PARLIAMENT OF VICTORIA

PARLIAMENTARY DEBATES (HANSARD)

LEGISLATIVE COUNCIL

FIFTY-SEVENTH PARLIAMENT

FIRST SESSION

Thursday, 7 August 2014

(Extract from book 10)

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By authority of the Victorian Government Printer

The Governor

The Honourable ALEX CHERNOV, AC, QC

The Lieutenant-Governor

The Honourable Justice MARILYN WARREN, AC

The ministry

(from 17 March 2014)

Premier, Minister for Regional Cities and Minister for Racing	The Hon. D. V. Napthine, MP
Deputy Premier, Minister for State Development, and Minister for Regional and Rural Development	The Hon. P. J. Ryan, MP
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Minister for Liquor and Gaming Regulation, Minister for Corrections and Minister for Crime Prevention	The Hon. E. J. O'Donohue, MLC
Assistant Treasurer, Minister for Technology and Minister responsible for the Aviation Industry	The Hon. G. K. Rich-Phillips, MLC
Minister for Environment and Climate Change, and Minister for Youth Affairs	The Hon. R. Smith, MP
Minister for the Arts, Minister for Women's Affairs and Minister for Consumer Affairs	The Hon. H. Victoria, MP
Minister for Higher Education and Skills	The Hon. N. Wakeling, MP
Minister for Agriculture and Food Security, and Minister for Water	The Hon. P. L. Walsh, MP
Minister for Police and Emergency Services, and Minister for Bushfire Response	The Hon. K. A. Wells, MP
Minister for Mental Health, Minister for Community Services, and Minister for Disability Services and Reform	The Hon. M. L. N. Wooldridge, MP
Cabinet Secretary	Mrs I. Peulich, MLC

Legislative Council committees

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

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

 # Participating member

Legislative Council standing committees

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

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

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

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

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

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

 # Participating member

Joint committees

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

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

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

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

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

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

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

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

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

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

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

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

Rural and Regional Committee — (*Council*): Mr D. R. J. O'Brien. (*Assembly*): Mr Howard, Mr Katos, Mr Trezise and Mr Weller.

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

Heads of parliamentary departments

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

Council — Acting Clerk of the Legislative Council: Mr A. Young

Parliamentary Services — Secretary: Mr P. Lochert

MEMBERS OF THE LEGISLATIVE COUNCIL

FIFTY-SEVENTH PARLIAMENT — FIRST SESSION

President: The Hon. B. N. ATKINSON

Deputy President: Mr M. VINEY

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

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

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

Leader of the Opposition:
Mr J. LENDERS

Deputy Leader of the Opposition:
Mr G. JENNINGS

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

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

Member	Region	Party	Member	Region	Party
Atkinson, Hon. Bruce Norman	Eastern Metropolitan	LP	Lovell, Hon. Wendy Ann	Northern Victoria	LP
Barber, Mr Gregory John	Northern Metropolitan	Greens	Melhem, Mr Cesar [2]	Western Metropolitan	LP
Broad, Ms Candy Celeste [9]	Northern Victoria	ALP	Mikakos, Ms Jenny	Northern Metropolitan	ALP
Coote, Mrs Andrea	Southern Metropolitan	LP	Millar, Mrs Amanda Louise [4]	Northern Victoria	LP
Crozier, Ms Georgina Mary	Southern Metropolitan	LP	O'Brien, Mr Daniel David [8]	Eastern Victoria	Nats
Dalla-Riva, Hon. Richard Alex Gordon	Eastern Metropolitan	LP	O'Brien, Mr David Roland Joseph	Western Victoria	Nats
Darveniza, Ms Kaye Mary	Northern Victoria	ALP	O'Donohue, Mr Edward John	Eastern Victoria	LP
Davis, Hon. David McLean	Southern Metropolitan	LP	Ondarchie, Mr Craig Philip	Northern Metropolitan	LP
Davis, Mr Philip Rivers [5]	Eastern Victoria	LP	Pakula, Hon. Martin Philip [1]	Western Metropolitan	ALP
Drum, Mr Damian Kevin	Northern Victoria	Nats	Pennicuik, Ms Susan Margaret	Southern Metropolitan	Greens
Eideh, Mr Khalil M.	Western Metropolitan	ALP	Petrovich, Mrs Donna-Lee [3]	Northern Victoria	LP
Elasmar, Mr Nazih	Northern Metropolitan	ALP	Peulich, Mrs Inga	South Eastern Metropolitan	LP
Elsbury, Mr Andrew Warren	Western Metropolitan	LP	Pulford, Ms Jaala Lee	Western Victoria	ALP
Finn, Mr Bernard Thomas C.	Western Metropolitan	LP	Ramsay, Mr Simon	Western Victoria	LP
Guy, Hon. Matthew Jason	Northern Metropolitan	LP	Rich-Phillips, Hon. Gordon Kenneth	South Eastern Metropolitan	LP
Hall, Hon. Peter Ronald [7]	Eastern Victoria	Nats	Ronalds, Mr Andrew Mark [6]	Eastern Victoria	LP
Hartland, Ms Colleen Mildred	Western Metropolitan	Greens	Scheffer, Mr Johan Emiel	Eastern Victoria	ALP
Jennings, Mr Gavin Wayne	South Eastern Metropolitan	ALP	Somyurek, Mr Adem	South Eastern Metropolitan	ALP
Koch, Mr David Frank	Western Victoria	LP	Tarlamis, Mr Lee Reginald	South Eastern Metropolitan	ALP
Kronberg, Mrs Janice Susan	Eastern Metropolitan	LP	Tee, Mr Brian Lennox	Eastern Metropolitan	ALP
Leane, Mr Shaun Leo	Eastern Metropolitan	ALP	Tierney, Ms Gayle Anne	Western Victoria	ALP
Lenders, Mr John	Southern Metropolitan	ALP	Viney, Mr Matthew Shaw	Eastern Victoria	ALP
Lewis, Ms Margaret [10]	Northern Victoria	ALP			

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

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THURSDAY, 7 AUGUST 2014

Thursday, 7 August 2014

The PRESIDENT (Hon. B. N. Atkinson) took the chair at 9.37 a.m. and read the prayer.

The PRESIDENT — Order! An unfortunate habit seems to be developing where, when I am on my feet, members seem to feel they can still talk. The rules are well known. If I am on my feet, I expect silence. The house expects silence. With that warning, next time I will be throwing people out. Yesterday and the day before I was fairly lenient in terms of being on my feet and having people continue conversations across the chamber, and it really was not a courtesy to the house.

RULINGS BY THE CHAIR

Adjournment matters

The PRESIDENT — Order! Last night during the adjournment debate a matter was raised by Mrs Kronberg for the Premier, and the Acting President, Mr Ramsay, indicated that he would refer the matter to me as to whether it should stand as an adjournment item. My view agrees with Mr Ramsay's perception last evening that the adjournment item ought not stand as an adjournment item. While the matter raised by Mrs Kronberg is one of great seriousness, particularly at this time in world affairs, her instrument in this house to pursue that matter and place on the record her views would best have been done in a 90-second members statement rather than as an adjournment matter. One of the reasons for that is largely because of her supporting statement on international affairs. I am concerned about a situation in the adjournment debate where members ask ministers to pursue federal policy. That is clearly not the intent of the adjournment debate, which is about state jurisdiction.

I understand and I agree with the sentiment that Mrs Kronberg put in terms of decrying anti-Semitism. In some ways had she put this matter to the Minister for Multicultural Affairs and Citizenship, I may well have had a different view to it being put to the Premier, because I think the multicultural affairs minister has more jurisdiction in these matters of our multicultural community. I certainly do not dispute the sentiment or the genuineness of Mrs Kronberg seeking to have people understand that anti-Semitism is unacceptable in Victoria, and I am sure that is a position the Premier, the minister to whom she referred the matter, would hold. But on this occasion in the context of our rules and practices for adjournment debates I agree with the Acting President that it should not proceed as an adjournment matter and, in the form it was put, might well have been better as a 90-second statement.

PETITIONS

Following petitions presented to house:

Beaumaris secondary school

To the Legislative Council of Victoria:

The petition of residents of Beaumaris and surrounding areas draws to the attention of the Legislative Council the importance of the provision of public education for all Victorian students, in all communities across the state.

The petitioners therefore request that the Legislative Council of Victoria ensure the ongoing provision of a government secondary school at the site of the Beaumaris campus of Sandringham secondary college, and more specifically provide a locally governed years 7–12 school for the community.

By Mr LENDERS (Southern Metropolitan) (372 signatures).

Laid on table.

TAFE funding

To the Legislative Council of Victoria:

The petition of certain citizens of the state of Victoria draws to the attention of the Legislative Council the state government's slashing of hundreds of millions of dollars from TAFE funding.

In particular, we note:

1. the TAFE association has estimated up to 2000 jobs could be lost as a result of these cuts;

2. many courses will be dropped or scaled back and several TAFE campuses face the possibility of closure; and

3. with 49 000 full-time jobs already lost in this term of government, skills training has never been more important for Victorians.

The petitioners therefore request that the Legislative Council urges the Napthine state government to reinstate the TAFE funding and guarantee no further cuts will be made.

By Mr LENDERS (Southern Metropolitan) (1537 signatures).

Laid on table.

PAPERS

Laid on table by Acting Clerk:

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

By-law No. 2/2014 Waterways Protection — Wimmera Catchment Management Authority under the Water Act 1989.

By-law No. 3/2014 Waterways Protection — Goulburn Broken Catchment Management Authority under the Water Act 1989.

By-law No. 3/2014 Waterways Protection — West Gippsland Catchment Management Authority under the Water Act 1989.

BUSINESS OF THE HOUSE

Adjournment

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

That the Council, at its rising, adjourn until Tuesday, 19 August 2014.

Motion agreed to.

PROCEDURE COMMITTEE

Membership

Mr LENDERS (Southern Metropolitan) — By leave, I move:

That standing orders be suspended to the extent necessary to allow for —

(1) Mr Jennings to be a participating member of the Procedure Committee; and

(2) Mr Jennings to substitute for Mr Viney on the Procedure Committee for the remainder of the 57th Parliament.

Motion agreed to.

MEMBERS STATEMENTS

Ken Dunne

Mr FINN (Western Metropolitan) — Everybody in this house, and I think in the community, knows the importance of a good teacher. A good teacher will not just instil knowledge in a student but bring out the best in them. A good teacher will change a child's life for the better and help prepare them for the journey ahead. Good teachers are to be cherished. They are more valuable than gold.

One such teacher went to his eternal reward on 22 July just passed. Ken Dunne was a teacher who changed lives for the better. I know that because he changed mine. When I was a tacker in grave danger of falling through the gaps more years ago than I care to remember, he grabbed me by the scruff of the neck and showed me what was possible. He taught me how to read using the *Sporting Globe* and a tall tale about Royce Hart being out for the season with a crook knee. He certainly knew how to engage me! My earliest recollection of anything political was by virtue of Ken Dunne in the classroom. He was the first to kindle my interest in current affairs when he taught his class that Fraser was in fact a politician and not a boxer.

I fear to think where I might have ended up without his intervention at Alvie Consolidated School over four decades ago. Ken gave me the grounding for everything I have done or will do in my professional life. Without him I would never have sat in this Parliament — indeed I might never have even heard of it. Ken Dunne was a brilliant teacher, a dear friend and a first-class human being. I am one of many who will miss him, but, more than that, who give thanks for the life of someone we will never forget. May he rest in peace.

Western Victoria

Mr BARBER (Northern Metropolitan) — I have spent a good part of the winter break visiting various parts of western Victoria. It is a land of beauty, inspiration and opportunity, but in political terms it is dying of thirst. During this time I saw that the south-west mayors group has come out asking why in four years the government has not been able to deliver one extra train service to the region. The editors of various newspapers across the Lowan electorate ask their readers to eschew The Nationals and turn Lowan into a marginal seat. In Horsham people are worried about the impact of mineral sands mining on their farms, and in Hamilton and Portland, two areas that are highly dependent on groundwater, they are very worried about the impact that coal seam gas, or unconventional gas drilling, might have on their region. I have had a great time in that region with a group of Greens candidates with ideas for the future that I know people are very keen to hear, and I look forward to more visits to the area.

Malaysia Airlines flight MH17

Mr D. R. J. O'BRIEN (Western Victoria) — I, too, wish to join my colleagues, and indeed the whole nation, in passing on my condolences and sympathy to the families of all the victims, from all around the world and particularly from Victoria, of Malaysia Airlines

flight MH17. It was a tragedy of many proportions, and our thoughts are with those families as the commemoration service is about to begin.

World War I centenary

Mr D. R. J. O'BRIEN — I also wish to join members who have commemorated the 100 years since the start of World War I, or the Great War. This week we saw the commemorations of the first shot, which was fired from the Mornington Peninsula, with orders coming from Queenscliff.

Sir John Monash

Mr D. R. J. O'BRIEN — Tomorrow, 8 August, is the anniversary of the Battle of Amiens. I wish to make some brief comments on the contribution of a great Victorian, Sir John Monash, in relation to both his prewar and postwar activities. Prewar he was a lawyer and an innovative engineer who contributed enormously to the building of our nation and designed many bridges in western Victoria using his Monier method of construction. During the war, and particularly at the Battle of Amiens, he changed the Allied plan of attack, which not only saved many Victorian lives but also was instrumental in bringing an earlier end to the war — in the end, a more decisive conclusion than might otherwise have been the case. In the postwar period he continued his efforts for Victoria at the State Electricity Commission of Victoria, and he always remained humble, such that his tombstone simply reads, 'John Monash'.

East–west link

Mr LEANE (Eastern Metropolitan) — With much fanfare the Premier, Denis Napthine, and the Minister for Public Transport, Terry Mulder, announced that travel time will be saved after the east–west link is built. They stated that in the trip from Ringwood to the airport in peak hour people will save 90 minutes. Considering that over the last two days peak hour travel from Ringwood to the airport has taken 60 minutes or less, what will happen to the people of Ringwood? After the east–west link is built they will arrive at the airport 30 minutes before they leave Ringwood.

I see a great peril for the people of Ringwood, whom a number of us represent. There is every chance that the people of Ringwood will arrive at the airport when they are still in the shower. If that is the case and you are going to save 30 minutes of your life every time you travel to the airport, I am going to travel back and forth from Ringwood to the airport until I get back into my early 20s, I have colour back in my hair and I can have a second crack at a career as a professional boxer or male model.

The PRESIDENT — Order! I have to go to the national commemoration service for victims of the MH17 disaster, but I am delighted that I was in the chair to hear that contribution. I just hope that the same opportunity is extended to the good people of Donvale.

Lorraine Clare Elliott, AM

Mrs PEULICH (South Eastern Metropolitan) — I am also glad I was present to hear that contribution. I wish Mr Shaun Leane well, but I say, 'Dream on!'. The prospect of his regaining his youth and good looks is unfavourable. It will be a challenge.

I would like, however, to take this opportunity to convey my deepest sympathy on the recent passing of my parliamentary colleague and friend Lorraine Elliott, the former member for Mooroolbark and Parliamentary Secretary for the Arts. She was an enthusiast for the arts as well as being a devoted mother and an absolutely smitten grandmother. I extend commiserations to Ms Elliott's family, in particular her daughter**,** Caroline Elliott, the vice-president, metropolitan, of the Liberal Party; her son, Tom Elliott, well known to all of us; and the two great loves of her life, John Elliott and John Kiely. May she rest in peace.

Malaysia Airlines flight MH17

Mrs PEULICH — I also take a moment to honour the innocent victims of Malaysia Airlines flight MH17 and wish the community well as it participates in the interdenominational national memorial service today commemorating those who lost their lives. In particular I thank all those in my electorate who have come together to sign a condolence book as a mark of their sadness and respect for those who lost their lives, especially the children.

World War I centenary

Mrs PEULICH — Finally, I pay tribute to the 16 million people who died as a result of World War I, and I thank those who organised the remembrance of the first shots fired at Fort Nepean for the opportunity to commemorate those lives and hopefully make sure we do not go down that track again.

National broadband network

Mr SOMYUREK (South Eastern Metropolitan) — The most recent review of the national broadband network, entitled *Independent Audit — NBN Public Policy Processes*, is nothing more than a political stunt.

The federal Minister for Communications, Malcolm Turnbull, and the federal government have done everything they can to discredit the nation's largest ever infrastructure project.

Interestingly, a recommendation from this report is for infrastructure projects worth over $1 billion to be subject to a full cost-benefit analysis and released publicly. I therefore eagerly await the release of the full cost-benefit analysis of the east–west link toll road — for which both the state and federal coalition governments are contributing more than $1 billion.

Gippsland manufacturing sector

Mr SOMYUREK — On another matter, last month with my friend, colleague and member for Eastern Victoria Region Johan Scheffer, and a Labor candidate for Eastern Victoria Region, Harriet Shing, I had the pleasure of meeting with manufacturers in the Gippsland region, courtesy of the Committee for Gippsland and its chief executive officer, Mary Aldred.

Particular thanks go to Rubbertough Industries and Australian Sustainable Hardwoods for providing tours of their manufacturing sites, and to representatives from Bass Coast Shire Council, the Baw Baw Latrobe Local Learning and Employment Network, Baw Baw Shire Council, the Committee for Moe, Esso Australia, FGM Consultants, Latrobe City Council, Quantum, Safetech Tieman Solutions, Slattery Auctions, Tim Weight Consulting and the West Gippsland Healthcare Group for taking time out to meet to discuss issues related to industry in the local area.

Greater Shepparton

Mr SOMYUREK — On another matter, last month the member for Thomastown in the other place, Bronwyn Halfpenny, and I had the pleasure of touring the Greater Shepparton region with the kind assistance of the Committee for Greater Shepparton and its chief executive officer, Matt Nelson. The day was productive, and I would like to thank representatives from Tatura Milk, the City of Greater Shepparton, Kreskas Brothers Transport — —

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

Malaysia Airlines flight MH17

Mr ELSBURY (Western Metropolitan) — I join the people of Australia in commemorating the victims of the MH17 atrocity. The western suburbs did not go unaffected, with the loss of Albert and Maree Rizk from Sunbury. I met Albert for the first time only a few weeks before he went on his holiday, but I understand that my colleague, Mr Finn, had known him for many years.

I would also like to express my condolences to the van den Hende family, who resided in the Einsbury estate. This was a true disaster in all its aspects.

World War I centenary

Mr ELSBURY — I also mention the commemoration of the centenary of the declaration of the First World War. This is a time to remember the things that we have — the democracy that was defended in that conflict. It is also a time to remember those who sacrificed so much to ensure that we can live in a free and civil society.

Ramadan

Mr ELSBURY — I wish Eid Mubarak to the members of the Islamic community. Eid is a celebration that occurs at the end of Ramadan, and I wish all members of the Islamic community well for the forthcoming year following this Eid.

St James the Apostle Parish

Mr ELSBURY — Last but not least, I congratulate the St James the Apostle Parish in Hoppers Crossing on achieving 25 years service to the community and providing spiritual guidance to the people of Hoppers Crossing.

Ralph Willis

Mr EIDEH (Western Metropolitan) — Last week I was happy to attend a farewell at Sunshine Hospital to honour Ralph Willis, AO, who has retired from the board of Western Health. The celebration recognised Ralph's hard work and dedication to the Western Health board over the past 10 years. In attendance were the Minister for Health, Mr David Davis, and members for Western Metropolitan Region Cesar Melhem, Colleen Hartland and Andrew Elsbury. During his time on the board Ralph acted as chair and was responsible for overseeing the provision of health services to a population in my electorate of around 800 000 people. Many of these individuals are significantly disadvantaged and face serious health concerns.

During his time as chair Ralph has also overseen the transition of the health service, which has occurred to ensure that it is able to respond quickly and thoroughly to the ever-changing demand for services in the west. I congratulate Ralph on his hard work over the past

decade, and I wish him all the very best for the next chapter of his life.

Bronwyn Pike

Mr EIDEH — I am delighted to inform the house that a former member for Melbourne in the Assembly, Bronwyn Pike, has been appointed to lead the Western Health board. During her time in the Victorian Parliament Bronwyn held a range of portfolios, including housing and aged care, community services, skills and workplace participation, senior Victorians, health, education and assisting the Premier on community building. I wish her all the very best for her new role and journey.

Gaza conflict

Ms CROZIER (Southern Metropolitan) — Over the last month graphic images have been broadcast in our media of casualties caused by the Middle East conflict involving Israel and Gaza. While it is absolutely shocking to witness any casualties of war, but particularly the innocent children who have been caught up in this conflict, no country should have to live under constant rocket fire. It has been reported that in the last three weeks Israel has had over 3000 rockets fired at it by the known terrorist organisation Hamas.

I am making this statement because just over a year ago I had the opportunity to visit Israel. It was an extraordinary experience to visit this geographically small, democratic and resilient country, which has achieved so much in a relatively short period of existence.

I also visited and met people living in Sderot, a town very close to Gaza, which is currently under rocket fire, and which has been constantly under attack for years. The heartfelt stories of people living under constant attack still resonates with me today: of parents having to choose which child to take to a shelter if they were travelling in a car when an alert went off, of children only being able to play in confined spaces with the protection of concrete play shelters in the shape of giant caterpillars, of houses having their own bomb shelters and of street shelters every 100 metres or so. Why? Because people only have 15 seconds from the time an alert goes off to the time they have to find shelter. That is the reality of daily life for the people of Sderot.

I along with the world community want this conflict to end. As much as we all want peace in the region, I also acknowledge the right of Israel to exist and defend itself.

Maldon

Ms LEWIS (Northern Victoria) — Maldon, in central Victoria, is a unique country town. It is Australia's first notable town, and it is situated on the side of Mount Tarrengower and overlooks Cairn Curran Reservoir. Nearby to the west are the beautiful Moolort Plains. It has a range of shops and festival celebrations, which are all focused on tourism. It also has a huge number of accommodation options, including many B & Bs. It has rich cropping and grazing nearby.

Currently this beautiful town is under siege. The Tarran Valley housing development, the proposal to build 24 broiler chicken sheds on the Moolort Plains nearby and the proposed closure of the Welshmans Reef Caravan Park are bringing this wonderful little town and its economy into serious danger.

World War I centenary

Mrs MILLAR (Northern Victoria) — This week marks 100 years since the commencement of World War I, and while 100 years sounds like a very long time there are few of us untouched by a connection to the devastation and impact of the Great War. Every Remembrance Day I remember my grandfather, Peter Harland Brady, a King's Own Scottish Borderer from Galashiels in Scotland. Of his whole family he was the only survivor — his two brothers were killed on the battlefields of northern France and his sister passed away during the course of the war. My grandfather was one of the 100 000 worst injured British soldiers of the war, having had a shell destroy one side of his face, which was later reconstructed during some of the earliest plastic surgery performed. Despite all of this, I have been told that he retained his warm sense of humour and his kindness. I pay tribute to my grandfather and his brothers today.

I recently had the privilege of attending a community event in Arthurs Creek to hear Ted Baillieu, the member for Hawthorn in the other place, as chair of the Victorian Anzac Centenary Committee, speaking on researching and establishing our connections to the Anzacs. It was an inspiring message. The vote of thanks was given by Sam Ozturk, Liberal candidate for Yan Yean, who spoke about the abiding significance of these connections for young Victorians today. I know this is true of my seven-year-old daughter, Harriet, who determinedly attended the Anzac Day dawn service this year in reverence and awe after learning about the Anzacs at school. As Ted described, we have a duty to pass on the Anzac torch to the next generation, and this flame is so easily lit. There is nothing to celebrate in war, as my grandfather's story tells, but there is much

to remember, honour and respect, and we owe it to those who gave so much to remember them.

Puppy farms

Ms PULFORD (Western Victoria) — Victorians spend more than $30 million a year purchasing dogs. Most puppies sell for around $1000, and there is no shortage at all of dog breeders in Victoria. Dogs Victoria has around 10 000 members in this state. It is important to note that there are approximately 100 large domestic animal breeding businesses operating in Victoria. Between them these 100 businesses have 3000 fertile female breeding dogs, and they are estimated to produce almost 15 000 puppies a year. Around 15 per cent of puppies are sold in pet stores, but the overwhelming majority of puppy sales now occur online.

The Royal Society for the Prevention of Cruelty to Animals responsible buying guide indicates that those looking to adopt a puppy should visit the breeding place and meet the breeding dog. Online sales are a key feature of the puppy farm supply chain. I have heard countless stories of roadside transactions where a fistful of cash is exchanged for a puppy and where the seller is discouraging of the puppy purchaser coming to the premises. Puppies go home and are loved and enjoyed very much, but the breeding dogs who have produced them continue on in appalling conditions — they are often required to produce two litters a year.

I take the opportunity to call on Gumtree and the Trading Post to cease pet sales. Online traders can help us to break the puppy farm business model, and it is essential that they do so.

Kylie Blackwood

Hon. E. J. O'DONOHUE (Minister for Liquor and Gaming Regulation) — Last Friday, 1 August, was the anniversary of the murder of Kylie Blackwood, a much-loved and respected resident of Pakenham. The murder of Kylie Blackwood has had a deep and significant impact on the Pakenham community, and I take this opportunity to acknowledge the anniversary of her tragic death.

World War I centenary

Hon. E. J. O'DONOHUE — On a different matter, I acknowledge the 100th anniversary of the first shot at Fort Nepean, a truly historic event in the history of the tragic World War I. I am pleased that the event was commemorated earlier this week.

Eastern Victoria Region

Hon. E. J. O'DONOHUE — The coalition government is delivering for my electorate of Eastern Victoria Region. It was terrific to have the Premier out last week to open the new training facilities at Tynong for the Pakenham Racing Club, a significant investment in racing in Eastern Victoria Region that will generate many jobs as this project continues to evolve and be delivered. The Premier also announced an upgrade to the South Gippsland Highway, which is a much-needed investment in that major arterial road. Importantly, the Premier and the Minister for Education opened the Officer specialist school, a wonderful new school for the Officer community, delivering education in a specialist setting for children with special needs. I congratulate all those involved in this magnificent project.

Liberal Party election candidates

Ms MIKAKOS (Northern Metropolitan) — In the past week the Liberal Party has had to dump two of its election candidates, Aaron Lane and Jack Lyons, for making sexist, racist or homophobic comments. In response Liberal headquarters has summoned all Liberal candidates to social media re-education classes. Liberal headquarters would now prefer that its candidates conceal their real views; it wants to hide the growing hate faction of the Liberal Party. I wonder how Wendy Lovell, Amanda Millar and the Premier feel about having had their photo taken at a women's refuge with Jack Lyons, who thought it was funny to make jokes about rape.

Sadly, none of this comes as a surprise. We have senior members of the Napthine government attending conferences espousing homophobic views without any reprimand. Attorney-General Robert Clark is scheduled to open the extremist World Congress of Families conference, which will also be attended by Bernie Finn and Jan Kronberg. The conference features a promoter of Russia's crusade against homosexuality, an American person promoting a discredited link between abortion and breast cancer and other representatives from the hard right. It can hardly be coincidental that there is no reprimand when Robert Clark and Bernie Finn were instrumental in getting the numbers together to dump Ted Baillieu and install Denis Napthine as Premier. If actions speak louder than words, then Robert Clark's actions speak volumes about this government's views.

Anti-Semitism

Mrs KRONBERG (Eastern Metropolitan) — I rise to deplore anti-Semitism in all its grotesque forms, and to say that there is no place for anti-Semitism in Victoria. I want to refer to an article by Jeremy Jones in the 'Last word' section of the *Australia/Israel Review*. He said:

> On the Facebook page of a Sydney-based group organising anti-Israel events, moderators permitted comments such as 'Jews … have always been bloodthirsty', are 'whining about the Holocaust', have 'all the money in the world' and similar statements, interwoven with sinister suggestions that the Jewish community in Sydney's 'eastern suburbs' needed to become better acquainted with pro-Hamas protesters.

Just yesterday a school bus in Randwick in Sydney's eastern suburbs was stormed by a group of youths described as being aged between 16 and 18 years. They got on the bus, in which Jewish schoolchildren made up the majority of passengers, shouting, 'Death to Jews', and, 'We will slit your throats'. The bus was carrying schoolchildren as young as five years old. This madness, which is continuing in our society, is a grave danger to us all.

The world is expressing concern about the suffering of the people of Gaza as Israel responds to the relentless missile bombardment it has had to endure from the terrorist group Hamas. Hamas does not care for its own people. It has brutalised its people. The people who stand up against Hamas have been — —

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

LOCAL GOVERNMENT LEGISLATION AMENDMENT (ENVIRONMENTAL UPGRADE AGREEMENTS) BILL 2014

Statement of compatibility

For Hon. D. K. DRUM (Minister for Sport and Recreation), Hon. D. M. Davis 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 Local Government Legislation Amendment (Environmental Upgrade Agreements) Bill 2014.
>
> In my opinion, the Local Government Legislation Amendment (Environmental Upgrade Agreements) 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**
>
> 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. D. M. DAVIS (Minister for Health).

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

> That the bill be now read a second time.

Incorporated speech as follows:

> The Local Government Legislation Amendment (Environmental Upgrade Agreements) Bill 2014 will amend the Local Government Act 1989 to allow all Victorian councils to offer 'environmental upgrade agreements'.
>
> Environmental upgrade agreements are a financing mechanism that helps building owners access finance for upgrades to improve the energy, water or environmental efficiency or sustainability of existing non-residential buildings on rateable land. The City of Melbourne has been offering environmental upgrade agreements since April 2011, enabled by the City of Melbourne Act 2001 as amended in 2010.
>
> The bill will bring forward the Victorian government's Plan Melbourne commitment by enabling all Victorian councils to offer environmental upgrade agreements. The bill largely replicates provisions in part 4B of the City of Melbourne Act 2001. The bill differs from the City of Melbourne Act only in that it strengthens protections against council liability and provides for the Minister for Energy and Resources to make guidelines relating to environmental upgrade agreements.
>
> Under an environmental upgrade agreement, a lender provides finance to a building owner for upgrades, and the local council collects repayments in a property charge levied through the rates system. The council then passes the property charge onto the lender. This mechanism provides a greater level of security for lenders because environmental upgrade charges are a first charge on the land that takes priority over all other mortgages, charges on, or interests in the land. This enables lenders to offer more competitive loan terms.
>
> The bill also enables tenants to contribute to the costs of environmental upgrades. Standard commercial leases provide for tenants to pay outgoings, such as energy costs and council charges. Subject to the agreement of the affected tenants, they can contribute to the repayment of the environmental upgrade charges while receiving compensating benefits in the form of reduced energy costs and improved working conditions.
>
> By enabling all Victorian councils to offer environmental upgrade agreements, the bill provides new ways to reduce the costs of doing business and improve environmental outcomes.

I commend the bill to the house.

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

Debate adjourned until Thursday, 21 August.

PUBLIC HEALTH AND WELLBEING AMENDMENT (HAIRDRESSING RED TAPE REDUCTION) BILL 2014

Second reading

Debate resumed from 25 June; motion of Hon. E. J. O'DONOHUE (Minister for Liquor and Gaming Regulation).

Mr LEANE (Eastern Metropolitan) — Mr Melhem was going to speak on this bill on behalf of the opposition, but he is across the road at the memorial service for victims of the MH17 disaster along with a number of colleagues from both sides of the chamber. I am sure the rest of us who are in the chamber today share and support the sentiment of that ceremony.

Despite the fact that the bill really tinkers around the edges, the opposition supports it. Mr Davis nearly fell over as I said that, but we believe the government is implementing a common-sense approach to reducing the red tape that hairdressers and make-up artists must currently adhere to. The bill seeks to amend the Public Health and Wellbeing Act 2008 so that these businesses need only register with the local council once and not annually. If there is a change of ownership or the new owners want to run the same type of business, they need to register with the council again. Under the amendments, councils and council officers would retain existing powers to monitor and enforce compliance with the act and regulations. This means that councils would still have power to inspect all registered premises at a reasonable hour, either to investigate a complaint from the public or to monitor compliance.

Current provisions in the act require a hairdressing salon proprietor or occupier to ensure that the premises are kept in a clean, sanitary and hygienic condition and that before carrying out any procedure each staff member cleans their implements, has clean hands and has attended to any open cuts or abrasions. As I said at the start, this seems like a common-sense approach.

These premises are important to the community. There are some 4000 hairdressing salons across the state. Anything that can be done to help them keep their businesses healthy and running well is a good thing. We support the bill.

Ms CROZIER (Southern Metropolitan) — I am very pleased to rise this morning to contribute to debate on the Public Health and Wellbeing Amendment (Hairdressing Red Tape Reduction) Bill 2014. We thank the opposition for its support of this bill. As Mr Leane said, this is a common-sense approach to reducing red tape. The purpose of the bill is to amend the Public Health and Wellbeing Act 2008 to provide for the registration, on an ongoing rather than periodic basis, of premises in which certain businesses are conducted, and to correct an outdated reference. As Mr Leane has highlighted, there are some 4000 hairdressing outlets across the state, which provide significant economic benefits. As someone who is a regular patron of a hairdresser, I suspect I support the industry a little more than my male colleagues do, especially some of those in the chamber with me today. Nevertheless these businesses are a necessary part of our community.

The bill goes to reducing red tape for hairdressers and beauty therapists, or those businesses where cosmetics and make-up is applied, but not where skin piercing or other invasive procedures might take place, such as tattooing or colonic irrigation, where there needs to be some stricter regulation. We want to maintain the highest standards of public amenity in relation to those various activities, and that is why they do not fall within the scope of this regulation. They do need constant and regular review, and that will be ongoing and will be provided. When it comes to hairdressing outlets, make-up artists and cosmetics, as I said, there will just be the need for a one-off annual review. That review will be conducted by councils on an annual basis. They will monitor and enforce compliance with the standards and will charge a renewal fee of between $100 and $250. That is the current status.

The regulations require operators to ensure that their premises, equipment and work systems are clean, hygienic and do not put the public at any risk. That is why we want to make this as simple as possible for businesses that do not pose a high public risk. However, we need to maintain the strictest controls and infection control measures for businesses such as tattoo parlours and places where there is penetration of the skin — ear piercing and things like that — where there can be transmission of blood-borne viruses, including hepatitis and HIV.

This is a straightforward bill. There are thousands of hairdressers, barbers and make-up businesses operating in Victoria. The amendments will reduce red tape for all those businesses that provide a lower risk to the public. In the seat of Oakleigh, which is an area in the Southern Metropolitan Region, there are quite a number

of hair and beauty salon outlets and places like Marzi Hairdressing in Oakleigh and Little Hollywood in Hughesdale.

Hon. D. M. Davis — Mario's in Kew.

Ms CROZIER — There is also Mario's in Kew. Mr Davis frequents Mario's regularly, I suspect. Once we have our own hairdressers and barbers, we are all generally loyal clients of those businesses. They have a very important role to play within the Victorian community. This is another move from the coalition government to reduce red tape.

I mention also the correction of an outdated reference in section 41 of the principal act. Clause 4 will replace reference to a ministerial committee in section 41(1)(d) with the Commission for Children and Young People, established under section 6 of the Commission for Children and Young People Act 2012. All functions previously performed by a ministerial committee under section 41(1)(d) are now performed by the commission. That is a fairly straightforward technical amendment.

I have some background here in relation to the economic benefits of hairdressers, make-up salons and the like. In 2014 IBISWorld published a report entitled *Hairdressing and Beauty Services in Australia*. This is a national report. There are 21 777 businesses nationally. Their revenue amounts to around $3.9 billion. It is a very important industry. This is another move by the coalition to support small business by reducing red tape. In reducing their costs this bill will enable those organisations to have ongoing registration rather than the annual registration that is currently in place. As Mr Leane said, it is common sense to have a one-off registration process as opposed to one that operates on an annual basis. Again I congratulate the government for taking this initiative and highlighting the need to reduce the burden on small business by reducing red tape. I commend the bill to the house.

Ms HARTLAND (Western Metropolitan) — As the two previous speakers have comprehensively covered what this bill is about, I am only going to speak on it very briefly. The Greens will support this bill — it is common sense and logical to do so. I have consulted extensively with my hairdresser, Nathan Stafford, and he tells me that this is a good idea. I feel quite comforted that it is okay. With those few words, the Greens will support this bill because it is absolutely sensible.

Mrs MILLAR (Northern Victoria) — It gives me pleasure to rise to make a brief contribution on this bill following my colleague Ms Crozier. I have spoken with a number of those in the hairdressing industry in my electorate about this legislation, and I know it is greatly welcomed in terms of reducing red tape and bureaucracy for small businesses.

It is timely that this bill is being considered during the month of August, as the Small Business Festival Victoria is running across the state for the entire month, fostering the development of small businesses across Victoria. Victoria's small businesses employ more than 1.27 million people, and since 2010, when this government came to office, 77 000 extra jobs have been created by small businesses across the state. Small business remains the lead employer of Victorians, and bills like this one are welcome as they make it easier to do business in this state.

I have been going to Ann Maurie Salon in Gisborne for many years, as has my mother-in-law, Elaine, and my daughter, Harriet. I pay tribute to Annie, Sabrina, Jess and the other staff. Every time you walk through the salon door there are smiles on their faces, and you always leave feeling great. This is what our Victorian hairdressers do for us. They do not just do our hair; they listen to us — and we all know Victoria needs more good listeners — they make us laugh and they care for us. As the title of the bill suggests, it is about health and wellbeing. I cannot emphasise enough the significance of all that hairdressers do.

I would like to mention Peter and Charlie at Hairroom in Hardware Lane. My husband, Rohan Millar, has been having his hair cut by Peter and Charlie for over 30 years. They are absolutely treasured by their clients, and I thank them and acknowledge their careers and service.

Every town has a hairdresser. As other speakers have mentioned, there are around 4000 hairdressers and barbers in Victoria. Many of them have been in business providing outstanding service to their clients for many years. It is the market, not registration, which determines whether hairdressing businesses survive and flourish. Word of mouth and repeat business is a powerful signal of the quality of the services provided.

While trade unions and bureaucrats are in love with regulation and procedure, it is the market which most truly protects the public from poor operators. We should have confidence in its operation — the invisible hand.

The bill provides for a one-off registration with the local council rather than the current annual process. Average registration fees are approximately $150 per

annum. Councils will maintain all of their power to monitor compliance.

This bill brings common sense to the hairdressing industry, and it is with great pleasure that I commend this bill to the house.

Mr RONALDS (Eastern Victoria) — I rise to support this good legislation. I am very surprised to find myself agreeing with everything that has been said on the other side of the chamber. As I have gone around my electorate, and in particular the lower house electorate of Monbulk, with a very good man, Mark Verschuur, who is a candidate for that seat, we have visited a lot of hairdressers, and the legislation has received a fantastic response.

It is important to note that about 4000 small businesses are affected by the legislation. There are 3100 hairdressers, 140 barbers and 780 make-up artists in Victoria. Like other speakers I want to mention my hairdresser. Chumba Concept Salon in Warragul was started some years ago by Carl and Belinda Keeley. They have now extended their business to include another salon in Windsor. It is a great business, which employs a number of people. Importantly, it has won awards not only in Australia but around the world. This is a great testament to people who wanted a bit of a tree change, moved to Warragul and have done so well in their business. It would be remiss of me not to mention my hairdresser, Debbie, who does a fantastic job, although I am very concerned that every time I go I seem to come out with my hair a little lighter in colour. She assures me that it is not of her doing.

The government is committed to a reduction in red tape. It is hard to believe that local businesses were being charged $150 on average and sometimes a lot more to register their business and to make sure they were complying with the legislation. It is not just about saving money for small businesses; it is also about making sure the costs of compliance beyond the $150 is reduced. It takes people away from their businesses and away from employing people.

Small business is the biggest employer in the state, in fact in the country, and anything we can do to remove red tape and the compliance burden helps to employ more people and at the end of the day gives more people opportunities to work, which is a great thing. This is another great example of the government removing red tape and building a better Victoria.

Motion agreed to.

Read second time.

Third reading

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

That the bill be now read a third time.

In doing so I thank honourable members for their contributions, and I thank the other parties in the chamber for their support of the bill. I also want to record my thanks to the department for the work that has been done in working through the bill to a sensible conclusion. It will reduce red tape and costs to businesses, and they are businesses that we all know and deal with directly and regularly. Lowering the cost to business ultimately lowers the cost of services. I thank the relevant industry too — hairdressing and make-up artists — for their consultation in the processes. With those remarks, I wish the bill well.

Motion agreed to.

Read third time.

STATUTE LAW AMENDMENT (RED TAPE REDUCTION) BILL 2014

Second reading

Debate resumed from 5 August; motion of Hon. E. J. O'DONOHUE (Minister for Liquor and Gaming Regulation).

Mr JENNINGS (South Eastern Metropolitan) — I commenced my contribution to the Statute Law Amendment (Red Tape Reduction) Bill 2014 on Tuesday evening, just before the adjournment. In that initial contribution I made it very clear that the opposition found this legislation to be a pretence in relation to what the government suggests is its major commitment to the reduction of red tape. It is window-dressing, because changing the way in which food services are regulated to reduce the requirement for a proprietor's name to be identified within a food outlet in Victoria is, in our view, hardly appropriate regulatory reform. It reduces the transparency and accountability of proprietors to provide quality outcomes in their food outlets. It encourages bad practice in terms of food handling and occupational health and safety in relation to food safety matters.

The consumer protections that will be reduced because of the change will not necessarily lead to fewer administrative practices, because local government will be required to pick up the responsibility for the identification and listing of proprietors of food outlets.

It is not a benefit for red-tape reduction. That is one issue.

On a second issue, the other pretence by the government is that it has changed the legislative basis for public consultation mechanisms in Docklands from one coordination committee under the auspices of the City of Melbourne Act 2001 to a non-legislative-based community forum convened by the council and Places Victoria. At best that might be a reflection of the appropriate way in which community consultation could take place in Docklands, but it certainly does not constitute regulatory reform.

The third item in the bill obliterates a major program that was introduced by the Labor government in 2007 to support the Victorian energy efficiency target (VEET) and to create programs designed to reduce the emissions profile of Victoria to assist households by introducing energy efficiency items in order to reduce energy consumption and therefore the costs of their energy consumption. The cumulative effect of all of those households across the state reducing their demand for energy into the future could have only played a cumulatively positive role in terms of the environmental and economic sustainability of the state.

The program, which is being decimated by the government, currently employs in excess of 2000 Victorian citizens; 2100 people are engaged in what is now known as the energy saver incentive scheme. The major impact of this legislation is to decimate that scheme and wind it up within the next two years. The opposition has joined other stakeholders in saying this is an appalling outcome, because it means that not only those jobs but also those energy efficiencies and benefits derived from it by Victorian households will be lost, and we will lose the restraint on energy consumption the program provides for, so every outcome that comes from this legislation will be bad for Victoria.

Mr Barber — So you are pledging to reverse it?

Mr JENNINGS — Mr Barber has not taken long to jump up out of his seat and start interjecting on me again today. He is obviously a bloke who is itching to get into this debate, and he will have his chance, but for some reason he wants to derive some fun at my expense. That is not going to happen today. I was associated with the creation of this program, with the creation of the momentum to do something about these matters, and I remain determined to do something about the climate change challenge experienced by Victoria so that we have not only legislation but programs that support the sustainability of the Victorian economy and Victoria's environment. Until the day I leave this place — and even beyond that day — I will be an advocate for programs that support sustainable investment and outcomes. That is the nature of my contribution today.

In the last 48 hours I have identified a number of occasions when I believe the policy positioning of the government was quite disingenuous. Before the coalition came to office in 2010 it supported the Climate Change Act 2010. It said to the people of Victoria, 'We support efforts to reduce greenhouse gas emissions. You don't have to have any fear about electing us, because we are committed to a program of environmental protections and addressing the climate change challenge'. The government's actions for the last three and a half years have run totally counter to that undertaking: the dismantling of the Climate Change Act, the dismantling of programs within the Department of Environment and Primary Industries and in fact the dismantling of the former Department of Sustainability and Environment, and the loss of capacity and capability in environmental protections that has been driven by this government, which continues to this day.

This has not stopped the duplicity of the government. The extraordinary thing is that while the government was introducing this very bill into the Parliament — in the same month the government was attempting to dismantle the energy saver incentive scheme — the government drew attention to the benefits of the scheme and tried to take credit for the scheme in a press release issued by the Minister for Environment and Climate Change on Wednesday, 4 June, in which the minister encouraged Victorians, as the heading says, to 'Be Winter Wise — keep the cold out and save'. The Minister for Environment and Climate Change, Mr Ryan Smith, is quoted in the press release as saying:

> Draughty homes are costing Victorian households up to $160 a year in additional energy costs.
>
> One of the biggest costs on winter energy bills is heat escaping through gaps in our homes, with the biggest sources of heat loss from cracks around doors, and uncovered vents and windows.

Extraordinarily, the media release goes on say:

> 'The Winter Wise campaign builds on the Napthine government's already substantial investment in practical energy efficiency programs and complements the energy saver incentive scheme', Mr Smith said.

That all sounds pretty good and laudable, but at the same time the minister's government is introducing a bill which cuts short the operation of the energy saver incentive scheme, which was due to run — by

Victorian law — and provide benefits to Victorian households until 2030, bringing forward its closing to 1 January 2016. He is cutting short that program by 14 years, but this did not prevent him from extolling the virtues of the program in his press release, pretending that the government is interested in that program and those outcomes. I think the minister has been caught continuing the duplicity of the government's attitude to this program and other environmental programs. Perhaps it is not surprising that the minister acts — —

Hon. D. M. Davis — On a point of order, Acting President, there was a word used in relation to the minister which is clearly unparliamentary.

Mr JENNINGS — What was the word?

Hon. D. M. Davis — 'Duplicity', and that is unparliamentary in my view.

Mr JENNINGS — Rubbish!

The ACTING PRESIDENT (Mr Eideh) — Order! I am not sure if it is unparliamentary. I ask Mr Jennings to withdraw.

Mr JENNINGS — I do not know that I should. Do you want to reflect on that? Duplicity — it is not even an adjective.

Hon. D. M. Davis — You have been asked to withdraw it.

Mr JENNINGS — 'Duplicity'. Are you sure? What would you rely on to be evidence about what duplicitous is? The very example of 'duplicitous' is in fact what I have been referring to.

Hon. D. M. Davis — First of all, it is false, and secondly, it is unparliamentary.

Mr JENNINGS — How can it be false? It is the evidence that I relied on.

The ACTING PRESIDENT (**Mr Eideh**) — Order! Mr Jennings to continue.

Mr JENNINGS — It is extremely important that people understand the English language and the language that is used within the Parliament if they are going to use points of order to sit people down. They should understand the accepted use of words in the English language — that helps. By definition, if you say two mutually exclusive things at the same time, that is duplicitous.

Mr Barber — Hypocritical.

Mr JENNINGS — Hypocritical may be the intent. The effect is as described.

Ms Crozier — Just get back to the bill.

Mr JENNINGS — That was very wise advice. It is a pity that intervention was not provided earlier, because I am concerned that — and I drew attention to this in my contribution on Tuesday night — the independent economic analysis the government relied upon to dismantle this program was used by the government in such a way that independent scrutiny shot holes through it. This was similar to the problems the federal Treasurer got himself into in the last week. The federal opposition and the community came after him because the advice he had received, which had been published by the federal Treasury, shot holes in the economic analysis and indicated there were adverse outcomes for Australian low-income households disproportionate to high-income households. The federal Treasurer initially denied the existence of that analysis that had come from his own department.

Similarly, the Victorian department has had that difficulty with the economic assessment and underpinning of its justification for obliterating this scheme. The independent assessment of the economic impacts had been commissioned by a range of stakeholders in Victoria, including the Clean Energy Council, the Energy Efficiency Council and the Brotherhood of St Laurence. Those stakeholders had commissioned Jacobs Consulting to undertake an economic assessment of the costs of the Energy Saver Incentive scheme and its benefits. It demonstrated the benefits to households, which is in accordance with what I have already indicated. These actions can save households $160 a year, which is what the minister relies on, but the net benefit to the Victorian economy from those actions is somewhere of the order of $140 million annually, and that has been reported independently by Jacobs for those organisations.

The Clean Energy Council, which issued statements to try to discourage the government from dismantling the scheme, went public on 17 March. It identified the importance of the scheme and reminded the government that two out of every five households in the program were below average income and one-third were on some form of welfare. It identified that the Victorian energy efficiency target scheme has reduced the energy costs for approximately 1.3 million households and businesses and also supports thousands of jobs in the Victorian economy, from businesses that install energy-efficient products to businesses that provide consulting services to manufacturers and suppliers — so says David Green in

a press release on behalf of the Clean Energy Council on 17 March 2014.

The coalition of the Energy Efficiency Council and the Brotherhood of St Laurence said in its press statement of 14 July:

> 'The Victorian government failed to release the cost-benefit allowance for consultation before it made a decision on the VEET, and now we've found out that their cost-benefit analysis was full of dodgy assumptions. We call on the Napthine government to halt their proposal to scale back the VEET until this modelling has been re-done', said Rick Brazzale from the Energy Efficiency Certificate Creators Association.
>
> Despite the apparent bias in the government's assessment, it also found that:
>
> > Households would benefit if the VEET was continued with a modest target. Participants would benefit from major reductions in their energy bills, and non-participants would effectively face no extra costs (50 cents per annum).
> >
> > The scheme has delivered disproportionately greater benefits to low-income suburbs.
> >
> > VEET supports over 2000 jobs in Victoria, which will be lost if the scheme is closed.

Those major stakeholders know about the benefits of the scheme and have been prepared to rise up and make comments in support of it. They commissioned an independent assessment in terms of the economic impacts and benefits not only to Victorian households but also to the environment. They joined a litany of organisations — maybe Mr Davis will have problems with the word 'litany' as well, but it is another word for list in this instance. There is a list of stakeholders in Victoria that have been particularly concerned about the impact of this program being dismantled. They include the Property Council of Australia, the Victorian Council of Social Service, the One Million Homes Alliance, the Brotherhood of St Laurence, Environment Victoria, the National Electrical and Communications Association, the Energy Efficiency Council, the Energy Efficiency Certificate Creators Association, the Clean Energy Council, Moreland Energy Foundation Limited and multiple other small and medium size enterprises which have expressed their concerns about the dismantling of this scheme.

The opposition looked at the effect this legislation would have. It is a very small piece of legislation — it does not have a large number of clauses — but it will be very big in its effects. We have looked at the cumulative effect the provisions would have, and we are particularly concerned about them, because they would bring forward the closure of the scheme from 2030 to 2016, and they would reduce the targets for energy reductions purchased through the scheme between now and 2016. The opposition therefore wants to prevent those effects and protect the scheme now and into the future. Therefore in the committee stage of debate on this bill the opposition will be moving to amend the clauses of this bill to have the effect of keeping the scheme running, as was originally intended, to 2030 — that is, we will be moving to amend those clauses that would bring forward the closure of the scheme. We will also be moving amendments designed to prevent the reduction in the emissions targets that were going to be purchased through the provisions of the programs that are attached to the scheme between now and the government's intended closure date.

The opposition will therefore be proposing to omit clause 7, which is the clause that brings forward the closure of the scheme; to omit clause 8 so as to enable a target to be maintained between now and 2030; to amend clause 9 to increase the target for emissions reduction, to be maintained between now and the closure of the scheme, at 5.4 million tonnes as distinct from the government's intended 2 million tonnes; to omit clause 10 so as to enable a target to be maintained between 2016 and 2030 to keep the scheme alive; and to omit clause 11 so as to maintain a requirement for participants to account for emissions reductions achieved through programs associated with the scheme between 2016 and 2030. The cumulative effect of the opposition amendments will be to keep the scheme running until 2030 as was originally intended, to maintain the level of emissions targets at 5.4 million tonnes purchased through the scheme annually and to ensure that the accountability framework is maintained.

One of the fine debating points that Mr Barber may want to engage on with me later and that some others may be confused about is: if those amendments are not successful, what is the best course of action? Should members vote to allow the bill to proceed or should they vote to defeat the bill? The government's — —

Hon. W. A. Lovell — Have we been notified of the amendments?

Mr JENNINGS — I believe you have been notified.

Hon. W. A. Lovell — They are Greens amendments?

Mr JENNINGS — No, they are ours. I have just run through them. I have been running through what the effects of them would be for about the last 5 minutes.

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

Mr JENNINGS — We had a slight pause in my contribution, because the amendments were circulated in my name, and I thank the house for that circulation. For the last few minutes I have been outlining the cumulative effects of those amendments, which would be to prevent the government from winding up this scheme in 2016 and to retain it and its level of engagement until 2030, which would mean it will maintain its efforts to reduce greenhouse gas emissions and to support Victorian households until 2030, which was the original intention for the scheme.

I am just about to reach the stage of outlining what might happen after the consideration of these amendments. If the government accepts them, then the opposition will fulsomely support the legislation. If the government does not accept them, we will very reluctantly not oppose it and allow it to proceed — that is, from our vantage point and subject to the consideration of the house.

It is not our preferred outcome for the scheme to be wound up in 2016, but in our view the net effect of the bill not passing would be that the scheme could be wound up earlier because there would not be a target — that is, the scheme would not have a legislative regulatory target in its final year. At the moment one of the effects of the government's legislation is that it will impose a target for the final year of this scheme, being 2015 running into 2016, and without that target the scheme would effectively be wound up one year earlier. That is the conundrum facing the government, the opposition and those supporting this program. If the legislation is not passed, there will be no effective target for the scheme and therefore no program in its final year of operation.

The Labor Party believes that the scheme should continue to 2030 and that the level of abatement that is purchased through the scheme should be maintained until 2030. That is our policy position. That is the outcome we support, and that would be the programmatic outcome we would support if we were in government or if we were to control the destiny of the legislation. Unfortunately the outcome of our amendments is not necessarily within our control, but our interest is in maintaining this scheme for as long as we can through the legislative means that are available to us, and to maximise its effectiveness through the legislation that underpins it.

Some people may be confused about this position. They may say, 'You have opposed this bill and you want to amend it. You may or may not be successful at amending it, and if you are not successful, why not just oppose it?'. Our interest is in keeping the scheme going for as long as we can until the government that is elected in November restores or maintains the program and retains the maximum number of jobs engaged in it.

The opposition wants to maintain the scheme until 2030. That is the net effect of our amendments, and I encourage all members of the chamber to support them. Our intention is to keep the scheme alive and to derive benefits for Victorian households, for our community and for the environment into the future. That is the spirit in which I have made my contribution today and in which I will do so in the committee stage.

Mr BARBER (Northern Metropolitan) — Like Mr Jennings, I also have some proposed amendments to the bill, and I am happy for them to be circulated now so that people can have them in their hands as I talk about the way in which the Greens have approached this bill.

Greens amendments circulated by Mr BARBER (Northern Metropolitan) pursuant to standing orders.

Mr BARBER — As has been noted, the bill is titled Statute Law Amendment (Red Tape Reduction) Bill 2014. Unfortunately in my seven and a half years here, I have not learnt much about the naming convention by which bills brought before the house are given their short title, but if the government were subject to the false and misleading claims aspect of the Trade Practices Act 1974, this bill would be up on charges, because apart from reducing one of the most minuscule imaginable pieces of red tape, the core of the bill is in fact to launch an attack on what has been one of the most efficient and cost-effective schemes so far in Victoria — in fact in Australia — to reduce greenhouse gas emissions.

That scheme, as we learnt along the way, has had a social equity benefit in that many people of low income have benefited from it — as we know, people of low income spend a higher proportion of their household budget on energy than the rest of us. Therefore it sounds like a win-win-win.

However, the government, which is on an ideological crusade that has been drafted up for it by the Institute of Public Affairs, has gone the hack on this highly effective scheme. The bill should be called the Statute Law Amendment (Increasing People's Power Bills)

Bill 2014. It could equally be called the Statute Law Amendment (Maintaining Power Company Profits) Bill 2014. I am yet to hear a reasonable explanation from the government as to why it wants to get rid of this scheme that was introduced in the previous Parliament, a scheme that has been very successful and that I think all parties supported at the time.

It is a testament to how far off track the Liberal-Nationals government has gone in that time that it is now seeking to abolish something it previously supported. The Victorian energy efficiency target (VEET) is basically a scheme whereby companies, often small businesses which have good ideas about how to reduce energy use around the home or in other businesses are incentivised — paid a bounty, effectively — to go to those homes and businesses, offer the energy efficiency savings and, when they deliver those, to basically cash them in under a scheme that has been highly regulated. I have not heard of anybody suggesting that this is a scheme that has been poorly regulated or poorly delivered.

The effect is that homes and businesses reduce their energy in ways that to most people are invisible. They change light bulbs, they introduce energy-efficient devices, in some cases they even move over to more efficient motors in various devices and sometimes they even use roof insulation or better insulation around their heating and cooling ducts or simply replace old appliances such as fridges or air-conditioners with newer, more modern, energy-efficient devices.

It is no exaggeration to say that literally tens of thousands of homes and businesses have benefited from this scheme over the years. I did not have the opportunity to pull together the statistics from all regions — for your benefit, Acting President, I would have liked to have produced the statistics for Western Victoria Region — but what I have obtained is the statistics for how many people have benefited from the scheme in the Morwell electorate, which just happens to be the electorate of the Minister for Energy and Resources, who is the proponent of the bill.

The types of measures that have been taken include ones that relate to the building envelope — that is, measures such as those Mr Jennings referred to before — draught stopping, filling gaps et cetera. After the close of this scheme you will no longer be able to receive a rebate on products that might help you to close gaps, reduce draughts and maintain heat within your house. If you want to do that, you will probably have to go back to using shredded copies of the Liberal Party policy platform from 2010, which could be very effective insulation and possibly fireproof if treated with the right chemicals.

The building envelope measures can include lighting — set and forget, change those light bulbs and you are saving money instantly. They can also include low-flow shower heads. I am not entirely sure what ideological objection the Liberal Party has to the further installation of these. They can also include space heating, stand-by power controllers and water heating. There is a rebate when you change over your hot-water heater — often because it has blown up anyway — to the most efficient model on the market and for other measures.

Each of these measures — and some homes and businesses would have implemented more than one — have been very much embraced in the Morwell area. In the Trafalgar postcode we have seen 2843 of these measures implemented. In the Moe postcode 12 779 products, appliances, devices or activities have been carried out to help people reduce their energy bills. And so it is down the line: through Morwell, Churchill, Traralgon, Rosedale, Glengarry, Toongabbie, Cowa, Heyfield, Yinnar, Boolarra, Mirboo North and Toora 48 839 different activities have been undertaken in order to help people cut their power bills.

Mr Jennings pointed out that this scheme has been embraced disproportionately by low-income people. That was an interesting outcome that appeared as we studied the unfolding of the scheme, and there is a reason for it. It is because people on low incomes, possibly on pensions and benefits, are actually at home a lot of the time. Therefore when the doorknockers from these energy efficiency companies come calling, they find people — possibly elderly or with a disability — at home and have been able to instantly help out by changing their light bulbs or offering something else. By that coincidence alone it has actually been the people on the lowest incomes in Victoria who have got the most benefit from this scheme that the government now plans to kill off.

The scheme should not be killed off; it should be expanded. It should be continued all the way through to 2030. Experience has shown that we are not going to run out of ways to find energy savings, because the more you look the more you find. In fact the measures that have been undertaken to date have just been the lowest hanging fruit; they have been the easiest and simplest activities to be implemented. If the government were to continue this scheme, it could in fact increase the annual target from 5.5 million tonnes, or approximately 5.5 million megawatt hours of electricity or a similar unit in gas, to be saved and, for example, move to a more project-based approach where

a business or other large power-using entity could put together a whole package of different energy-saving plans, calculate savings and then monetise that by being paid through the VEET scheme. By the way, throughout the scheme the VEET units have traded at around about $15 a tonne, which is quite a modest figure to pay to help energy savings. But of course the paybacks for most of these energy users have in many cases been almost immediate — within one or two years. That is the low-hanging fruit that has been targeted.

Hundreds of thousands of activities have been conducted across tens of thousands of homes — disproportionately, low-income homes and homes in regional Victoria — but what about the rest of us? What about those of us who have not yet directly participated in the scheme? It turns out we have all benefited too. The resultant reduction in energy demand has been so great that it has actually pushed down the wholesale price of power. The government has had to do backflips and contortions to try to prove otherwise in this instance, and yet the evidence is all around us.

An ongoing 2 per cent reduction in both total energy use in Victoria and peak energy use in Victoria is what we have been seeing while the scheme has been rolling out, and that is predicted to continue. The result is that the underlying wholesale price of power is about as low as it has been in 10 years, and 2500 megawatts of coal-fired and gas-fired power plant across the electricity grid of south-eastern Australia is now in mothballs. Therefore, unless you own shares in a coal-fired power station and live in the state of Victoria, basically everybody has been a winner.

However, the coal industry does not like it. It is running a massive war against everything that has so far been effective in reducing energy use or in cleaning up our power supply. This small but important scheme has been on the hit list for a long time, and now it seems the government is about to achieve what it wants.

It is interesting to look at what the industry had to do with the modelling. The modelling had to go through some contortions to show the outcome the industry wanted, which was that the scheme was somehow adding a burden. It is also interesting to go back and reflect on the approach that was taken in the previous round when the original target was set. Under that round I recall that they modelled the impact on the generation side of electricity supply, and one of the assumptions they made at that time was that HRL would build the so-called clean coal power plant. That was a baseline assumption fed into the modelling and not what came out at the other end.

That of course was the clean coal dream plant that was originally funded by a Labor state government and a Liberal federal government and which eventually, over the passage of years, had its grant extended until we had a Labor federal government and Liberal state government. Then the whole project just collapsed. It collapsed because it is risky technology with dubious benefits. It collapsed for the same reason the existing plant is in mothballs. The industry saw the declining demand for power and realised there was no niche in the market for it even if the technology had been a plain vanilla type, let alone a blue-sky type. It saw that with household solar and wind energy coming through the renewable energy target there really was not going to be a place for another fossil fuel plant in Australia, and I believe we will never see one beyond the smallest and most modest facility.

Therefore the energy market has itself a big dilemma at the moment. Some of this is common ground for both the industry incumbents and the Greens. So long as people keep getting smarter in finding ways to reduce their energy bills — which they did in response to the greedy power companies jacking up prices so fast — there will be an increasing reduction in demand and supply will be displaced, with no clear exit strategy. It will take a very wise government — and I doubt that it will be a coalition government, because its view is clearly that it is going to, in the words of the federal Minister for the Environment, Greg Hunt, clean it up, not shut it down — to bring together the complex nature of the energy market and put it on a more sustainable path.

The only other provisions in this bill worth mentioning are those in the Food Act 1984. Those provisions remove the requirement for the name of the proprietor of a food business to be prominently displayed on a food premises. I had to read this over to understand what was proposed. It means that if I go into a restaurant, have a meal and then go home and find I have food poisoning, if I then go back on Monday morning to remonstrate with the proprietor, I cannot find out who the proprietor is. I might encounter some poor kid who is serving behind the counter and say, ‘I want to talk to the boss.’ He will probably say, ‘Mate, I just work here. I don’t know who officially runs this joint. I’m just here as a casual’.

Mr Ramsay — The manager, maybe.

Mr BARBER — It could be. I might ask to see the manager, but if I really want to take further action, I need to go down to the council, fill in a form and wait for however long to get an answer as to who is the proprietor of that restaurant. It could be that Mr Elsbury

is looking for a new career after 29 November. He might set up Andrew Elsbury's food van selling souvlaki in Sydney Road, and I am sure he would proudly say, 'Hi, this is Andrew's food van'. It would not be incredibly burdensome to have a little plaque saying, 'I am the proprietor of this restaurant. Here are my details'. Most businesses seem to display their various business licences on the walls if they are regulated under any other act.

Mr Ramsay interjected.

Mr BARBER — Tacos — take your pick. Whatever is the current trend.

If this is really what it is all about, then I am stunned. I am not sure what the Liberal Party stands for anymore, but if it has a cause, it is probably red-tape reduction. But if this kind of red-tape reduction is the engine room of the movement, it is no wonder it can barely get itself in motion when pointed downhill with a tail wind.

Mr Ramsay interjected.

Mr BARBER — I am being encouraged by Mr Ramsay to widen the debate and talk about other types of red tape. I might get to that in a minute.

If this is really what the government is charging in here with 114 days until an election, I can see why it is in so much trouble. If anything, this bill seems to increase red tape for anybody who is affected by it. However, I do not even know if putting your name on the wall can be classified as red tape. It creates a responsibility that the proprietor has to follow, but it is really just part of their overall responsibilities to run a good establishment, keep their kitchen clean and all the rest of it. In fact what it does is it helps proprietors evade identification against liability, which nobody seems to be arguing about. A proprietor has responsibilities to run a clean kitchen and provide a healthy working and dining environment. The only reason not to stamp your name on that is if you are trying to evade that responsibility.

By the way, this piece of ugly red tape was not something thought up by some incredibly crazy, socialistic charge. It was first inserted in the Food (Amendment) Act 1986, and the explanatory memorandum in the legislation indicates that the provision was needed partly to cut red tape for a person wanting to take legal action and partly to avoid buck-passing on important food issues. I will take us down memory lane and read members a little bit of that explanatory memorandum:

> The new section will require the proprietor of a food premises, food vehicle, or premises at which an unregistered food vending machine is located to paint or affix his or her name on the premises or vehicle. The person whose name is so painted or affixed, unless the contrary is proved, is to be taken as being the proprietor, and the seller of any food contained on or in the premises or vehicle.

In other words, this legislation sets up legal relations between the person who buys the food and the person who sells it. It has nothing to do with red tape. When the Food Act 1984 was overhauled in 2001, this provision was retained in more or less the same form but shifted to section 17. Nobody had a problem with it, including the Liberal Party in opposition, whose lead speaker, the then shadow Minister for Health, Robert Doyle, said:

> … the Liberal Party is pleased to support the bill. I am a conciliatory person and a helpful shadow minister, so rather than make politics out of this important area I hope the Parliament can turn its mind to the goal of good food legislation that will serve all Victorians well, not just businesses and regulators.

Who knew that in 2001 the Labor and Liberal parties were so hell-bent on regulating everything that they brought in this crushing piece of bureaucracy, which is the requirement to put a sticker on the wall saying, 'I am in charge here'. In fact that requirement was strengthened only last year by the Statute Law Amendment (Directors' Liability) Act 2013, which linked section 17 of the Food Act with new criminal liability provisions in section 51A. Far from being bureaucratic madness, this is red-tape cutting madness. An unfortunate person somewhere in the public sector has been told to serve up a certain amount of statute that the government can cut so that it gets to use the term 'red tape' one more time.

Acting President, I have decided to avoid temptation and not talk about some of the other types of red tape that I think should be cut. I know you have heard me talk about that before in relation to the energy industry. As I discovered during my recent visits to western Victoria, some people running small businesses still find it difficult to get their solar panels connected. I was at Halls Gap Zoo during my visit to the area. I am sure you, Acting President, have also visited it from time to time. I think quite a succession of politicians have been through there, talking to the zoo's proprietors about some of the problems they have had with what you and I might even agree has been some excessive levels of bureaucracy regarding the regulation of a fairly simple activity of running a zoo and a tourist attraction.

That leaves just one small section of the bill that I can agree with, which is the modest proposal to seek dissolution of the Docklands Coordination Committee and replace it with a more democratic and open

Docklands community forum, which my Greens colleagues on Melbourne City Council, Cr Rohan Leppert and Cr Cathy Oke, were certainly glad to support. This is part of Docklands' coming into the fold of the city of Melbourne. Docklands is now more than halfway through its development stage, so it is time to transition towards treating Docklands like other suburbs, and part of that is open community meetings. Of course we would encourage the committee to behave in a way that is as transparent as it can possibly be, and certainly as transparent as politicians in this place would like to be in relation to their spending, interests and all the rest of it.

Therefore, as I will address in the committee stage, we have a number of amendments designed to take out what I find to be the offending bits of the bill and leave just one bit, which is the Docklands committee structural change. I look forward to the committee stage, when I can address that in a bit more detail.

Mr ELSBURY (Western Metropolitan) — It has been an interesting debate so far. We have seen two sides of Mr Jennings over the two-day period we have had to deal with this bill. Mr Jennings was quite verbose on Tuesday night. He was getting quite agitated and passionate. There was a lot of movement and colour going on over there. Then, all of a sudden, we saw a very muted version of Mr Jennings today. I do not know what has happened in between, but we have seen a very muted version of Mr Jennings on this bill.

I thank Mr Barber for the careers counselling. If I need any advice from him on that particular subject, I know I am going to be in dire straits. In any case if I chose to open a food van, that would be a noble cause — to be part of the economy and a proprietor of a business is no small feat. I do not see why Mr Barber would try to use that as a method of belittling me in any way, shape or form, because to be a small business owner provides employment, provides for suppliers to gain their money the way they do and even provides for a landlord, possibly, to be able to gain funds through the business. I do not understand why Mr Barber chose to try to use this as some sort of insult. I would actually wear it as a badge of pride if in some future time, 24 years from now or even sooner — 12 years or something like that — I decide to move into business. I do not know why Mr Barber would think so little of small business operators here in the state of Victoria.

The Statute Law Amendment (Red Tape Reduction) Bill 2014 makes some major changes to the Victorian Energy Efficiency Target Act 2007, the Food Act 1984 and the City of Melbourne Act 2001. The government has a target of reducing red-tape costs across Victoria by $700 million per annum. This is a target we believe we can achieve because by reducing red-tape costs in the community we are not only reducing the burden on government of the regulation of those pieces of red tape — and green tape, I should say, being items that have been added for some ridiculous reason to save some sort of green cause that has been pushed upon us by the left of politics — but also reducing the burden on being able to go about your business. For the government to be able to efficiently conduct its business is a noble cause, in my way of thinking, and we have introduced a red tape commissioner to undertake some of that work, to look through the many regulations and laws we have in this state and to provide us with some guidance as to where there may be some red tape that can be removed.

Red-tape removal is one element of the support this government gives to business across Victoria, and we provide that to the many businesses that call Victoria their home. We have also reduced payroll tax, lowered WorkCover premiums and supported the abolition of the carbon tax, to name a few of the ways we are reducing the cost of doing business here in Victoria. The Victorian Energy Efficiency Target Act 2007 will be amended to effect the closure of the Victorian energy efficiency target (VEET) scheme over a one-year period. The Department of State Development, Business and Innovation has conducted modelling of the VEET scheme and found that a maximum of 35 per cent of households and 14 per cent of businesses are likely to participate in this scheme. The remaining households and businesses which do not participate would be forced to pay an additional $50 on their power bills every year if we continued this scheme. Over the next 15 years the VEET would cost $700 million, so we are taking away a cost to our community of $700 million by bringing the VEET scheme to a close.

We are doing this not because we do not believe in the objectives of this scheme; rather, we think it has reached its saturation point. It has reached the point where it is no longer realistically achieving the outcomes it first espoused to achieve, because while we have been distributing the low-flow shower heads, weather sealing, energy-efficient lighting and stand-by power controls — indeed my home has all those things; we have been able to set up our home like that — the more expensive initiatives are not being taken up. We have not seen a large number of people take up those particular initiatives, because there is a counter cost; there is a cost the owner of the property also has to incur at the time they take on that responsibility.

It is also unfortunate that the VEET scheme failed to reach its own aspirational targets at the end of 2012. It only reached 52 per cent of its aspirational target. We believe that it may now be time for some new thinking on that program. Programs come and go. We are not building steam engines anymore, and Mr Barber would be happy with that. When something better comes along, you use it. Certainly we retain a number of programs that will assist in energy efficiency, such as the ResourceSmart AuSSI Vic schools program, the Smarter Choice smart retail program to assist point-of-sale staff in being able to advise customers of energy-efficient appliances and the Smarter Resources, Smarter Business energy and materials program that will provide small and medium size businesses with energy and material efficiency activities. We also have the Smarter Resources, Smarter Business energy-efficient office building program. All of these measures allow for energy efficiency programs to continue to be rolled out across the state.

We will be transitioning the Victorian energy efficiency target scheme over the next 12 months in order to conclude it. This gives the accredited providers of the VEET scheme time to make the arrangements they need for their businesses. This is a much more reasonable way of dealing with the end of a scheme than the way our dear friends in the federal Labor government dealt with the home insulation scheme. Retailers involved in that scheme had only 48 hours to wrap up their affairs. We are giving them 365 days. I think that is a little more reasonable — —

Mr Barber — Do you have insulation at your place?

Mr ELSBURY — I paid for it, Mr Barber. This mismanagement required the federal government to put together a $15 million compensation package for those insulation companies that received only 15 per cent back on the stock they had at the time the scheme was so viciously scrapped.

As a government, we have seen a doubling of renewable energy generation in Victoria — from 1400 megawatts in 2010 to 3100 megawatts today. We have also doubled the energy technology innovation strategy to $82 million. We have funded $5 million for a wave energy pilot in Port Fairy, as well as $1.6 million for Melbourne University's geothermal heating and cooling pilot project and $1.4 million for a project to develop low-cost PV roof materials.

We are still working hard to become more energy efficient. Over the past year over 2000 rooftop solar systems have been installed. There are currently 800 wind turbines with permits in Victoria yet to be built. We still have a lot of capacity in the renewables market.

I will move on to the amendments to the Food Act 1984, which remove the requirement for a proprietor of a food business to prominently display its name on its premises. In the regulation of a food business, councils that are the responsible authority do not rely on these names being displayed on businesses; rather, they use their own lists and registers. Section 17 of the Food Act 1984 regulates the approximately 48 000 food businesses in Victoria. This measure will reduce red-tape requirements on businesses selling food in Victoria, which include shops, manufacturers and vans from which food is sold. Anyone seeking the name of a proprietor of a food business can get this information from the council for the area in which the business is based.

Amendments to the City of Melbourne Act 2001 will result in the Docklands Coordination Committee being dissolved. The functions of the Docklands Coordination Committee are currently being carried out by the Docklands Community Forum, which includes members of the public, making it a much more representative body. The functions being delivered by the Docklands Community Forum include site presentation, marketing and promotion.

The amendment of these three acts will improve the operation of business in Victoria, reduce energy costs for Victorians and reduce the burden of government regulation on business. With those words, I commend the bill to the house.

Motion agreed to.

Read second time.

Committed.

Committee

The ACTING PRESIDENT (Mr Elasmar) — Order! I understand amendments have been circulated by Mr Jennings and Mr Barber in relation to this bill. Mr Jennings's amendments propose to omit or amend certain clauses in part 4 of the bill, clauses which make amendments to the Victorian Energy Efficiency Target Act 2007.

Mr Barber has similar amendments that omit clauses under part 4, and he has further amendments to omit certain clauses under part 2 of the bill, which makes amendments to the Food Act 1984. I call Mr Barber to move his amendment 1, which proposes the omission

of paragraph (a) from clause 1. I propose that Mr Barber's amendment 1 be considered a test for his amendments 4 to 8, 15, 16 and 18, which are all connected to the omission of clauses relating to the Food Act.

Clause 1

Mr BARBER (Northern Metropolitan) — I move:

1. Clause 1, lines 5 to 8, omit paragraph (a).

There has been quite a bit of dispute about the business impact statement that was developed by the government to justify this bill — that is, the scrapping of the Victorian energy efficiency target (VEET) scheme. The government's business impact assessment (BIA) suggested the benefits from VEET were limited, but that was in contrast to all other recent assessments of VEET and similar schemes, which found that they deliver significant economic benefits.

The Energy Efficiency Council, the Brotherhood of St Laurence (BSL) and the Energy Efficiency Certificate Creators Association commissioned Jacobs Group (Australia), a respected energy modeller, to find out why the government's BIA came to a different conclusion. First of all, Jacobs found that the government's assessment potentially underestimated savings from avoided electricity generation costs. It benefits all of us when we use less power. The government's assessment also excluded the operating and maintenance cost savings from energy-efficient appliances. It assumed that energy savings would last for only a fraction of their full life after implementation, and it ignored the substantial financial benefits of reducing greenhouse gas emissions. The impact of reducing emissions was not even counted in the modelling.

Despite the apparent bias in the government's assessment, the BIA still found that households would benefit if VEET was continued with a modest target. Participants would get major reductions in their energy bills, and non-participants would, in effect, face no extra costs — I think about 50 cents per annum might have been added under the government's own modelling. The BIA found that the scheme delivers disproportionately greater benefits to low-income suburbs, and it found that VEET supports over 2000 jobs in Victoria.

As a piece of sensitivity analysis, Jacobs found that if just some basic assumptions in the government's BIA had been changed, the benefits of the scheme would rise dramatically. Everyone from Rob Murray-Leach from the Energy Efficiency Council to Ric Brazzale to Damian Sullivan at BSL was of the view that the government was putting the interests of big energy companies ahead of jobs and householders.

As energy prices continue to increase it is going to become critical that we help low-income households with their rising bills. I doubt that anyone from the energy industry is going to be handing back any savings from the scrapping of the carbon tax — unless you think they are all great guys. Why would they? These are the electricity companies that systematically go from door to door and lie to people about their energy bills to the point where the Australian Competition and Consumer Commission finally dragged Energy Australia into the courts and fined it millions. The type of rapacious behaviour that people in this industry exhibit suggests that they are not going to be nice guys and hand back any savings from their pocket to the householder.

My question for the minister is: how does he account for the difference between the result of the government's modelling and the independent assessment by the Jacobs modelling group, and what comment does he have on the questions about the very key assumptions on which the government's modelling — and thereby the purpose of the bill — is based?

Mr Jennings interjected.

Hon. G. K. RICH-PHILLIPS (Assistant Treasurer) — I thank Mr Barber for his question. Mr Jennings is attempting to answer it for me, and he has not done a bad job. Mr Barber refers to the Jacobs modelling as the independent assessment. Mr Barber also referred to who commissioned that modelling. The parties that commissioned that modelling have a vested interest in the Victorian energy efficiency target scheme and its continuation. The business impact assessment that was released by the government was assessed by the Victorian Competition and Efficiency Commission (VCEC), which wrote to the Department of State Development, Business and Innovation with respect to the adequacy of the BIA and the way it was put together. VCEC confirmed the adequacy of the BIA and the way it was structured. In its letter to the government VCEC said:

> Our assessment is that overall the BIA meets the requirements of the Victorian Guide to Regulation. The BIA includes a comprehensive analysis of the benefits and costs of options for closing — and continuing — the VEET scheme and the impacts of these options on different stakeholders. The underlying assumptions and limitations of the analysis are transparently reported in the BIA.

The BIA meets the government's requirements in respect of regulation reform requirements, and VCEC has certified it to that effect. A similar certification does not exist for the alternative modelling Mr Barber refers to.

Mr BARBER (Northern Metropolitan) — None of that suggests the government got the answer right. That is just the Victorian Competition and Efficiency Commission saying, 'Yes, you meet the requirements of a business impact assessment and your modelling assumptions are transparent'. That leads me back to the second part of my question, which the minister did not answer. How does the minister account for the difference between the assumptions that were built into his model and those of the alternative model? It seems they make a dramatic difference to the outcome in terms of the costs and benefits.

Hon. G. K. RICH-PHILLIPS (Assistant Treasurer) — As Mr Barber will appreciate, if you change any assumption in any model, you will change the outcome.

Mr Barber interjected.

Hon. G. K. RICH-PHILLIPS — Not always. If you change the assumptions that go into a model, you will change the outcome. If the assumptions do not change the outcome, then the model must be broken.

Business interrupted pursuant to standing orders.

QUESTIONS WITHOUT NOTICE

East–west link

Mr TEE (Eastern Metropolitan) — My question is to the Minister for Planning. I refer to the minister's decision on 30 June when he released his planning decision for the east–west link. His decision included a requirement for development plans, which will include a number of changes including a new connection between the east–west link and Flemington Road. Can the minister advise what opportunities there will be for the public to have a say on these changes, particularly the location and the design of the new connection?

Hon. M. J. GUY (Minister for Planning) — There is a development plan. The first stage has been approved, which consists of me giving the overarching approval for the project to proceed. The development plans have to be now submitted, and when those development plans are submitted they will follow the course of the Major Transport Projects Facilitation Act 2009. In relation to my requirement to then approve those plans, I will make that decision when they are submitted.

Supplementary question

Mr TEE (Eastern Metropolitan) — I suppose the question was: through the process that is now required in terms of the changes that will be included in the development plans, including this new connection to Flemington Road, what capacity will there be for the community to have any say about those changes, which were not part of the original proposal? The minister's answer is very concerning, because given that opportunity to give comfort to the community that they will have a chance to be heard, he was unable to give them that comfort. Will the minister at least be able to assure the community that they will see these changes, including the details of the connection between the east–west link and Flemington Road, before the contracts are signed?

The PRESIDENT — Order! Before I call the minister, I advise Mr Tee that he got dangerously close to editorialising rather than putting a context for the supplementary question.

Hon. M. J. GUY (Minister for Planning) — I will follow the course of the Major Transport Projects Facilitation Act. If Mr Tee does not like that process, he probably should not have voted for it when it came to this chamber in the last Parliament.

Health infrastructure

Mrs MILLAR (Northern Victoria) — My question today is to the Minister for Health, the Honourable David Davis. Can the minister update the house on recent and significant progress with construction and refurbishment of major health capital projects?

Hon. D. M. DAVIS (Minister for Health) — I thank the member for her question, and I thank her, along with other members for Northern Victoria Region — Mr Drum and Ms Lovell in particular — for their strong advocacy for health capital projects across northern Victoria.

I note the pleasure of the town of Echuca with the redevelopment of the hospital, stage 1 of which was opened in recent weeks. It is very clear that the stage 1 capacity — the new surgical ward, with beds for high-dependency and cardiac patients, and the subacute ward — will be in a very strong position going forward. The hospital's beautiful facade and the massive project that is occurring there will set the town up for the decades to come.

It is clear that Labor would not build the new Echuca hospital; it was the coalition in opposition that committed $40 million. Later federal money came in to add to that and then some additional state money. What we will see with the $65 million project is a very good outcome for the people of Echuca and northern Victoria. The members for that area can be very proud of the work that has been done to get the hospital moving and to get it rebuilt so that the community will see great value into the future.

Equally in recent days I was in Wonthaggi to see the new dental service opened. It is a massive expansion of the dental service. The member for Bass in the other place, Ken Smith, has been a strong advocate for that dental service and for the nearby rehabilitation component that I was also able to open jointly with the federal member. It will see a very good outcome for both rehab and dental services at Wonthaggi.

I was also able to make an announcement of $499 000 from the Rural Capital Support Fund to refurbish and modernise a number of the key aspects at the Wonthaggi hospital. The Rural Capital Support Fund is a very important fund that funds projects around country Victoria, but this funding in particular will see a significant upgrade to the acute and surgical wards at Wonthaggi hospital. This is an important step to enable the hospital to continue to treat large and growing numbers of surgical patients as the population grows in that area. Brian Paynter, the candidate for the Bass electorate, was also present. Along with Ken Smith he is a very strong advocate for Wonthaggi hospital. I was proud to be at Wonthaggi to see that great outcome.

Equally in recent weeks I was pleased to join the Premier and many members from this chamber, including Mrs Peulich who has been a very strong advocate for the Monash Children's hospital. Massive work has begun at the children's hospital, which was not built by Labor. Labor had 11 years, and from 2002 and 2003 it was clear that the need for a children's hospital was there. Labor never committed a cent — not 1 cent. We put in $250 million. I was proud to join the Premier in turning the first sod at the Monash Children's so that children in the south-east of Melbourne and down to Gippsland will have a children's hospital that will deliver services for them into the future.

It has been the advocacy of Liberal members in that area that has driven this important project. Labor did nothing over that period. The last health minister would not build the hospital. He did not do a single thing, and he will stand condemned forever.

East–west link

Mr TEE (Eastern Metropolitan) — My question is again to the Minister for Planning, and again I refer him to his decision for the east–west link. In particular I refer to the advisory committee headed by Kathy Mitchell that will make recommendations to the minister on design changes contained in the development plans, and I ask: will the minister publicly release that committee's report and the recommendations of that committee?

Hon. M. J. GUY (Minister for Planning) — I should state again to Mr Tee that this government intends to follow to the letter the process around the Major Transport Projects Facilitation Act 2010. The material in relation to the advisory committee report is on the government's website. The material associated with it has been there for some time. If Mr Tee hates this process, I ask him again why he voted for it.

Supplementary question

Mr TEE (Eastern Metropolitan) — Just to be clear, I am referring to the work that will be done by the committee, not the previous committee. As the minister will know, the Major Projects Facilitation Act does not stop him from releasing that report. It is entirely a matter for him. My supplementary question is: if the minister will not release the report, will he at least assure the community that he will receive the committee's report and its recommendations before the east–west link contract is signed?

Hon. M. J. GUY (Minister for Planning) — The contractual arrangements are not signed by me, and I am sure Mr Tee realises that. In this process I will conduct myself absolutely properly and appropriately and to the letter of the law as applied by the act under which this project will proceed.

Melbourne aviation precinct

Mr ONDARCHIE (Northern Metropolitan) — My question this afternoon is to the Honourable Gordon Rich-Phillips in his capacity as Minister responsible for the Aviation Industry. Could the minister update the house on how Victoria is developing as a national base for aviation services?

Hon. G. K. RICH-PHILLIPS (Minister responsible for the Aviation Industry) — I thank Mr Ondarchie for his question and for his interest in the Victorian and Australian aviation and aerospace industry, which is a great success story in the Asia-Pacific region for this country and the state.

The Victorian government has long recognised the changing nature of the aviation and aerospace industry in current times in terms of the aircraft used, the introduction of composite materials, the introduction of new technologies and different avionics technologies. The face of the aviation industry has very much changed in the last decade in particular. As composite materials have been introduced and aircraft such as the Boeing 707 Dreamliner have been introduced into service, the needs for both manufacturing and supporting those aircraft has changed dramatically. This has created both a challenge and an opportunity for the aviation industry in Australia and in Victoria in being able to provide the type of integrated support services which those new airframes require, and in so doing to have the type of capability in our workforce to meet the needs of the industry, particularly as composites are introduced.

Victoria has a great success story already in the Boeing facility at Port Melbourne, which is the single largest Boeing manufacturing facility outside North America and the only facility anywhere in the world producing much of — —

Mr Lenders — On a point of order, President, I welcome the minister's effusive answer about the government's role in aviation and job creation, but I seek your guidance on this matter. When a similar question was asked of him about Qantas and jobs and plans in 2011, he narrowly defined his portfolio, from memory, to basically facilitating Avalon Airport being built. While I very much welcome him answering the question effusively, I am seeking your guidance, President. If he gets a similar question from the opposition on job losses in the future, can he hide behind the Avalon defence?

Hon. G. K. RICH-PHILLIPS — On the point of order, President, I have been very clear with this house in the past that my role as aviation minister is around supporting and promoting the development of the industry in this state. That is the area that I have taken questions on in the past and that I will happily take questions on in the future.

The PRESIDENT — Order! As the Leader of the Opposition would know in raising this point of order, I am not in a position to direct ministers on how to answer questions. I do not apply this to the minister on this occasion, but if ministers choose to duck and weave on particular questions that are not to their liking, I am not in a position necessarily to advise or instruct those ministers to answer the questions in a way that might satisfy the members posing those questions. Nonetheless, on this occasion the member has commended the minister for his answer. His answer today is certainly apposite to the question and is providing the house with information that I am sure members find useful and important in the context of Victoria's involvement in this industry.

As for previous answers that the minister might have given, I regret that I cannot recall the specific question that Mr Lenders mentioned, but again on that occasion the minister had the opportunity to answer as he saw fit. No doubt, depending on the sequencing of questions on that day or indeed on subsequent days, if the member who posed the question had been unsatisfied with the minister's answer, they might well have taken it up in a supplementary or further question. It is on that basis that the minister has his responsibilities, as the house understands them, and I am sure as questions arise he will use his best endeavours to address those questions.

Hon. G. K. RICH-PHILLIPS — It almost sounds as if the opposition does not like good news. As I was saying, the Boeing facility in Melbourne is the largest facility outside North America, and it is a great credit to the capability that Victoria has developed in aerospace manufacturing.

Today I am delighted to advise the house of the establishment of the Melbourne aviation precinct at Melbourne Airport. This follows a substantial investment by the Little Group in acquiring the use of the former Ansett Australia maintenance facility at Melbourne Airport to develop an integrated aviation precinct, which will bring together aviation service providers across a range of disciplines — be they in maintenance, repair and overhaul; avionics servicing; wheels and brakes; or engine facilities — and also support a growing base of corporate aviation here in Victoria.

It is a fantastic endorsement of the aviation industry in Victoria that the Little Group has chosen to take on that facility, to use it in that way, to bring together multiple small and medium enterprises in the aviation industry so they can work alongside one another, benefit from collaboration and from the productivity improvements that flow from having co-located service providers in the one physical facility to provide streamlined service provision to aviation operators in the Asia-Pacific region. This is a powerful model. It is unique to Victoria. It is something the Victorian government has been delighted to support, and it is delighted to see the Little Group show confidence in the Victorian industry by taking on this investment.

This is a great announcement for Victoria and for our aviation and aerospace industries. It highlights the

opportunity which now exists as we move into a new era in aviation and aerospace, with new technologies and new materials, and the confidence of the Little Group that Victoria has the capability, and can continue to develop the capability, to provide the services and support the Asia-Pacific region needs in aviation and aerospace.

Child safety regulation

Ms MIKAKOS (Northern Metropolitan) — My question is to the Minister for Children and Early Childhood Development. I refer the minister to her media comments over the past two days regarding the proposed increase in penalties for parents or carers leaving children unattended in cars. Can the minister advise what is the maximum age of a child in respect of which these penalties apply?

Hon. W. A. LOVELL (Minister for Children and Early Childhood Development) — The Napthine government is responding strongly to the concerning issue of children being left unattended by significantly increasing the penalties for the people who are responsible for leaving those children unattended. We propose to increase the penalty from a fine of just over $2200 to a fine of $3690 and the time that someone may spend in jail for doing that from three months to six months.

The law of Victoria is very clear. A person responsible for a child cannot leave the child unattended for any longer than is reasonable, given the circumstances, without making appropriate arrangements for their supervision or care. Someone who is under 16 years of age cannot be charged with the offence of leaving a child unattended unless they are the parent of the child. There is actually no set age at which it is legal to leave a child unattended — it depends on the child and their situation. Deciding on whether to charge a parent with this offence is a case-by-case matter. It is about what is reasonable in the circumstances of the particular child. The Secretary of the Department of Human Services must be consulted before that charge can be laid.

Babies and young children should never be left at home alone, in a car alone, at a supermarket alone or anywhere alone. As children get older they need the opportunity to gradually take on more responsibility for themselves and practise being by themselves at home. A parent is in the best position to decide whether their child is sufficiently mature to be left alone for any length of time. Leaving children unsupervised in a car at any time is very dangerous, and we hear most about the risk of leaving children in hot cars. There is also a risk in cold weather. As well as this, children can get bored and start to explore, leading to dangers. They can try to struggle free from seatbelt restraints and be injured. Of course, the car could be stolen with a child in it. So parents need to be very vigilant about how they supervise their children and make sure that children are never put in danger.

Supplementary question

Ms MIKAKOS (Northern Metropolitan) — I thank the minister for that fulsome response, which was very well read. I refer the minister now to Deborah Gough's article posted on the *Age* website yesterday at 2.53 p.m. It referred to the minister's spokeswoman, who was said to have 'confirmed the age at which a child could be "unattended" was 12'. On a subsequent post of this story at 4.10 p.m., the minister's spokeswoman 'confirmed the age at which a child could be "unattended" was 16'. The minister said in response to the previous question that there is no set age, so I ask the minister: who was correct? Is the minister correct? Was the minister's spokeswoman initially correct when she said it was 12, or was she correct when she said it was 16? What is the correct age?

Hon. W. A. LOVELL (Minister for Children and Early Childhood Development) — As I just explained in my substantive answer, it depends on the circumstances and it depends on the child. The answer I have given is the correct answer, but what we would like to know is whether the opposition fully supports the protection of children, or is it opposed to us increasing these penalties in order to provide additional protection to vulnerable children in Victoria? It is clear from the member's attitude that she does not support the protection of vulnerable children.

Mr Lenders — On a point of order, President, the minister was clearly asked which government announcement was correct on government administration. The minister's response was to debate the question on what the opposition may or may not do on a piece of legislation that comes here. I put it to the minister that her answer is clearly debating the question and, President, I ask you to ask her to desist.

Hon. D. M. Davis — On the point of order, President, the minister was clearly very direct in her answer that it depends on the circumstances. That is precisely the point the minister made in her previous substantive answer, so she reiterated that point very clearly. But it is clear the opposition is very sensitive, and it is very clear that it is not supportive — —

The PRESIDENT — Order! Clearly the point of order taken up by Mr Davis started out reasonably well,

but it ended up as debate. Indeed I concur with the Leader of the Opposition that towards the end of the minister's answer to the supplementary question she did — whilst earlier addressing the question in an apposite fashion — move into a debating mode. Does the minister wish to complete her answer?

Hon. W. A. LOVELL — I have finished.

Shrine of Remembrance

Mrs COOTE (Southern Metropolitan) — My question this afternoon is to the Minister for Veterans' Affairs. As the minister knows, I have a great interest in this matter. Could the minister inform the house of how the Victorian coalition government has supported the redevelopment and expansion of Victoria's Shrine of Remembrance?

Hon. D. K. DRUM (Minister for Veterans' Affairs) — I understand that Mrs Coote has a very strong and personal connection to the shrine, because it is very close to her residence and she walks past it every day. As we look forward to the Galleries of Remembrance project being completed, we must acknowledge it has been a very busy week with the centenary of World War I. Whilst I have already had the pleasure this week of mentioning the commemorative service at Point Nepean in relation to the first shot of World War I being fired 100 years ago, on Monday I also had the opportunity, along with the Premier and Mr Hodgett, the Minister for Major Projects, to accept the handover of the Galleries of Remembrance project from the contractor, Probuild.

It has taken a long time to get the construction phase and build finished. As Minister Hodgett announced, this was a $45 million project that was completed ahead of time and on budget. The centrepiece of the Galleries of Remembrance will be the *Devanha* troop-carrying boat. I have mentioned it previously in the house, but it is worth reminding the house that this centrepiece of the galleries is the original troop-carrying boat that took the troops from the mothership, which was positioned approximately 300 metres off the shore. It carried about 20 troops at a time to the shores of Gallipoli under heavy fire. It was not unusual for troops to already have been killed by the time they hit the beach.

The shrine was originally built in 1934 as a place to honour fallen soldiers and as a place for families to grieve the loss of their loved ones. Two-thirds of the cost of building the shrine was raised by public subscription. We must remember that at that time it would have been a severely depressed postwar economy, so there is no doubt about the critical and significant role the shrine has played in Victoria's culture and history. While the shrine was built as a memorial to World War I, the Galleries of Remembrance will be an acknowledgement of all our conflicts, starting prior to World War I and moving forward to current conflicts, as well as the many peacekeeping roles we have been involved in. The galleries are currently being fitted out with all of the other artefacts, memorials and medals in addition to what has already been in them.

It is expected that the numbers visiting the shrine will increase. Currently over 700 000 visitors attend the shrine each year and it is expected to reach well over 1 million visitors. The shrine will become one of the top three visitor-attracting sites in Melbourne into the future. There is going to be a great opportunity for education to be enhanced at the new Galleries of Remembrance. There is seating for approximately 200 people in the theatre. As people walk around the galleries they will have the opportunity to enter educational breakout rooms, complete with computers, allowing people, both young and old, to enhance their experience. They will be able to look at different conflicts and different battles and, especially, to check up on the various service histories of the people who went before us and who made such an enormous sacrifice to give us the life we enjoy today.

Child safety regulation

Ms MIKAKOS (Northern Metropolitan) — My question is again to the Minister for Children and Early Childhood Development. I again refer the minister to her media comments about new penalties for leaving a child unattended in a car. On Tuesday on Channel 9 the minister said these penalties were not meant to catch parents who accidentally left their child in a car, but on Wednesday in her media release and in her morning radio appearance she said:

> Whatever the reasons, there's simply no excuses for leaving a child unattended.

Which of the minister's two statements reflects her government's policy?

Hon. W. A. LOVELL (Minister for Children and Early Childhood Development) — I think the member is taking my first statement out of context. What was said is that these provisions are not meant to catch people who accidentally get out of their car, with their keys left in the car and where the car locks behind them. We certainly want those parents to ring emergency services and get those children out of the car and into safety as soon as possible.

These penalties relate to parents who deliberately leave their child in danger, such as parents who leave their child in the car while they go shopping at the Boxing Day sales. It is about people who leave their children in the car while they go to a gaming venue and people who leave their children at a shopping centre while they go off and do shopping elsewhere. This is about parents who are leaving their children in danger. These penalties are appropriate. They are what the community expects.

Supplementary question

Ms MIKAKOS (Northern Metropolitan) — The minister's selling of this policy has been botched over the last two days. In light of the frequent changes to her characterisation of the application of these new penalties, how can Victorian parents have any certainty that they will not be caught out by this new policy?

Hon. W. A. LOVELL (Minister for Children and Early Childhood Development) — On the contrary, I would say that this policy has been received extremely well over the last two days. It has got extremely good coverage and has been well received by the community, not only in the media but over social media. What is clear is that the opposition does not support this policy. Opposition members do not support protecting vulnerable children, and they should come clean and say what their position is on children being left unattended and in vulnerable situations.

Regional growth planning

Mr KOCH (Western Victoria) — My question is to my colleague the Minister for Planning, Matthew Guy. Can the minister inform the house what action the government has taken to bring forward a new level of structural planning for regional Victoria and importantly for new land supply in Geelong in particular?

Hon. M. J. GUY (Minister for Planning) — I thank Mr Koch for his very important question about ensuring that this government and future governments over the next decades have a well-planned and structured system to manage our population growth, not just in Melbourne but throughout Victoria. I am deeply pleased to be able to inform the house that over the last few weeks I have launched the final number of our regional growth plans. Regional growth planning is for the first time conducting planning on a regional scale throughout regional Victoria, where we have eight regional growth plans, with the ninth being Plan Melbourne for our central urban area, the Melbourne metropolitan area. Importantly, conducting planning on a regional basis allows councils to prioritise where growth will be on that regional level, to prioritise where farming needs to be protected on a regional basis and to ensure that appropriate infrastructure bids are made on the basis of a regional approach to government, not just on a piece-by-piece, municipality-by-municipality approach.

I have had much pleasure in launching the Great South Coast regional growth plan in Hamilton. The next day, in the beautiful town of Birchip, together with the member for Mildura in the Assembly and the member for Swan Hill in the Assembly, who is also the Minister for Agriculture and Food Security, I had much pleasure in launching the Loddon Mallee North regional growth plan. I had pleasure in launching the regional growth plan for Wimmera Southern Mallee in Horsham, and I recently had much pleasure being with the member for Benambra in the Assembly in launching the Hume regional growth plan in Wodonga.

As I said, the launching of these regional plans now concludes the process of launching that phase of those growth plans. It is now about implementing what is Australia's most efficient, clearest and best way of conducting planning throughout regional Victoria. No other region in any state in Australia conducts planning in such a holistic way as Victoria now does.

Importantly I also want to inform the house about some discussions I have had with the City of Greater Geelong. We launched the G21 regional growth plan, which was the first cab off the rank, if you like, of the regional growth plans over 12 months ago. The G21 plan forecasts Geelong's ability to grow sustainably and strongly into the future as one of Australia's largest cities. In the decades to come we will see the population growth rate in Geelong starting to edge up above 2 to 2.5 per cent, maybe more, and I believe within our lifetime we will see Geelong as a city with greater than 500 000 people in its metropolitan area. That means we need to plan ahead now to ensure that Geelong grows sustainably and sensibly and that we get growth in its central city area, in its existing suburbs and of course in its outer growth areas.

I have had sensible conversations with the council and with the mayor, Cr Darryn Lyons, around bringing forward urban growth zone proposals into the Batesford South and Lovely Banks area to the north of Geelong, and of course bringing forward precinct structure plans earlier than they would be scheduled in the southern suburbs of Geelong through the Armstrong Creek growth corridor.

All these points, as well as our regional growth plans, show that the Liberal-Nationals government is planning well ahead and sensibly for regional Victoria to ensure that the mapping out of our state's growth into the future is not focused on Melbourne alone. We are providing the incentives and reasons for people to choose regional Victoria not just to live in and invest in, but to raise a family in and grow and be a part of what is definitely Australia's greatest place to raise your children, and that is regional Victoria.

Child safety regulation

Ms MIKAKOS (Northern Metropolitan) — My question is again to the Minister for Children and Early Childhood Development. I refer to the minister's response to my previous question in which I asked her about the new penalties for leaving children unattended in cars. She referred to the new penalties applying to a parent who deliberately leaves a child in the car whilst going shopping, so I ask: will these new penalties apply to parents who leave their 15-year-old child in the car whilst paying for petrol?

Hon. W. A. LOVELL (Minister for Children and Early Childhood Development) — As I have already explained to Ms Mikakos, it is on a case-by-case basis depending on the maturity of the child. A 15-year-old child is quite capable of staying in a car while a parent goes and pays for petrol. The police will make an individual case-by-case decision around whether children are capable of looking after themselves or not. It is clear that the opposition does not support the protection of vulnerable children. By continuing this line of questioning the shadow minister shows that she is completely opposed to the protection of vulnerable children. She shows a lack of care for their wellbeing.

Supplementary question

Ms MIKAKOS (Northern Metropolitan) — Victorian parents would have every reason to be very concerned by the minister's conflicting statements, and I refer her to her media release yesterday in which she said:

> Whatever the reasons — there's simply no excuses for leaving a child unattended'.

I again refer the minister to her answer to my previous question in which she referred to the word 'deliberately, and I ask: what is the mens rea — the legal intention — that will apply before these penalty provisions apply to Victorian parents?

Hon. W. A. LOVELL (Minister for Children and Early Childhood Development) — As I have explained I think six times during today's question time, it is a matter for the police. What Victorian parents would be concerned about is that we are 16 weeks from an election and it is clear that the only policy that this shadow minister has is to leave children in vulnerable situations and not provide for their care and protection. With 16 weeks to an election, we have had six questions now from the shadow minister on something that was explained to her in the answer to her first question. The opposition is not taking decent policies to the election, it has nothing decent to raise on behalf of the people of Victoria, and it is only interested in leaving children in vulnerable positions.

Ms Mikakos — On a point of order, President, my question was very specific. The minister has sought to debate the question, but my question was specifically trying to get some clarity around the minister's own statements, both in the media and here in the house. In response to my earlier question she used the word 'deliberately', which has particular legal connotations. She has made different statements in her media release, in the media and in the house today, so Victorian parents need some certainty around what is the legal test. That was the supplementary question.

Hon. D. M. Davis — What is the point of order?

Ms Mikakos — The point of order is that the minister is debating, and I bring her back to the supplementary question, which is to give us some clarity around the legal test that would apply to these new penalty provisions.

Hon. D. M. Davis — On the point of order, President, in the member's question I clearly heard points about concerns in the community, and the minister came back very directly with the fact that there were concerns in the community about the opposition's position, and that is quite a legitimate response to the words and phrases that were in her question.

The PRESIDENT — Order! On the point of order, this matter has now been canvassed, as the minister has indicated, in effect over six questions. As I indicated earlier in respect of another point of order, I am not in a position to direct a minister as to exactly how they should answer a question. For the most part, certainly from my perspective in the chair, the minister provided answers that were apposite to the question, albeit they might not have been as definitive as Ms Mikakos sought in terms of an answer. The minister has a further 10 seconds to respond, and she may wish to consider the legal definitions aspect that Ms Mikakos has canvassed in her question. Otherwise Ms Mikakos might well have some other avenues she might explore

if she considers that there is continuing ambiguity about this policy area.

Hon. W. A. LOVELL — The opposition cannot hide on this. It must come clean and say whether it supports this measure to protect vulnerable children or whether it is prepared to leave them — —

Mr Lenders — On a further point of order, President, in the last part of her question the minister has gone into a full-on debate. It is not a question of government administration, as I said earlier. She is now hypothesising and requiring other parties to declare positions. I ask you to bring her back to government administration and not to debate.

Hon. D. M. Davis — On the point of order, President, the beginning of the question talked about concerns in the community, and it is very clear that there are concerns in the community about the opposition's position.

The PRESIDENT — Order! I concur with the Leader of the Opposition with regard to this point of order. The minister, in the 7 seconds that she has been on her feet following the last point of order, did enter into full-on debate, and that debate involved calling into question the opposition's position, which is not part of the government's jurisdiction. Therefore the minister was clearly debating. The minister has indicated that she has completed her response.

Crime prevention

Hon. R. A. DALLA-RIVA (Eastern Metropolitan) — My question without notice is to the Minister for Crime Prevention, Edward O'Donohue. Can the minister update the house about some of the latest infrastructure projects the Napthine coalition government is funding to improve community safety in Victoria?

Hon. E. J. O'DONOHUE (Minister for Crime Prevention) — I thank Mr Dalla-Riva for his question and his longstanding interest in crime prevention issues both in this place and previously as a member of Victoria Police. It was a pleasure to join Mr Dalla-Riva recently to unveil some recent crime prevention initiatives in Heidelberg — some antigraffiti projects that have seen improvements to community safety in that precinct. I also acknowledge Mrs Peulich, who recently unveiled the Autumn Place upgrade in Doveton, a fantastic infrastructure project improving the amenity of Doveton and improving community safety in that area.

I particularly want to update the house on the delivery of some important CCTV projects. The government has provided to the City of Melbourne $250 000 for nine CCTV cameras in crime hotspots in the CBD and Docklands, and upgrades to the Safe City control room. The location for these new cameras was decided based on the advice of Victoria Police. I was pleased to launch those new cameras last month with the Lord Mayor, Robert Doyle. The Lord Mayor endorsed this initiative by explaining that twice a day, every day of the year, police ask to look at the footage because they need the help of the CCTV footage in solving crime.

Mr Barber interjected.

Hon. E. J. O'DONOHUE — It is clear that this investment is helping to solve crime and, I can tell Mr Barber, to prevent crime. Victoria Police members who were present at that launch spoke about how situations can now be defused much more quickly and crime can be prevented because of the ability to monitor situations and respond in a much quicker way than was previously possible.

Mr Barber interjected.

Hon. E. J. O'DONOHUE — I can inform Mr Barber that that was the advice of Victoria Police — that CCTV not only helps to solve crime but helps to prevent crime.

In that context, I was also very pleased to launch the CCTV camera network for the community of Hastings. This is the delivery of an election commitment by the member for Hastings in the Assembly, Neil Burgess, and I congratulate Mr Burgess on his tireless advocacy for the delivery of this project. There were many challenges in the delivery of this project, but Mr Burgess was unswerving and unrelenting in his desire to see this commitment delivered, and I am very pleased that it has now been delivered.

It was a pleasure to see the installation of these cameras at the Hastings police station. The delivery of this new technology will help Hastings police respond to crime and also deter crime. Hastings police advised that footage of a number of incidents has already helped police respond to particular matters. I would also like to acknowledge the strong support of the Western Port traders, who were very supportive of this project.

Regrettably, not all CCTV projects are being delivered by local government in the way that the government would expect. That includes the Moreland City Council, which is still to complete its project some 18 months after the coalition offered it $250 000, and we know that the City of Glen Eira is the only council

to have rejected CCTV funding. However, I congratulate Elizabeth Miller, the outstanding member for Bentleigh in the Assembly, who has turned the council's rejection into a positive by using the funds that were available — the $150 000 committed by the government — for 18 individual community safety projects. This is a great result for that community, and I congratulate Elizabeth Miller, who is doing a fantastic job.

Supported residential services

Hon. D. M. DAVIS (Minister for Ageing) *(By leave)* — I would like to respond to a point Ms Mikakos made yesterday regarding her questions without notice of 25 June. In the first instance I indicate that it did take some time to prepare these answers, because it was a complex process.

As to the question of how many audits of supported residential services (SRSs) were taken by authorised officers of the Department of Health in the 2012–13 financial year, I can indicate that under the legislated regime introduced in July 2012 a targeted compliance review (TCR) inspection is the mechanism for monitoring compliance in SRSs, as well as other inspections in response to complaints. Authorised officers of the department undertook 220 TCR inspections of SRSs in 2012–13 — substantially more than were carried out in 2009–10 under Labor.

There was a supplementary question as to how many audits of SRSs were undertaken in Southern Metropolitan Region by authorised officers of the department in the 2012–13 financial year. I can indicate that authorised officers of the department undertook 43 TCR inspections of SRSs in Southern Metropolitan Region in 2012–13.

In response to the question of how many audits and inspections at Mentone Gardens were conducted by authorised officers of the department during the last term of government, I can indicate that the department undertook 12 inspections of Mentone Gardens during that term of government.

The other supplementary question asked whether an audit of Mentone Gardens finances was conducted by the minister's department prior to a receiver being appointed and on what date this occurred. I can indicate that the department does not audit the finances of SRSs; it has no legal authority to do so. These are private businesses, and where operated by companies, their reporting requirements are established under the Corporations Act 2001, which is administered by the Australian Securities and Investments Commission.

MALAYSIA AIRLINES FLIGHT MH17

The PRESIDENT — Order! I indicate that several members of this chamber — and we thank the party leaders and whips for the opportunity — today attended the national memorial service for Malaysia Airlines flight MH17, which was tragically shot from the sky two weeks ago, as we know. I have a number of programs from that event, if any members would like one.

I also wish to convey on this occasion a message from the Consulate General of the Arab Republic of Egypt in Melbourne which was forwarded to me following the event. It reads:

> In this hour of bereavement and immense grief, I would like to extend my deepest condolences over the tragic crash of Malaysian flight MH17 in Ukraine in which Australian lives were lost among other nationals.
>
> I am deeply shocked by the disaster and would like to convey my heartfelt condolences and sympathy with the government and people of Australia and to the families of all passengers who were on board in the unfortunate flight.

That is signed by His Excellency Khaled Rizk, the Consul General in Melbourne.

RULINGS BY THE CHAIR

Unparliamentary expressions

The PRESIDENT — Order! I make a brief comment about a point of order that was taken earlier this morning with regard to a line of argument led by Mr Jennings. Mr Jennings remarked that he thought the minister had been caught continuing the duplicity of the government's attitude to this program and other environmental programs.

On a point of order the Leader of the Government, Mr Davis, sought the withdrawal of the word 'duplicity'. The Acting Chair at the time, Mr Eideh, asked for a withdrawal and Mr Jennings challenged whether or not he ought to be required to withdraw in the context of what he had said. There was some discussion across the chamber between Mr Jennings and Mr Davis, and following that Mr Eideh, as the Acting Chair, decided that he would not insist on the withdrawal of the remark and allowed the debate to continue.

As a very indelible rule I expect that where a withdrawal is sought, in almost all instances that ought to be complied with out of respect for the Chair. Earlier this week Mr Guy might well have taken issue with my request for a withdrawal but out of respect for the Chair

he complied, and I think that was the appropriate thing to do.

Notwithstanding that very indelible rule, I can understand why Mr Jennings took exception on this occasion to being asked to withdraw, and I think the Leader of the Government might not have understood the term that was used. From the copy of *Hansard* I have, it is clear Mr Jennings's remarks were directed at the government. He used the word 'duplicity' in terms of a government attitude, not in terms of the minister that Mr Davis thought had been referred to, who was Mr Smith, the Minister for Environment and Climate Change. Therefore it was clearly not a personal reflection on the minister. It was in my view a legitimate debating process, and I do not believe that the word, in the context in which it was used today, was unparliamentary. Mr Eideh's decision to allow Mr Jennings to continue and not insist on a withdrawal was appropriate in the circumstances, albeit, as I said, I do believe that out of respect for the Chair and as an indelible rule where a withdrawal is sought it ought to be provided.

One of the things I have to say about these reflections, if you like, or comments where people use words like 'duplicity' and so forth, is that I have indicated on a number of occasions that it is not just about the words that are used — it is the context in which they are used, and it is even the tone in which they are used. On one occasion a word might be acceptable and might well be within the parameters of robust parliamentary debate, but on another occasion that word might well be unparliamentary because of the way in which it is used. Therefore there is a need for discretion by the Chair in those respects.

However, I suggest that what is really important for us all to consider is that in any reference to people where there is a descriptive pejorative remark to be made, it should be one that does not impugn the character of the person but rather examines the action or inaction of that person. In other words, it is focused on an issue or a matter of importance and substance rather than being an attempt to diminish or damage the reputation of that person, particularly if it is taken outside a substantive motion and particularly if it is put as a debating tactic as distinct from a matter that explores an issue of some substance.

I do not believe that it is in the interests of this place to have members trying to character assassinate, damage or impugn the reputations of other individuals, whether they be MPs or others, by using words and phrases simply as a debating tactic where the words used would not pass a legitimate test of public opinion outside this place. We all enjoy parliamentary privilege, but clearly there is a responsibility that attaches to it. I am aware of a number of cases where words have been used in here that might well have been taken as defamatory had they been used outside of this place.

In my view, as I have indicated previously in a ruling, the threshold at which words could constitute an accusation or improper motives must necessarily be high in the inherently political environment of a parliamentary debating chamber. Nonetheless, they should not seek to impugn someone's character where there is not some sort of substance to that accusation, and it is an accusation the substance of which can be tested in a proper debate.

When it comes to suggesting that a government might have been duplicitous, the test is even higher because you are not impugning the character of an individual. In that context today, from my point of view, there was no issue with the contribution of Mr Jennings in this place. On that occasion Mr Eideh's decision not to insist on a withdrawal was an appropriate one in the circumstances, but again I mention that it is important to respect the Chair. Some of these matters will be judgement calls from time to time, and those judgement calls will be made not just on the word used but on the context in which the word is used and even on the tone in which it is used.

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

STATUTE LAW AMENDMENT (RED TAPE REDUCTION) BILL 2014

Committee

Resumed; further discussion of clause 1 and Mr BARBER's amendment:

1. Clause 1, lines 5 to 8, omit paragraph (a).

Mr BARBER (Northern Metropolitan) — I do not propose to continue this discourse with the minister. It is our view that the inputs and assumptions behind the modelling are questionable. If those assumptions were correct, there would be very little reason to pursue energy efficiency in the state of Victoria, and yet during the second-reading debate I heard some suggestions that government MPs think this is great and that they have a big set of ideas that are coming down the line, which they have not told us about. In many other jurisdictions around the world, energy efficiency targets are normal and are seen as a necessary mechanism to keep on reducing energy bills and greenhouse gases, which are rated at zero value, as we saw from the minister's answer and the government's modelling.

I was glad to hear that the spokesperson for the opposition believes this is a program that should continue until 2030. I think I heard him say at one stage that he thought the 5.4 million target should stand. I do not know how far that gets him towards his aspirational target of a 20 per cent reduction in greenhouse gas emissions. I would suggest we would need a lot more than 5.4 million.

Mr Melhem — I agree.

Mr BARBER — In fact I would suggest that probably half the reductions that we would expect from the stationary energy sector would come from energy efficiency, with the other half dealt with by a range of other measures across the sector. Energy efficiency is a very large source of savings that virtually pay for themselves in many instances. I disagree with the lead speaker for the government, who suggested that the program was exhausted and that they had run out of new savings.

That is all I have to say on clause 1 concerning the energy efficiency standards. However, I believe we will be voting on my amendment to the Food Act 1984 shortly.

Hon. G. K. RICH-PHILLIPS (Assistant Treasurer) — The government will not be supporting Mr Barber's proposed amendment to clause 1. The intent of the amendment is to knock out the changes to the Food Act around food premises disclosure, and the government does not intend to support knocking that out.

Committee divided on amendment:

Ayes, 16

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

Noes, 21

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

Amendment negatived.

The ACTING PRESIDENT (**Mr Elasmar**) — Order! I call Mr Barber to move his amendment 2, an amendment that also relates to his amendment 3, which proposes the omission of paragraph (c) from clause 1. I propose that Mr Barber's amendment 2 be considered a test for his amendments 3, 9 to 14 and 17, which are all connected to the omission of clauses relating to the Victorian Energy Efficiency Target Act 2007.

Mr BARBER (Northern Metropolitan) — I move:

2. Clause 1, page 2, line 5, omit "Committee; and" and insert "Committee."

I think the procedure here is that because I wish to move amendments to remove a number of provisions in addition to what the opposition might be proposing, I will be seeking to remove paragraph (c) — that is, the purpose of the bill to amend the Victorian Energy Efficiency Target Act 2007. When we get to my later amendments I am presuming that the opposition will take precedence with its amendments that seek to do the same thing. For now the purpose of the amendment is to remove the purpose of the bill that closes the scheme.

Hon. G. K. RICH-PHILLIPS (Assistant Treasurer) — The government does not support Mr Barber's amendment, obviously, and will not be supporting its passage.

Mr JENNINGS (South Eastern Metropolitan) — I want to make it clear that the intention of the opposition in all of its interventions today is to keep the scheme alive, and to keep the scheme alive for the longest opportunity. In our view the scheme should be kept alive till 2030. The reason we will not support this amendment is that the effect of it, if the government has its way, will be that there is in fact no target beyond 2015. Therefore no program that would be supported by the legislation would be required, because the target has to be set in legislation for the scheme to go forward. The opposition will not be supporting Mr Barber's amendment because its effect is, in practice, to wind the scheme up earlier than even the government is suggesting.

Amendment negatived; clause agreed to; clauses 2 to 6 agreed to.

Clause 7

The ACTING PRESIDENT (**Mr Elasmar**) — Order! Mr Jennings's amendment 1 and Mr Barber's amendment 10 both invite the committee to vote against clause 7.

Mr JENNINGS (South Eastern Metropolitan) — Just to run through the logic, every amendment I shall move from this point on is to keep the scheme alive and to insert a target so that there are some programs that have the effect of meeting the objectives of the target and maintaining the target, along with the certificates that would be associated with that and the acquittal of energy savings that would be required under the scheme. The omission of clause 7, which is specifically the intent of my amendment 1, will restore the original position which allows for the creation of certificates in respect of prescribed activities undertaken after the commencement of the Victorian energy efficiency target scheme and before 1 January 2030. In other words, it saves the scheme in its operation until 2030. I invite members to vote against this clause.

Hon. G. K. RICH-PHILLIPS (Assistant Treasurer) — The government will not be supporting Mr Jennings's amendments or Mr Barber's parallel amendments. Obviously the government's intention with this legislation is to wind up the VEET scheme at the end of 2015, and to do so at a transitional level of 2 million tonnes of carbon dioxide equivalent reduction in that transition year. We will not be supporting Mr Jennings's or Mr Barber's amendments.

Committee divided on clause:

Ayes, 18

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

Noes, 16

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

Pairs

Atkinson, Mr	Viney, Mr
Kronberg, Mrs	Darveniza, Ms
Drum, Mr	Tarlamis, Mr

Clause agreed to.

Clause 8

Mr JENNINGS (South Eastern Metropolitan) — I invite members to vote against this clause. Omitting clause 8 would restore the original position, requiring a relevant entity to not have an energy shortfall for a year from 1 January 2030, or any year after. It is therefore consistent with the clauses that keep the scheme alive. Whilst I invite members to vote against it, I will not necessarily be calling a division, unless it is pretty clear that I am going to win it.

Hon. G. K. RICH-PHILLIPS (Assistant Treasurer) — The government's intention is to sunset the scheme at the end of 2015, and therefore we will not be supporting Mr Jennings's amendment.

Clause agreed to.

Clause 9

Mr JENNINGS (South Eastern Metropolitan) — I move:

3. Clause 9, line 24, for "2" substitute "5.4".

This is the most vexing and potentially confusing clause for people in the public domain in terms of understanding its net effect in the context of what the current bill does.

Whilst the bill brings the closing of the scheme forward from 2030 to 2016 — which is a negative, in the opposition's view — it also puts in place a target for the last year of the scheme that it otherwise would not have. A legislative amendment was required to put in place a target for the last years of the scheme. The opposition is not moving for the deletion of this clause; rather, it seeks to amend it — in the name of maximising its effectiveness in the government's concluding year — to be 5.4 million tonnes, as distinct from the government's figure of 2 million tonnes. That is the effect of the amendment I propose.

We are moving this amendment because we want to maintain the efforts of the scheme, the jobs underpinned by it and the benefits that are afforded to Victorian households and the economy in the long term. We want to maximise the engagement of the program which underpins the legislation until its closing date. While there are some members of the community who may be confused about why, in effect, the opposition is amending this clause rather than seeking its omission, we are doing it to keep the scheme alive at the highest degree of engagement until the government's closure of it.

Committee divided on amendment:

Ayes, 16

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

Noes, 18

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

Pairs

Viney, Mr	Drum, Mr
Darveniza, Ms	Rich-Phillips, Mr
Tarlamis, Mr	Atkinson, Mr

Amendment negatived.

Clause agreed to; clauses 10 to 12 agreed to.

Reported to house without amendment.

Report adopted.

Third reading

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

That the bill be now read a third time.

In so doing, I thank members for their contributions.

Motion agreed to.

Read third time.

WATER AMENDMENT (FLOOD MITIGATION) BILL 2014

Second reading

Debate resumed from 26 June; motion of Hon. G. K. RICH-PHILLIPS (Assistant Treasurer).

Ms PULFORD (Western Victoria) — The Labor opposition will not be opposing the Water Amendment (Flood Mitigation) Bill 2014. The bill seeks to do a number of things, including improve the management of existing levees on Crown land to help protect communities at risk of flood and reflect the recommendations from the parliamentary Environment and Natural Resources Committee, which were adopted by the government. In its response the government agreed that access to private land for works needs to be negotiated as part of a system of overall levee management.

The bill also seeks to achieve this through a levee maintenance permit system, with permits to be granted to nominated beneficiaries. It is envisaged that once granted the permits will govern issues around construction, removal, alteration or maintenance of levees. The bill seeks to amend a variety of public land management acts to give effect to the introduction of a levee maintenance permit system. Quite a number of pieces of legislation are affected, and much of the bill seeks to apply these practices consistently.

This bill arises from significant flooding events that took place in Victoria between September 2010 and February 2011. I am sure all Victorians will remember the dramatic images of flooding, particularly in January of 2011. Countless communities were substantially affected. I had the opportunity to view firsthand the impact of flooding in communities as diverse as Skipton, Creswick and Dimboola in my electorate, and there was significant damage north-east of the areas in which I tend to travel. Many communities were greatly affected — some of them small communities with limited capacity to respond. We saw yet another extraordinary display of community spirit and volunteering as people struggled to respond to such significant rainfall.

We know that climate change is real. We on this side of the house accept that human activity has impacted on and continues to impact on a changing climate. We believe the scientists and meteorologists when they tell us that extreme weather events will become more severe and more frequent. The Liberals and The Nationals are still working through some of those issues, but members on our side are with the scientists.

It is incumbent upon all of us to improve our ability to respond to emergencies arising from extreme weather events, so in 2011 the Parliament's Environment and Natural Resources Committee was charged with the task of inquiring into matters relating to flood mitigation infrastructure. The committee's report was presented in August 2012 and made 40 recommendations for the improvement of management and maintenance of levee infrastructure. This bill deals with one of the most significant recommendations, that being recommendation 4.6, which sought to deal with certain levees on Crown land

that varied from being in quite good condition to being in a pretty ordinary state of repair and no longer up to the task of keeping communities and agricultural land safe from flooding.

Some levees cross between Crown land and private land, and an incredibly complex array of management tools have evolved. For affected communities and individuals, this legislation seeks to clarify where the decisions need to be made and how they need to be made. These are reasonably practical measures. It is worth noting that many of the other recommendations that the government said it fully accepted as a result of the committee's work have not, in a practical sense, been taken up by the government.

It is also worth noting that the communities devastated by these floods were, in many instances, sent off to do detailed flood management studies. They went off in the spirit with which they thought the government's offer to fund and support these studies was intended. These studies have now been done. They make recommendations and detail projects that are required to ensure that the damages and the losses that were experienced in flood-affected communities will not be repeated, but the government has made no allocation whatsoever for funding to enable those communities to do anything with these fabulous new reports that they have.

In communities across my electorate I have been briefed on these wonderful flood studies and on the projects that have been recommended as a result of them, but the Victorian government provides nowhere for these communities to make the case for funding for these projects that have been clearly determined to be essential. The government needs to lift its game in that endeavour.

I believe our whips have agreed to a reasonably brief discussion on this bill, but in the context of a water management bill it is appropriate to note the absolute fiasco that has this week been clearly laid out in reports into the Office of Living Victoria. This was the government's signature water policy. The government has had a great deal to say about the way Labor chose to manage infinitely scarcer water resources than this government has had to manage, but the Victorian people can have no confidence whatsoever when the government's flagship water policy, the Office of Living Victoria, is rocked by the kinds of scandals that we have seen reported in the press today.

The Labor Party will not be opposing the bill, although it wonders where and when the government will act on the other recommendations in the report of the inquiry undertaken by our colleagues on the Environment and Natural Resources Committee.

Mr RAMSAY (Western Victoria) — It gives me pleasure to rise to speak on the bill. I acknowledge that Labor is not opposing the bill, and I am pleased that its lead speaker, Ms Pulford, has congratulated the government on bringing it to the house. As a member for Western Victoria Region, she understands the devastation caused by the floods to large parts of the region in January 2010.

I will not go through the technical wording of the bill. It is a simple bill, and its objective is to create a permit scheme to facilitate the maintenance of levees on Crown land in response to recommendations made by the Environment and Natural Resources Committee (ENRC) in its report on flood mitigation infrastructure in Victoria. I congratulate David Koch, who chaired the joint parliamentary committee. He is a parliamentary colleague and member of Western Victoria Region who understands the impact on regional Victoria of natural disasters like the floods. He also has a local knowledge of many of the small rural towns and communities that were affected. Over 172 towns were affected by the floods, and the total cost to the state was in excess of $1.3 billion. It was a significant natural disaster.

I am pleased to see that the government has accepted all the committee's 40 recommendations in full and in principle. The government's response to the report was tabled on 17 October 2013. Even though Ms Pulford suggested that some of the recommendations are yet to be acted on, I know works are happening. Recently I was in Creswick with the Minister for Agriculture and Food Security, David O'Brien and others to look at some of the flood mitigation works being done on Creswick Creek. That is only one of many activities that have been borne out of the government's response to the floods.

I commend my parliamentary colleague David O'Brien. I do not do it as much as I should, and I am saying this because I do not think Mr O'Brien will be contributing to the debate on the bill. One month after we were elected to the Parliament one of our first duties as members of Parliament, when we were quite green, raw and new to the experience, was to involve ourselves in helping communities like Horsham, Nhill and Charlton, where we saw the impacts of the floods on places like the hospital and on places right down to towns around Ballarat. We helped with sandbagging and talked to local communities to try to understand the impacts on them and how as local members we could help through a whole-of-government approach to respond to the impacts of floods on those small

communities. Being on the ground and at the front line in helping those communities with the floods, we felt the impacts they had on individuals. I am sure Mr O'Brien would say that it is pleasing to see that this is one of many responses the government has made in relation to the impact of the floods in January 2010.

Following the major flooding that occurred across Victoria in late 2010 and early 2011, ENRC was charged by the Legislative Assembly with inquiring into matters relating to flood mitigation infrastructure. Its report was tabled in August 2012, and it made 40 recommendations for improving the management and maintenance of that infrastructure. In its response to the ENRC report the government expressed support fully or in principle for all 40 recommendations, as I have already indicated. In particular, the government agreed that where a levee on public land is not maintained by a public authority, a person who believes they would benefit from the maintenance of the levee should be able to enter the land to undertake the required maintenance. If passed this afternoon, the bill will give effect to this commitment.

The bill also allows a person to obtain a permit at the minister's discretion to maintain a levee on Crown land — and we are only talking about Crown land in the bill — to reduce damage caused by flooding. The bill also provides a Crown land manager to oversight the environmental acts and regulations to ensure that they are not compromised. Despite the fact that a permit is able to be obtained at the minister's discretion for works to be done on Crown land, other than what is done by a public authority, there are sufficient environmental conditions and restrictions in relation to those works that will not be compromised under the act. I make that point noticing that Ms Pennicuik has entered the chamber and is looking intently at me as I talk about issues relating to the environment. I suspect she has concerns about the impact on the environment if the permits are issued.

Mr D. D. O'Brien — We always listen to you intently too, Mr Ramsay.

Mr RAMSAY — Thank you, Mr O'Brien. The permit scheme will not allow for existing levees to be made higher, wider or longer nor allow the construction of new levees on Crown land. To ensure that the environmental and other values attached to Crown land are protected the minister will be required to refer an application for a levee maintenance permit to the relevant statutory land manager for consideration prior to determining the application. The land manager will require that reasonable conditions be placed on the permit, including the types of machinery to be used, types of soil and other materials allowed to be brought onto Crown land to repair a levee. Any permits issued will be valid for up to five years, with the substantive maintenance work, including the use of machinery and the bringing in of soil onto Crown land, having to be completed within the first 12 months. The minister will be able to revoke a permit where it is believed that the permit-holder has failed to comply with its conditions.

It is anticipated that the minister's power to issue or revoke a permit or to vary a condition of a permit will be delegated to relevant authorities with the necessary knowledge and experience in waterway management and flood plain management. This will allow for a single point of contact for applicants in the administration of permit applications on all types of Crown land. Presently the entry onto and carrying out of work on Crown land to maintain flood mitigation works is difficult to authorise, and for some types of land, such as national parks, it is not possible to authorise private individuals at all. In addition a patchwork of restrictions applies across different land tenures — for example, state forests — as well as the civil laws of trespass. Land managers have identified that the unauthorised maintenance of levees already occurs on Crown land. The introduction of this permit scheme will enable lawful maintenance and repair of existing rural levees on Crown land to be undertaken within permit conditions applied to protect land values.

I will make just a couple of other comments, because I appreciate that there are other speakers who would like to make a contribution to the debate on this bill, including I am sure Mr Danny O'Brien, who has considerable knowledge of all water matters. As I said, it is an innocuous bill. It is not contentious. It is being supported by Labor. I am not sure what the intent of the Greens is, as they have not indicated it. The legislation allows communities to better protect themselves from the potential risk of flooding.

I am reminded that during the 2010–11 floods I inspected a levee bank at Warracknabeal. It is an interesting case, given that an entrepreneur — I think that is what the gentleman would be called — decided to take into his own hands the building of a levee bank around the town, although it caused considerable angst for the local council at the time. Nevertheless, history will show that due to his perseverance, knowledge and experience — I am not sure how much luck was involved — the levee bank substantially saved many houses from being impacted on by floods, as he intended. History will show that his decision was right. He made the call, and the town was better off for it.

There is opportunity for individuals to lawfully pursue maintenance of levee banks on Crown land if they wish. I encourage the Greens to support the Water Amendment (Flood Mitigation) Bill 2014 if they do not already. I commend the work being done by the government not only in response to the ENRC inquiry recommendations but in providing the funds that are flowing now through regional Victoria to many small towns like Creswick, where significant flood mitigation works are being carried out; Skipton, where there was significant flooding of Mount Emu Creek, impacting low-lying businesses; Horsham, where a significant part of the south of the town went under water; and Nhill and Charlton, where a new hospital is rising out of the flood-affected area. The many farmers who were significantly impacted by loss of stock, pasture and fencing have also been provided with grants to help them rebuild.

The government has done its bit by providing funds to support those affected by floods; it is now our job as members to support those communities impacted by floods by passing this bill this afternoon and giving greater surety and safety to communities in the event of other tragic floods like the ones we saw in 2010–11. I commend the bill to the house.

Mr BARBER (Northern Metropolitan) — Mr Ramsay will be glad to know that the Greens do not oppose the bill. The bill overhauls the permit process so that existing levees on nearly all types of Crown land that will not be maintained by the government can be maintained by and at the expense of private individuals who would benefit from the maintenance and the councils that represent them. It enacts an Environment and Natural Resources Committee recommendation from an investigation into the 2010–11 floods. The government's intention with this legislation is not to create any new levees, make existing levees bigger or otherwise alter or breach them, but just to allow for their maintenance. We have been scrutinising this legislation closely to check that that is in fact the case. It may have been the intent of the government, but the question is: does the legislation in fact do that?

The idea is to stop the unregulated and dangerous practices that happened during certain flood emergencies where people built up or ripped open levees when floods were approaching, partly because there had been no maintenance by government and individuals could not access the land in an orderly manner in the years before the floods. Many of these levees were on private land when they were built. In my time I have heard tales of people patrolling their levee with a shotgun all night during flood periods to make sure nobody gets the idea that ripping down a particular piece of levee might send the floodwaters one way rather than another. There is a saying up that way: 'Fires unite, floods divide'. When a fire is coming from a particular direction, people gang together, fight the fire and stop it before it gets to the community; once a massive amount of water is on its way down a particular river and levees are constraining its progress, that changes the situation.

I could ask some questions in the committee stage, but I might just put a couple of questions that the minister or a later speaker from the government might like to address: why does a permit not have to include levee dimensions that cannot be exceeded, and why does the minister not have to consider the levee's historical dimensions during the permit approval process? There was considerable discussion about this during the Environment and Natural Resources Committee's inquiry into flood mitigation infrastructure in Victoria in 2012.

I do not propose to go clause by clause through the bill and explain what it does. With those few words, the Greens will support the bill.

Mr D. D. O'BRIEN (Eastern Victoria) — I take great pleasure in rising to speak briefly on the Water Amendment (Flood Mitigation) Bill 2014. As other speakers have pointed out, this is a fairly straightforward bill which will implement one of the recommendations of the Environment and Natural Resources Committee from a year or two ago. I am now a member of that committee, but I was not at that time. It allows landholders across the state who would like to do some work on a levee on public land that may be supporting or protecting their own private land to do so with a permit from the Minister for Water.

I only caught the first part of Mr Barber's question on restrictions on dimensions of levees. I am sorry that I cannot answer Mr Barber in detail, but my understanding is that the bill will not allow for levees to be built up or expanded in any way, shape or form, so it really is only the maintenance of existing levees to ensure that they are structurally sound and can continue to do the job that they are doing. I hope that answers at least the first question Mr Barber asked.

This bill also recognises the flooding issues that arose from 2010–11, particularly in areas of northern Victoria. Some parts of the state were very badly affected for weeks, and in some cases months, at a time, and Mr Ramsay has referred to some of those. I think it is incumbent on government to do every little thing it can to ensure that flooding and damage to communities is minimised as much as possible.

The government has been doing a lot of work in this space. Again, Mr Ramsay has quite eloquently outlined a number of works that have been done. In my own region, Eastern Victoria Region, in Gippsland we recently had a number of announcements about flood mapping and flood study plans that have been funded by the government. With the member for Morwell, Mr Russell Northe, and the federal member for Gippsland, Mr Darren Chester, I announced funds for Rosedale and Traralgon, and the Deputy Premier, Mr Peter Ryan, announced a similar grant for Seaspray to do some flood mapping and planning.

That is critical. One of my first memories growing up in Traralgon was of looking out over flooded areas of the town when the Traralgon Creek rose, as it does almost every year and as it does quite badly every couple of years, on my recollection. This flood mapping and planning we are doing will allow councils and emergency services such as the State Emergency Service and police to better understand flooding, where it will impact and what can be done to best protect towns. Of course we have levees in most of our towns to ensure that they are protected from floods, but this bill is about rural areas of the state where only small areas or small numbers of people might be affected by floods.

It is a good, common-sense approach. The Liberal Party and The Nationals like to adopt a common-sense approach. In recognition of the fact that some of these levees will simply not be able to be maintained by governments or government authorities, this legislation allows some of the people who will be most affected to go in and do the work. It is rare to have such a good, common-sense approach taken in government these days, and it is good to see that.

I will briefly mention one other aspect related to this bill, and that is that the 2010–11 floods highlighted just how damaging flooding can be and how important it is to protect our communities. It highlights an issue I was involved with previously in the Murray-Darling Basin reform — that is, the issue of environmental watering, which is another term for flooding. Environmental watering is flooding. It was pleasing to see that, as part of the Murray-Darling Basin plan process, the state government and other governments got together to ensure that some of the more extreme proposals for environmental watering were, to pardon the pun, watered down to ensure that those communities were protected as well.

Mr Barber — Those were the ones that would prevent species and ecosystem extinction, were they?

Mr D. D. O'BRIEN — I say to Mr Barber that it is important to ensure that humans, towns and farms are looked after. You can ensure that the environment is protected by careful and clever environmental watering, but it does not necessarily have to be — and in many cases cannot be — through overbank flows.

I highlight that because, as we saw in 2010–11 and as we see regularly in flooding events, floods cause damage. They cause loss of property and at worst they can cause loss of life. As best as possible we need to manage that whilst managing — and I recognise that we do need to manage — the important benefits of floods that come to our rivers and streams.

Again I say this is a good, common-sense piece of legislation. I welcome the tripartisan support we have, with both the Labor Party and the Greens supporting this bill, and I look forward to its passage soon. I commend the bill to the house.

Mrs MILLAR (Northern Victoria) — It gives me great pleasure to rise to make a contribution in the debate on this important bill, the Water Amendment (Flood Mitigation) Bill 2014, which reflects one small part of the very significant work being done currently on better protecting this state and its communities against the threat of flood events. Water is hugely important across northern Victoria, and there can never be too much focus on the importance of good water management across this region. Given the huge significance of water to rural and regional communities, it is perhaps surprising how little work has been done, in particular on flood mitigation, in the past.

No Victorian will ever forget the intensity and the extent of the various flood events which occurred between September 2010 and February 2011, with approximately 40 communities in northern Victoria being hit more than once. These flood events affected more than 172 towns and localities. Without mentioning every one of them, I know that few of us will ever forget the huge impacts at both Kerang and Charlton, though many other parts of northern Victoria, including Shepparton, Numurkah, Mooroopna, Rochester, Bright, Bendigo, Echuca, Euroa, Benalla and Swan Hill were also significantly impacted by these events.

The cost of these events was estimated to be in excess of $1.3 billion, and not surprisingly the extent and cost of flood insurance has been one of the major issues which the subsequent inquiry has reviewed. Since these flood events the Legislative Assembly charged the Environment and Natural Resources Committee of Parliament, chaired by David Koch, to inquire into

these events, and its report was tabled in August 2012 with over 40 recommendations. The government's response was tabled on 17 October 2013, and since that time the work on implementing the recommendations and better preparing Victoria for future flood events has been continuing very actively.

I would like in this context to acknowledge the work of the Minister for Water, Peter Walsh, and of the excellent staff at the Department of Environment and Primary Industries (DEPI). This is an absolutely huge piece of work, and I know that Minister Walsh brings great expertise and depth of experience to these matters. So little work has been done on flood mitigation because it is not an easy task to take on. It is a credit to the minister that he has been prepared to tackle this and ensure that there are clear guidelines around management of levees and flood mitigation.

Real and proper consultation is currently occurring on the Victorian flood plain management strategy right across Victoria with a wide range of stakeholders, including landholders, local government, water catchment authorities and local communities. I congratulate the chair of the interdepartmental reference group, Sharyon Peart, and the committee members as well as the very expert staff of DEPI — indeed some of them are in the chamber with us today — who have been involved in these sessions, which represent a wider part of the task this bill focuses on. Part of this work has involved aerial mapping and modelling right across Victoria, and this is a new, amazing and very impressive resource for Victoria.

The Water Amendment (Flood Mitigation) Bill 2014 will improve the management of existing levees on Crown land to help regional Victorians protect themselves against the risk of floods. Since coming to this role nearly a year ago I have had significant involvement with landholders in a number of parts of northern Victoria in relation to the state of existing levees — and this bill only refers to existing levees on Crown land and not to lengthening existing levees or making them higher or wider. In many instances levees across Victoria are very dilapidated, having been constructed early in the last century and, in some instances, with little maintenance done since that time, nearly a century ago. I have experienced this for myself at a number of locations, and I note that some of the levee banks I visited had notable damage that had been caused over decades by rabbits and other wildlife, human activity, weeds and of course time itself.

Mr Ramsay also noted the work going on in a range of areas across Victoria. That is accurate, but it is only the start of an extensive piece of work that needs to be completed. If you left this important task where the responsibility currently sits — with local government — I know, and ratepayers generally know, that a significant number of local councils, though certainly not all, would continue to neglect it. It has taken this state government and this minister to put in a framework to ensure that Victoria will be better prepared if and when flood events occur again.

I will touch on other aspects of the bill briefly. Presently the entry onto and the carrying out of work on Crown land to maintain flood mitigation works is difficult to authorise, and for some types of land, such as national parks, it is not possible to authorise private individuals at all, even in instances where these individuals want to assist with undertaking these tasks. Land managers have identified that the unauthorised maintenance of levees already occurs on Crown land. The introduction of this permit scheme will enable lawful maintenance and repair of existing rural levees on Crown land to be undertaken within permit conditions applied to protect public land values. I know this will be welcomed by many across these communities.

For the reasons I have outlined I again congratulate the minister, departmental secretary Adam Fennessy and the superb staff at DEPI on being prepared to take on the huge and important piece of work of better protecting Victorians from flood events. 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.

CRIMES AMENDMENT (ABOLITION OF DEFENSIVE HOMICIDE) BILL 2014

Second reading

Debate resumed from 5 August; motion of Hon. E. J. O'DONOHUE (Minister for Liquor and Gaming Regulation).

Mr ONDARCHIE (Northern Metropolitan) — I rise to speak on the Crimes Amendment (Abolition of Defensive Homicide) Bill 2014, and I would say by way of opening that as a Parliament we must ensure that the judiciary is given clear instructions about the

standards our community expects the judiciary to uphold, and this bill goes towards achieving that. This bill makes significant improvements to homicide laws, and it will hold offenders to account. It will improve the operation of self-defence laws, and it will enable common misconceptions about family violence to be proactively addressed at the start of the trial. It also simplifies notoriously complicated complicity laws.

Defensive homicide applies when a person kills someone else with a genuine but unreasonable belief that his or her actions are necessary in self-defence. Unlike murder, which carries a maximum sentence of life imprisonment, the maximum penalty for defensive homicide is 20 years imprisonment. Defensive homicide was introduced in 2005 following recommendations made by the Victorian Law Reform Commission in its *Defences to Homicide — Final Report*. The commission argued that the law should recognise the lower culpability of a person who kills with a genuine belief that their life is in danger but who cannot prove that their actions were objectively reasonable. At the same time as recommending the abolition of provocation the commission recommended on balance the introduction of a partial defence to murder to provide a halfway house for women who killed in response to family violence and who were unable to successfully argue self-defence and thereby obtain an acquittal.

Since its introduction defensive homicide has predominantly been relied upon by men who have killed other men in violent confrontations, often with the use of a weapon and often involving the infliction of horrific injuries. This has caused justifiable community concern that the law, like the law on provocation once did, is allowing these offenders to get away with murder. This bill will introduce a clearer and simpler statutory test for self-defence which will apply to all offences. Currently differences between the self-defence test for fatal and non-fatal offences make the law confusing and often difficult for juries to apply. Under the new self-defence test, self-defence will apply where a person believes that his or her conduct is necessary in self-defence and where a person's conduct is a reasonable response in the circumstances as he or she perceives them.

I know something about murder. In 2005 my uncle was brutally killed at the age of 72. He was stabbed 71 times in his own home. My uncle was sitting watching TV when an offender broke into his home and killed him. This bill goes to meet community expectations, and I commend it to the house.

Motion agreed to.

Read second time.

Committed.

Committee

Hon. E. J. O'DONOHUE (Minister for Liquor and Gaming Regulation) — I seek leave for Mr David O'Brien to join me at the table.

Leave granted.

Clause 1

The ACTING PRESIDENT (**Mr Elasmar**) — Order! I ask Ms Pennicuik to move her amendment 1, which amends the purposes of the bill to remove the references relating to abolishing the offence of defensive homicide. This is a consequential amendment, and it is a test for several of her other more substantive amendments.

Ms PENNICUIK (Southern Metropolitan) — I move:

1. Clause 1, lines 5 and 6, omit "to abolish the offence of defensive homicide and".

As you have outlined, Acting President, this amendment is a test for several other amendments that have the same effect. The effect of this amendment would of course be to substantially change the bill before us and to take away one of the main purposes of the bill, which is to abolish defensive homicide. The Greens would prefer to see defensive homicide left in place to work alongside the new provisions included in the bill with regard to jury directions and the other amendments that have been already discussed during the second-reading debate. I will not cover them again as they do not relate to this particular amendment.

I take up one point that Mr O'Brien raised during the second-reading debate about the idea of this amendment being to change the bill so that it does not abolish defensive homicide and so that all those provisions in the bill would be removed but the provisions regarding jury directions and other matters would stay in the bill. That is what we are trying to achieve — that defensive homicide will stay in place but those improvements, as we see it, will also stay in place.

I will briefly reiterate the points I made in the second-reading debate regarding submissions to the Department of Justice's consultation paper last year. A joint submission was prepared by Domestic Violence Resource Centre Victoria (DVRCV); Dr Danielle Tyson, from the department of criminology at Monash

University; Associate Professor Bronwyn Naylor, faculty of law at Monash University; Dr Chris Atmore, from the Federation of Community Legal Centres; and Sarah Capper, from the Victorian Women's Trust. It was also supported by the Human Rights Law Centre, Victoria Women Lawyers, the Women's Domestic Violence Crisis Service, Koorie Women Mean Business, inTouch Multicultural Centre Against Family Violence, No To Violence, Women's Health Victoria, Women's Legal Service Victoria, the Victorian Aboriginal Legal Service, Women with Disabilities Victoria and the Peninsula Community Legal Centre.

One would notice that most of those are organisations representing women and women who may be in trouble in terms of family violence, and I think that is apposite in terms of their very key points, which are that defensive homicide should not be abolished. If defensive homicide is abolished, excessive self-defence should be reintroduced, and if excessive self-defence is not reintroduced, a family violence-specific partial defence such as that introduced in Queensland should be considered as a possible option.

A family violence-specific defence is not ideal, but it would be preferable to having no other partial defence. I think that is fairly clear, and this bill does not do any of those things. We have taken advice and consulted, and we have also had email conversations and verbal conversations with some of these people who have made their point very strongly that defensive homicide should not be abolished. We agree with them, and we think — and my amendments reflect it — that defensive homicide should be kept in place; that the jury directions are a good move, although of course it is not incumbent upon the trial judge to always give those directions, and I will talk about those amendments when we get to them; and that there could be a review after five years to see how it is all working together.

If we do abolish defensive homicide, we are just left with self-defence, and the same group of people in their response to the bill outlined some other key points, including that recent research showed there is no clear evidence that self-defence can successfully be raised by female defendants at a trial. The study identified eight cases of women who have killed their intimate partners since the reforms. There was evidence of prior family violence in each case; however, the study found no evidence that self-defence can be effectively utilised by women defendants at trial.

Also, despite an increase in overall awareness of family violence in the community at large, misconceptions about family violence, including gender stereotypes about victims, remain entrenched in our society and among legal professionals. The submission states:

> Defensive homicide should be retained as a 'safety net' partial defence for women who kill violent partners.
>
> > Defensive homicide was introduced after a lengthy research and consultation process by the Victorian Law Reform Commission, which recommended that a partial defence was needed as a halfway house for women who kill violent partners. The research by DVRCV and Monash shows that defensive homicide is still needed and is working effectively as intended. Since the reforms four women have been convicted of defensive homicide after killing an abusive partner — two women pleaded guilty, and two were convicted at trial. In this sense, to argue the law is not working as it was intended is false.

It further states:

> The proposed jury directions have some value in assisting juries to better understand family violence, however the impact of these should not be overestimated.

I will return to that point later. The point the group is making is that by abolishing defensive homicide and relying on self-defence the government is going to disadvantage the very women for whom this legislation was put in place. That is why the Greens are moving this amendment.

Mr TEE (Eastern Metropolitan) — I rise to present Labor's position in relation to the amendment. We will not be supporting the amendment. I think there is common ground across the chamber in that the Parliament is determined to find a way to ensure that the legal system properly protects women in abusive relationships who kill their abusers when they are not facing an immediate attack. I think all parties are seeking to find a way forward.

The previous government attempted the model which is currently in place. That model came about as a result of a Victorian Law Reform Commission recommendation. The evidence suggests that it has not been successful. There are various figures floating around, but the figure I have suggests that in 25 out of 28 cases where this defence was used, it was used by men and most of them did not have a family relationship with the victim. So what is proposed in this bill is another way of ensuring that women who find themselves in this awful position have a proper defence. What has been suggested in the bill is that the definition of self-defence be amended — in fact, that it be taken out of the common law and set out as a statutory definition to reflect the fact that self-defence can be used by a person who is responding to a harm that is not immediate and whose response involves the use of force in excess of the force involved in the harm or the threat.

Our view is that this is a serious attempt to address an issue that the previous government sought to address following the recommendations of the law reform commission. We have some reservations about these provisions. I set those out in my contribution to the second-reading debate, and I will not repeat them. I am not of a mind to support the Greens' amendment, because it seems to me that the Greens want to keep the old provisions, which demonstrably have not worked. The Greens propose that we keep both the existing provisions and the substitute provisions. My concern about that is that it would increase complexity and difficulty, and it is unclear to me whether that model can in fact work. We are not prepared to take the risk. We would prefer to see whether the model proposed in this bill works. We will monitor it, and we will act on the evidence as it emerges in the same way we have in our response to this bill.

Hon. E. J. O'DONOHUE (Minister for Liquor and Gaming Regulation) — At the outset I acknowledge the contributions of members who participated in the second-reading debate: Mr Tee, Ms Pennicuik, Mr David O'Brien and Mr Ondarchie. I think the second-reading debate contributions have clearly articulated some of the challenges in this very difficult area.

The government will be opposing the amendment moved by Ms Pennicuik on the basis that its effect is that defensive homicide would not be abolished; it would remain as a defence under the Crimes Act 1958. The government does not agree with this change as it defeats the very purpose of the bill.

To go to one of the points made by Ms Pennicuik, the government accepts that there are a range of views in the community on this matter. Ms Pennicuik cited some people who believe the current provisions should be retained. The government has gone through a very detailed process through a Department of Justice consultation paper and considered the range of views presented in coming to the position it has on the legislation.

I note that the position before us today has been endorsed by many, and I note an article by Kate Fitz-Gibbon that appeared in the *Age* of 27 June. Dr Fitz-Gibbon is a lecturer and researcher in the school of humanities and social sciences at Deakin University. She said that this legislation:

> … represents a significant step forward in ensuring just responses to lethal violence in the Victorian criminal justice system.

The government will oppose the amendment by Ms Pennicuik. The government acknowledges that there is a range of views and thanks the opposition for its support of this clause.

Ms PENNICUIK (Southern Metropolitan) — I have a few things to say in response to what I have just heard from the opposition and from the government, because what we are doing here is taking the quite big step of abolishing defensive homicide. I will start with the minister who said there are a range of views. I have looked at the consultation paper and at the volume and range of views and they are very much in favour of keeping the defensive homicide plea. Very few of them are in favour of the abolition of defensive homicide, so for the minister to stand up and say that — it needs to be corrected.

As I said earlier in support of my amendment, the salient point is that the range of views in favour of keeping defensive homicide are coming from organisations that deal with women involved in family violence. The reason for putting defensive homicide into the statute arose out of the abolition of the defence of provocation. It was to be replaced by defensive homicide because that defence was being misused by men, as we all know, and that is how we got to the position of having defensive homicide put into the statute. But of course once you put something into the statute it is going to be used by men and women who find themselves in a position where they may be able to argue defensive homicide.

I do not believe there has been any evidence put forward that that defence is not working. Obviously it has been used by some men because it is on the statute book, but if you look at the figures, it can be seen that a quarter of the offenders had a relationship with the victim. I have not read through all the cases so I do not know all the details of them, but in 4 of the 28 the offender and victim were intimate partners, and in three cases the offender was a woman. This means that in around 10 per cent of those cases it was a woman who killed her intimate partner.

That fits pretty well with the national figures. Using figures from the Australian Institute of Criminology, we can see that Australia-wide 66 per cent of domestic homicides were intimate partner homicides. Of those homicide offenders, 88 per cent were men and 12 per cent were women. The figures reflect the general figures relating to homicides in the community and the fact that 68 per cent of all homicide victims are men and 32 per cent are women. That is where things change. But the figures that are being trotted out as a reason to abolish defensive homicide do not stack up

because, of course, if you have something in the statute book, it is going to be used by both men and women.

There is no evidence that the plea of defensive homicide is not working, except to say that it may work better if juries are better directed on the issues relating to family violence, something this bill does not put in place. Unfortunately it uses the word 'may' instead of 'must' in terms of the trial judge. I will return to that when we go to those amendments.

Mr Tee talked about the risk we might be taking. I think the risk we are taking is with the abolition of defensive homicide. The risk is that women will not have that partial defence. Whether or not it is being used by men in some cases, that is not a reason to take it out of the statute book and leave women to rely on self-defence, which is what this bill does. It goes against all of the submissions from people who are dealing with these issues.

Committee divided on amendment:

Ayes, 3

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

Noes, 33

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

Amendment negatived.

The ACTING PRESIDENT (**Mr Elasmar**) — Order! I call Ms Pennicuik to move her amendment 2, which amends the purposes of the bill to include defensive homicide in the context of family violence in relation to changes to the Jury Directions Act 2013. This is a consequential amendment and is a test for several of Ms Pennicuik's other more substantive amendments.

Ms PENNICUIK (Southern Metropolitan) — I move:

2. Clause 1, page 2, line 11, after "which" insert "defensive homicide,".

Acting President, it would be useful to know which proposed amendments this amendment tests.

The ACTING PRESIDENT (**Mr Elasmar**) — Order! The amendment is a test for amendments 24, 25, 30 to 32 and 35.

Ms PENNICUIK — They are all amendments to clause 11 of the bill.

This amendment is a consequential amendment and is a test for further amendments which would amend certain parts of clause 11. In terms of jury directions on family violence, which is in new section 32 to be inserted by clause 11, instead of the trial judge relying on defence counsel requesting that the trial judge give jury directions on family violence, a new clause would be inserted that would read:

> If it is relevant to the facts in issue, the trial judge must direct the jury on family violence in accordance with subsection (3) —

which is a newly renumbered subsection (3), not the current subsection (3), so it would be the current subsections (6) and (7) —

> and all relevant parts of subsection (4).

The reason I want to move this amendment is that I support the new jury directions that are being inserted by the bill, but every jury in every trial is meant to be representative of the community. That is the idea of a jury. As I have already mentioned, there are varying levels of awareness in the community as to the circumstances that people face in family violence. Earlier I mentioned the organisations that have responded to the bill. A paper was prepared by Domestic Violence Resource Centre Victoria, the Victorian Women's Trust and Dr Danielle Tyson from Monash University. The authors made the point that:

> The proposed jury directions have some value in assisting juries to better understand family violence; however, the impact of these should not be overestimated.

They go on to say:

> Stereotypes and misconceptions are strongly entrenched. Further, in the proposed bill the onus rests on the defence or accused to request this direction (the trial judge may also do this if deemed in the interest of justice).

The authors:

> … note the difference here with that of sexual offences — whereby certain jury directions are mandatory — whereas this proposed change will rely on defence counsel to be

> sufficiently aware of family violence and to raise it at an early enough stage to avoid damage being done without it. The research by DVRCV and Monash found that many legal professionals, particularly defence counsel, were not adequately aware of family violence and were not utilising the family violence provisions.

They also made the point that changing attitudes about family violence within the culture of the criminal justice system and the community will take a sustained effort over a considerable period of time. It will require extensive measures that go beyond legislative reform, including ongoing professional and legal community education about the nature and dynamics of family violence which challenges gender-based stereotypes about victims of family violence. The authors of the paper also say that, contrary to arguments that the proposed change to self-defence will cover women's experiences in responding to family violence, the proposed bill appears to be already anticipating the possibility of more murder convictions in such cases.

The effect of my amendment would be that in all cases where family violence is relevant to the issue the trial judge must give the jury directions about family violence. Every jury is different. It should not just be that the trial judge relies on this being raised by defence counsel but that in all cases where a jury is faced with a trial where family violence is an issue the judge should make those jury directions.

Mr TEE (Eastern Metropolitan) — The opposition will not be supporting the Greens amendment on this issue. We do that for a number of reasons. The bill currently provides that it is sufficient for either party to request that the judge provide these directions whether or not the judge considers it to be relevant to the facts. On my reading, at the moment it is a broader requirement of the judge. That is the first issue.

The second issue is that Ms Pennicuik is concerned about the capacity of judges to recognise that it is appropriate to provide these directions to the jury, but I do not think her amendment in any way addresses that issue because it still requires the judge to make an assessment as to whether or not it is relevant to the facts in issue. We would suggest that the provision provided by Ms Pennicuik is no better than that currently provided by the bill in the sense that, under the bill as is, you require either party to ask this of the judge and the judge is required to do so unless there are good reasons for not doing so, whereas under Ms Pennicuik's provision the defence — it would usually be the defence — would need to argue to the judge that it is relevant to the facts in issue. I am not sure that opening up another line of argument would be particularly helpful.

I suppose more generally, and I probably should have started with this, we are always concerned about requiring judges to do anything. As a general rule we flinch at any notion of a mandatory issue. We think it is better that the judge have discretion because we know that all the facts and circumstances and individuals that appear before judges are different, and as a general rule our disposition is that there ought to be flexibility and that we ought to allow judges to make the call based on the material before them. We are against the mandatory nature of Ms Pennicuik's clause. As I said, principally we think that the model set out here, which allows either party to ask for these directions, is as good if not better than that proposed by Ms Pennicuik, which requires debate before the judge as to whether or not it is relevant to the facts in issue.

The ACTING PRESIDENT (**Mr Elasmar**) — Order! Before I call the minister, Ms Pennicuik can still move her amendment 26 to clause 11 — she can move it later on. I say that just for Mr Tee's information.

Mr TEE — I understand that. I suppose I have just covered off in the sense that it appears to me that the amendments we are looking at are removing the current provisions to be substituted, so I am addressing it in that context. I think Ms Pennicuik raised clause 26 on the way through as well.

Hon. E. J. O'DONOHUE (Minister for Liquor and Gaming Regulation) — Before I respond to the amendment moved by Ms Pennicuik, just to be clear, clause 11 inserts new section 32(1), which says:

> Defence counsel (or, if the accused is unrepresented, the accused) may request at any time that the trial judge direct the jury on family violence in accordance with subsection (6) and all or specified parts of subsection (7).

Mr Tee referred to 'either party'. Just to be clear, the section we are talking about relates to defence counsel.

Leaving that aside, I welcome the support of the clause by the opposition. The government agrees with the point Mr Tee made about discretion. I note that Mr David O'Brien canvassed that in some detail in his second-reading debate contribution. Just to take a step back, these are very serious trials. Defence counsel will have the ability to request that jury directions be made, taking into consideration all the factors in that trial. That discretion is best left with the defence to raise if it deems it in the best interests of its case to do so.

Ms PENNICUIK (Southern Metropolitan) — Perhaps the minister can answer a question for me about the situation where the provisions are left as they are and the defence counsel does not make that request

and a trial judge feels that the facts in a case are such that a jury should be given jury directions about family violence. Remember, we are now in a situation where my previous amendment has been defeated, so defensive homicide is abolished. We are now in a situation where women do not have defensive homicide to rely on; they only have self-defence to rely on. If juries do not have direction about family violence because defence counsel did not raise it and the trial judge did not provide it, that leaves women unprotected and does not leave them in the situation they would have been left in, where they had the ability to make use of defensive homicide. My question is: if the bill remains the way it is, can the judge of their own volition give those directions?

Hon. E. J. O'DONOHUE (Minister for Liquor and Gaming Regulation) — In response to Ms Pennicuik's question, I draw her attention to the contribution made by Mr David O'Brien in the second-reading debate, where he specifically addressed this point. He said:

> At the end of a trial, if a judge were to believe that there was likely to be a substantial miscarriage of justice, certain directions could be given and the directions introduced into the Jury Directions Act could also be the subject of those judicial directions.

To go to that specific act, the Jury Directions Act 2013, section 15 says:

> **When trial judge must give direction regardless of parties' views**
>
> (1) Despite sections 13 and 14, the trial judge must give the jury any direction that is necessary to avoid a substantial miscarriage of justice even though —
>
> (a) the direction relates to a matter that defence counsel …

It goes on. That section outlines the circumstances in which a judge must give a direction to the jury, notwithstanding that it has not been sought by the defence counsel in this case.

Ms PENNICUIK (Southern Metropolitan) — I thought that might be the answer. I am sorry, Minister, but that does not quite relieve my concerns. It would be interesting to know exactly what the opposition will do when it is faced with the Jury Directions Amendment Bill 2014 that is coming before us, as it has a mandatory provision in it for jury directions. Clause 14 of that bill, which inserts new section 49(1), says:

> If … the trial judge considers that there is likely to be evidence in the trial that suggests that the complainant delayed in making a complaint or did not make a complaint, the trial judge —
>
> (a) must direct the jury in accordance with subsection (4) before any evidence about delay in making a complaint or lack of complaint is adduced; and
>
> (b) may give the direction before any evidence is adduced in the trial.

I make the point again that because women are not going to be able to avail themselves of the defence of defensive homicide anymore, then I do not believe the current jury directions are going to be enough. When the trial judge understands that family violence issues are involved in the case before them, they should be required to give family violence directions to the jury because of the very reason that this bill is abolishing defensive homicide.

Committee divided on amendment:

Ayes, 3

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

Noes, 34

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

Amendment negatived.

Clause agreed to; clauses 2 to 5 agreed to.

New heading and clause

Ms PENNICUIK (Southern Metropolitan) — I move:

8. Insert the following New Heading and Clause to follow Clause 5:

> **'Division 3 — Review of Act**
>
> **A Review of certain amendments**
>
> Before section 585 of the **Crimes Act 1958 insert —**
>
> **"584 Review of amendments made by Crimes Amendment (Self-defence and Other Matters) Act 2014**

(1) The Attorney-General must review the operation of Part IC to determine whether the policy objectives of that Part remain valid and whether the provisions of that Part remain appropriate for securing those objectives.

(2) The review is to be undertaken as soon as possible after the period of 5 years from the day on which section 3 of the Crimes Amendment (Self-defence and Other Matters) Act 2014 comes into operation.

(3) The Attorney-General must cause a report on the outcome of the review to be laid before each House of Parliament within 12 months after the end of the period of 5 years.”.’.

The Department of Justice recommended a review after five years, and given that the abolition of defensive homicide is quite a significant undertaking, we agree that it should be up for review after five years. That is why I am moving the amendment.

Mr TEE (Eastern Metropolitan) — As I have said in my second-reading contribution and as part of the analysis of these provisions, we in opposition are keen to ensure that we have the right legislative provisions in place. We are also willing to give the amendments proposed by this bill a go, but we have some reservations, which I went through in my contribution to the second-reading debate.

We think it is appropriate that the operation of these provisions be reviewed so that we can all see what impact it is having. We think five years is an appropriate time to see how these cases flow through in terms of making sure we have a substantial body of knowledge. We are supportive of the use of Parliament as the vehicle. We think it is an appropriate tool. We will be supporting this amendment.

Hon. E. J. O’DONOHUE (Minister for Liquor and Gaming Regulation) — The government does not support the amendment moved by Ms Pennicuik. The government does not think it is necessary for a review to be mandated by legislation. A review may be conducted by the government in five years if it considers it necessary to do so, or it may be conducted at some other time, including earlier than five years, if the government considers it necessary.

The history of this issue and what brings us to the house to debate this matter is the subject of a Law Reform Commission report on defensive homicide tabled in 2004. Mr Tee spoke about that report and about the reforms that were commissioned by the previous government. This legislation follows from the consultation paper titled *Defensive Homicide — Proposals for Legislative Reform* which was released in October last year. I suppose I am making the point in agreement with Mr Tee that the community will continue to have a strong interest in this area. This is an important reform. The government will monitor it very closely, but it does not believe a mandated five-year review is necessary. A review will be conducted if and when it is required, whether that be in three, four, five or six years time, or at some other time determined by the government.

Ms PENNICUIK (Southern Metropolitan) — I thank the opposition for its support of the amendment. I will respond to the minister by saying that though this government has not supported reviews being put into legislation, it is not unusual for it to happen. The minister himself referred to the Department of Justice paper, which recommended that there be a review after five years. I also remind the minister that in his response he said the government will perhaps conduct a review in three years. But it might not be his government; it could be any government, and that is the reason why we should put this mandate in the legislation.

Committee divided on amendment:

Ayes, 16

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

Noes, 21

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

Amendment negatived.

Clauses 6 to 10 agreed to.

Clause 11

Ms PENNICUIK (Southern Metropolitan) — I think we have already gone through the argument as to whether the trial judge must give the direction or whether the trial judge makes the direction after being requested by the defence counsel. I think we have prosecuted that argument already. We have also gone

through the abolition of defensive homicide and the review. They were the three main principles I was testing by my amendments. They are quite complicated with the consequential amendments, renumbering and renaming et cetera. In my opinion those three principles have been tested by the previous amendments even though consequential amendments came before the substantive amendments.

For the record I think I have tested whether defensive homicide stands part of the bill, whether the trial judge in all cases must give jury directions, and the review. I am satisfied with that, and therefore I will not proceed with any further amendments.

Clause agreed to; clauses 12 to 13 agreed to.

Reported to house without amendment.

Report adopted.

Third reading

Motion agreed to.

Read third time.

CRIMINAL ORGANISATIONS CONTROL AND OTHER ACTS 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 Criminal Organisations Control and Other Acts Amendment Bill 2014.

In my opinion, the Criminal Organisations Control and Other Acts 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 contains a range of reforms to Victoria's justice system, including amendments to:

the Confiscation Act 1997 to improve the operation of the existing civil forfeiture regime and to implement a serious drug offender forfeiture regime;

the Criminal Organisations Control Act 2012 to modify the procedure for seeking a declaration or control order, ensure that members cannot escape the ambit of the legislation by joining other organisations, and provide that parties will generally bear their own costs in proceedings under that act;

the Firearms Act 1996 and Major Crime (Investigative Powers) Act 2004 to improve the effectiveness of those schemes and also declarations and control orders;

the Criminal Procedure Act 2009 to vary the test applied by the courts when determining whether to grant leave to cross-examine a witness at a committal hearing, and to limit cross-examination during committal hearings to questions related to those issues for which leave has been granted;

the Crimes (Mental Impairment and Unfitness to be Tried) Act 1997 (CMIA) to provide the Children's Court with jurisdiction to hear cases involving fitness to stand trial or the defence of mental impairment;

the Major Crime (Investigative Powers) Act 2004 to improve the operation of the act by ensuring that persons arrested for seeking to avoid a witness summons may be discharged from custody on bail as if the person had been accused of an offence, clarifying the chief examiner's coercive examination powers, permitting the use of evidence obtained during examinations, and providing for the release of restricted evidence to a person charged with an offence and the Office of Public Prosecutions; and

the Sentencing Act 1991 to allow applications for variation of an alcohol exclusion order to be heard and determined by the Magistrates Court for all orders made by the County Court, and with the direction of the Supreme Court for orders of that Court.

The bill also includes several other miscellaneous amendments to the Criminal Procedure Act 2009, Evidence (Miscellaneous Provision) Act 1958, Mental Health Act 2014, Open Courts Act 2013, Personal Safety Intervention Orders Act 2010 (PSIO act), Summary Offences Act 1966, Victorian Institute of Forensic Medicine Act 1985, and Victoria Police Act 2013.

Human rights issues

Confiscation amendments

Serious drug offender forfeiture

The bill provides for the confiscation of all property of serious drug offenders. The following charter act rights are relevant to this new power:

the right to protection of families and children (section 17); and

the right not to have one's home unlawfully or arbitrarily interfered with (section 13) and the right not to be deprived of property other than in accordance with law (section 20).

In my opinion, the bill does not limit the right to protection of families and children. While the confiscation of property may affect families and the ability of a child's parents to provide for that child's needs, the bill establishes several safeguards to protect families and children who may otherwise be adversely affected by the regime.

The bill provides that an accused will be able to retain certain 'protected' property, such as ordinary household items, clothing, tools of trade and property used as transport (such as a motor vehicle) under a prescribed value. These items cannot be included in a restraining order, and so will not be subject to automatic forfeiture. This will limit any disruption to a family household arising from the restraint of property.

Existing protections in the Confiscation Act also apply to the serious drug offender forfeiture regime. An accused person may apply to the court for reasonable living and business expenses at any stage throughout the court proceedings, which may include medical expenses, rental or mortgage payments or school fees (section 14 of the Confiscation Act). Section 26 of the Confiscation Act enables a court, when it makes a restraining order or at any later time, to make such orders in relation to the property to which the restraining order relates as it considers just. Orders can be made under both these powers to ensure that an accused person is able to provide or maintain a reasonable standard of living for his or her dependants.

In my opinion, the right in section 17 of the charter act does not protect the family home from forfeiture where it is reasonable to assume that it has been obtained using the proceeds of serious crime. Even so, the bill specifically mitigates the risk that family dependants will be left without a home as a result of forfeiture of their residence. After forfeiture, dependants are able to apply to the Court for the payment of a prescribed amount of money from the sale of the property to secure alternative accommodation. The Court has the discretion to order this payment if satisfied that the residence is not tainted property and the dependant does not have sufficient financial resources to purchase or rent alternative accommodation.

Additionally, if a court makes a restraining order, any person claiming an interest in the property other than the accused can apply for an exclusion order, which will exclude certain property from the operation of a serious drug offence restraining order, where the interest was not subject to the effective control of the accused.

These safeguards ensure that the rights of families and children set out in section 17 of the charter act are not limited by the bill.

I also consider that the serious drug offender forfeiture provisions in the bill do not limit the right not to be deprived of property other than in accordance with law (section 20) or the right not to have one's home unlawfully or arbitrarily interfered with (section 13(a)).

The forfeiture of property under the bill will only occur in accordance with the clear statutory procedures set out in the bill after a person has been convicted of a serious drug offence and declared by the Court to be a serious drug offender. Consequently, any forfeiture will be in accordance with law.

Further, the new serious drug offender forfeiture regime is not arbitrary, but serves a clear purpose, namely to deprive serious drug offenders of their property in order to ensure that such offenders do not profit from their crimes, and to repay the community for any loss suffered by the commission of such offences.

The bill also contains important safeguards regarding the restraint and forfeiture of property, discussed above, which prevent any arbitrary interference with a person's home.

Civil forfeiture amendments

The changes to the civil forfeiture regime are minor. Only tainted property can be forfeited under this regime and the forfeiture of tainted property in accordance with law and a court order does not limit the rights in sections 13, 17 and 20 of the charter act.

Criminal organisations control amendments

Modified procedure for seeking declarations and control orders

The statement of compatibility for the Criminal Organisations Control Act outlined how control orders may impose restrictions upon several charter act rights including freedom of expression (section 15), freedom of association (section 16(2)), right to privacy (section 13) and freedom of movement (section 12). In that statement, I explained any such limitations were either permitted by internal limits within the relevant rights or were justified under section 7(2) of the charter act. I remain of the view that the powers given to the court to impose conditions under a control order are compatible with the charter act under the amendments to the procedure for seeking declarations and control orders.

The bill modifies the procedure for seeking and obtaining declarations and control orders in two ways. The range of offences that may provide the basis for an application for a declaration will be broadened to include offences punishable by at least five years imprisonment (rather than the ten years currently required). Further, those offences will no longer need to satisfy further criteria, such as involving substantial planning and organisation. The bill also creates two different categories of declarations against organisations: 'prohibitive declarations' and 'restrictive declarations'. The process for obtaining a prohibitive declaration will be the same as is currently provided for declarations against organisations and will retain the criminal standard of proof. However, the civil standard of proof will be applied to the tests for restrictive declarations and declarations against individuals (currently, the criminal standard of proof applies to the first limb in each test).

The amendments are intended to assist the scheme to achieve its stated purpose of preventing and disrupting the activities of organisations involved in serious criminal activity. Therefore, the amendments have at their core the protection of rights, including the right to life and the protection of families and children. These are important objectives that help justify any limitations to charter act rights that may be imposed by the making of a control order.

Appropriately strong tests must still be satisfied before the Supreme Court may make a declaration. The civil standard of proof is not insignificant, and applications for all categories of declarations must also be supported by acceptable and cogent evidence under section 19(4) of the Criminal Organisations Control Act.

Similarly, the new tests for making a control order following a restrictive declaration or in relation to declared individuals still require that the Supreme Court be satisfied a control order is necessary or desirable to restrict or to impose conditions on the activities of the organisation or individual in order to end, prevent or reduce a serious threat to public safety and order. The Supreme Court also retains a broad discretion as to whether to make a control order even where the test is satisfied (a discretion that also applies to the making of declarations).

Further, the most serious conditions that may be imposed on an organisation will only be available where a prohibitive declaration applies. Consequently, control orders which prohibit an organisation from continuing to operate, carry on business or take on new members may only be made where a prohibitive declaration has been made using the beyond reasonable doubt standard of proof. Any conditions may only be imposed where the Court considers such a condition is appropriate.

Lowering the standard of proof for the making of restrictive declarations does not limit the right to a fair hearing in section 24 of the charter act. Applications for declarations are civil in nature. The amendments merely apply the standard of proof that would ordinarily apply in civil proceedings.

Amendments preventing the avoidance of declarations and control orders

The bill provides an alternative test for making a declaration against an organisation where any two or more of its members are also members, former members or prospective members of an organisation to which a control order applies, or who themselves are personally subject to an individual control order. The same issues described in relation to the simplified procedure for making declarations and control orders also arise here. I consider that the powers given to the Court to impose conditions under a control order following a declaration made under this new test are permitted by internal limits within the rights or are justified under section 7(2) of the charter act.

These amendments are also justified by the fact that they are required to ensure the act operates as intended. Experience in other Australian jurisdictions suggests that members of organisations may seek to avoid declarations and control orders by joining other similar organisations. This provision ensures that those organisations (and relevant members) may be efficiently and effectively brought within the scheme.

Where the new test is applied, the court will already have been satisfied of the involvement of the persons in question in serious criminal activity. The court will also need to be satisfied that the activities of the new organisation pose a serious threat to public safety and order.

The Criminal Organisations Control Act currently provides that the court may prohibit members, former members or prospective members from participating in the activities of the organisation. It would be open to the court to limit such a condition to just current members or just former members. The bill ensures that in such instances a person who was a member on the day of the initial application but who has since ceased to be a member is considered both a member and a former member for the purposes of that condition. This will ensure a person cannot avoid the condition by quitting the organisation once the application for a declaration is known.

Amendments to the Firearms Act and Major Crime (Investigative Powers) Act

The Major Crime (Investigative Powers) Act currently provides that an application for a coercive powers order may be based on any offence that:

(a) is punishable by 10 years imprisonment or more;

(b) involves two or more offenders;

(c) involves substantial planning and organisation;

(d) forms part of systemic and continuing criminal activity; and

(e) has as a purpose the obtaining of profit, gain, power or influence or of sexual gratification where the victim is a child.

The bill provides that an offence that satisfies (a) and (b) where at least two of the offenders involved are declared individuals or declared organisation members, does not also need to have the characteristics in (c), (d) and (e).

I do not consider that this revised definition of 'organised crime offence' limits the right of a person not to be compelled to testify against himself or herself under section 25(2)(k) of the charter act. The purpose of the latter three characteristics is to limit the coercive powers order scheme to organised crime. This becomes redundant where the suspected offenders include persons who the Supreme Court has already determined, in making a declaration or control order, are involved in organised crime.

The bill also amends the Firearms Act to ensure that any person who is a declared individual or the subject of an individual control order is prohibited from holding a firearms licence, and that other declared organisation members are presumed not to be a fit and proper person for holding a firearms licence. These amendments limit the right to a fair hearing by affecting a person's ability to challenge a decision to cancel, or refuse to grant, a firearms licence.

However, that limitation is reasonably justified when balanced with the protection of other rights including the right to life and the protection of families and children. The Supreme Court will have already found that declared individuals and persons subject to individual control orders are engaged in serious criminal activity. Public safety and order necessitates that they be precluded from holding firearms licences. Similarly, it is appropriate to presume that members of an organisation found to have been engaged, or used, in serious criminal activity and to pose a serious threat to public safety and order should also not hold firearms licences. Nevertheless, given that persons in this latter category have not personally been found to have engaged in serious criminal activity, the bill appropriately affords them the ability to demonstrate that they are a fit and proper person to hold a firearms licence.

Criminal procedure amendments

The bill amends the requirements of the Criminal Procedure Act where an accused seeks leave to cross-examine a witness at a committal hearing. Currently, under section 124 of the Criminal Procedure Act, a witness cannot be cross-examined at a committal hearing unless a magistrate grants leave to do so. Section 124 sets out different tests for the granting of leave, depending on whether the informant consents. If the informant consents to the accused cross-examining a witness, the Magistrates Court must grant leave unless the court considers that it is inappropriate to do so. If the informant does not consent, the court must not grant leave unless satisfied that:

(a) the accused has identified an issue to which the proposed questioning relates and has provided a reason why the evidence of the witness is relevant to that issue; and

(b) cross-examination of the witness on that issue is justified.

The bill amends section 124 so that the latter test will apply to all applications for leave to cross-examine a witness at a committal hearing, whether or not the informant consents. In addition, the amendments will limit the cross-examination of witnesses at a committal hearing to questions that are relevant to an issue for which leave has been granted.

The following charter act rights are relevant to these provisions:

> the right of a person charged with a criminal offence to have the charge decided by a competent, independent and impartial court or tribunal after a fair and public hearing (section 24(1)); and
>
> the right of a person to examine, or have examined, witnesses against him or her, unless otherwise provided for by law (section 25(2)(g)).

However, nothing in the bill limits the rights set out in sections 24(1) and 25(2)(g) of the charter act. Committal proceedings involve a preliminary examination to assess whether the accused should be committed for trial. Importantly, criminal charges are not finally determined at a committal proceeding, and the bill does not alter the accused's ability to question and cross-examine witnesses at a trial. The bill also does not prevent an accused from cross-examining witnesses during a committal hearing where the magistrate is satisfied that the accused's proposed questioning is both relevant and justified having regard to the purposes of a committal proceeding (which includes ensuring a fair trial). The new provisions are designed to ensure that any questioning of witnesses is relevant and justified.

Mental impairment and unfitness to be tried amendments

Jurisdiction of the Children's Court to determine whether a child is fit to stand trial

The bill confers jurisdiction on the Children's Court to determine whether a child is fit to stand trial. The reform will promote the charter act right of accused children to be brought to trial as quickly as possible (section 23(2)).

Currently, fitness to stand trial is determined by the County Court, which involves a lengthy and complex process including two jury hearings. The time frames set out in the bill for determining fitness to plead are shorter than those currently applicable in the County Court, so the majority of cases involving children where fitness to plead issues are raised will be dealt with more quickly. This will ensure that accused children will be brought to trial as quickly as possible as set out in section 23(2) of the charter act.

Procedures for children with mental impairment

The bill also contains special procedures and requirements which are tailored to the needs of children with mental impairment. The bill provides for the Children's Court to declare a child liable to supervision in certain circumstances, and to make custodial or non-custodial supervision orders. If a child is not declared liable to supervision, he or she must be released unconditionally. In order to promote the rehabilitation of children, when considering whether to declare a child liable to supervision or release the child unconditionally the court is required to consider whether the child is receiving appropriate treatment or support for the child's mental health or disability.

These requirements promote the charter act right of a child charged with a criminal offence to a procedure that takes account of his or her age and the desirability of promoting the child's rehabilitation (section 25(3)). The Children's Court must not make an order detaining a child in custody under the bill unless it is satisfied that there is no practicable alternative in the circumstances. The Children's Court must not declare a child liable to supervision unless the court considers that the declaration is necessary in all the circumstances, and must not make a custodial supervision order unless it is required for the protection of the child or the community. Finally, the maximum duration of a supervision order under the bill is 24 months for children aged over 15 years and 12 months for children aged between 10 and 15 years.

Several charter act rights are also relevant to the provisions around the powers afforded to the Children's Court in respect of children with a mental impairment, including:

> the right to liberty and security (section 21);
>
> the right of persons deprived of liberty to be treated with humanity and respect (section 22);
>
> the right of a child who has been convicted of an offence to be treated in a way that is appropriate for the child's age (section 23).

However, the bill does not limit the right set out in section 21 of the charter act because no child will be subject to arbitrary detention, and the bill establishes a clear statutory framework for detention containing special requirements and appeal rights.

The Children's Court may only impose custodial and non-custodial supervision orders on children, or order that a child be detained in a youth justice centre in the absence of a formal finding of guilt where the child is found to have committed the offence charged (but is not fit to stand trial, or is not guilty due to mental impairment). A child found not to have committed the offence charged, or an alternative, will not be subject to any order.

Orders made in relation to a child in a CMIA proceeding, or subject to a CMIA supervision order, will be the least restrictive of liberty possible to protect the community or the

child from any likely danger because of the child's mental condition. The bill contains safeguards to ensure children are only placed on custodial supervision orders if they pose a danger to the community. Further, the bill provides for less restrictive means — non-custodial supervision — to be used to achieve the purpose if it is possible to do so.

I also consider that any limits to section 22(1) of the charter act are reasonable and justified. As already noted, the bill will allow the Children's Court to make custodial supervision orders in relation to children who have not been formally convicted of an offence. Where custodial orders are made, the child will be detained in a youth justice centre operated by the Department of Human Services (DHS), which are currently the only secure facilities suitable for children who are a danger to others due to criminal offending. The result is that children subject to custodial supervision orders will be detained with children convicted and sentenced for criminal offences.

The purpose of these orders is to ensure that a child involved in offending conduct who has seriously impaired mental functioning can be prevented from offending and receive any necessary treatment or support, even if this requires his or her detention. An additional purpose of custodial supervision orders is to protect the child and the community.

These measures involve the least restrictive means available to achieve their purpose and, in any case, serve a legitimate end. The Children's Court must not make an order detaining a child in custody unless it is satisfied that there is no practicable alternative and it must not declare a child liable to supervision unless satisfied that the declaration is necessary in all the circumstances. Prior to making a supervision order, the Children's Court will be required to obtain a certificate from the secretary DHS or the Secretary of the Department of Health outlining the facilities and services available for the custody, care or treatment of the person. If appropriate treatment cannot be provided in a youth justice centre, the amendments provide for transfer to a mental health facility for acute care.

While section 23(3) of the charter act may not be strictly relevant to this bill because children who are subject to a supervision order will not be convicted of an offence, I nevertheless consider that right would not otherwise be limited. For the reasons given above, the bill ensures that children will be treated in a way that is appropriate for their age.

Major crime (investigative powers) amendments

Concurrent proceedings

The bill amends the Major Crime (Investigative Powers) Act to confirm that the chief examiner may, pursuant to a coercive powers order, examine a person who has been or may be charged with an offence on the subject matter of the offence. This will potentially result in persons being examined in a process that runs prior to, or concurrently with, a separate criminal proceeding. The right of a person charged with a criminal offence to have the charge decided by a competent, independent and impartial court or tribunal after a fair and public hearing (section 24(1)) is, therefore, relevant.

While the answers a person provides to the chief examiner will not be able to be directly used against the person in evidence under section 39 of the Major Crime (Investigative Powers) Act, any other evidence obtained as a consequence of an answer given will be admissible in a criminal proceeding. A majority of the High Court recently held that concurrent coercive questioning and criminal proceedings fundamentally alters the accusatorial system of criminal justice.

Although the effect of these clauses is to require a person to answer questions in a concurrent proceeding following being charged with an offence, and to abrogate a person's privilege against self-incrimination during the coercive questioning in relation to a matter relevant to a pending or imminent criminal charge, I am nevertheless of the view that the amendments regarding concurrent proceedings are compatible with the right to a fair hearing.

The Major Crime (Investigative Powers) Act contains processes and safeguards to ensure that the powers provided under that act are exercised in a fair manner, subject to the supervision of the Supreme Court. A coercive examination may only be undertaken by the chief examiner pursuant to a coercive powers order, which must be made by the Supreme Court. The court also has power to impose conditions on the use of coercive powers under the order. When considering whether to make a coercive powers order, the court's discretion will be exercised in accordance with the judicial processes and procedures which govern the court, thereby diminishing the possibility of injustice in any subsequent examination. Section 8(1)(b)(ii) of the act also provides that the Supreme Court must have regard to the public interest and to the impact of the use of coercive powers on the rights of members of the community when exercising its discretion to make a coercive powers order, and determining the conditions attaching to the use of coercive powers.

Further, the Major Crime (Investigative Powers) Act contains a number of express safeguards to protect against any prejudice to the hearing of any criminal proceedings. Section 29(3) of the act requires the chief examiner to take all reasonable steps to ensure that the conduct of the examination does not prejudice those proceedings, which may include conducting the examination in private. In addition, section 43 of the act requires the chief examiner to give a direction prohibiting the publication or communication of evidence given or document produced in an examination if the failure to do so might prejudice the fair trial of a person who has been, or may be, charged with an offence.

The court hearing the related criminal charge will retain its inherent power to control its own processes and take such steps as are necessary to ensure a fair hearing where any exercise of power under the act may prejudice the fair trial of the accused, including, for example, staying a proceeding in a case where practical unfairness becomes manifest.

Nothing in these amendments therefore limits the ability of the court hearing related criminal proceedings to conduct the trial in a fair manner.

Release of evidence and documents

Section 43 of the Major Crime (Investigative Powers) Act restricts the publication and communication of evidence and documents obtained by the chief examiner. New section 43A safeguards the right to a fair hearing (section 24(1)) by empowering the Supreme Court to order the release of restricted evidence to a person charged with an offence if it is in the interests of justice to do so. Further, while new section

43B permits the release of restricted information, this may only occur upon the order of the Supreme Court, which may exercise its discretion to decline release in order to prevent the misuse of its processes or prejudice to the fair hearing of a person.

Defence of reasonable excuse

The bill inserts a statutory 'reasonable excuse' defence for the offence of failing or refusing to answer a question in an examination. Although this clause places an evidential burden on the accused, it does not limit the right to be presumed innocent in section 25(1) of the charter act because the prosecution retains the legal burden of establishing the elements of the offence beyond reasonable doubt. Further, the creation of this defence is beneficial to a person charged under section 37(2).

Contempt powers

The bill repeals the sunset clause with respect to the provisions for contempt of the chief examiner. These provisions include powers of the chief examiner to charge a person with contempt and to issue a warrant to arrest the person. A person who is arrested must be brought before the Supreme Court forthwith and may be detained in police custody in the meantime. The chief examiner is also empowered to direct that an arrested person be detained in a prison or a police jail for the purpose of ensuring his or her appearance before the Supreme Court. Express safeguards are provided where it is not practicable for the person to be immediately brought before the Supreme Court (section 49(8) of the Major Crime (Investigative Powers) Act).

Although the provisions authorise the detention of persons, I consider that they are compatible with the right to liberty in section 21 of the charter act. The detention can only occur where a person is charged with contempt and is subject to a range of safeguards that give effect to the protections in the charter act.

Removal of derivative use immunity

The bill amends the Major Crime (Investigative Powers) Act to provide that section 39 does not prevent evidence obtained as a direct or indirect consequence of an answer given in an examination or document or other thing produced at an examination or in answer to a witness summons being admitted in a criminal proceeding or other proceeding for the imposition of a penalty. Any such evidence will be admissible in the proceeding in accordance with the applicable rules of evidence.

As the second-reading speech introducing the Major Crime (Investigative Powers) Act made clear, the legislative intention at the time of enactment was that the immunity set out in section 39 of the act would not extend to information obtained, or evidence derived, as a result of answers provided at an examination. However, a derivative use immunity was subsequently 'read' into the act by the Supreme Court in *In the matter of Major Crimes (Investigative Powers) Act 2004* (2009) 24 VR 415, applying section 32 of the charter act. In that case, the court found that the right to fair hearing and the right to protection against self-incrimination in the charter act included a right to protection against the derivative use of compelled testimony.

The amendments authorising the admission of evidence obtained as a consequence of an answer given in an examination therefore limit the right of a person not to be compelled to testify against himself or herself or to confess guilt (section 25(2)(k) of the charter act) as interpreted at first instance by the Supreme Court, and potentially interferes with the right to a fair hearing (section 24(1)). Nevertheless, for the reasons that follow I consider that the ability to use evidence derived from compulsory questioning under the act is a reasonable and justified limit on the privilege against self-incrimination and is therefore compatible with the right to a fair hearing.

The central aspect of the privilege against self-incrimination is protected by the direct use immunity provided in section 39 of the act and is not affected by the bill. Further, in *In the matter of Major Crimes (Investigative Powers) Act 2004*, the Supreme Court also recognised that the derivative use of answers given in an examination could be justified under the charter act.

There are significant difficulties in detecting and prosecuting organised crime offences. Criminal organisations are well known to engage in serious violence against persons who provide information to police. They use that reputation to ensure that even persons who are not involved in the offences do not assist police with their investigation. This code of silence can operate both within the criminal organisation and outside it. The Major Crime (Investigative Powers) Act aims to assist in the detection and prosecution of such offences and thereby prevent further offences.

The inability to use any evidence derived from answers, against the person who gave them, significantly undermines the effectiveness of the coercive powers scheme in achieving that aim. Because of the code of silence and culture of fear, the chief examiner may examine a person without being aware of the level of criminal activity in which that person is involved or which the person knows about. By providing answers that lead to the discovery of evidence against them, that person can be effectively immunised from prosecution. This undermines the ability to prosecute persons responsible for serious organised criminal offences, which is an important purpose of the act. In addition, the risk of a person immunising themselves from prosecution adversely affects the way in which Victoria Police and the chief examiner use the powers under the act, reducing the scope and value of the chief examiner's powers.

One of the concerns that the privilege against self-incrimination protects against is the risk of unreliable testimony obtained through improper questioning techniques, including torture. These concerns do not arise from the use of evidence derived from compulsory questioning by the chief examiner.

I consider that ensuring that derivative evidence is able to be used is necessary to enable serious organised crime to be investigated and prosecuted. While it may limit the privilege against self-incrimination, the reading in of a derivative use immunity significantly undermines the important purposes of the act and there are no other less restrictive means reasonably available.

I also consider that the admission of derivative evidence obtained as a consequence of answers given under the act would not result in an unfair trial. The law has long recognised that the privilege against self-incrimination may be limited by statute and the admission of such evidence does not render a trial unfair.

Application of Bail Act to persons arrested under the Major Crime (Investigative Powers) Act

The Major Crime (Investigative Powers) Act empowers the Supreme Court to issue an arrest warrant for a person served with a witness summons and who the Court considers may abscond. The bill amends these powers to provide that when the person is arrested, he or she may be discharged from custody on bail in accordance with the Bail Act 1977 as if the person had been accused of an offence. This enlivens the provisions of the Bail Act, which provides that when granting bail, a court may order the surrender of the accused's passport, which may limit the person's ability to enter and leave Victoria.

The charter act right of every person lawfully within Victoria to move freely within Victoria and to enter and leave it and has the freedom to choose where to live (section 12). However, in my view, the scope of the right to freedom of movement is subject to a range of limits implicit in a free and democratic society based on the rule of law. One of these implicit limits on the freedom of movement is being required to obey a witness summons issued by the chief examiner under the act. Requiring the surrender of the passport of a person served with a witness summons in order to prevent that person from absconding to avoid questioning by the chief examiner is a reasonable limit on that right, and is directed to the legitimate end of ensuring that a witness summons served by the chief examiner is not evaded by the person absconding.

Miscellaneous amendments

Mental Health Act amendments

The bill amends section 351 of the Mental Health Act 2014 to provide that a protective services officer (PSO) may apprehend a person if the PSO is satisfied that the person appears to have mental illness and because of the person's apparent mental illness, the person needs to be apprehended to prevent serious and imminent harm to the person or to another person.

The right to liberty and security of a person as described in section 21 of the charter act is relevant to these amendments. Of particular relevance is the section 21(2) right not to be 'arbitrarily' arrested or detained. However, for the reasons that follow I consider that the power to detain is not 'arbitrary' and is, therefore, compatible with section 21 of the charter act.

A PSO must, as soon as practicable after apprehending the person, hand the person into the custody of a police officer or arrange for the person to be taken to a specified health related professional listed in the Mental Health Act. This is an existing power that applies to police officers. PSOs have also exercised equivalent powers under section 10 of the Mental Health Act 1986 since 2012 for a legitimate public purpose. PSOs only have the power to exercise the power while on duty at a designated place, which is currently defined in regulations by reference to railway premises. The power is for the purpose of protecting the safety of both the person themselves and others in the community. The PSO is required to hand a detained person to a police officer or arrange for the person to be taken to a health related practitioner or a health service as soon as practicable after the person is detained.

Personal Safety Intervention Orders Act reforms

The bill introduces a new provision into the PSIO act providing that the registrar of the Magistrates Court must refuse to accept an application for a personal safety intervention order if satisfied that:

> the application is frivolous, vexatious, without substance, made in bad faith, has no reasonable prospect of success or is an abuse of process; or
>
> the matter would be more appropriately dealt with by mediation.

Although this provision may have the consequence that in certain cases, the court will not consider an application for a personal safety intervention order, in my opinion this does not limit the charter act right of a party to a civil proceeding has to have the proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing (section 24).

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 does include a right of access to the courts, that right is not absolute but may be subject to reasonable restrictions aimed at achieving legitimate objectives.

In my opinion, this provision is directed to achieving legitimate objectives. It sets out two grounds on which the registrar must refuse to accept an application.

The first ground is aimed at preventing unmeritorious applications and minimising the cost to the community of consuming court time of resources in considering such applications. In my opinion, there is no fair hearing right of access to the courts to make frivolous, vexatious and unmeritorious applications.

The second ground is also where the matter would be more appropriately dealt with by mediation. It is a standard and uncontroversial feature of litigation that the parties are required to mediate to attempt to settle the matter. Where mediation is not successful, a person will be able to apply for a personal safety intervention order. The bill also contains safeguards to prevent inappropriate matters being sent to mediation. The registrar is required to have regard to guidelines issued by the Attorney-General in making his or her decision. A registrar will not be able to refuse the application if the application is made by a police officer on the applicant's behalf. Where mediation appears more appropriate, the court will facilitate contact by the Dispute Settlement Centre of Victoria to encourage mediation.

Further, if a registrar refuses to accept an application, the prospective applicant can apply for a review of this decision. The Court will have the power to direct a registrar to accept the application.

In my opinion, requiring an appropriate matter to be referred to mediation before a court hearing can occur is not a limit on a fair hearing right of access, but even if it is, it is a justifiable limit.

Power of protective services officers to require name and address

The bill enables protective services officers (PSOs) to require a person being directed to move on to provide their name and address. The right to privacy set out in section 13 of the charter act is relevant to this power. However, in my view this provision is compatible with the right to privacy as it is lawful and not arbitrary. PSOs will only be able to utilise this power where they intend to direct a person to move on. This new power will enable police to keep track of when a person has been repeatedly moved on for the purposes of applying for a related exclusion order. It will also assist police in determining whether a person contravenes a move-on direction.

The use and disclosure of that information would be subject to the usual protections under the Information Privacy Act 2000.

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 Criminal Organisations Control and Other Acts Amendment Bill 2014 includes a range of important sets of reforms to Victoria's justice system. These reforms involve amendments to the Confiscation Act 1997; Criminal Organisations Control Act 2012; Criminal Procedure Act 2009; Crimes (Mental Impairment and Unfitness to be Tried) Act 1997; and Major Crime (Investigative Powers) Act 2004.

The bill also includes miscellaneous amendments to the Evidence (Miscellaneous Provisions) Act 1958, Firearms Act 1996, Fortification Removal Act 2013, Mental Health Act 2014, Open Courts Act 2013, Personal Safety Intervention Orders Act 2010, Sentencing Act 1991, Summary Offences Act 1966, Victoria Police Act 2013, and Victorian Institute of Forensic Medicine Act 1985.

Confiscation

The first set of reforms included in this bill is amendments to the Confiscation Act. The amendments will better enable law enforcement to target the profits generated by very serious drug offences. The bill also contains technical amendments to improve the operation of the existing civil forfeiture scheme contained in that act.

Confiscating the proceeds of criminal activity is one of the most effective methods of targeting and disrupting serious and organised crime. Many serious crimes, in particular the large-scale trafficking of drugs, are motivated purely by profit. In some cases, these profits are reinvested by criminals to pursue further criminal activity. The confiscation of these profits removes the incentive to commit these crimes and prevents their use in supporting further criminal activity.

The bill will establish a regime for the forfeiture of assets of persons declared by the court to be 'serious drug offenders'. The court will make such a declaration when convicting a person of one of several very serious drug offences, including the trafficking or the cultivation of a large commercial quantity of drugs. These offences are the most serious drug offences — punishable by up to life imprisonment — ensuring that serious drug declarations are only targeted at the most serious of offenders.

The effect of a serious drug declaration will be the mandatory forfeiture to the State of almost all of the offender's property. The offender and dependants will be able to retain household goods and clothing, and a modestly priced vehicle. Dependants of the offender will be able to seek relief from hardship caused by the forfeiture, to ensure they are not left homeless.

These laws strengthen existing provisions in the Confiscation Act that target the proceeds of criminals. While there are existing provisions in the Confiscation Act that allow for the confiscation of the assets of offenders, these provisions require the prosecution to prove a link between the offending and the assets. In the case of serious drug offenders, this link is often obscured by the use of sophisticated money laundering techniques.

The bill contains safeguards to ensure that innocent third parties are not disadvantaged by the forfeiture of a serious drug offender's assets. Third parties with a legitimate interest in the drug offender's assets will be able to seek to have that interest excluded from forfeiture. Dependants will not be left homeless and will be able to retain a reasonably priced family home. More extravagant properties will be sold and a portion of the proceeds will be returned to the dependants to secure alternative accommodation.

These measures reflect the reality that a serious drug offender's lifestyle is funded entirely from the proceeds of crime, and ensure that serious drug offenders are not able to avoid confiscation laws by obscuring the origin of their wealth. The measures confirm that Victoria has a zero tolerance approach to drug trafficking and that offenders will not profit from this crime in Victoria.

The bill will also amend provisions in the Confiscation Act that deal with the civil forfeiture of the proceeds of crime. Civil forfeiture allows for the confiscation of property used in and derived from crime without a requirement that the person be convicted of a crime. While there is no need for the person to be convicted, the scheme requires proof of a connection between the property and the alleged crime.

The legislation currently requires the prosecution to allege a specific offence and prove that the property was derived from or used in that offence. This approach does not adequately address the common scenario where criminally obtained wealth is derived from a number of offences and it is impossible to show which wealth was derived from which offence.

The amendments contained in this bill will seek to address this by clarifying the language of the legislation so that civil

forfeiture proceedings can be commenced on the basis that property was derived from one or more offences. It will still be necessary for the prosecution to prove the link between the offending and the property. These amendments will ensure that forfeiture action cannot be frustrated where criminal wealth has been derived from a pattern of offending.

The bill will also amend provisions in the Confiscation Act that allow persons to seek relief from the hardship caused by the forfeiture of property. Currently the Confiscation Act allows a person (such as a dependent spouse or child) who might suffer hardship due to the forfeiture of property to seek a payment out of the forfeited property to relieve such hardship. The amendments will clarify that in considering this question, the court should have regard to the level of undue hardship caused by forfeiture that is hardship above and beyond the ordinary hardship that can be expected to occur as a result of the forfeiture of assets. These amendments will ensure that the provisions operate as intended — that a person is not left destitute as a result of asset forfeiture, rather than restoring a person to the circumstances that existed prior to forfeiture.

The amendments to the Confiscation Act represent significant further improvements to Victoria's criminal assets confiscation regime to better target, prevent and deter serious and organised crime.

Criminal organisations control

The bill also amends the Criminal Organisations Control Act and other related acts. The amendments will add to the powers provided by the Criminal Organisations Control Act to further strengthen the capacity of Victoria Police to tackle criminal organisations, drawing on the experience of other jurisdictions and feedback from Victoria Police about how the scheme can most effectively prevent future criminal activity.

Criminal organisations, including outlaw motorcycle gangs, pose a significant threat to public safety and order in Victoria. The Criminal Organisations Control Act, which commenced on 13 March 2013, allows control orders to be made to curtail the activities of such organisations where they pose a threat to public safety.

The bill will broaden the range of criminal offences that can trigger the making of a declaration against an individual or an organisation. Currently the Criminal Organisations Control Act requires an offence be punishable by at least ten years' imprisonment or specifically listed in the schedule to the act. The bill will lower this threshold to an offence punishable by five years' imprisonment, ensuring that violent offences such as common assault and affray are captured.

The Criminal Organisations Control Act also currently requires that offences that can trigger the making of a declaration must have several further characteristics, including that the offence involved substantial planning and organisation. These requirements will be removed so that it will be sufficient for the court to be satisfied that organisations, or their members, are engaging in, organising, facilitating or supporting such criminal activity.

The bill will also enable police to obtain orders imposing a range of restrictions on an organisation without needing to prove criminal activity beyond reasonable doubt. Proof on the balance of probabilities will be sufficient.

At present, Victoria Police must prove beyond reasonable doubt that an individual or organisation is involved in 'serious criminal activity' before any control order can be obtained. The criminal standard of proof is the standard applied in criminal prosecutions. It is a high standard, reflecting the severity of consequences that can follow from a criminal conviction. It is therefore appropriate that this standard apply where a control order is to be made that could result in an organisation being banned from continuing to operate. However, the bill will enable a range of other restrictions to be imposed on an organisation where a court is satisfied on the balance of probabilities that the organisation is engaged in relevant criminal activity.

It will often be the case that police have intelligence that an organisation is involved in serious criminal activity that poses a serious threat to public safety, but may not — or not yet — have obtained sufficient evidence that would satisfy a court to the criminal standard of proof. In these circumstances, it is appropriate that a restrictive declaration can be made that will enable a control order to impose a range of restrictions and limitations on an organisation in order to protect the public from future criminal activity.

The bill also applies a new test for when the court may make a control order following a restrictive declaration or in relation to a declared individual. Under the new tests, the Supreme Court will be able to make a control order where such a declaration is in place and:

> for organisations — it is necessary or desirable to restrict, or to impose conditions on, the activities of the organisation or its members, prospective members or former members in order to end, prevent or reduce a serious threat to public safety and order; or
>
> for individuals — it is necessary or desirable to restrict, or to impose conditions on, the activities of the individual in order to end, prevent or reduce a serious threat to public safety and order.

Experience in other jurisdictions has shown that organisations may seek to frustrate control orders by purporting to hand in their club colours or by 'patching over' to organisations with no criminal history in Australia. The bill includes measures to stop members of criminal organisations doing so.

Any person who is a member of an organisation at the time action is commenced against it will be unable to avoid a control order prohibiting members from participating in the activities of the organisation by simply quitting the organisation. This will ensure that the only way for members to avoid the operation of such a condition is by ceasing to be involved in the organisation.

The bill will also provide a simplified mechanism for police to seek a declaration against an organisation that accepts members from a declared organisation. This will ensure that members of a declared organisation cannot take advantage of organisations with no local criminal history, to avoid the operation of the control order scheme.

Stronger consequences will also flow immediately from the making of a declaration. The bill will amend the Firearms Act 1996 so that any individual made subject to an individual declaration or control order is prohibited from possessing a firearm. This is appropriate given that such a declaration or

order would only be made on the basis that that individual is engaged in serious criminal activity.

The Firearms Act will also be amended to include a presumption that any member of a declared organisation is not a 'fit and proper' person for the purposes of that act. Any member of a declared organisation who wishes to hold a firearms licence must make submissions as to why he or she is a fit and proper person to hold such a licence.

These amendments will ensure that firearms can be immediately taken out of the hands of dangerous criminals and organisations.

The Major Crime (Investigative Powers) Act 2004 will be amended to ensure that the coercive powers available under that act can be used to investigate the criminal activities of declared organisations. Currently the process required to obtain a coercive powers order under that act duplicates substantially the process required to obtain a declaration under the Criminal Organisations Control Act. These amendments will eliminate this duplication to ensure that coercive powers can be more readily used against organisations found by a court to be engaged in serious criminal activity.

The bill will also introduce provisions into the Criminal Organisations Control Act that specify that parties to proceedings under the act will bear their own legal costs. The court will retain a discretion to award costs against a party who brings a frivolous or vexatious application. The bill will also allow individuals and organisations to consent to the making of a declaration or a control order.

Criminal procedure

The third set of reforms in this bill involve amendments to the Criminal Procedure Act to further deliver on the government's election commitment to tackle delays and inefficiencies in the justice system.

The bill amends the Criminal Procedure Act to give the Magistrates Court greater flexibility and involvement in determining how a committal hearing should be conducted so that committal hearings can be listed and finalised more quickly. This will avoid court time being wasted on cross-examination that is not central to the issues in the case. The changes will also be beneficial to victims and witnesses of crime.

There are more than 1200 committal hearings in the Magistrates Court each year. One of the primary functions of a committal hearing is to give the parties the opportunity to clarify and explore the issues in dispute by cross-examining important witnesses. While committal hearings can add value to the justice process, an assessment of the depositions from committal hearings shows that a significant amount of the cross-examination during a committal hearing is not necessary to ensure the accused receives a fair trial. Sometimes cross-examination involves witnesses simply being asked about whether each sentence in their statement is correct, or counsel using the committal hearing as a dry run for the cross-examination that will occur at trial.

Committal hearings can be expensive and resource-intensive and add between four to six months delay in the completion of the process (from charge to finalisation). The process of giving evidence can also be stressful for witnesses and, especially, victims. The bill makes key amendments to the Criminal Procedure Act in order to address these problems and make committal hearings more efficient.

Currently, where the informant or the prosecution consents to the cross-examination of a witness, the magistrate must grant leave unless the court considers it inappropriate to do so. The bill introduces a more rigorous test for determining when leave to cross-examine a witness at a committal hearing should be granted.

Clause 109 of the bill provides that the informant or the prosecution's consent or opposition to the witness's cross-examination is no longer the primary consideration in determining leave. Instead, the bill expands the current test where the informant or the prosecution opposes leave, to apply to all witnesses that an accused wishes to cross-examine at a committal hearing. That is, the magistrate will have to be satisfied in all applications for leave that:

> the accused has identified an issue that he or she wants to question the witness about,
>
> the accused has given a reason why the evidence of the witness is relevant to that issue, and
>
> cross-examining the witness about that issue is justified.

By applying this test to all witnesses the accused seeks to cross-examine, the magistrate will be able to ensure that witnesses will only be required for cross-examination at a committal hearing where cross-examination of the witness is justified.

The bill also introduces a requirement that the accused must seek leave for each issue that the accused proposes to cross-examine the witness about, and the magistrate must identify each issue for which leave is granted: for example, identification evidence, self-defence or whether a person was in possession of a drug. Currently, an accused only needs to seek leave to cross-examine a witness in relation to one issue and once leave is granted, cross-examination at the committal hearing is at large. This often results in lengthy cross-examination of witnesses on issues that are not in dispute. This bill makes it clear that in order to ask questions of a witness about an issue at a committal hearing, the accused must have leave to ask questions about that issue. If not, the court must disallow the questions.

The accused will be able to apply for leave to cross-examine a witness on issues both at the committal mention, and at the committal hearing. There will be occasions where an issue only becomes apparent during the committal hearing. The new provision in Clause 111 provides that the accused can seek leave to cross-examine a witness on a different issue during the committal hearing. This provides the accused and the court with enough flexibility to ensure a fair and just outcome for the accused whenever the issue arises, while limiting unnecessary cross-examination.

The bill also makes it clear that the credibility rule from the Evidence Act 2008 applies to committal proceedings. This means that the court must not grant leave to cross-examine a witness about his or her credibility unless the accused can satisfy the court that cross-examination on this issue could substantially affect the assessment of the credibility of the witness. Currently, there is significant cross-examination about the credibility of the witness, which does not appear to satisfy this test.

The amendments to the Criminal Procedure Act also address the cumbersome procedural requirements for the Traffic Camera Office when serving summons and paperwork on accused who elect to have their offences heard in court. The bill introduces a definition for 'traffic camera offence' in clause 112, and allows service of documents for these offences to be effected by ordinary service, and to a post office box nominated by the accused.

Mental impairment and unfitness to be tried

This bill also amends the Crimes (Mental Impairment and Unfitness to be Tried) Act (CMIA) to enable the Children's Court to hear and determine children's cases under that act.

The CMIA applies to people charged with criminal offences who may be unfit to stand trial, or who were mentally impaired at the time the offence was allegedly committed. The CMIA applies to adults and children, but makes no particular provision for children.

Prior to 2010, the Children's Court assumed an inherent jurisdiction to determine cases where a child's fitness to plead was in issue. The basis of the assumption was that the legislature could not have intended the lengthy and complex County Court procedure in the CMIA to apply to children. However, after Justice Lasry's decision in *CL (a minor) v Tim Lee & Ors* in November 2010 that the Children's Court did not have jurisdiction, all children's cases raising fitness to plead have been committed to the County Court.

The consequence of the CL decision is significant delay in resolution of children's matters, and significant cost in comparison to determination of matters in the Children's Court. The special hearing procedures required under the CMIA require empanelment of two separate juries in the County Court, and generally take a year or more to resolve.

To address these issues, the bill will amend the CMIA to:

enable the Children's Court to determine fitness to plead under the CMIA in relation to all indictable offences that may be heard in the Children's Court;

require offences outside the jurisdiction of the Children's Court (which are offences resulting in death), or offences that the Children's Court considers it cannot adequately deal with, to continue to be committed to the higher courts for fitness to be determined;

require the Children's Court president to determine cases involving the most serious offending (offending with a maximum penalty of 25 years) when fitness to plead or the mental impairment defence are raised, while permitting Children's Court magistrates to determine all other cases, and the president to nominate a magistrate to determine a serious matter if he is unavailable;

maintain the Children's Court's jurisdiction over a 'child', so a person aged under 18 years of age at the time of the alleged commission of the offence will be dealt with in that court (unless the person is 19 years or above when a proceeding for the offence is commenced;

allow the Children's Court to declare a child liable to supervision under the CMIA if required for the protection of the child or the community, and enable the Children's Court to impose custodial and non-custodial supervision orders;

limit Children's Court supervision orders to up to six months duration, with extensions of up to a maximum of 2 years for children aged 15 and over, and up to a maximum of 1 year for children aged under 15 to ensure regular supervision of the supervision order by the court (given the major review provisions in the CMIA will not apply to orders made by the Children's Court);

require orders made in the Children's Court to be transferred to the County Court for review and supervision when a child reaches 19 years of age, which is the criminal jurisdictional limit of the Children's Court; and

require children on custodial supervision orders to be held in Youth Justice centres, supervised by the Department of Human Services (DHS).

In essence, the bill applies the provisions of the CMIA to hearings in the Children's Court, appropriately modified for that jurisdiction. There is strong support for these amendments amongst courts and criminal justice system agencies.

The CMIA currently allows supervision orders to be made for children — both custodial and non-custodial. However, the CMIA requires a person on a custodial order to be held in an 'appropriate place' as defined in the CMIA. These are mental health facilities, such as Thomas Embling, and secure residential facilities for people with intellectual disabilities.

The amendments will allow children to be detained under custodial supervision orders in secure facilities provided by the Secretary of the Department of Human Services (DHS).

In relation to both remand and any order for custodial supervision, the Children's Court will be required to obtain a certificate as to availability of appropriate services for the child from the Department of Human Services or Department of Health. If appropriate treatment cannot be provided in a Youth Justice centre, the amendments provide for transfer to a mental health facility for acute care.

The express intention of the amendments is that children will only be subject to custodial supervision if necessary, and only for as long as it is necessary. The bill provides for periodic review of supervision orders by the Children's Court.

These proposed amendments to the CMIA are to be implemented as soon as possible so that children's cases within the jurisdiction of the Children's Court will not have to be committed to the County Court due only to issues of fitness to plead or mental impairment. On 15 August 2012, I asked the Victorian Law Reform Commission (VLRC) to review the functioning of the CMIA. Subsequently on 18 September 2013, the terms of reference were extended to the consideration of whether the Children's Court should be permitted to deal with fitness to plead issues. The VLRC has been asked to report no later than 30 June 2014.

After the VLRC reports, the government will consider possible improvements to the CMIA as a whole including whether any further changes are required to the provision relating to children.

The bill also includes an amendment to the Working with Children Act 2005 to ensure that findings of guilt, for the purposes of that act, include findings of not guilty due to insanity. The CMIA replaced the common law defence of

insanity with a statutory defence of mental impairment. The CMIA provides for a verdict of not guilty on account of insanity in relation to a person charged with an offence committed before the commencement day, but sentenced after commencement, to be taken to be a finding of not guilty because of mental impairment under the CMIA. However, this provision does not apply to findings of insanity returned before commencement of the CMIA.

The effect of this is that old findings of not guilty by reason of insanity may not be able to be considered as findings of guilt for the purposes of licensing or accreditation schemes. This was identified as a concern for working with children checks. The bill ensures this is no longer the case.

Major crime investigative powers

Part 6 of the bill contains technical amendments to the Major Crime (Investigative Powers) Act 2004 that will improve the operation and effectiveness of the coercive powers scheme for investigating organised crime offences.

The bill amends the purposes of the Major Crime (Investigative Powers) Act to make it clear that the use of coercive powers also extends to the prosecution of organised crime offences, not just their investigation. This reflects more clearly the functions and purposes of the Office of the Chief Examiner and the operation of the coercive examination scheme. It is also consistent with similar legislative statements in commonwealth and interstate schemes.

The bill also amends the criteria the Supreme Court must consider when giving notices under section 20 of the Major Crime (Investigative Powers) Act. Section 20 provides for the giving of a written notice to a person subject to a witness summons or an order directed to a person in custody to give evidence that the summons or order is confidential and that it is an offence to communicate certain matters to any person. The provision protects witnesses who have been summonsed. However, under the new amendments, the effect on witnesses reputation will no longer be a consideration for the court in determining when to make such a notice.

The amendments also clarify the operation of the notice provision. The making of a notice will be mandatory under section 20(2) in two circumstances. First, a notice must be given where the failure to do so would reasonably be expected to prejudice the safety of a person, the fair trial of a person who has been or may be charged with an offence, or the effectiveness of an investigation of the organised crime offence in relation to which the summons was issued or the order was made. A notice or order must also be issued where the failure to do so would otherwise be contrary to the public interest. The court will also have a discretionary power to make a notice or order where the failure to do so might prejudice the effectiveness of an investigation of the organised crime offence in relation to which the summons was issued or the order was made or might otherwise be contrary to the public interest.

The bill also makes it expressly clear that the chief examiner can commence, or continue to conduct, an examination of a person even if court or tribunal proceedings (whether civil or criminal) that relate to the same subject matter of the examination are already on foot or are subsequently commenced. This amendment responds to the recent decision of the High Court in *X7 v. Australian Crime Commission* [2013] HCA 29. The court decided, in the context of considering legislation governing the Australian Crime Commission, that the coercive examination of a person charged with an offence cannot occur where the examination concerns the subject matter of the offence charged, without express language or by necessary implication. The amendment inserts the necessary express language.

Section 31 of the act contains preliminary requirements that must be undertaken prior to a witness being questioned or producing a document. The bill amends the section so that a witness who attends solely to produce documents can elect to dispense with some of those requirements. If the witness does not make that election, the chief examiner need only comply with a narrower range of preliminary requirements. This amendment streamlines and expedites the examination process where a person attends solely for the production of documents.

Section 39 of the act abrogates the privilege against self-incrimination when answering questions put in an examination or producing a document or other thing. The act includes a 'use-immunity' that restricts answers or documents or things being used as evidence against the person in criminal and civil proceedings. However, the use-immunity was never intended to prevent the use of other evidence derived from answers, documents or things in a criminal prosecution against the person, or the use of such material in a prosecution against a third party. Nevertheless, the Supreme Court in *In the Matter of the Major Crime (Investigative Powers) Act 2004* [2009] restricted this use of evidence.

The bill amends section 39 to make it clear that the abrogation of the privilege against self-incrimination applies whether the person has been or may be charged with an offence in respect of the subject matter of the question, document or thing. It also clarifies that section 39 does not prevent the admission in a criminal proceeding (or proceeding for a penalty) of any evidence obtained as a direct or indirect consequence of an answer, document or thing. Any such evidence is otherwise admissible in accordance with the normal rules of evidence.

The amendment is a direct response to the Supreme Court's decision and is intended to reverse that ruling and restore the original intention of Parliament. Consequently, any witness in an examination under the Major Crime (Investigative Powers) Act cannot claim the privilege. The witness must answer all questions that the Chief Examiner directs the witness to answer. Any evidence given by a witness is not admissible against them in a criminal proceeding or a proceeding for the imposition of a penalty. It is, however, admissible against other persons. That evidence may also be admissible in relation to offences against the Major Crime (Investigative Powers) Act, confiscation proceedings and the offence of giving false or misleading evidence.

Although answers given by a witness cannot be used against them, police may rely upon the evidence to further investigations into organised crime offences. The answers might lead police to discover new evidence and new lines of enquiry. This is generally known as derivative use. While the act clearly states there can be no direct use of your evidence against you, the amendments will ensure derivative use is available to investigators.

Section 43 of the Major Crime (Investigative Powers) Act confers powers on the chief examiner to restrict the publication and communication of evidence and information that identifies a person who has given evidence. As with the

amendments to section 20 of the Major Crime (Investigative Powers) Act, the bill amends section 43(2) so that the effect on witness' reputation will no longer be a consideration for the court in determining when to restrict the publication and communication of evidence and identifying information. Section 20 will also be amended to clarify that the circumstances where such a direction is mandatory apply in relation to a person who has given evidence, or produced a document or thing, before the chief examiner.

The bill creates two new provisions, sections 43A and 43B, which provide mechanisms for the release of restricted evidence respectively where a person has been charged with an offence, and where a person has not yet been charged. These modifications streamline and clarify the current processes under section 43. The bill creates a definition of restricted evidence and inserts a provision clarifying that the operation of the amended sections do not prevent the communication of restricted evidence for the purpose of prosecuting a person charged with an offence under the act itself (such as refusing to answer a question, providing false or misleading evidence and obstructing or hindering the chief examiner).

The process under the new section 43A replaces the old sections 43(4) to (5). This provides for an application to a court that restricted evidence be made available to a person charged with an offence before the court. The chief commissioner, the Director of Public Prosecutions or the person charged, can make the application. The provisions create a process whereby the material is provided to the court, and the chief examiner, the Chief Commissioner of Police and any witness whose interests are affected by the material can then make submissions as to its release.

The new section 43B provides a similar process where a person has not been charged with an offence. Under the new provisions, the chief commissioner may apply to a court for an order that restricted evidence be made available to the Director of Public Prosecutions if the chief commissioner suspects on reasonable grounds that there are reasonable prospects for the conviction of a person for an offence if the evidence is so made available. Again, the provisions create material is first provided to the court, and the chief examiner, the Chief Commissioner of Police, the Director of Public Prosecutions and any witness whose interests are affected by the material may then make submissions as to its release.

After hearing the submissions, the court may make the evidence available to the Director of Public Prosecutions if satisfied there are reasonable grounds for the suspicion founding the application and the interests of justice require the evidence to be made so available. If the evidence is released and a person is subsequently charged with an offence, the Director of Public Prosecutions is not prevented from making the evidence available to the person charged or their legal representative.

The bill removes the sunset period in the provisions dealing with contempt of the chief examiner (section 49) and the rule against a person being charged with both an offence under the act and contempt of the chief examiner in respect of the same set of circumstances (section 50). These provisions have been in operation for some time and it is unnecessary to continue to subject them to a sunset period.

Section 46 of the Major Crime (Investigative Powers) Act provides for the issuing of a warrant for the arrest of a person subject to a summons where they have absconded, are likely to abscond or are otherwise attempting to evade the service of a summons. The provision requires the person to be brought before the court and admitted to bail, detained in police custody, detained in a prison or police jail or released unconditionally. The purpose is to ensure their attendance to give evidence.

Currently, where the person is detained in police custody, the chief commissioner is required to arrange a standard of accommodation and meals comparable to that generally provided to jurors kept together overnight. The reference to detention in police custody and the provision of a certain standard of accommodation in police custody are unnecessary. The bill amends the section to clarify that when an arrested person is brought before the court, the court may release them on bail in accordance with the Bail Act 1977, order their detention in a prison or police jail or order their unconditional discharge. The resulting section is easier to understand and apply. The amendment to section 46 will insert a specific reference to the Bail Act 1977 and will therefore incorporate all of the powers in that act.

The bill also makes a minor amendment to the Criminal Procedure Act 2009 to ensure that transcripts of an examination are included in a hand-up brief where that evidence is relevant in a prosecution.

The final amendment in part 6 of the bill addresses an anomaly in section 37 of the Major Crime (Investigative Powers) Act. That section creates an offence where a person refuses to answer a question or produce a document. The offence is punishable by a maximum period of up to five years imprisonment. In section 49 of the Major Crime (Investigative Powers) Act, such conduct can also constitute a contempt of the chief examiner. However, a defence of 'reasonable excuse' applies to the offence in section 49. The bill amends section 37 so that the 'reasonable excuse' defence also applies to the offence of refusing to answer a question or producing a document. The resulting offence provisions will therefore apply in a fairer manner, consistent with other offence provisions in the act.

Variation of alcohol exclusion orders

The bill amends section 89DG of the Sentencing Act to provide that any application to vary an alcohol exclusion order must, in most cases, be made to the Magistrates Court, regardless of which court first made the order. If the Supreme Court imposed the order, then it may direct that any variation application be made to the Magistrates Court, or retain the variation power for itself.

Applications to vary an alcohol exclusion order are minor matters which may be dealt with expeditiously. This amendment will ensure that all applications to vary an alcohol exclusion order can be dealt with by the one court in an efficient manner. It will also ensure that the higher courts need not have a continuous monitoring role in respect of alcohol exclusion orders they impose thereby providing them with more time and resources to perform other functions.

Miscellaneous

Amendments to Criminal Procedure Act 2009

The bill will amend schedule 3 of the Criminal Procedure Act 2009 to authorise general and specialist inspectors within the meaning of the Prevention of Cruelty to Animals Act 1986 to

witness statements for briefs in criminal proceedings. This amendment will enhance the efficiency of the criminal justice system in animal welfare matters.

Amendments to Evidence (Miscellaneous Provisions) Act 1958

The bill makes technical amendments to provisions in the Evidence (Miscellaneous Provisions) Act 1958 that list who may witness a statutory declaration. The amendments will correct references to school principals, veterinary practitioners and accountants in the list of authorised witnesses to statutory declarations. The bill will also clarify that Children's Court registrars can witness statutory declarations and affidavits.

Amendments to the Mental Health Act 2014

The bill amends section 351 of the Mental Health Act 2014 to reinstate protective services officers' powers to detain people who appear to have a mental illness and as a result need to be apprehended to prevent serious and imminent harm.

Amendments to the Open Courts Act 2013

The bill also makes two minor amendments to the Open Courts Act 2013. The first will improve the operation of the notice requirements for suppression order applications by clarifying who must be given notice. The second will align the test for the making of a broad suppression order by the Magistrates Court with the test that applies to the making of a proceeding suppression order on administration of justice grounds.

Amendments to the Personal Safety Intervention Orders Act 2010

Amendments to the Personal Safety Intervention Orders Act (PSIO act) aim to provide increased protection for victims of stalking and serious prohibited behaviour whilst diverting lower level interpersonal disputes to mediation. Protection is afforded by court-made intervention orders between people who are not family members.

Under the current law, a magistrate asked to make a personal safety intervention order can formally refer the matter to mediation if a matter may be more suitable for mediation or is not appropriate for a court to determine. However, it is preferable for such cases to be referred to mediation assessment at the earliest opportunity, rather than referral needing to be decided by a magistrate.

Accordingly, the bill will require court registrars to refuse to accept a PSIO application where they are satisfied that the matter would be more appropriately dealt with by mediation; or is frivolous, vexatious, an abuse of process, without substance, has no reasonable prospect of success or is in bad faith.

In those cases where mediation appears more appropriate, the court will facilitate contact by the Dispute Settlement Centre of Victoria (DSCV) to encourage mediation and a sustainable solution to the dispute.

Importantly, the amendments contain safeguards to prevent inappropriate matters being sent to mediation. The Attorney-General's PSIO Guidelines recognise that many matters should not be mediated including where there has been violence. In making a decision, a registrar must consider whether the matter would be prohibited from being mediated under these guidelines.

In addition, all matters referred to the DSCV must go through a detailed intake assessment which identifies matters that are inappropriate for mediation. Such matters will be returned to the court if an intervention order could be appropriate.

A prospective applicant will also be able to apply to a magistrate to have a registrar's decision reviewed. The court may then direct a registrar to accept an application so the matter would proceed to a court hearing.

Amendments to Summary Offences Act 1966

The bill amends section 6B of the Summary Offences Act 1966 to ensure that PSOs may request the name and address of a person they intend to give a move-on direction, in the same way police officers can.

Section 6B was recently inserted by the Summary Offences and Sentencing Amendment Act 2014. The provision was intended to ensure that police can identify when someone has been the subject of repeated move-on directions, and determine whether it is appropriate to apply for a longer-term exclusion order. While only a police officer may apply for a move-on-related exclusion order, the application could be based on a direction or directions given by a PSO. To give effect to the intended operation of exclusion order provisions, the bill will provide PSOs with a power to record the name and address of persons they have directed to move on.

The amendment also ensures that use of move-on powers by PSOs can be subject to the same degree of oversight as applies to police.

Amendment of Victorian Institute of Forensic Medicine Act 1985

As recommended by the director of the Victorian Institute of Forensic Medicine (VIFM) an amendment to the Victorian Institute of Forensic Medicine Act 1985 has also been included in this bill. The amendment provides for the appointment of an additional VIFM council member with financial expertise to assist the council in managing VIFM.

Amendments to Victoria Police Act 2013

Finally, the bill makes technical amendments to, and consequential upon, the Victoria Police Act 2013 to clarify the regulation-making power in the act, amend a typographical error, and align police terminology with that used in the Victoria Police Act.

This suite of reforms to Victoria's justice system demonstrates the government's commitment to taking strong action to combat serious and organised crime, and to sensible, streamlined processes in our courts.

I commend the bill to the house.

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

Debate adjourned until Thursday, 14 August.

POWERS OF ATTORNEY 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 Powers of Attorney Bill 2014 (the bill).

In my opinion, the Powers of Attorney Bill 2014, as introduced in the Legislative Council, is compatible with human rights as set out in the charter act. I base my opinion on the reasons outlined in this statement.

Overview

The main purpose of the bill is to simplify and consolidate Victoria's powers of attorney (POAs) legislation. In particular, the bill provides for the appointment of an attorney under an enduring POA, which is currently provided for in the Instruments Act 1958. In broad terms, an enduring POA is a legal instrument by which a person (the principal) empowers another (the attorney) to make decisions and act on their behalf as to the principal's personal and/or financial matters. An enduring POA continues to operate in the event that the principal loses capacity to make decisions about those matters.

The bill also makes provision for a new appointment, a supportive attorney, whose role is to support the principal to make and give effect to their own decisions. Unlike an attorney under an enduring POA, a supportive attorney is not a substitute decision-maker for the principal.

Human rights issues

Charter act rights that are relevant to the bill

The ability for an attorney under an enduring POA to make decisions and act on behalf of the principal is potentially relevant to the following charter act rights:

recognition and equality before the law (section 8)

freedom of movement (section 12)

privacy and reputation (section 13)

property rights (section 20).

In my view the bill does not limit these rights.

Recognition and equality before the law

Section 8(1) of the charter act provides that every person has the right to recognition as a person before the law. Section 8(3) of the charter act provides that every person is equal before the law and has the right to equal and effective protection against discrimination. The bill, in providing for an enduring POA and a supportive attorney appointment, promotes these rights.

Enduring powers of attorney

A person may suffer discrimination in practice because they cannot manage all of their affairs or protect their rights if they lose legal capacity. This bill reduces the risk of such discrimination by enabling people to voluntarily create an instrument to enable a trusted person to help manage their affairs in that event.

An enduring POA is an entirely voluntary instrument that may be entered into by a person who has decision-making capacity that can assist the person when he or she subsequently loses capacity. The bill provides a legal framework for these instruments which includes giving legal effect to the principal's intentions as expressed in the instrument appointing the attorney. The bill also sets out principles and duties to be adhered to by the attorney that are designed to ensure that the wishes of a principal who has lost capacity are respected. These provisions promote a principal's right to recognition and equality before the law; further, nothing in the bill discriminates against a person on the basis of a relevant attribute.

Supportive attorneys

The provisions of the bill enabling a supportive attorney appointment are designed to support persons with impaired decision-making capacity to make and give effect to their own decisions. The bill recognises that a person has decision-making capacity if he or she can make a decision with appropriate support.

The appointment is intended to promote the autonomy and dignity of people who have a disability. It will assist people whose ability to make decisions is questioned or impaired because of their disability and allow them to continue to exercise legal capacity. As such, the appointment promotes the right to recognition and equality before the law.

Freedom of movement and property rights

Section 12 of the charter act provides that every person lawfully within Victoria has the right to move freely within Victoria and to enter and leave it and has the freedom to choose where to live. Section 20 provides that a person must not be deprived of his or her property other than in accordance with law.

An attorney may be authorised under an enduring POA to make decisions on behalf of the principal in relation to the principal's personal affairs, which could include where the principal lives and may be authorised to act in relation to the principal's financial or property matters including disposing of the principal's property. However, any limitation on a person's ability to make their own decisions about such matters arises from the person's decision-making incapacity, and attorneys must act within the limits of the authority conferred by the enduring POA. Accordingly, these rights are

not limited by the bill in establishing a legal framework for the appointment of an attorney under an enduring POA.

Privacy and reputation

Section 13(a) of the charter act provides that a person has the right not to have his or her privacy, family, home or correspondence unlawfully or arbitrarily interfered with. Section 13(a) is relevant because under the bill an attorney under an enduring POA and a supportive attorney under a supportive attorney appointment are both able to access personal information about the principal as part of their role. The bill provides that a person is authorised to disclose personal information about the principal to a supportive attorney acting under a supportive attorney appointment. Further, access to personal information by attorneys and supportive attorneys is specifically authorised in other acts that regulate the disclosure of and access to personal information (for example, the Disability Act 2006, the Health Records Act 2001 and the Information Privacy Act 2000). However, these powers to access the principal's personal information do not limit the charter act right because they are neither unlawful nor arbitrary.

Any information provided to an attorney or supportive attorney will be lawful because it will be provided under a legal power, namely the enduring POA or the supportive attorney appointment. The powers are designed to serve the purpose of assisting attorneys to properly carry out their roles in acting on the principal's behalf (in the case of an enduring POA) or supporting the principal to make his or her own decisions (in the case of a supportive attorney).

The bill also contains clear limits and safeguards in relation to these powers. An attorney under an enduring POA is subject to a duty not to disclose confidential information gained as an attorney unless authorised by the power or by law.

Where a supportive attorney is authorised to access the principal's personal information under the appointment, the bill provides that the supportive attorney may only access, collect or obtain information that is relevant to a supported decision or that may be lawfully obtained by the principal and may only disclose the information obtained for a purpose that is relevant and necessary to the supportive attorney role or for another lawful reason.

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

Second reading

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

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

That the bill be now read a second time.

Incorporated speech as follows:

The bill simplifies and consolidates the law relating to powers of attorney, creates the new role of a supportive attorney and improves protections against abuse. By doing so, the bill aims to make the use of powers of attorney more straightforward and effective in both business and personal contexts.

Powers of attorney have their origin under the common law as a means of appointing an agent to carry out specified transactions on behalf of the appointor. Aspects of the use of powers of attorney have for many years been regulated by the Instruments Act 1958 and its predecessors. Over time, common-law powers of attorney became increasingly long and complex in order to ensure that the power authorised as wide a range of transactions as possible. In 1980, the Instruments Act 1958 was amended to provide by statute for a simple form for a general power of attorney that authorised the attorney to do anything that could lawfully be done by an attorney other than to delegate his or her power. This removed the need for a power of attorney to separately list and describe every type of transaction which the power authorised. However, as with purely common-law powers of attorney, these general powers of attorney are automatically revoked if the donor of the power ceases to have the legal capacity to appoint an attorney. In 1981, the Instruments Act was further amended to provide for an enduring power of attorney, being a general power of attorney that is not revoked by the subsequent incapacity of the donor. In 1999, the Guardianship and Administration Act was also amended to provide for persons to appoint enduring guardians, who can exercise the powers of a guardian to the extent that the appointor subsequently becomes unable to make reasonable judgements in respect of matters specified in the instrument of appointment.

As a result of these historical developments, there is often uncertainty and confusion as to the various options currently available for persons to appoint others to act on their behalf, and as to the powers that each form of appointment confers on the appointee. The bill therefore establishes a clear distinction between appointments that a person chooses to make for someone to act on their behalf and appointments that VCAT makes where a person is not capable of making such appointments themselves, with the former being referred to consistently as attorneys, and the latter as guardians. The bill will also allow a person to confer under a single enduring power of attorney powers that may previously have required both an enduring power of attorney and an enduring guardianship, and to specify more clearly which of those powers are being conferred.

The bill implements a majority of the recommendations made in the report by the Victorian parliamentary Law Reform Committee (VPLRC) in its *Inquiry into Powers of Attorney*, which was tabled in Parliament in August 2010. The bill also reflects a number of recommendations from the Victorian Law Reform Commission in its *Guardianship — Final Report*, which was tabled in Parliament in April 2012.

The bill makes only minor amendments to the law regulating non-enduring powers of attorney, including general powers of attorney, which are referred to in the bill as general non-enduring powers of attorney. The current statutory provisions and the common law governing these powers, which are widely used in the commercial sphere, have not been identified as being in need of major reform.

Definition of decision-making capacity

Neither the Instruments Act nor the Guardianship and Administration Act define capacity, which is a key concept in

the operation of powers of attorney legislation. The bill addresses this gap by defining decision-making capacity and providing guidance about how it should be assessed. These provisions protect a person's right to make their own decisions whenever possible. They are consistent with the approach taken in the new mental health laws that were recently enacted by Parliament. The bill makes clear that a person is presumed to have decision-making capacity unless there is evidence to the contrary.

The bill provides that a person has decision-making capacity as to a matter if the person is able to: understand the information relevant to the decision and the effect of the decision; retain the information to the extent necessary to make the decision; use or weigh that information as part of the process of making the decision; and communicate the decision and the person's views and needs as to the decision in some way, including by speech, gestures or other means.

The bill provides that, in determining whether a person has decision-making capacity, regard should be had to a range of factors specified in the bill.

Statement of principles

The bill introduces a principles-based approach to exercising a power under an enduring power of attorney. The bill requires a person exercising a power, carrying out a function or performing a duty for a principal under an enduring power of attorney to do so in a way that is as least restrictive of the principal's freedom of decision and action as is possible in the circumstances and ensures that the principal is given practicable and appropriate support to enable them to participate in decisions affecting them as much as possible in the circumstances.

An attorney must give all practicable and appropriate effect to the principal's wishes and take such steps, if any, as are reasonably available to encourage the principal to participate in decision making even though the principal does not have decision-making capacity. An attorney must also act in a way that promotes the personal and social wellbeing of the principal.

Scope of enduring powers of attorney

The bill allows a principal to authorise an attorney to do anything that a principal can lawfully do by an attorney, with that power not being revoked by the person subsequently ceasing to have relevant decision-making capacity. Under the bill, a principal may confer powers on an attorney in relation to financial or personal matters, or both.

Consolidated form for enduring powers of attorney

The bill provides for a consolidated enduring powers of attorney form to cover both financial and personal matters with a separate form for general non-enduring powers of attorney. Plain English forms will be developed, which adopt consistent language and are easy to understand and use.

Making an enduring power of attorney

The bill also provides consistency in the requirements for making, witnessing and accepting an enduring power of attorney, as well as consistent eligibility criteria about who can be appointed as an attorney under an enduring power of attorney. The bill requires an attorney appointed under an enduring power of attorney to formally accept their appointment and for the acceptance to be witnessed.

The bill allows for the appointment of alternative attorneys or multiple attorneys to act jointly, severally, jointly and severally or as majority attorneys. The bill provides that where there is a disagreement between an attorney for personal matters and an attorney for financial matters where they both have power over a matter, the view of the attorney for personal matters will prevail.

The bill implements the VPLRC recommendation to narrow the current list of qualified witnesses to an enduring power of attorney to require one of the two witnesses to be a person authorised to witness affidavits or a medical practitioner. While stricter than current requirements for witnesses, these requirements balance having a witness that is qualified to assess the principal's understanding of the appointment and to identify any evidence of duress with a group of witnesses who can be easily accessed when needed. The bill excludes certain people such as the relative of the principal or an attorney, a care worker or an accommodation provider for the principal from being a witness to avoid the possibility of a conflict of interest.

Commencement of an enduring power of attorney

The bill includes common commencement criteria for an enduring power of attorney whether for personal matters or financial matters. The bill will enable a principal to specify in the enduring power of attorney a time, circumstance or occasion on which the power is exercisable, if not, the power will commence from when the enduring power of attorney is made. If the principal loses decision-making capacity, the enduring power will commence immediately.

The duties of enduring attorneys

The bill more clearly sets out the duties of an attorney under an enduring power of attorney without excluding common-law duties. The bill requires an attorney to: act honestly, diligently and in good faith; exercise reasonable skill and care; not use the position for profit unless authorised; avoid acting where there is or may be a conflict of interest unless authorised by the enduring power of attorney; not disclose confidential information gained as the attorney unless authorised by the power or by law; and to keep accurate records and accounts.

The bill also specifies particular duties for attorneys with financial powers. For example, such attorneys will not be able to enter into conflict transactions unless specifically authorised by the principal or by VCAT and must keep the attorney's property separate from the principal's property. However, such attorneys may provide from the principal's property for the needs of a dependant of the principal if specified in the enduring power of attorney and can make a gift of a principal's property in specified circumstances.

Revocation of enduring powers of attorney

The bill requires the revocation of an enduring power of attorney by a principal or an enduring attorney's appointment to be in writing in the prescribed form and to be witnessed. In addition, the bill requires a principal who revokes the enduring power of attorney or an attorney's appointment to take reasonable steps to notify any attorneys. As is currently the case, the bill also lists the circumstances under which an

enduring power of attorney is automatically revoked, such as on the death of the principal.

Protecting principals from abuse

Safeguards against abuse of powers of attorney are contained throughout the bill, from the tightening of the witness requirements to the clearly specified duties of attorneys acting under a power of attorney. In addition, the bill creates two specific new offences to address circumstances of abuse.

The bill provides that a person must not dishonestly obtain an enduring power of attorney to obtain financial advantage or to cause loss to the principal or another person. In addition, the bill prohibits an attorney under an enduring power of attorney from dishonestly using the power to obtain financial advantage or to cause loss to the principal or another person.

Compensation for victims of abuse

As recommended by the VPLRC, the bill gives VCAT power to order an attorney to pay compensation to a principal for a loss caused by the attorney contravening the Powers of Attorney Act when acting under an enduring power of attorney. Currently, this power is only given to the Supreme Court.

Increased powers for VCAT

The bill retains and clarifies existing powers of VCAT in relation to enduring powers of attorney and provides additional powers that will enable VCAT to:

authorise and retrospectively validate a conflict transaction;

declare the making or revocation of an enduring power of attorney that was not validly executed to be valid;

determine that an enduring power of attorney is not valid in certain circumstances, including if it is satisfied that dishonesty or undue influence was used on the principal to make the enduring power of attorney; and

order compensation for any loss caused by the attorney contravening the act relating to enduring powers of attorney.

Supportive attorneys

The bill provides for an adult, described as the 'principal', to appoint a person of their choice to act as their 'supportive attorney' to support them to make and give effect to some or all of their own decisions.

The availability of such appointments will help promote autonomy and dignity for people with a disability who have the capacity to make various decisions for themselves, provided they have support to make and give effect to those decisions. It provides legislative acknowledgement that mechanisms other than substituted decision making can be used to allow people with a disability to engage in activities requiring legal capacity and to make and give effect to decisions that affect their lives.

The bill allows a person to specify whom they want to support them in their decision making, the types of decision they want support to make and the types of support they want in order to make and give effect to those decisions. This will also provide certainty for third parties, allowing them to deal with a supportive attorney more confidently than if the relationship were informal, and thus better enabling principals to have their wishes and decisions respected and implemented.

Power to access information

A principal may authorise a supportive attorney to access, collect or obtain, or assist the principal in accessing, collecting or obtaining from any person any information that is relevant to the decision or decisions.

This power aims to address instances where a person without clear legal authority to do so has difficulty accessing relevant information when assisting someone to make an important decision, such as medical reports, financial statements and other personal information.

A principal may also authorise a supportive attorney to communicate information about the principal and decisions made by the principal to other people. For example, a principal may authorise a supportive attorney to communicate the principal's support needs to an accommodation provider in order to have changes made or to gain information to assist the principal to decide where he or she will live.

A principal may also authorise a supportive attorney to do such things as are necessary to give effect to the principal's decisions. For example, a principal who wishes to receive a home service may authorise the supportive attorney to make arrangements for the service to be provided once the decision has been made to proceed with the service.

This is intended to be a practical power so that a principal's decisions are implemented. This power is not intended to make the supportive attorney a substitute decision-maker for the principal, and a supportive attorney cannot give effect to a supported decision about a significant financial transaction.

Given the nature of the appointment, the witnessing requirements for the supportive attorney appointment are less restrictive than for the appointment of an enduring power of attorney. The appointment must be witnessed by two adult witnesses, one of whom must be a person authorised by law to witness the signing of a statutory declaration. Only one of the witnesses can be a relative of the principal or the proposed supportive attorney, or a care worker or accommodation provider of the principal.

A principal will be able to revoke the appointment of their supportive attorney at any time if they have capacity to do so.

I commend the bill to the house.

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

Debate adjourned until Thursday, 14 August.

PRIVACY AND DATA PROTECTION 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 Privacy and Data Protection Bill 2014 (the bill).

In my opinion, the Privacy and Data Protection 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 key purposes of the bill are to:

combine the provisions of the Information Privacy Act 2000 (IP act) and the Commissioner for Law Enforcement Data Security Act 2005 (CLEDS act), modified as necessary to create the new office of the Privacy and Data Protection Commissioner;

introduce legislative provisions that fulfil the government's announced commitment to the implementation of a new Victorian protective data security regime; and

introduce two mechanisms (public interest determinations and information usage arrangements (IUAs)) to provide some limited flexibility in the application of certain of the existing information privacy principles (IPPs) and (in the case of IUAs) certain information handling provisions in other acts.

Human rights issues

Relevant charter act rights

Section 13 — a person has the right not to have his or her privacy unlawfully or arbitrarily interfered with.

The explanatory memorandum to the charter act stated that it was that act's intention that the right to privacy it contained be interpreted consistently with the existing information privacy and health records framework in Victoria to the extent that it protects against arbitrary interference.

In *WBM v. Chief Commissioner of Police* [2012] VSCA 159 (WBM), the Victorian Court of Appeal considered but did not need to choose between two competing interpretations of 'arbitrary' for the purposes of this right. The first was the 'ordinary' or dictionary meaning: a decision or action, which is not based on any relevant identifiable criterion, but which stems from an act of caprice or whim (WBM, [99]).

The second interpretation of 'arbitrary' was broader and was described by Bell J in *PJB v. Melbourne Health* [2011] VSC 327 [84] as follows:

[arbitrary'] … extends to interferences which, in the particular circumstances applying to the individual, are capricious, unpredictable or unjust and also to interferences which, in those circumstances, are unreasonable in the sense of not being proportionate to a legitimate aim sought.

In *WBM*, the Court of Appeal did not decide which interpretation was correct, but the broader meaning was preferred in obiter dicta by Warren CJ ([104] and Hansen JA [133] and adopted by Bell AJA).

In my opinion, nothing in this bill creates an arbitrary interference with privacy on either interpretation of the word.

The right to privacy is enhanced by the bill's substantive provisions in relation to:

protective data security (in part 4);

law enforcement data security (in part 5) (based on the CLEDS act); and

the information privacy provisions (in part 3) which are unchanged from the IP act, including:

its scope of application in respect of privacy to public sector organisations;

the IPPs set out in schedule 1 of the bill; and

the exemptions for certain organisations, such as courts and tribunals and law enforcement agencies in specified circumstances, from the application of some or all of the IPPs, on public interest grounds.

A table of re-enacted provisions is included in part 9 — consequential amendments.

Part 3 of the bill introduces two new mechanisms not contained in the IP act:

public interest determinations;

information usage arrangements (IUAs);

which allow for dispensations from the IPPs or approved codes of practice and (in the case of IUAs) allow for specified practices to be treated as authorised by information handling provisions in other acts.

Public interest determinations

The PDP commissioner can make public interest determinations (and temporary public interest determinations) (PIDs and TPIDs), and in part 3 division 6 — Information usage arrangements (IUAs), allow for any IPP (except for IPP4 on data security and IPP6 on access and correction) or an approved code of practice to be departed from in respect of

relevant organisations' proposed handling of personal information.

The authorisation by a PID or TPID or an IUA or a certification of an act or practice which may contravene an IPP need not constitute an interference with privacy under the charter act.

If a PID or TPID did authorise an interference with the privacy of an individual, such authorisation will be lawful and not arbitrary because:

persons whose interests would be affected by a PID are afforded an opportunity to be heard before a PID is made;

the PDP commissioner may only make a PID or TPID if satisfied that the public interest in the organisation engaging in the act or practice substantially outweighs the public interest in complying with the relevant IPP;

for transparency, PIDs and TPIDs must be published on the PDP commissioner's website;

an organisation subject to a PID must report on it to the commissioner at least annually and the PDP commissioner must revoke a PID or TPID where the public interest grounds are no longer met, and may revoke it if the reasons set out in the application no longer apply;

a PID and TPID may be disallowed by Parliament.

Information usage arrangements

IUAs are designed to address many aspects of information handling between the parties, not just the IPPs. Subject to commissioner's satisfaction that relevant public interest tests have been met and the approval of relevant ministers, an IUA may authorise a departure from the IPPs (except IPPs 4 and 6) or an approved code of practice and may determine that an information handling practice is permitted for the purpose of an 'information handling provision' which is a provision of an act that permits handling of personal information as required or authorised by law or by or under an act.

If an IUA did authorise an interference with privacy, such authorisation will be lawful and not arbitrary because:

an IUA must be initiated by a Victorian government organisation and must set out practices for handling personal information to be undertaken in relation to one or more public purposes including the provision of services in the public interest;

an IUA must be submitted for approval by the commissioner and relevant ministers;

the information to be provided to the PDP commissioner and ministers in a IUA for consideration is extensive, including identification of any adverse actions that may be taken by organisations as a result of the operation of the IUA;

the PDP commissioner must consider and certify that the acts and practices described in the IUA satisfy a net public interest test before any authorisation to depart from an IPP or approved code of practice or any permission for the purposes of an information handling provision is given;

the PDP commissioner must report on a draft IUA to the responsible minister/s and the report may consider the appropriateness of any aspects of the IUA;

the IUA must be approved by the responsible minister/s; and

the IUA must be published on the PDP commissioner's website (redacted or summarised as necessary) and the lead party must report on the IUA to the commissioner at least annually.

In addition, the PDP commissioner may issue compliance notices in respect of IUAs under part 3 division 9 if the terms of an IUA are not complied with by the organisations involved. Further, the responsible minister/s must revoke an IUA if the public interest tests are no longer met, or may revoke it if the reasons for application no longer apply.

Certifications by the PDP commissioner

The commissioner may also certify that a specified act or practice of an organisation is consistent with an IPP or an information handling provision or an approved code of practice. The certification process is not a means for authorising a departure from an IPP or information handling provision or an approved code of practice, but a means of providing an independent view that an act or practice is consistent with them. A person who acts in good faith in reliance on a current certificate does not contravene the relevant IPP or information handling provision or approved code of practice. Any person whose interests are affected by a certificate may seek review of the decision to issue the certificate in VCAT. VCAT or a court may set aside a certificate. Certificates must be published on the commissioner's website. In my opinion, the provision of a certificate of consistency by the commissioner, which is reviewable by a court or VCAT, does not limit the right to be free from arbitrary interferences with privacy.

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 reforms introduced by the Privacy and Data Protection Bill 2014 will strengthen the protection of citizens' private information that is held by the Victorian public sector.

For the first time in Victoria, the bill requires the development of a protective data security framework for monitoring and assuring the security of data held by the public sector.

The framework will address a number of the data security issues identified by the Victorian Auditor-General in his 2009 report on *Maintaining the Integrity and Confidentiality of Personal Information*.

The framework will include protective data security standards, protective data security plans prepared by public sector bodies to implement the standards, and law enforcement data security standards relating specifically to law enforcement data and crime statistics.

Alongside clear standards for ensuring the security of data, the bill will establish clear avenues for departments and agencies to seek a determination about whether a particular use of personal information that it holds is authorised or required by law.

The bill will also allow public sector organisations to apply to enter into arrangements allowing them to handle or share personal information in ways that vary the application of certain information privacy principles, if that use of the information is clearly in the public interest.

The bill also merges the existing roles of Privacy Commissioner and the Commissioner for Law Enforcement Data Security to create a single Privacy and Data Protection Commissioner with responsibility for the oversight of the privacy regime in Victoria.

The bill otherwise re-enacts, or re-enacts with clearer wording, many key provisions of the Information Privacy Act, notably the information privacy principles. The 'organisations' to which that act applied remain subject to the privacy provisions of this bill.

I will now outline the main provisions of the bill.

Use of public sector information

The bill provides two new avenues for a public sector agency to determine whether a particular use of personal information is authorised or required by law [IUA as to handling provisions and certification].

The bill also provides two avenues for a public sector agency to seek to vary the application of, or not comply with, an information privacy principle, except for principles 4 and 6 relating to the security of data and access to or correction of it respectively [IUA as to IPPs and PIDs].

PIDs and TPIDs empower the commissioner to determine that specified actions in respect of personal information that do or may contravene an IPP (other than IPPs 4 (data security) or 6 (access and correction)) or a code of conduct are not unlawful. They will not be regarded as interferences with privacy while the determination is in force.

The key functions of an IUA are to facilitate:

> compliance with a law;
>
> the performance of the functions of any Australian government agency (federal, state, territory); or
>
> a provision of a service in the public interest to the public or a section of the public.

Victorian public sector entities may seek approval of an IUA involving as parties other Victorian public sector entities or external organisations including contracted service providers, commonwealth, state or territory government sector bodies, or private sector bodies including non-government organisations and overseas entities. External organisations will remain bound by whatever privacy obligations they have under the laws of other jurisdictions.

Significantly, an IUA is also permitted, subject to safeguards, in circumstances where: a provision in a statute or regulation other than this bill permits such collection, use or disclosure where it is 'required or authorised by law'.

The public interest in the protection of personal privacy is carefully safeguarded in respect of PIDs, TPIDs and IUAs in various ways.

Among these is the bill's specification of grounds on which PIDs and TPIDs may be revoked by the PDP commissioner. PIDs and TPIDs are also subject to being disallowed by Parliament.

For IUAs, the bill specifies in detail the procedure to apply to the PDP commissioner, parties and content, together with notification where adverse actions may be taken in consequence of the IUA, and provides for review of IUAs' operation. The PDP commissioner may issue compliance notices in respect of an IUA, and the relevant minister or ministers must revoke the IUA on specified grounds.

The most significant safeguard of the public interest is that both these mechanisms require a public interest test to be met — that the public interest in the applicant doing the acts or engaging in the practices specified in the application substantially outweighs the public interest in adhering to IPPs 1, 2, 3, 5, 7, 8, 9 or 10. For example, if an IUA provides for an organisation to transfer personal information out of Victoria, the organisation must either comply with IPP 9 (transborder data flows) or seek dispensation from IPP 9 pursuant to the IUA. Dispensation requires the PDP commissioner to certify that any such dispensation is justified on the public interest test, and the relevant minister or ministers to approve the dispensation after considering the PDP commissioner's report.

The third new mechanism is certification by the PDP commissioner that a particular act or practice is consistent with the provisions of the IP act, this bill or the IPPs. This mechanism is intended to provide certainty to organisations where there may be doubt as to the legality of a proposed action, and to afford statutory protection to persons who act in good faith in reliance on the PDP commissioner's certification while it remains in force. An individual or organisation whose interests are affected by the decision to issue the certificate may apply to the Victorian Civil and Administrative Tribunal (VCAT) for review of the decision.

The availability of these mechanisms is expected to significantly assist in the delivery of public services in the public interest, in particular in areas such as the implementation of child protection programs where multiple agencies hold information, the performance of various land management functions, and the control of organised crime.

Protective data security

Aggregating the responsibility for oversight of the Victorian privacy and law enforcement data security regimes, as well as for the implementation of a new Victorian protective data security regime, is expected to reap the benefits of consistency and coordination in this fast-moving sphere.

Part 4, Protective Data Security, is applicable to the entities set out in division 1. While the intention is that the whole of government will be covered by this regime, there are exceptions. Notable among these is the health services within the meaning of the Health Services Act 1988 that are specified in division 1 and which are governed by separate legislation.

The key protective data security provisions in the bill concern development by the PDP commissioner of the Victorian protective data security framework, and protective data security standards. These standards may be either general or customised, and must be approved by the Attorney-General and the minister responsible for whole-of-government ICT.

Within two (2) years of the issue of the standards applying to an agency or body to which part 4 applies, it must ensure that:

a security risk profile assessment is undertaken for the agency or body; and

a protective data security plan is developed that addresses the standards applicable to that agency or body.

These plans will not be subject to the Freedom of Information Act 1982.

There is provision for review of a plan if an agency or body's circumstances change, or otherwise every two years.

Because it is recognised that not all agencies or bodies subject to part 4 will have equal capacity or resources to meet their obligations under this part, the bill's regulations provision will enable differential application as required.

Law enforcement data security

The law enforcement data security provisions in part 4 apply to both Victoria Police and the new chief statistician. They are largely based on the provisions of the CLEDS act, and the bill provides for continuity between the two regimes, including the 'Standards for Victoria Police law enforcement data security' issued in 2007. It should be noted that if a law enforcement data security standard is inconsistent with a protective data security standard, the law enforcement security standard prevails to the extent of the inconsistency.

The reforms embodied in this bill create a more streamlined system that will have broader and more comprehensive oversight of the privacy and information security regime for the Victorian public sector. The bill also introduces flexibility in relation to handling of personal information held by the public sector where appropriate in the public interest. At the same time, the Victorian government is responding to trends worldwide towards more open access to information, which the government has endorsed through its DataVic Access Policy.

PDP commissioner's functions

In light of the scope of the bill, the PDP commissioner will be responsible for a broad range of functions. In respect of privacy these include:

promoting an understanding of and acceptance of the IPPs and of the objects of those principles;

examining the practices of organisations with respect to personal information they maintain;

receiving complaints about the acts or practices of organisations that do or may contravene IPPs or adversely affect individuals' privacy;

conducting or commissioning audits of organisations in respect of their handling of personal information;

issuing compliance notices to organisations; and

issuing guidelines and other materials in relation to the IPPs.

In respect of protective data security and law enforcement data security, the PDP commissioner's functions include:

issuing protective data security standards and law enforcement data security standards;

developing the Victorian protective data security framework and promoting the uptake of protective data security standards by the public sector;

conducting monitoring and assurance activities, including audits, to ascertain compliance with data security standards, and referring findings;

undertaking reviews of matters relating to data security and crime statistics data security; and

making reports and recommendations.

I commend the bill to the house.

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

Debate adjourned until Thursday, 14 August.

ASSISTED REPRODUCTIVE TREATMENT FURTHER AMENDMENT BILL 2013

Introduction and first reading

Received from Assembly.

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

Statement of compatibility

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

In accordance with section 28 of the Charter of Human Rights and Responsibilities Act 2006 ('charter act'), I make this statement of compatibility with respect to the Assisted Reproductive Treatment Further Amendment Bill 2013.

In my opinion, the Assisted Reproductive Treatment Further Amendment Bill 2013, as introduced to the Legislative Council, is compatible with the human rights as set out by the charter act. I base my opinion on the reasons outlined in this statement.

Overview

The purpose of the bill is to provide that information relating to donor treatment procedures using gametes donated prior to 1988 be included in the register on which post-1988 information is recorded, and to enable persons born from donations prior to 1 July 1988 to be able to access information from that register with the consent of the donor. The bill also provides for the exchange of information concerning hereditary or genetic diseases affecting a donor or the donor's offspring.

The bill will also extend the functions of the Victorian Assisted Reproductive Treatment Authority (VARTA) to provide counselling and donor-linking intermediary services to persons seeking information and those responding to requests to information.

Human rights issues

Right to privacy and reputation (section 13)

Section 13(a) of the charter act provides that a person has the right not to have his or her privacy, family, home or correspondence unlawfully or arbitrarily interfered with.

An interference with privacy will not be unlawful where it is permitted by law, and the legislative provision is precise and appropriately circumscribed. The requirement that interferences with privacy not be 'arbitrary' requires that interferences must be reasonable in the circumstances and that the restrictions on privacy are in accordance with the objectives of the charter act.

The bill enables persons born from donor treatment procedures using gametes donated prior to 1988 to obtain identifying information about the donor from the central register with the consent of the donor. The bill also allows the disclosure of health information about a donor or a person born as a result of a donor treatment procedure where a doctor certifies that it is necessary to save a person's life or to warn a person of the existence of a genetic or hereditary condition that may be harmful to that person or the person's descendants in future. The bill also allows a person born as a result of a donor treatment procedure or his or her parent to apply for some non-identifying details of persons born as a result of a donor treatment procedure using gametes donated by the same donor. The right to privacy is relevant to all these aspects of the bill.

The extension of the right to obtain identifying information about the donor from the central register with the consent of the donor to persons born from donor treatment procedures using gametes donated prior to 1988 affects the right to privacy of donors, the families of donors, donor-conceived persons and the families of donor-conceived persons.

Before 1 July 1988, donors donated gametes on the basis that their anonymity would be assured. They and their families have the right not to have their privacy and their family unlawfully or arbitrarily interfered with. Releasing identifying information about a donor who donated gametes on the condition of anonymity would interfere with the donor's right to privacy and the right of the donor's family to privacy. The bill ensures that the interference is neither unlawful nor arbitrary by limiting disclosure to circumstances where the donor has given consent to the release of the information. This ensures that the right to privacy of the donor and the donor's family is not limited.

It has been argued that the basis of the right to know one's genetic identity is an extension of the right to privacy and reputation. A preliminary ruling by the English High Court in the case of *Rose v. Secretary of State for Health and Human Fertilisation and Embryology Authority* [2002] EWHC 1593 held that the right to privacy encompasses the right of a donor-conceived individual to obtain information about his/her biological origins. On this basis, the right to privacy of the donor-conceived person is relevant to the bill. However, by requiring the consent of the person whose identifying information is to be disclosed, the bill balances appropriately the competing rights to privacy of the donor and the donor-conceived person, and ensures that the right to privacy of the donor-conceived person is not unlawfully nor arbitrarily interfered with.

The right to privacy of the family of a person conceived as a result of gametes donated before 1988 is also affected by the bill as the family may not have told the donor-conceived person about the circumstances of the person's conception. The bill requires the same process that applies to persons conceived from gametes donated between 1988 and 1997 to apply to persons conceived from gametes donated before 1 July 1988. That is, if the person is an adult, the person consents to the disclosure of the identifying information. If the person is a child, the person's parent or guardian must consent to the disclosure and the child must not have indicated that the child does not want the information to be disclosed. When an application is made for a person's identifying information, that person receives counselling about the potential disclosure of the information. It is very unlikely that any persons conceived as a result of gametes donated before 1988 are still children. In any event, the requirements of consent and counselling ensure that any interference with the rights of the family is neither unlawful nor arbitrary.

The disclosure of health information about a donor or a person born as a result of a donor treatment procedure to warn a person of the existence of a genetic or hereditary condition that may be harmful to that person or the person's descendants in future, affects the right to privacy of the person about whom that information is to be disclosed, and possibly some family members of that person, particularly as the information can be disclosed without the consent of the person to whom the information relates. The bill includes certain safeguards, particularly requiring that such a disclosure is not permitted unless a doctor certifies that the

disclosure is necessary to save a person's life or to warn a person of the existence of a genetic or hereditary condition that may be harmful to that person or the person's descendants in future. In addition, the bill provides that the disclosure should be made by a registered ART provider. ART providers have access to specialist genetic counsellors and have experience in sensitively managing these disclosures, including in circumstances where an individual is unaware of their donor-conceived status.

In considering whether the disclosure of health information to warn a person of the existence of a genetic or hereditary condition that may be harmful to that person or the person's descendants in the future limits the right to privacy, it should be noted that this disclosure promotes the right to life in section 9 of the charter act. This provision promotes the right to life as it provides a person with access to information that may result in that person or the person's descendants preventing, or limiting the effect of, life-threatening genetic or hereditary conditions.

The bill ensures that the rights to privacy of the person whose health information is to be disclosed, and any other family members, are not limited by the bill. The disclosure of health information is not an arbitrary interference with privacy as there is a high threshold before disclosure can occur, the circumstances of any disclosure are circumscribed and not unreasonable or arbitrary.

The bill allows persons born as a result of a donor treatment procedure, or his or her parent, to apply for some non-identifying details of other persons born as a result of donor treatment procedures using gametes donated by the same donor. The intention of this provision is to ensure that a donor-conceived person does not unknowingly form a romantic relationship with a half-sibling. The bill allows for a donor-conceived person to apply for, and receive from the central register, details of the total number of the person's siblings from donor treatment procedures and the number in each family, the sex and month and year of birth of each of those siblings. The details released are non-identifying but also enough to provide a donor-conceived person with information as to whether a potential partner is a possible half-sibling. The limitation on the amount of de-identified information released about half-siblings means that any disclosure is reasonable in the circumstances, and not arbitrary. Although the right to privacy is relevant to these provisions, they do not limit the right. This is because the interference with the privacy of the half-siblings is neither unlawful nor arbitrary.

Protection of families (section 17(1))

Section 17(1) of the charter act provides that families are the fundamental group unit of society and are entitled to be protected by society and the state. This right is principally concerned with family unity.

The bill affects donors' families as well as recipient families (the families of persons conceived with donor gametes). The VARTA consultation revealed that some donors who have not told their families about their donor status have fears about the release of identifying information impacting adversely on their family relationships.

Many recipient parents are in favour of donor anonymity, as it was common practice before 1988 to be secretive about a child's donor insemination origins.

The bill ensures that identifying information about donors or persons conceived as results of a donor treatment procedure is only released with the consent of the person whose information is the subject of the application. In addition, the bill requires that the person receive counselling about the potential consequences of the disclosure. In this way, the bill respects the importance of the family units affected by the disclosure process and, accordingly, is compatible with the right of families to be protected by society and the state.

Hon. David Davis, MP
Minister for Health

Second reading

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

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

That the bill be now read a second time.

Incorporated speech as follows:

Victoria was the first jurisdiction in Australia to recognise and address the needs of donor-conceived persons to access information regarding their genetic heritage. The Infertility (Medical Procedures) Act 1984 and the Infertility Treatment Act 1995 required information relating to treatment procedures using donor gametes to be recorded on a central register.

The current Assisted Reproductive Treatment Act 2008 maintains two registers from which information about persons participating in, or born from, donor treatment procedures can be obtained:

a central register, which contains both identifying and non-identifying information about donor-conception stakeholders since 1988; and

a voluntary register, which records personal information voluntarily lodged by the donor, donor-conceived person, or a recipient parent.

However, there are currently three separate regimes regulating access by donor-conceived people to information about their donors. The changes in the legislative regime over time reflect society's changing attitudes to donor conception and the rights of donor-conceived people to have information about their genetic origins.

Currently, people who were born from gametes donated after 1998 are entitled under the act to obtain identifying information about their donors when they reach adulthood. People conceived from gametes donated between 1988 and 1997 can access identifying information about their donors with the donor's consent. However, people conceived from gametes donated prior to 1988 have no legislated right to obtain identifying information. Prior to 1988 donors' anonymity was a requirement of the consent to donation process.

The 2012 parliamentary committee inquiry into access by donor-conceived people to information about donors was

asked to consider the possible legal, practical and other issues that may arise if donor-conceived people who do not currently have access to information about their donors were provided with that information. In its final report the committee recommended the introduction of legislation to allow all donor-conceived people to obtain identifying information about their donors regardless of when the gametes they were conceived from were donated or whether the donor had consented.

The government considered the committee's report, carried out a comprehensive literature review and a detailed human rights analysis of the interests of all stakeholders, including donor-conceived individuals, recipient parents, donors and their families, and also considered the findings of VARTA's consultation with pre-1998 donors. The government concluded that the committee recommendation to allow all donor-conceived people access to identifying information about their donors should be supported in principle, but would be more appropriately implemented with the consent of the donor. The government tabled its final response to the inquiry in August this year. The bill gives effect to the government's response, balancing the rights of all donor conception stakeholders whilst establishing a legal right of access to information for those conceived from gametes donated prior to 1988 where none existed before.

The mechanism for disclosure of identifying information provided in this bill is predicated on the consent of the donor in the same way as this occurs for persons conceived from gametes donated between 1 July 1988 and 31 December 1997. This effectively extends the model that currently applies to persons born from gametes donated between 1988 and 1997 to donor-conceived people born from donations made prior to 1988, to enable them to access information about their donor where it is available. By providing disclosure of identifying information with consent, the model represents an effective implementation of the key committee recommendation to provide retrospective access, whilst balancing the rights of various donor conception stakeholders.

Access to information for persons born from donations made prior to 1988

The bill will allow for persons born from gametes donated prior to 1 July 1988 to be able to request and receive identifying information about their donor, where it is available and where their donor consents to its release, through the central register. Upon receipt of an application, the registrar of BDM will be able to disclose identifying information if the applicant was conceived using gametes donated prior to 31 December 1997 and the donor has given consent to the disclosure. The disclosure of non-identifying information will apply upon receipt of an application by a person under section 56 of the act irrespective of whether consent is obtained.

The requirement of the act for an applicant to have received counselling prior to the disclosure of identifying information, or to be offered counselling in the case of non-identifying information, will also apply to persons seeking information relating to donor treatment procedures involving the use of gametes donated prior to 1 July 1988.

Access to information about siblings

Currently the voluntary register is the only formal avenue for a donor-conceived person and recipient parents to seek information about genetically related donor siblings. If a person conceived from the same donor's gametes (a half-sibling) is registered on the voluntary register, the donor-conceived person can obtain non-identifying and/or identifying information from the voluntary register, in accordance with the half-sibling's wishes. However, for this to be effective, the half-sibling must be aware that they are donor conceived, must be aware of the existence of the voluntary register and must be registered on it.

The committee heard that a significant issue for some donor-conceived people is the concern that they may unknowingly form a romantic relationship with a half-sibling. The committee also heard that the provision of non-identifying information about siblings, such as birth month, year and sex, could provide donor-conceived people with a means to assure themselves that a potential partner is not a sibling.

This bill will allow for a donor-conceived person or a parent of a donor-conceived person to request information about that person's genetic siblings from the central register. In response to applications about genetically related siblings, the number of genetically related siblings in total and per family unit, their sex, month and year of birth may now be disclosed.

The committee also noted that although clinics currently provide donors who provided gametes before 1988 with basic non-identifying information about their donor offspring, donors do not possess this right under legislation. All donors who consented to the use of their gametes after 1 July 1988 currently have the right to obtain from the central register non-identifying information about their donor offspring, regardless of the age of the offspring. The only non-identifying information that is provided is the donor offspring's sex and year of birth. The bill will provide for all donors, regardless of when they made donations, to be able to request non-identifying information about their donor offspring.

Exchange of information about significant hereditary or genetic conditions

Donors may become aware, some time after making their donation, that they have a medical condition that may be passed on to offspring. In these situations it may be critical that the offspring be advised that they may have, or may develop, a serious medical condition. There is currently no mechanism in the act for information about heritable genetic diseases or genetic abnormalities to be passed on to people who may be affected by this information. A similar issue may arise for donor-conceived people who wish to pass on medical information about a hereditary condition to donor-conceived siblings.

The committee recommended that a mechanism be introduced to allow a donor to provide medical information to a donor-conceived person where there is evidence of hereditary or genetic disease or risks to the health of the donor-conceived person, and that the same principles apply to donor-conceived people providing medical information to donor-conceived siblings. This bill will introduce a provision that enables health information about genetic or hereditary conditions, diseases or illness to be disclosed and exchanged between donors and their offspring and between donor-conceived siblings.

It is noted that registered assisted reproductive treatment (ART) providers already have established processes and experience and are best placed to disclose medical information when necessary. ART providers have procedures for notifying past and present patients of significant hereditary diseases and illnesses where the disclosure is necessary to lessen or prevent the threat to the person's health, life or safety, or to inform a person about the existence of a medical condition that may affect them or their offspring.

It is intended for this ART provider practice to apply to present patients, past patients and other affected donor-conception stakeholders (including pre-1988 donors and pre-1988 donor-conceived people). ART providers can provide affected individuals with access to specialist genetic counsellors and have experience in sensitively managing these disclosures, including in circumstances where an individual is unaware of their donor-conceived status.

The bill will provide for registered ART providers to manage the disclosure of medical information similarly to what is provided for in the NSW Assisted Reproductive Technology Act 2007, and to be able to request information about persons conceived from donated gametes from the central register to enable them to perform this function.

Securing access to and preserving donor treatment records

Other than through the voluntary register, persons conceived from donations made prior to 1988 currently have no legal mechanism to access information about their donors. Access to information about their donors is at the discretion of, and dependent on the resources of, individual clinics and doctors who carried out the treatment. The disparate location and management of records can be problematic for facilitating access. It is believed that some pre-1988 records may be inaccessible, incomplete, inaccurate, or no longer exist. Where records are held privately, they are currently not protected under any legislation and are legally able to be destroyed at any time.

By securing records and facilitating information exchange or access to records between relevant record keepers and BDM, the bill will enable consistent and centralised access to information held in records to be established for stakeholders seeking information. In the bill, this will be achieved by:

> inviting individual doctors or other persons who may have records to provide these to the registrar of BDM so that the relevant information can be added to the central register;
>
> requiring ART providers that hold pre-1988 records to compile a register of prescribed information from records held by them and to provide the register to BDM so that this information may be added to the central register;
>
> allowing BDM to access and disclose information from the Prince Henry's Hospital records held at the Public Records Office of Victoria as required in order to respond to requests for information.

In the act, the destruction of records is an offence; this bill will extend this provision to records relating to donor treatment procedures involving the use of gametes donated prior to 1 July 1988. In addition, the bill will stipulate that all health records relating to donor treatment procedures must be retained for a period of 99 years. This will ensure these records are preserved in order to facilitate future access to them for the purposes of verifying or obtaining additional information held within them.

Where records are available, ART providers and BDM will create retrospective entries to be placed on the central register. It is intended that these entries reflect the entries required to be kept under the regulations, where that information has been recorded and is able to be ascertained.

Counselling, support and donor-linking services

The Committee heard that the commencement of the operation of the act in 2010 brought about changes in the services available to donor-conception stakeholders, suggesting that, in the minds of donor-conception stakeholders, these were markedly reduced and fragmented, and difficult and confusing to access. Currently, BDM manages the central and voluntary registers; counselling is referred to Family Information and Networks Discovery (FIND); and VARTA is responsible for public education.

The committee noted a number of apparent shortcomings with the current service arrangements for donor-conception stakeholders. The government's response resolves these shortcomings, addressing the current information exchange constraints, and simplifying the service system using the existing infrastructure and expertise of BDM and VARTA. The bill will also provide for increased counselling services and donor-linking.

The current limitations in the act relating to the exchange of information will be addressed in this bill, as these limitations have contributed to the criticisms that the system is disjointed and difficult to navigate. The bill will allow BDM to exchange information about applicants to the central or voluntary register with the prescribed counsellor in order to facilitate effective compulsory counselling sessions.

The existing requirement for a person seeking identifying information from the central register to undergo compulsory counselling will be retained. VARTA will assume responsibility from FIND for the provision of the counselling of applicants seeking information. VARTA will offer support and counselling services not just to applicants for information but also to the broader group of donor-conception stakeholders and other related parties, such as partners of applicants or subjects of an application or recipient parents.

Under the new arrangements set out in the bill, the subject of an application for identifying information whose consent is required may seek counselling on his or her own initiative, or BDM may refer the subject for counselling to assist the person in making a decision as to whether or not to consent. This will ensure that subjects of applications for identifying information are supported to understand the motivations and intentions of the person making the application, and can make informed decisions regarding consent.

In addition, VARTA will provide a voluntary donor-linking service, acting as an intermediary in the exchange of information and contact between donor-conception stakeholders. Encompassed in this service will be a letterbox facility which will enable correspondence between parties who wish to participate in the exchange of information confidentially and progressively.

VARTA's functions generally

Lastly, under the bill, VARTA will continue to provide education and resources about assisted reproductive treatment and fertility more generally and continue to provide support to parents in telling their children about the circumstances of their conception. The bill will also provide VARTA with responsibility to review and decide applications relating to advertising for egg donors under the Human Tissue Act 1982. Other applications under the Human Tissue Act 1982 will remain with the Minister for Health (and the Department of Health, as per present arrangements).

I commend the bill to the house.

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

Debate adjourned until Thursday, 14 August.

FREEDOM OF INFORMATION AND VICTORIAN INSPECTORATE ACTS 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 Freedom of Information and Victorian Inspectorate Acts Amendment Bill 2014.

In my opinion, the Freedom of Information and Victorian Inspectorate Acts 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 makes various amendments to the Freedom of Information Act 1984 (FOI act) and the Victorian Inspectorate Act 2011 (VI act).

The FOI act amendments in large part seek to improve the operation of the act, including by clarifying time limits and notification requirements by the Freedom of Information Commissioner (FOI commissioner). In addition, the amendments will allow for the appointment of assistant commissioners, providing much-needed support to the office of the FOI commissioner.

The amendments to the VI act provide a process for dealing with detained persons, including processes for a detained person to make a complaint to the Victorian Inspector (VI), and enabling the VI to issue a summons to a detained person to attend before the VI. In addition, an amendment will provide specific consequences where a corporation or its officers are guilty of an offence under the VI act.

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

Section 13: privacy and reputation

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. This right may be relevant to clause 16(1) and clause 23 of the bill.

Under the existing FOI act the FOI commissioner may disclose a document that is claimed to be exempt under section 33 (document affecting personal privacy), provided that he or she notifies any affected person of their right to appeal that decision. In some cases, it is not possible for the FOI commissioner to obtain the contact details required to notify affected people. Clause 16(1) will amend the FOI act to require the FOI commissioner to notify a person 'if practicable'.

This amendment will ensure that the provision is consistent with section 33(3), which requires an agency or minister to notify a person 'if practicable', if, in response to a request, the agency or minister intends to release documents containing information relating to the personal affairs of the person. The amendment does not limit the right in section 13 of the charter act because it has no effect on which personal information is disclosed under the FOI act. It will still be necessary for the FOI commissioner to consider, under section 33, if the document should be exempt from disclosure where this would involve the 'unreasonable disclosure' of information relating to the personal information of the person. The FOI commissioner will also still be required to make endeavours to notify an affected person.

Section 63D of the FOI act currently imposes substantial limitations on the FOI commissioner and her office in relation to the use of any document or information produced or provided in the course of a review or complaint process. Clause 23 will amend this provision to apply only to exempt documents such as cabinet documents and documents affecting personal privacy. The purpose of this amendment is to reduce the administrative burden on the FOI commissioner of handling and disposing of every document and item of information received as though it were sensitive, which often is not the case.

The bill amends section 63D so that it only applies to exempt documents.

This has the effect that the requirements contained in section 63D will no longer apply in relation to non-exempt documents received by the FOI commissioner, which may contain personal information in some circumstances. However, this amendment serves a legitimate and necessary purpose, enabling the timely and efficient processing of FOI reviews and complaints. Victorian public servants who receive personal information remain bound by the

requirements of the Information Privacy Act 2000, and by the data security processes utilised by the FOI commissioner which ensure the proper handling of such information and limit any interference with personal privacy.

In my view, the provisions do not limit the section 13 right to privacy and are therefore compatible with the charter act.

Section 17: protection of children

Section 17(2) of the charter act provides that 'every child has the right, without discrimination, to such protection as is in his or her best interests and is needed by him or her by reason of being a child'.

Clause 28 of the bill provides that people in detention aged 16 years or over can be directed to appear before the Victorian Inspectorate (VI) by summons.

The VI act provides that the VI must not issue a witness summons to a person who is under the age of 18 years unless it considers on reasonable grounds that the information, document or thing that the person could provide may be compelling and probative evidence, and it is not practicable to obtain the information, document or thing by any other means. This process requires the VI to take the best interests of the child into account. Further, the VI process is fair and transparent and there is scope for a child's interests to be represented by a legal representative, parent or guardian.

These safeguards are sufficient to ensure that children aged 16 or 17 who are directed to appear before the VI receive sufficient protection within the meaning of section 17(2) of the charter act.

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

Second reading

Hon. G. K. RICH-PHILLIPS (Assistant Treasurer) — I advise the house that the bill was amended in the other place. Clause 14 of the bill was amended to reduce the time for the making of fresh decisions by an agency from 45 days to 28 days. I move:

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

Motion agreed to.

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

That the bill be now read a second time.

Incorporated speech as follows:

The bill implements further important reforms to the Freedom of Information Act and the Victorian Inspectorate Act that will support and enhance the operation of Victoria's integrity legislation.

Freedom of Information Act

The coalition government remains committed to ending the abuses of FOI that pervaded the former government, and to improving transparency and accountability across government agencies.

The establishment of the FOI commissioner by the coalition government was the most significant change to Victoria's freedom of information regime since its introduction more than 30 years ago.

For the first time, Victoria now has an independent FOI commissioner to review applications and investigate complaints, where applicants are dissatisfied with the initial response to an FOI application by an agency.

Victorians are already making good use of this regime: the office of the FOI commissioner has received more than 1000 inquiries, 250 requests for reviews and 160 complaints in its first year of operation.

The coalition government has allocated $9.9 million over the forward estimates to the office of the FOI commissioner. This represents substantial additional resources compared with the position under the former government, where reviews were usually undertaken by agency officers as a side role on top of their main jobs.

This bill allows for the appointment by the Governor in Council of one or more assistant FOI commissioners. The coalition government has committed to appointing two assistant commissioners, who will assist in reducing delay and managing the FOI commissioner's caseload by deciding on applications for review and complaints referred by the FOI commissioner.

These two assistant commissioner positions will be funded by an ongoing increase to the budget of the FOI commissioner's office, in addition to the $9.9 million already allocated over the forward estimates.

The bill provides for the FOI commissioner to be able to refer any review or complaint to an assistant commissioner. An assistant commissioner will have all the functions, and may exercise all the powers, of the FOI commissioner in dealing with a review or complaint. Assistant commissioners will be responsible to the FOI commissioner for the due performance of their functions; however, each assistant commissioner will have full authority to decide the cases referred to them, and a decision of an assistant commissioner will be taken to be a decision of the FOI commissioner.

These reforms will ensure timely decisions on FOI reviews and complaints, benefiting applicants and improving the efficient use of agency resources across government.

The bill also affirms that the FOI commissioner must perform functions and exercise powers with as little formality and technicality as possible.

The bill clarifies the process to be undertaken by the FOI commissioner when reviewing a decision of an agency to refuse a request on the grounds that it is apparent that the documents described in the request are exempt documents.

The bill clarifies that the FOI commissioner may rely on the advice and assistance of members of staff in all aspects of dealing with a review or complaint, including undertaking

preliminary inquiries and making a fresh decision or recommendation. The bill also clarifies the circumstances in which the functions of the FOI commissioner may be undertaken by, or delegated to, members of staff.

In addition, the bill makes various amendments that clarify time limits and notification requirements by, and to, the FOI commissioner. The bill amends the FOI Act to require the FOI commissioner to notify an agency when the commissioner receives an application to review a decision of the agency. The bill also specifies a time limit for an agency to notify the FOI commissioner if it revokes a decision under review by the commissioner, and imposes a clear and appropriate time limit of 28 days on applicants to indicate whether they agree with the fresh decision of an agency.

Victorian Inspectorate Act

The bill also makes amendments to the Victorian Inspectorate Act, primarily designed to improve the capacity of the Victorian Inspector to hear complaints and evidence from persons in detention. The bill confirms that a detained person may make a complaint to the Victorian Inspector, and enables the Victorian Inspector to issue a summons to a detained person to attend before the inspectorate. The bill also provides specific penalties for a corporation found guilty of an offence under the Victorian Inspectorate Act, and establishes that an officer of the corporation knowingly concerned in or party to the commission of the offence is also guilty of the offence.

Consistent with the government's commitment to promoting an efficient and effective integrity regime, the bill will reduce administrative burdens, support the informal resolution of disputes, and underpin the provision of additional resources where they are required. The amendments will enhance the efficiency of the FOI regime and increase the effectiveness of the Victorian Inspectorate.

I commend the bill to the house.

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

Debate adjourned until Thursday, 14 August.

ADJOURNMENT

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

That the house do now adjourn.

Ormond level crossing

Mr LENDERS (Southern Metropolitan) — The adjournment matter I raise tonight is for the attention of the Minister for Public Transport, Mr Mulder, and it regards the promised removal of the railway crossing at North Road, Ormond, in my electorate. This was an election commitment of the government at the last election. In fact the government was so enthusiastic about it that Ms Elizabeth Miller, the member for Bentleigh in the Assembly, in her budget broadcast in 2011 actually said it was completed. That was a bit of a surprise to most of the commuters in the area, because there have been some scoping works, a lot of press releases, a few hard hats and pictures of premiers in fluoro vests, but the level crossing still remains in place.

Residents of North Road, Ormond, and the area are quite concerned about this delay. Commuters are also concerned about the plans with the botched rescheduling of trains in the city tunnels, or the Met, and the fact that they suddenly have to go to Flinders Street rather than through the city loop.

There is also a lot of concern regarding railway crossings. In particular we have seen from this government that only in Brighton and out past Colac — good on residents in Brighton and outside Colac — have active ministers been able to deliver on promises for new railway crossings to be done with the highest priority.

On 17 June Public Transport Victoria presented to the Glen Eira City Council a status report on where these things were going and — surprise, surprise! — the new railway crossing announced this year in Burke Road, Glen Iris, has now taken priority over the one at North Road, Ormond, which was a solemn election commitment and which Ms Miller's broadcast had already said was completed.

The action I am seeking from the Minister for Public Transport is, firstly, to honour the election commitment to complete the new crossing at North Road, Ormond, and secondly, to attend the public transport forum coming up at the Glen Eira town hall, which Ms Miller has given an apology for. I seek for him to deliver on the commitment to do the North Road crossing before the newbie that has been announced at Burke Road, Glen Iris. I seek for the minister to meet the election commitments and take some of the angst away from the long-suffering commuters at North Road, Ormond, who have heard this crossing promised again and again and who have even heard announcements that it has been completed. These commuters are still waiting for the cars and the trains to be able pass each other nicely on the grade separation, which has already been announced by Ms Miller as completed but which unfortunately has not happened.

Western Highway

Mr RAMSAY (Western Victoria) — My adjournment matter tonight is for the Minister for Public Transport, the Honourable Terry Mulder. The matter I wish to raise is of a road upgrade at the end of the Western Highway duplication inbound to Melbourne. At the outset can I say what a magnificent

highway it will be, with full duplication to Stawell and beyond, and with the new Deer Park bypass. I congratulate the Napthine government, through the minister, on the commitment with the federal government of $505 million in duplication funds for stage 1, Ballarat to Stawell, plus the feasibility commitment for a Beaufort bypass and the ongoing planning for duplication beyond Stawell.

The duplication of the Western Highway, like the $591 million duplication and planning works currently underway between Waurn Ponds and Colac — which were fiercely advocated for by the federal member for Corangamite, Sarah Henderson — is critical roads infrastructure work for the important freight and passenger road user corridors in Western Victoria Region.

It absolutely defies description why the Greens would stall road recovery funding in the Senate and put a halt to many important works, like the duplication works. They must be held to account for crippling rural communities across Victoria that are dependent on that funding for essential road connections.

I seek from the minister a commitment to investigate the poor state of the Western Highway at the end of the Western Highway duplication inbound to Melbourne from Troups Road North to the off-ramp at Hopkins Road at Kororoit. It is having an impact not only on road users throughout western Victoria but also on members of the Sri Durga Temple community who live adjacent to that section of road. I seek remedial works as a matter of urgency.

Office of Living Victoria procurement process

Mr SOMYUREK (South Eastern Metropolitan) — I raise a matter for the Minister for Water, Mr Walsh, regarding the recent Ombudsman's report entitled *Investigation into Allegations of Improper Conduct in the Office of Living Victoria*. The matters raised in this report are serious matters relating to government procurement. The Ombudsman reported serious concerns about good governance, the actions and subsequent accountability of senior management, the lack of planning, the use of exemptions to award contracts and the excessive use of the staffing services state purchase contract.

The Labor opposition believes procurement, when used correctly, can and should be a significant driver of the local economy, jobs creation and innovation. The Victorian government is the largest purchaser of goods and services in our state, and it purchases approximately $15 billion of goods and services annually. Accordingly Victorians expect value for money from the expenditure of their government.

The Ombudsman's report reveals that the Office of Living Victoria did not seek to get value for money — and I think that is an understatement — for Victorian taxpayers dollars. Millions of dollars worth of contracts were awarded without proper process, not to mention the conflict of interest and rorting alleged by the Ombudsman. Such behaviour undermines the confidence Victorians will have in their governments to purchase goods and services. The action I seek from the minister is that he take immediate action to rectify the serious procurement issues detailed in the Ombudsman's report.

The PRESIDENT — Order! I will allow the matter to stand, but I have to say I have some concerns about the way in which that adjournment matter was put. To me it was a setpiece contribution. I think the tag at the end to get the minister to take action was almost an excuse for putting other things on the record. I am not sure that was the best mechanism to use to bring these matters to the chamber as an item. At any rate, given that there was an action by the minister called for at the end of the contribution, it gets in by the skin of its teeth.

Northern Metropolitan Region sporting facilities

Mr ONDARCHIE (Northern Metropolitan) — My adjournment matter tonight is for the attention of the Minister for Sport and Recreation, Damian Drum. I draw the minister's attention to sporting and recreational facilities in the northern and north-eastern suburbs of Melbourne, a rapidly growing area of Melbourne. The north and north-east are home to numerous sporting activities, including Australian football, Rugby, tennis, netball, hockey and athletics, amongst other activities. In particular I draw his attention to both cricket and soccer — or football, as I call the world game — and the facilities for those sports in the north and north-east of Melbourne. This is an area that requires more infrastructure and opportunities for families and communities, allowing them to be more active more often.

My request to the minister is that he visit venues where some of these activities, such as cricket and soccer, occur in the north-east. Specifically I invite him to visit some such venues in Nillumbik and meet with community members and our wonderful sporting volunteers.

Sunshine Primary School

Mr MELHEM (Western Metropolitan) — The matter I raise tonight is for the attention of the Minister for Education, the Honourable Martin Dixon. It relates to Sunshine Primary School. I talked about this issue yesterday in my members statement, so I apologise to members and ask them to forgive me for repeating some of these matters. Sunshine Primary School currently has 185 students, with 50 per cent of families qualifying for the education maintenance allowance and 50 per cent coming from non-English-speaking backgrounds. Principal Lyn Read has taken a school that was in deficit two years ago and put it back into surplus. This community is an example of the real lifters in our society.

The school, however, is in need of funding for maintenance and repairs, as confirmed in a May 2012 condition assessment summary report completed by the Department of Education and Early Childhood Development's infrastructure and sustainability division. The school was informed that the sum of $637 707 had been allocated to address some of the issues; however, the government has not delivered on that yet. The school is also in need of its first school oval and running track. The oval redevelopment project will cost $128 000. The school has worked very hard to obtain funds; it has managed to get $73 426, leaving a shortfall of $54 574.

The action I ask of the minister is that he provide the shortfall of $54 574 towards the building of the school oval and that he also make some inquiries with the department about the status of the funding for the maintenance and repairs, which are urgently needed. The funding should preferably be received this financial year. I would appreciate the minister responding to me as soon as possible.

Monash councillor

Mrs PEULICH (South Eastern Metropolitan) — I raise a matter of some concern that has been referred to me. It relates to a very long letter written by the mayor of Monash City Council, Cr Geoff Lake, to Mr Kahramanian, the executive director of the Armenian National Committee of Australia. The letter refers to a motion that I believe has been considered by some of the councillors of the City of Monash.

The PRESIDENT — Order! I ask the member who she is raising the matter with.

Mrs PEULICH — The matter is for the Minister for Multicultural Affairs and Citizenship. Having read through this very long diatribe, which is full of contradictions and inconsistencies — the mayor claims that all he wants is harmonious relations with all and sundry yet practises division and conflict at every opportunity — I believe that what Cr Lake has done, in attempting to incite division and disharmony between the Armenian and Turkish communities, is deplorable. I say from the outset that as a person who works in the multicultural area diligently and extensively I have an excellent relationship with both those communities.

The mayor has also copied this letter to all and sundry. It is most inflammatory. It is certainly condescending, and I believe it deserves to be considered by the Minister for Multicultural Affairs and Citizenship and, if he feels similarly, perhaps it needs to be referred to either the Victorian Equal Opportunity and Human Rights Commission for consideration or perhaps even an apology or, more seriously, to the inspectorate.

I believe Cr Geoff Lake has frequently used his position as mayor, at times without resolutions of council, to do things which are not impartial — and impartiality is required under the Local Government Act 1989. In addition to that, he has campaigned extensively on statewide issues. The most recent example I saw — and this was on mayoral letterhead — was correspondence that had been letterboxed or sent out and that was promoting the Labor candidate for the Assembly seat of Oakleigh and deputy mayor, Stephen Dimopoulos, in — —

Ms Mikakos — On a point of order, President, in her adjournment matter Mrs Peulich has raised a number of issues that would seem to be better directed to the Minister for Local Government rather than the Minister for Multicultural Affairs and Citizenship. Now she is also using the opportunity to refer to political candidates of various parties who have nothing to do with government administration. Mrs Peulich is straying to matters which are outside the purview of an adjournment matter.

Mrs PEULICH — On the point of order, President, what I am attempting to demonstrate is that this mayor regrettably uses every opportunity to create disharmony and conflict. The latest example is this letter written to Mr Kahramanian that attempts in my view to create disharmony between two multicultural groups which have a history of tension that I think should not be fostered.

The PRESIDENT — Order! Mrs Peulich is debating, rather than addressing the point of order.

Members would be aware that they can raise only one matter during the adjournment debate. The matter is the one to which Mrs Peulich has just spoken — that is, a gentleman has been sent a letter that Mrs Peulich and apparently the gentleman have some concerns about. Some of her contribution in raising the adjournment matter was designed to provide context, but I accept the point of order that in raising the mayor's activities in addressing other issues, statewide issues and so forth, Mrs Peulich was moving outside the specific adjournment matter that she was raising. I ask her to come back to the specific action that she seeks of the minister in regard to that letter.

Mrs PEULICH — I accept the President's ruling. The letter is of concern. It is condescending. It exposes a stunt that has been conceived by Cr Lake in order to create tension and angst, I believe for political gain. I seek that the Minister for Multicultural Affairs and Citizenship read this letter, consider it, have it investigated and take the appropriate action. As a multicultural society we cannot tolerate anyone deliberately using a position of that importance in order to create tension. Certainly that should not be encouraged at any time.

Local learning and employment networks

Ms LEWIS (Northern Victoria) — I raise a matter with the Minister for Higher Education and Skills regarding funding for the local learning and employment networks (LLENs). In 2001 and 2002, 31 LLENs were established across Victoria to address problems faced by young people in the 15-to-19 age group and to assist with their transition from school to training and employment. The LLENs were fully funded by the state government. The LLENs model was very successful and in 2010 federal funding through the partnerships program saw the work of the LLENs expanded to cover young people in the 10-to-19 age group. Expanding the role of the LLENs included helping vulnerable young people to remain in education, in either a mainstream school or an alternative setting. The work of assisting people with moving into training and employment was continued.

The LLENs are vital links between schools, training providers, employers, industry and the community. They are often the difference between students making a successful transition to work and falling into unemployment. The federal funding was for a four-year period, and at the conclusion of that period in December the very important role filled by the LLENs will be unsupported by government. The state government has not yet indicated whether it will resume responsibility for funding the LLENs statewide. I ask the Minister for Higher Education and Skills to ensure that funding is provided to enable the LLENs throughout Victoria to continue their vitally important role in our communities.

Wind energy

Mr D. R. J. O'BRIEN (Western Victoria) — My adjournment matter is for the Minister for Energy and Resources, Mr Northe, and I ask the minister to investigate the use of small-turbine wind technology and to assess if this technology can be more widely utilised in Victoria, particularly in Western Victoria Region, which I represent. It is important to note at this juncture that I am not recommending for or against the use of large wind turbines, or wind farms as they are commonly known, but rather I seek to focus the minister's attention on another form of wind energy, being the use of small turbines.

Like other state and federal members for western Victoria, over many years I have received a lot of feedback from rural residents and farmers about large wind farm facilities, and in fact I operated as a lawyer in wind farm cases involving approvals in Toora and Portland in the early 2000s. Many of the concerns outlined in those cases have regrettably come to pass in relation to residents in close proximity to wind turbines, including some visual impacts and impacts on bird life, and I note the particularly strenuous representations I have received from the Gardner and Jelbart families, whom I have also spoken to about their concerns.

In addition to the noise and visual impacts there are also economic externalities in relation to the larger wind farms, such as damage to roads from the trucks carrying construction materials. These externalities are often not factored in, and certainly it seems ironic that the Greens say they care about wind energy but ignore the impact that these larger facilities can have on roads and the large amount of construction materials involved. We have all witnessed the farcical situation occurring in the federal Senate, where the Greens are again showing their reckless indifference to western Victoria by seeking to oppose the Roads to Recovery funding.

What the state government has said in relation to energy is that all energy carries externalities and costs, but these small wind turbines reduce the visual impact and the noise and they greatly reduce transmission losses in the grids because they effectively reduce energy usage at their source — the farm. This technology also better reflects western Victorian settlement patterns, because property owners in the area are often isolated from the grid. I therefore ask that the minister investigate this technology and assess ways in

which the government can support its wider use in western Victoria.

Assistance dogs

Mr TEE (Eastern Metropolitan) — My matter is for the Minister for Agriculture and Food Security, and it relates to an issue that has been raised by the mayor of the City of Boroondara. Her concern relates to disability assistance dogs, and in particular an assistance dog used by a 10-year-old who suffers from severe autism. This girl's assistance dog has had over 500 hours of training and is recognised as an assistance animal under the Disability Discrimination Act 1992. The issue is that assistance dogs are not recognised in Victorian legislation, and there is no reference to them in the Domestic Animals Act 1994. Therefore a distinction is drawn between assistance dogs and guide dogs, which are used by people who are visually or hearing impaired and which are covered in the Domestic Animals Act 1984.

Local councils are required to collect registration fees for dogs, but where a dog is a guide dog there is an exemption so that there is no requirement to pay the registration fee. However, there is no such exemption for assistance dogs, and therefore a registration fee is payable in the same way that it is payable for a dog that is a family pet. My request to the Minister for Agriculture and Food Security is that he review the situation, consider it and, if it is an anomaly, remedy the situation so that the assistance dogs, where appropriate, are treated in the same way as guide dogs.

Beveridge mobile and broadband coverage

Mrs MILLAR (Northern Victoria) — The matter I raise tonight is for the Minister for Technology, the Honourable Gordon Rich-Phillips — an excellent minister — and relates to mobile and broadband coverage in Beveridge and surrounding areas. It is my understanding that matters related to broadband and mobile coverage are a federal government responsibility, but I note the Victorian government's strong and consistent commitment to advocating to the commonwealth for improved broadband and mobile coverage in regional and rural areas of the state. I also congratulate the minister on the Victorian government's budget commitment this year of $40 million for the regional connectivity program, which I understand will assist in addressing coverage issues.

Within the context of this ongoing work and advocacy by the government, I draw the attention of the minister to a forum in Beveridge which I recently attended together with the Liberal candidate for the Assembly seat of Yan Yean, Sam Ozturk. At this forum residents raised an important issue of concern to the local community relating to the difficulties they have been experiencing with poor mobile and broadband coverage in certain residential areas of Beveridge, although it was noted that there is excellent coverage at Beveridge Primary School and in some other residential areas. Sam has raised with me, and I also understand this from discussions with local residents at this forum, that there are some notable black spot areas in Beveridge where mobile coverage is ineffective. Certain residential areas also have very limited access to ADSL and national broadband network services.

I ask the minister to consider these coverage issues as the government continues its strong advocacy to improve connectivity outcomes, particularly for regional and rural communities, and to update the Beveridge community on how the Victorian government is working to help improve mobile and broadband coverage for Victorians living in regional areas.

The PRESIDENT — Order! I have a concern that the minister does not have jurisdiction for the national broadband network and the member has asked him to update the Beveridge community. I ask Mrs Millar to rephrase what her expectation from the minister might be.

Mrs MILLAR — Given the state government commitment this year of $40 million to assist with connectivity in regional and rural Victoria and the fact that the state government is already advocating to the federal government in relation to connectivity issues, I ask the minister to update the house on how we are working towards improving mobile and broadband coverage for the Beveridge community.

Healesville and District Hospital

Mr JENNINGS (South Eastern Metropolitan) — The matter I raise on the adjournment this evening is for the attention of the Minister for Health. I ask the minister to provide information that has been sought by the Save Healesville Hospital action group.

I am sure the minister is aware of community concern about the ongoing service configuration and investment strategy which should support the Healesville community and its local health service, because it is an issue that has been brought to his attention on previous occasions. I have been informed by members of the Save Healesville Hospital action group that they have been successful to some degree in instigating a consultancy. This is being supported by the community,

and the federal coalition government is providing $55 000 for the $90 000 consultancy to support an independent assessment of the healthcare needs of that community.

I understand that in discussions between the consultant, community organisations and Eastern Health they have sought access to information about health utilisation and financial data that would assist in the determination of the recommendation of that consultancy. That information has been sought on a number of occasions, including on 24 May, 30 May, 13 June and 23 July. It has been reported to me by members of the action group that Eastern Health has indicated its willingness to provide that information to assist the consultancy, subject to the approval and agreement of the minister.

On behalf of the community I specifically ask that the minister release that information to enable the consultant, Brewerton & Associates, to complete that work and provide recommendations to the community and the government about the appropriate service configuration needed to support the Healesville community now and into the future.

World Congress of Families

Ms MIKAKOS (Northern Metropolitan) — My matter is also for the Minister for Health, and I hope he comes back into the house to respond. I wish to express my concern that three Napthine government members of Parliament will be attending a conference that is pushing a widely discredited theory linking abortion to breast cancer and trying to suggest that this is in some way a legitimate risk. The World Congress of Families conference has included this issue in its program. This theory has been completely refuted by the World Health Organisation, the US National Cancer Institute, Britain's Royal College of Obstetricians and Gynaecologists, and health authorities in both Victoria and New South Wales.

The Attorney-General, Robert Clark, is scheduled to open this conference. I understand that Bernie Finn and Jan Kronberg will also be in attendance, as well as federal members Kevin Andrews, Senator Eric Abetz and Senator Cory Bernardi. It is concerning that members of the government — and in particular the Attorney-General, the minister responsible for the Equal Opportunity Act 2010 — are attending a conference that will discuss Russia's crusade against homosexuality, as well as promoting this discredited suggested link between abortion and breast cancer. The promotion of this discredited theory and the publicity the conference will no doubt be accompanied by — and it has already attracted a great deal of media interest — has the potential to cause unnecessary alarm to many Victorian women, and some might say that that is its purpose.

The attendance of senior members of the Victorian and federal governments at this conference will certainly lend some credibility to these discredited theories. I understand that this conference will take place at the end of the month, and it will no doubt be accompanied by a great deal of media interest. I call on the Minister for Health to make public statements clearly refuting the link between abortion and breast cancer, as supported by evidence from his own Department of Health.

Responses

Hon. G. K. RICH-PHILLIPS (Assistant Treasurer) — Mr Lenders and Mr Ramsay raised matters for the attention of the Minister for Public Transport.

Mr Somyurek raised a matter for the Minister for Water.

Mr Ondarchie raised a matter for the Minister for Sport and Recreation.

Mr Melhem raised a matter for the Minister for Education.

Mrs Peulich raised a matter for the Minister for Multicultural Affairs and Citizenship.

Ms Lewis raised a matter for the Minister for Higher Education and Skills.

Mr David O'Brien raised a matter for the Minister for Energy and Resources.

Mr Tee raised a matter for the Minister for Agriculture and Food Security.

Mr Jennings and Ms Mikakos raised matters for the Minister for Health.

I will pass those matters on.

With respect to the matter raised by Ms Mikakos, I would say to her that if it is her contention that the mere attendance at a conference constitutes endorsing everything that may be said at that conference, then we are on a very slippery slope. We would need to be mindful that every member of the opposition was endorsing every comment made at every conference they attended, if that were the standard Ms Mikakos was proposing members of Parliament be held to. We

need to be very careful as to the direction that would take us.

Mrs Millar raised a matter for my attention, in my capacity as Minister for Technology, with respect to mobile and broadband black spots in certain areas of Victoria. She referred specifically to the Beveridge community and representations and advocacy she has made and received along with Sam Ozturk, the Liberal candidate for the Assembly seat of Yan Yean, with respect to community concerns around a number of mobile telephone and broadband black spots. This is an area on which the Victorian government has strongly advocated to the commonwealth. We know that the introduction of the national broadband network (NBN) by the Rudd Labor government led to the displacement of considerable private sector investment in broadband infrastructure in areas that by now would have been covered by private sector broadband providers. That has not occurred due to the displacement effect of the NBN.

The Victorian government has strongly advocated to the commonwealth to ensure, firstly, that the NBN rollout meets Victoria's population share — Victoria has 25 per cent of the nation's population and will receive at least 25 per cent of the NBN rollout — and, secondly, that it is prioritised towards those areas which are identified as known black spots and areas of shortage between existing broadband capability and broadband demand.

Likewise we recognise that there are a number of areas in Victoria where mobile telephone communications are limited. As Mrs Millar said, in this year's budget the Victorian government committed $40 million to our regional connectivity program to partner with the commonwealth to address some of those mobile telephone black spot areas, with particular priority being given to those areas which are fire prone or subject to other natural disasters and need mobile telephone coverage.

I thank Mrs Millar and Mr Ozturk for their advocacy on this. I will be very pleased to provide Mrs Millar with some more detailed information specifically as it relates to the Beveridge community, and I thank her for raising this issue.

The PRESIDENT — Order! I will make a comment on Ms Mikakos's adjournment matter, which I let through because she sought an action from the minister which I thought was valid. I confirm part of what the Assistant Treasurer said in his response to that item in that I would not want to see the adjournment debate characterised in future by suggestions that members had used bad or inappropriate judgement in attending particular events. Members of Parliament represent the entire community and are required at times to attend events they do not necessarily support.

I am not commenting on this particular event in terms of the commitment the members referred to by Ms Mikakos might have to some of the matters that will be the subject of debate at this conference. Certainly members attend many events in the course of their duties, and in many respects they may well not support some of the propositions that are canvassed at those events. It would therefore be inappropriate to convey a view that they were making bad judgements in terms of where they were going or what they were doing. I think that in this instance, as I said, the action sought from the minister was not inappropriate. The context put around that action was of some concern to me, but the actual request for action rescued the item on this occasion.

However, I would not want to see this happen again because, as the Assistant Treasurer has indicated, it would be a slippery slope if we had people coming in on various occasions saying, 'Look, because this person is going to this particular event, they actually support all the propositions that might be canvassed at that event'. I offer that as a caution to members going forward.

That concludes the adjournment debate. The house stands adjourned.

House adjourned at 5.08 p.m. until Tuesday, 19 August.