PARLIAMENT OF VICTORIA

PARLIAMENTARY DEBATES (HANSARD)

LEGISLATIVE COUNCIL

FIFTY-SIXTH PARLIAMENT

FIRST SESSION

Thursday, 12 August 2010

(Extract from book 12)

Internet: www.parliament.vic.gov.au/downloadhansard

By authority of the Victorian Government Printer

The Governor

Professor DAVID de KRETSER, AC

The Lieutenant-Governor

The Honourable Justice MARILYN WARREN, AC

The ministry

Premier, Minister for Veterans' Affairs and Minister for Multicultural Affairs	The Hon. J. M. Brumby, MP
Deputy Premier, Attorney-General and Minister for Racing	The Hon. R. J. Hulls, MP
Treasurer, Minister for Information and Communication Technology, and Minister for Financial Services	The Hon. J. Lenders, MLC
Minister for Regional and Rural Development, and Minister for Industry and Trade	The Hon. J. M. Allan, MP
Minister for Health	The Hon. D. M. Andrews, MP
Minister for Energy and Resources, and Minister for the Arts	The Hon. P. Batchelor, MP
Minister for Police and Emergency Services, and Minister for Corrections	The Hon. R. G. Cameron, MP
Minister for Community Development	The Hon. L. D'Ambrosio, MP
Minister for Agriculture and Minister for Small Business	The Hon. J. Helper, MP
Minister for Finance, WorkCover and the Transport Accident Commission, Minister for Water and Minister for Tourism and Major Events	The Hon. T. J. Holding, MP
Minister for Environment and Climate Change, and Minister for Innovation	The Hon. G. W. Jennings, MLC
Minister for Planning and Minister for the Respect Agenda	The Hon. J. M. Madden, MLC
Minister for Sport, Recreation and Youth Affairs, and Minister Assisting the Premier on Multicultural Affairs	The Hon. J. A. Merlino, MP
Minister for Children and Early Childhood Development and Minister for Women's Affairs	The Hon. M. V. Morand, MP
Minister for Mental Health, Minister for Community Services and Minister for Senior Victorians	The Hon. L. M. Neville, MP
Minister for Public Transport and Minister for Industrial Relations	The Hon. M. P. Pakula, MLC
Minister for Roads and Ports, and Minister for Major Projects	The Hon. T. H. Pallas, MP
Minister for Education and Minister for Skills and Workforce Participation	The Hon. B. J. Pike, MP
Minister for Gaming, Minister for Consumer Affairs and Minister Assisting the Premier on Veterans' Affairs	The Hon. A. G. Robinson, MP
Minister for Housing, Minister for Local Government and Minister for Aboriginal Affairs	The Hon. R. W. Wynne, MP
Cabinet Secretary	Mr A. G. Lupton, MP

Legislative Council committees

Legislation Committee — Mr Atkinson, Ms Broad, Mrs Coote, Mr Drum, Ms Mikakos, Ms Pennicuik and Ms Pulford.

Privileges Committee — Ms Darveniza, Mr D. Davis, Mr Drum, Mr Jennings, Ms Mikakos, Ms Pennicuik and Mr Rich-Phillips.

Select Committee on Train Services — Mr Atkinson, Mr Barber, Mr Drum, Ms Huppert, Mr Leane, Mr O'Donohue and Mr Viney.

Standing Committee on Finance and Public Administration — Mr Barber, Mr Guy, Mr Hall, Mr Kavanagh, Mr Rich-Phillips, Mr Tee and Mr Viney.

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

Joint committees

Dispute Resolution Committee — (*Council*): Mr D. Davis, Mr Hall, Mr Jennings, Mr Lenders and Ms Pennicuik. (*Assembly*): Mr Batchelor, Mr Cameron, Mr Clark, Mr Holding, Mr Lupton, Mr McIntosh and Mr Walsh.

Drugs and Crime Prevention Committee — (*Council*): Mrs Coote, Mr Leane and Ms Mikakos. (*Assembly*): Ms Beattie, Mr Delahunty, Mrs Maddigan and Mr Morris.

Economic Development and Infrastructure Committee — (*Council*): Mr Atkinson, Mr D. Davis and Mr Tee. (*Assembly*): Ms Campbell, Mr Crisp, Mr Lim and Ms Thomson.

Education and Training Committee — (*Council*): Mr Elasmar and Mr Hall. (*Assembly*): Mr Dixon, Dr Harkness, Mr Herbert, Mr Howard and Mr Kotsiras.

Electoral Matters Committee — (*Council*): Ms Broad, Mr P. Davis and Mr Somyurek. (*Assembly*): Ms Campbell, Mr O'Brien, Mr Scott and Mr Thompson.

Environment and Natural Resources Committee — (*Council*): Mr Murphy and Mrs Petrovich. (*Assembly*): Ms Duncan, Mrs Fyffe, Mr Ingram, Ms Lobato, Mr Pandazopoulos and Mr Walsh.

Family and Community Development Committee — (*Council*): Mr Finn and Mr Scheffer. (*Assembly*): Ms Kairouz, Mr Noonan, Mr Perera, Mrs Powell and Mrs Shardey.

House Committee — (*Council*): The President (*ex officio*), Mr Atkinson, Ms Darveniza, Mr Drum, Mr Eideh and Ms Hartland. (*Assembly*): The Speaker (*ex officio*), Ms Beattie, Mr Delahunty, Mr Howard, Mr Kotsiras, Mr Scott and Mr K. Smith.

Law Reform Committee — (*Council*): Mrs Kronberg and Mr Scheffer. (*Assembly*): Mr Brooks, Mr Clark, Mr Donnellan, Mr Foley and Mrs Victoria.

Outer Suburban/Interface Services and Development Committee — (*Council*): Mr Elasmar, Mr Guy and Ms Hartland. (*Assembly*): Mr Hodgett, Mr Langdon, Mr Nardella, Mr Seitz and Mr K. Smith.

Public Accounts and Estimates Committee — (*Council*): Mr Dalla-Riva, Ms Huppert, Ms Pennicuik and Mr Rich-Phillips. (*Assembly*): Ms Graley, Mr Noonan, Mr Scott, Mr Stensholt, Dr Sykes and Mr Wells.

Road Safety Committee — (*Council*): Mr Koch and Mr Leane. (*Assembly*): Mr Eren, Mr Langdon, Mr Tilley, Mr Trezise and Mr Weller.

Rural and Regional Committee — (*Council*): Ms Darveniza, Mr Drum, Ms Lovell, Ms Tierney and Mr Vogels. (*Assembly*): Mr Nardella and Mr Northe.

Scrutiny of Acts and Regulations Committee — (*Council*): Mr Eideh, Mr O'Donohue, Mrs Peulich and Ms Pulford. (*Assembly*): Mr Brooks, Mr Burgess, Mr Carli, Mr Jasper and Mr Languiller.

Heads of parliamentary departments

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

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

Parliamentary Services — Secretary: Mr P. Lochert

MEMBERS OF THE LEGISLATIVE COUNCIL

FIFTY-SIXTH PARLIAMENT — FIRST SESSION

President: The Hon. R. F. SMITH

Deputy President: Mr BRUCE ATKINSON

Acting Presidents: Mr Eideh, Mr Elasmar, Mr Finn, Ms Huppert, Mr Leane, Ms Pennicuik, Mrs Peulich, Ms Pulford, Mr Somyurek and Mr Vogels

Leader of the Government:
Mr JOHN LENDERS

Deputy Leader of the Government:
Mr GAVIN JENNINGS

Leader of the Opposition:
Mr DAVID DAVIS

Deputy Leader of the Opposition:
Ms WENDY LOVELL

Leader of The Nationals:
Mr PETER HALL

Deputy Leader of The Nationals:
Mr DAMIAN DRUM

Member	Region	Party	Member	Region	Party
Atkinson, Mr Bruce Norman	Eastern Metropolitan	LP	Lenders, Mr John	Southern Metropolitan	ALP
Barber, Mr Gregory John	Northern Metropolitan	Greens	Lovell, Ms Wendy Ann	Northern Victoria	LP
Broad, Ms Candy Celeste	Northern Victoria	ALP	Madden, Hon. Justin Mark	Western Metropolitan	ALP
Coote, Mrs Andrea	Southern Metropolitan	LP	Mikakos, Ms Jenny	Northern Metropolitan	ALP
Dalla-Riva, Mr Richard Alex Gordon	Eastern Metropolitan	LP	Murphy, Mr Nathan[2]	Northern Metropolitan	ALP
Darveniza, Ms Kaye Mary	Northern Victoria	ALP	O'Donohue, Mr Edward John	Eastern Victoria	LP
Davis, Mr David McLean	Southern Metropolitan	LP	Pakula, Hon. Martin Philip	Western Metropolitan	ALP
Davis, Mr Philip Rivers	Eastern Victoria	LP	Pennicuik, Ms Susan Margaret	Southern Metropolitan	Greens
Drum, Mr Damian Kevin	Northern Victoria	Nats	Petrovich, Mrs Donna-Lee	Northern Victoria	LP
Eideh, Mr Khalil M.	Western Metropolitan	ALP	Peulich, Mrs Inga	South Eastern Metropolitan	LP
Elasmar, Mr Nazih	Northern Metropolitan	ALP	Pulford, Ms Jaala Lee	Western Victoria	ALP
Finn, Mr Bernard Thomas C.	Western Metropolitan	LP	Rich-Phillips, Mr Gordon Kenneth	South Eastern Metropolitan	LP
Guy, Mr Matthew Jason	Northern Metropolitan	LP	Scheffer, Mr Johan Emiel	Eastern Victoria	ALP
Hall, Mr Peter Ronald	Eastern Victoria	Nats	Smith, Hon. Robert Frederick	South Eastern Metropolitan	ALP
Hartland, Ms Colleen Mildred	Western Metropolitan	Greens	Somyurek, Mr Adem	South Eastern Metropolitan	ALP
Huppert, Ms Jennifer Sue[1]	Southern Metropolitan	ALP	Tee, Mr Brian Lennox	Eastern Metropolitan	ALP
Jennings, Mr Gavin Wayne	South Eastern Metropolitan	ALP	Theophanous, Hon. Theo Charles[3]	Northern Metropolitan	ALP
Kavanagh, Mr Peter Damian	Western Victoria	DLP	Thornley, Mr Evan William[4]	Southern Metropolitan	ALP
Koch, Mr David Frank	Western Victoria	LP	Tierney, Ms Gayle Anne	Western Victoria	ALP
Kronberg, Mrs Janice Susan	Eastern Metropolitan	LP	Viney, Mr Matthew Shaw	Eastern Victoria	ALP
Leane, Mr Shaun Leo	Eastern Metropolitan	ALP	Vogels, Mr John Adrian	Western Victoria	LP

[1] Appointed 3 February 2009
[2] Appointed 9 March 2010
[3] Resigned 1 March 2010
[4] Resigned 9 January 2009

CONTENTS

THURSDAY, 12 AUGUST 2010

CONTENTS

Thursday, 12 August 2010

The PRESIDENT (Hon. R. F. Smith) took the chair at 9.33 a.m. and read the prayer.

PAPERS

Laid on table by Clerk:

Office of Police Integrity — Report on Complaint Investigation, August 2010.

Victorian Law Reform Commission — Final Report on Surveillance in Public Places.

A proclamation of the Governor in Council fixing an operative date in respect of the following act:

Therapeutic Goods (Victoria) Act 2010 — 3 August 2010 (*Gazette No. S306, 3 August 2010*).

BUSINESS OF THE HOUSE

Standing and sessional orders

Mr VINEY (Eastern Victoria) — By leave, I move:

That so much of the standing and sessional orders be suspended as necessary to enable questions without notice and answers to questions on notice to be taken at 2.00 p.m. on Friday, 13 August 2010.

Motion agreed to.

ENVIRONMENT AND NATURAL RESOURCES COMMITTEE

Reporting date

Mr VINEY (Eastern Victoria) — By leave, I move:

That the resolution of the Council of 29 July 2009 requiring the Environment and Natural Resources Committee to present its final report concerning the environment effects statement process in Victoria to the Council no later than 30 August 2010 be amended so as to now require the committee to present its final report by 5 October 2010.

Motion agreed to.

MEMBERS STATEMENTS

Forests: protection

Mr BARBER (Northern Metropolitan) — In 1990 I was arrested in East Gippsland for crossing the road. On one side of the road was the Errinundra National Park and on the other side of the road were unprotected old-growth forests. The then Labor government put me in jail because I believed — and I even more fervently believe it today — that no government, however democratically elected, has the right to cut off the choices and options for future governments and therefore future citizens by making irreversible decisions that damage our environment.

Yesterday the Supreme Court agreed with my original proposition and said that such forests should be protected under a suite of laws and regulations which themselves arise out of the precautionary principle. In fact VicForests has been found to have been breaking the law in going ahead and logging those forests, and so I will pursue this matter even more thoroughly in the future. I hope the government is not proposing to write itself out of the law so that it can continue to log forests which should be protected for future generations.

Marriott Support Services

Mrs COOTE (Southern Metropolitan) — I would like to speak about Marriott Support Services. Marriott Support Services is an excellent organisation that provides work and support in Moorabbin and McKinnon for people with an intellectual disability. This service is an integral part of the community which helps get work for people with an intellectual disability and it has had some remarkable successes. It really is a terrific story over a sustained time.

Marriott Support Services has been successful in obtaining work for its clients across a range of local businesses. In the latest edition of *Marriott Matters* the service highlights how McDonald's and Coles have given employment opportunities to Lyndon and Jane that have proven to be a huge success.

The work of Marriott would not be as successful as it is without a first-rate board. Pam Rivers has been a committee member and a director of Marriott Support Services for over 20 years, and she has now resigned. An article in this edition of *Marriott Matters* states:

Pam Rivers, a committee member/director of Marriott Support Services for over 20 years, has retired from the board as she has served the maximum number of times as a director permitted under the new constitution.

Pam has been a committed and hardworking director and an enthusiastic volunteer at Marriott House. The board has acknowledged her outstanding service and commitment by making her a life member. Pam will continue her involvement with Marriott House and is a director of the Allan T. Marriott Foundation board.

These sorts of success stories are happening right across the Southern Metropolitan Region, and I add my

congratulations to Pam Rivers and to all of those at Marriott Support Services.

Victorian Association of Jewish Ex-servicemen and Women: memorial service

Ms HUPPERT (Southern Metropolitan) — On Sunday, 1 August, I was privileged to attend the inaugural pilgrimage held by VAJEX, the Victorian Association of Jewish Ex-servicemen and Women at the Shrine of Remembrance. This was the first time in its 81-year history that VAJEX has held a service at the shrine, but it is a fitting location, as one of the most famous Jewish ex-servicemen, Sir John Monash, was instrumental in the fundraising effort which led to the construction of the shrine.

The service was a moving tribute to the contribution made by Jewish servicemen and women to Australia. I particularly wish to acknowledge the hard work and commitment of the VAJEX organising committee, in particular the president, Ben Hirsh, and the vice-president, Judy Landau.

Glen Eira College: *Little Shop of Horrors*

Ms HUPPERT — On 4 August I spent an enjoyable evening at Glen Eira College's performance of its musical *Little Shop of Horrors*, and I wish to congratulate the cast, crew and production team on what was an outstanding performance. Clearly a great deal of effort had been put into it. It is great to see the students and staff at the school working together to provide an entertaining evening for all concerned.

Essendon Airport: future

Mr O'DONOHUE (Eastern Victoria) — I saw in the *Moonee Valley Leader* of 9 August 2009 that the Greens have vowed to shut down Essendon Airport no matter which major party wins government at the election. The coalition has been absolutely clear about the importance of Essendon Airport to country Victoria, including my electorate of eastern Victoria. It is most concerning to see the federal Greens propose to close it, particularly given the sweetheart preference deal done between the Greens and Labor. The Greens wish for a state coalition government with Labor. I call on the Labor Party to put the interests of country Victoria ahead of its short-term political aims and stand by Essendon Airport.

Schools: building program

Mr O'DONOHUE — The release of the Orgill report has confirmed just what a shambles the Building the Education Revolution process has been. Whilst New South Wales has received most of the attention, enormous amounts of taxpayer money have been wasted by the Victorian government. In the Eastern Victorian Region we have seen issues at Berwick Lodge Primary School, Berwick Primary School, Warburton Primary School, Gladesville Primary School and others which have all reported either a failure to deliver value for money, elongated construction times or both. It is just not good enough. The government should put more trust in school communities and school principals rather than using Soviet-style centralised control.

Mr Lenders interjected.

Mr O'DONOHUE — When he was the Minister for Education the Treasurer was fond of claiming there was Moscow on the Molonglo. Moscow on the Molonglo lives, Treasurer! It is called the Building the Education Revolution process.

Basilian Chouerite Sisters: South Morang residence

Mr ELASMAR (Northern Metropolitan) — On Sunday, 25 July, with my parliamentary colleague Marlene Kairouz, the member for Kororoit in the other place, I attended the opening of the Basilian Chouerite Sisters' new residence in the presence of the Most Reverend Bishop Issam John Darwish. The new residence for the sisters is located in South Morang. The event was well attended by community leaders, parishioners and well-wishers. Now that the Basilian Chouerite Sisters, headed by Sr Christiane Samaha, have a secure place to reside, I am sure that they will play a vital role in education and nursing within the Australian community.

University of Melbourne: Oman Corner

Mr ELASMAR — On 2 August I attended the official opening of the new Oman Corner located at the Sidney Myer Asia Centre, Melbourne University. The event was launched by the Consul General of the Sultanate of Oman, His Excellency Hamed al-Hajri, and federal MP Laurie Ferguson, the Parliamentary Secretary for Multicultural Affairs and Settlement Services. Amongst the many distinguished guests present were the Victorian Governor, David de Kretser, and the President of the Legislative Council, the Honourable Robert Smith. With its colourful showcase, the Oman Corner displays, amongst other things, traditional Oman clothing, jewellery and frankincense, and provides a glimpse into the world of Oman.

Sport: funding priorities

Mr ATKINSON (Eastern Metropolitan) — I want to express my concern about a trend towards supporting major sporting bodies, which can frankly stand on their own feet, with grant funding which has election purposes when women's sport and children's sport, which are in a very difficult circumstances throughout Australia, require funding. Particularly with the obesity issues, we ought to be funding children's sport to a much greater extent than we do. Yet we see that government — the federal government in this case — is allocating significant funds to the Essendon Football Club, the Richmond Football Club and the North Melbourne Football Club. The opposition is suggesting, as is the state government, that the Geelong Football Club should receive significant largesse. I guess in Geelong's case the stadium is a major one that has a regional focus, and therefore there is some justification for that.

However, funding training grounds is a fairly tenuous use of government funds at a time when, as I said, I think our priorities ought to be on women's sport and children's sport. The significant millions of dollars that are being directed by governments could well have been picked up from the Australian Football League's own profits.

Racial and religious tolerance: offensive advertising

Mr SOMYUREK (South Eastern Metropolitan) — Two weeks ago I stood in this place to congratulate the leader of the federal opposition for his rapid disendorsement of a rogue Liberal Party candidate in the Sydney electorate of Chifley for claiming, amongst other things, that electing his Muslim opponent to Parliament would bring Australia close to the hands of a Muslim country. In that speech I stated my disappointment at the questioning of a fellow Australian's loyalty to his country due solely to his faith and/or heritage.

It is with great regret that I present to the house another instance of a candidate being targeted due to his faith and/or integrity. The member for Isaacs, Mark Dreyfus, is a hardworking and talented local member doing his best to represent the people of Isaacs. He also happens to be of the Jewish faith — something which should be irrelevant in our secular democratic nation.

The *Dandenong Leader* this week ran a quarter-page advertisement calling on the people of Isaacs to defeat Labor MP Mark Dreyfus by putting him last on the ticket. The advertisement features in big bold red print the words 'No more support for Israel'.

This advertisement is just like the anti-Muslim campaign in Chifley, and it does two things: first, it seeks to question the candidate's loyalty to Australia; and second, it publicly identifies the candidate as a member of a minority faith and in doing so has as its objective electoral backlash by bigots, in this case anti-Semites in the community.

The *Dandenong Leader* has demonstrated poor judgement in accepting this advertisement. As a consequence of the precedent set by this advertisement, those of us of minority faith, race and ethnicity running for political office are now fair game for any person motivated by religious, ethnic or religious hate.

Department of Education and Early Childhood Development: mandatory reporting

Mrs PEULICH (South Eastern Metropolitan) — On 19 March 2009 I wrote a letter to Mr Darrell Fraser, deputy secretary, office for government school education, in relation to a very serious matter involving a particular case at a particular school, making inquiries about why certain processes of a very important policy, being that of mandatory reporting, had not been followed and asking for the department to review and to advise me if the mandatory reporting requirements were followed as per departmental guidelines, which were at that time on the Web. There is substantial evidence that the mandatory reporting guidelines of the department were not followed, and therefore there was a failure to protect all parties concerned.

I believe this is a most serious transgression from an institution charged with the responsibility of looking after children and of course expected to be above reproach in every regard, especially on matters of this nature. It is therefore with great regret that, after a 17-month wait and no response, I now call for an independent review of the compliance of the department of education with mandatory reporting guidelines and requirements since the 2006 election to ensure that justice is not denied to all concerned and to ensure that there is every opportunity for the truth to be established within the time frames that mandatory reporting requires.

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

Vietnam veterans: apology

Mr KAVANAGH (Western Victoria) — Next Wednesday, 18 August, is Long Tan Day, and in the lead-up to that occasion I wish to repeat my call for a national sorry day for Australia's returned servicemen from Vietnam. These Australians gave great service in the defence of South Vietnam and in the service of Australia during that war. Unfortunately many of them were very badly treated upon their return to Australia. Since I made this call a couple of months ago many of them have written to me and confirmed that some of their problems are the result of the way that they were treated upon their return to Australia, and some of them say that a national sorry day would indeed help to overcome some of the difficulties and challenges that they have faced since their return from Vietnam.

Democratic Labor Party: Senate candidates

Mr KAVANAGH — I would also like to take the opportunity to congratulate the Democratic Labor Party Senate team for the federal election — John Madigan, Geraldine Gonzalves and my brother John Kavanagh. Their chances of winning are fairly slim, partly because the Australian media does not give much attention to small-party candidates. Indeed, although we are all restricted in our ability to broadcast — that is, that privilege is reserved legally for certain corporations — the responsibility that entails of giving adequate coverage and letting the electorate know what its voting options are, is not often fulfilled.

Snowy River: environmental flows

Ms BROAD (Northern Victoria) — This week a proposal from the Minister for Water, Tim Holding, on behalf of the Brumby Labor government to boost environmental flows in the Snowy River has won agreement from the federal Gillard Labor government and the New South Wales government. This agreement will see environmental flows in the Snowy River increased immediately by 24 billion litres to 71 billion litres in 2010–11. The agreement will see an additional 56 billion litres returned over the next two years. Improved rainfall and storage levels could see the allocations as high as 120 billion litres to 140 billion litres in 2011–12.

This is a great result for one of Australia's most iconic rivers, and I acknowledge the work of the Snowy River Alliance and the member for East Gippsland in the other place, Craig Ingram, in campaigning effectively and relentlessly for the return of environmental flows to the Snowy River.

I am very pleased to see that the three governments are on track to recover entitlements for 212 billion litres or 21 per cent of the original flow of the river by the end of 2012. This is in contrast to the position of the Liberal Party at a federal and state level, which continues to regard this as a waste of water.

STATEMENTS ON REPORTS AND PAPERS

Department of Human Services: report 2008–09

Mrs COOTE (Southern Metropolitan) — I speak today on the annual report for 2008–09 of the Department of Human Services. I highlight again, as I have done previously in this chamber, the issues affecting our ageing population. As I have said before in relation to these reports, this one is very light on in reporting on some of the serious issues facing a burgeoning aged-care sector in our country and, indeed, our state. For example, the report talks about the number of hours by which home-care services have been boosted, and we know that people increasingly want to stay in their own homes with supported care. At the moment it would seem, according to this report, that home and community care programs assist 250 000 Victorians a year with domestic help, nursing and allied health services such as physiotherapy, podiatry, meals, social support and personal care. The additional funding will provide an extra 317 000 hours of support to older Victorians.

I believe this is not going to be enough. We have to seriously address this issue for the future because we want our ageing Victorians to have dignity and to make certain that they stay as healthy as they possibly can so that they can remain integral members of the community. They have a lifetime of experience, and although they may be becoming frail, that is no reason to isolate them. We must make certain that they are an integral part of our communities.

This report talks about heatwaves, and at page 31 it says:

> The summer of 2008–09 brought extraordinary heatwave conditions, and our aged-care staff acted quickly to help providers of community and residential aged care prepare and support vulnerable older people.

We are increasingly seeing the necessity for air-conditioner usage in our summers because the summers are becoming hotter. From years gone past we know for a fact that older Victorians who are either on a fixed income or are on the poverty borderline often have to go to bed in winter to keep warm when they

turn off their heating because they cannot afford the expense of the electricity. Now we are starting to see a new trend with heatwaves in summer, and many of these older people have health conditions. They often need a cool environment. The need for dialysis is one such condition when it is vitally important that these people can sustainably maintain a regular temperature and remain cool throughout the summer.

We are now facing huge cost-of-living hikes in this state. One can look to the smart meter debacle and what is coming down the track for all Victorians as evidence of this, but it will impact especially on elderly Victorians and those in the lower socioeconomic area. The smart meters are already proving to be another white elephant and a huge disaster for Victorians. They are going to be costly, there will be a whole range of problems associated with them and the people who will be badly affected will be elderly Victorians.

Already in this annual report it talks about heatwaves and the fact that it is imperative for our elderly Victorians to have air conditioning running so that they can remain safe and their health is not threatened. In winter, yes, you can go to bed, put on jumpers, get under the doona and turn off the heating; but in summer, if you are elderly, how will you cool down without the use of electricity? You just will not be able to do that. You will not be able to get into a cool bath because water costs will go through the roof as well. We have huge living cost imposts coming our way, which will hit our elderly more than anybody else in our community.

The annual report is very short-sighted. It should have looked at forward estimates to put significant funding into assisting our elderly people so that they can stay in their own homes with not only nursing support but also with allied health support and cost-of-living support, because there is no point in them being able to stay in their own homes if they cannot remain healthy.

It is an indictment of the department that it has not looked into this matter and addressed it as a very real issue. The government continues to work in silos. We have the silo of the energy sector, the silo of the aged-care sector and the silo of the Department of Human Services sector. Nobody talks to each other to ask how we will be able to make certain that the energy sector is supportive of the people who are most vulnerable in our state, and we really need to be debating the issues around aged care to a far greater degree.

Department of Human Services: report 2008–09

Mr MURPHY (Northern Metropolitan) — I too would like to address the Department of Human Services annual report 2008–09 in relation to the issue of mental health.

On Tuesday evening during the dinner recess I attended a candlelight vigil held in Northcote to raise awareness in the federal election campaign around issues concerning mental health. The campaign came after the collection of a petition containing 103 000 signatures calling on the government to urgently reform mental health services and to provide quality services.

The candlelight vigil that was organised on Tuesday evening was held in conjunction with the community organisation GetUp, as well as various other community organisations and individuals across Victoria and Australia. I was particularly impressed with the turnout, given that it was a very cold and rainy night. It was attended by between 100 and 200 people, and the sight coming over the hill as I drove down towards the olive grove at All Nations Park in Northcote was fantastic to see, with hundreds of lights coming from those holding candles, trying to raise awareness for mental health reform in this country.

I have noted in this place previously that the issue of mental health is a significant one, with one in five Victorians living with a mental illness. The impacts on individuals and the community of dealing with mental illness cannot be underestimated. Rates of employment for Australians with a serious mental illness are very low, and a major study of 980 Australians with schizophrenia or bipolar disorder conducted in 1997–98 found that only 5.8 per cent of males and 6.1 per cent of females were in full-time employment. Rates for men and women receiving disability support pensions were 72 per cent and 62 per cent respectively. The issues in relation to people living with a mental illness are far greater than those affecting just the individuals concerned. They affect our economy and society significantly.

Whilst on the issue of mental health, I would like to address comments made during the federal election campaign, particularly by former Liberal leader Andrew Peacock. He announced at the start of this week that anyone who was not able to understand what was happening in the federal election campaign would have to be handicapped. The comments made by Mr Peacock are unfortunate and in my view disgraceful. To suggest that people living with a disability such as mental illness or that the one in five

people in Victoria are unable to follow what is happening in the federal election campaign is a serious blight on the reputation of somebody who might have been Prime Minister of this country.

A number of comments were made by users of the ABC website that ran the story in relation to this. I would like to read a couple of them. Alex Read commented on the website that:

> The phrase 'handicapped' refers to people with disabilities. It does not distinguish between those with physical, mental and intellectual disabilities. It is not the same thing as saying somebody is stupid. People with physical disabilities are certainly not stupid, though, unfortunately, many in the community look at them and assume that they must be.

Joel from Melbourne commented that:

> There are 1.5 million Australians with a disability, and their greatest handicap is the attitudes of people such as Mr Peacock.

I would hope that Mr Peacock would come out and apologise for these comments, as he has offended many in our community by suggesting that they are unable to follow important news events and current affairs, such as a federal election campaign, which is nonsensical.

I also note that Tony Abbott has suggested that 'waffle' such as access to cinemas in our society should not be debated in the federal Parliament. I disagree with those comments as well. I hope the federal Liberal leadership, whilst it has committed to funding mental health research, recognises that sometimes words speak louder than actions.

VicForests: report 2009

Mrs PETROVICH (Northern Victoria) — I rise to make a contribution on the VicForests 2009 annual report. VicForests was established as a result of the Victorian government's Our Forests Our Future policy and is responsible for sustainable timber harvesting and the sale of native forest timbers from the public forests of eastern Victoria. The preamble of the report says:

> VicForests is accountable to the Victorian government. Its actions and those of its employees must be consistent with the relevant government policy and priorities.

I have an issue I would like to raise regarding this report. It is reflected in an article in the *Sunday Age* newspaper of December 2007 which posed the question in its headline, 'How to turn $99 million worth of trees into a $17 000 loss'. The answer provided was to 'Give it to VicForests'. The article thereby exposes VicForests as an incompetent economic manager of our public forests.

The then Treasurer, now the Premier, John Brumby, established this corporatised arm of the state government as a cornerstone of the Our Forests Our Future policy. Even after many millions of dollars in grants from the Bracks and Brumby governments and substantial revenue from other government departments, there is still no profit from VicForests. Five years on we have an appalling result with the loss in 2009 of $7.466 million. The organisation has also been plagued with credit problems, carries a considerable amount of impaired receivables and has a pricing dispute with a major client.

Considering that an $18 million bushfire salvage grant was provided, surely we cannot blame the loss on the fires. The Labor government has decimated an entire industry by closing most of it down throughout regional and rural Victoria, wasting $80 million in regional forest agreements and consultancies that it did not adhere to, paying $80 million to buy back licences and pay out workers and losing chain businesses and craftsmanship of substantial value. Nationally 11 000 jobs have been lost.

When looking at where the profits are, we note that the government — and in particular Premier Brumby — allows VicForests to sell resources at about $10 a tonne. The yield from the pulped product is about $1000 a tonne. So why does VicForests lose money?

Mr Barber — You sound like the Wilderness Society over there.

Mrs PETROVICH — Yes, it could be like that, Mr Barber. Why does VicForests lose money, given that there is an opportunity to increase price flow from the mainly overseas pulp mills? Regional forest agreement low estimates were continually reduced under the Bracks government, which resulted in many good businesses closing down, including some in my electorate, with a loss of jobs and revenue. I am particularly upset to say that many of those men remain unemployed — and it is predominantly a middle-aged male population.

One example of a result of the closure of harvesting in the Midlands forest was the demise of Black Forest Timbers Pty Ltd, a value-adding timber operation employing 50 people. When then Treasurer John Brumby opened the company's state-of-the-art processing line he described the company as an outstanding business and a great example of the type of business the government liked to partner. Unfortunately, because of a range of factors, that business no longer exists. What is very sad about that is there was a recent announcement from the Minister for

Environment and Climate Change about an allocation order to reopen the Wombat State Forest. I ask: what has been the point of the exercise? We have lost 50 jobs, closed a business and we are now opening a timber industry again in the Wombat forest.

Recently, the Macedon Ranges Shire Council called on the environment minister to stand by his past commitment to protect the Cobaw and Wombat state forests from logging and woodchipping. The council last week unanimously agreed to ask the minister, Gavin Jennings, to remove the Midland forest from the allocation order. The order allocates areas of the state forest to the state government logging company VicForests for harvesting and selling timber resources.

We have gone full circle back to pre-regional forestry agreement (RFA) conditions. I understand the western forest resource was made available on 5 May by an order issued by Gavin Jennings. I recall the member for Macedon in the other place, Joanne Duncan, campaigning for no RFA and no woodchipping. She was aided by her friends in the Wombat forest protection society and the Cobaw and Wombat Forest Action Group. In fact, she was nicknamed 'Chips', a name which seems to have stuck.

If some of the resource currently processed for Gunns Ltd had been woodchipped, it may have gone into value-added product with great benefits to Victoria and with the bonus of supporting our domestic furniture market, but unfortunately that is no longer possible with the closure of industries like Black Forest Timber. There is great sadness — —

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

Auditor-General: *Access to Social Housing*

Mr ELASMAR (Northern Metropolitan) — I rise to speak to the Auditor-General's 2010 report *Access to Social Housing*. The introduction of the housing associations into the ministry of housing's role in providing affordable housing to the disadvantaged in our community has made a remarkable reduction to the waiting lists. I have no doubt that the 6500 properties that will be available shortly to those housing associations will dramatically improve the lives of current applicants on the waiting lists who meet the ministry of housing's criteria. I am not a person who normally drags up the previous Liberal government's record, but its part in the massive sell-off of the housing ministry's public housing stock during the era of former Premier Jeff Kennett's leadership is one of the main reasons for the long waiting lists.

I understand the housing associations will have a mix of private renters together with approved applicants from the ministry of housing. This is a good thing, and will stop the stigmatism and the worldwide perception that public housing stock is immediately identifiable as no-go areas or ghettos.

Social housing is affordable housing. As a Labor parliamentarian I am proud that it is a Brumby Labor government initiative that, according to the Victorian Auditor-General, is already proving to be a success. However, we do not rest on our laurels. We continue to strive to introduce programs and projects that will enhance the lifestyle and livability of all Victorians. We believe that all families should have decent, safe and affordable housing and that those members of the community who do not earn a living wage should not be consigned to the rubbish tip. As a government we must continue to find sustainable ways of ensuring that underprivileged children have every opportunity to advance. In the first instance that means providing them with a decent roof over their heads, which is a fundamental right.

An important highlight of the report is that housing association tenants are happy with the services provided and with the quality of the homes they are living in. This is an achievement worthy of comment and congratulations to the hardworking personnel of the ministry of housing on their work, in every sense of the word, and their partnership with the housing associations.

In my electorate of Northern Metropolitan Region I am pleased to say that the housing associations are making an impact on the current housing shortage. I welcome their participation and their role in providing long-term, safe and affordable housing for many years to come for the poor and needy in our community. I commend the report to the house.

Department of Human Services: report 2008–09

Ms LOVELL (Northern Victoria) — I rise to speak on the Department of Human Services annual report 2008–09. In particular I want to talk about the section that begins at page 36 under the heading 'Year in review — housing' and how that glosses over the Premier's failure in housing in Victoria. In Victoria we have a housing crisis. It is Premier John Brumby's housing crisis; a crisis of Labor's making. We have had 11 years of failed policy in housing in this state that has led to a crisis in home ownership, private rental and public and social housing.

Page 39 of the report talks about the new National Affordable Housing Agreement that was reached in January 2009 between the state and federal Labor governments. I have to say that at the time that new agreement was signed the housing sector was extremely disappointed because it did not produce one extra dollar for housing in addition to the funding provided under the old commonwealth-state housing agreement. The housing sector was particularly critical of that; it had expected there would be additional money for housing, but the affordable housing agreement did not even meet what would have been provided under the old commonwealth-state housing agreement, taking into account annual increases of the consumer price index. It was an extremely disappointing agreement that was signed between the federal and state Labor governments.

During the 2008–09 year we saw the public housing waiting list grow significantly. In June 2008 there were 36 302 Victorian families on the general housing waiting list. Of even greater concern is the fact that there were 8032 families on the early housing waiting list, which includes those at risk of homelessness or recurring homelessness or coping with a disability or with a special housing need. By June 2009 those lists had both grown. The general housing waiting list had increased to 39 940 families, an increase of 3638. The early housing waiting list, which caters for the most vulnerable people of all, had increased to 10 608 families, an increase of 2576 over the year.

We have seen those lists grow again in 2010. The recently released figures show 41 017 families on the general housing waiting list and 12 051 vulnerable families on the early housing waiting list. I note that in the March 2010 quarter 1013 families joined the general housing waiting list and in the June 2010 quarter 1223 joined that list.

Victoria's housing crisis, a crisis of John Brumby's making, is growing. So too is the time that families must wait to be housed in this state. On page 147 of this report the timeliness performance measure shows that the target set for the year was a 6-month wait, but in reality that blew out to 7.1 months. We know that that wait is now 8 months. If we go back to 1999, when this government came to power, we find that under the Kennett government the wait for vulnerable families on the early housing list was 2.8 months. That has blown out to 8 months under the Brumby government.

This report again addresses homelessness, and we should note that 23 300 Victorians are homeless on any given night, with more than 2200 of them sleeping rough, but our lazy housing minister has failed to produce the new Homelessness 2020 strategy. A discussion paper went out last year that said a draft report was due in early 2010 and the final report in May 2010. It is now August, and we are still waiting for both of these reports because the lazy housing minister has failed to do his job.

Auditor-General: *Hazardous Waste Management*

Mrs KRONBERG (Eastern Metropolitan) — I rise to make my contribution, which will be centred on information the Victorian Auditor-General's June 2010 report on hazardous waste management has set out for us. I have to say that the report outlines an awful situation. Reading about it has caused me great concern, and I am here to put some of the issues before the people of Victoria. They will inevitably share my concern and alarm about this.

Frankly, the government has allowed the Environment Protection Authority (EPA) in this state to be asleep on its watch. There have been many transgressions of regulations in terms of how hazardous waste is transported, treated and disposed of that show an appalling lack of oversight. The information frankly beggars belief. In some ways, though, it is not surprising, because with climate change being the predominant environmental issue, which has soaked up so much of people's thinking and effort and strategising, it seems to me it is inevitable that you will have other issues building up into toxic time bombs all over the state, with people thinking they can go on with business as usual. There has not been the right degree of will and oversight.

The specific aim of the Victorian Auditor-General's report on hazardous waste management was to examine whether the EPA's control and regulation of hazardous waste has in fact reduced inappropriate disposal. The areas examined included whether data used to inform control and regulation is relevant and reliable — and it is not — and the surveillance and monitoring of generators of waste in this state. There are some 10 000 generators of hazardous waste in this state, and for those of us with responsibility for electorates in the Melbourne metropolitan area it is a matter of concern that 80 per cent of the hazardous waste generated by those 10 000 generators in the state is generated in metropolitan Melbourne. The audit also examined the surveillance and monitoring of transporters — those responsible for the treatment and disposal of the waste — to see whether those processes and means have been effective. It also examined whether enforcement actions are appropriate and timely, and

whether any of the expected benefits from new regulations are being achieved.

The Victorian Auditor-General has concluded that the EPA in this state is not effectively regulating commerce and industry's management of hazardous waste. This is a horrific tale of woe. Is it that there is not enough funding from this government? Is it that there is not enough will, enough direction? Whatever it is, I believe that our environment minister needs to be condemned for this appalling set of circumstances, which have arisen as a result of a lack of oversight and will and perhaps due to the minister being distracted by other environmental matters.

According to the Auditor-General's assessment the EPA's monitoring and inspection activities lack coherence, purpose and coordination — that is, in a general sense those responsible have lost their way, obviously through lack of leadership. Once again this government's appalling ineptitude in the implementation of information systems has raised its ugly head. How inept this government is in implementing high-technology systems has been a theme throughout my term in this Parliament. No matter which department you talk about, it is over budget, over time or simply not working. The left hand does not know what the right hand is doing, and there is no material that can be garnered for analysis and response to issues as they develop, let alone to manage anything by way of future forecasts or trends.

The Victorian Auditor-General highlights the fact that the Environment Protection Authority has poor business information. This has been sheeted home to — —

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

Department of Human Services: report 2008–09

Mr D. DAVIS (Southern Metropolitan) — I am pleased to make some comments on the Department of Human Services 2008–09 report. Of course we all look forward with interest to seeing the reports from the Department of Human Services and the newly created Department of Health in the next cycle of annual reports.

I am particularly interested in the changes that have occurred since that report was tabled and the impact that these changes will have. The Brumby government signed a deal with the former Prime Minister, Kevin Rudd, to change our health system in Victoria. I obtained an in-confidence memo dated 26 July 2010 by Peter Broadhead from the Department of Health and Ageing in Canberra. The memo makes reference to a meeting that was held with Victorian bureaucrats, including Fran Thorn and several senior representatives from the Victorian department as well as representatives from Victorian central agencies. Interestingly this memo lays out the summary points, and there is an attachment to it, being the presentation given by the Victorian bureaucrats. A number of serious points are raised in this, and clearly Victoria is very unhappy with the way the Gillard government is going about implementing the so-called health reforms. Medicare Locals, the proposal to widen community and primary care across very large regions, according to the federal health minister, Nicola Roxon, is likely to be headed by divisions of general practice. Many Victorians who know the many decades-long history with community health in Victoria are concerned about what will be left of our community health sector and our great community health services in Victoria by the time Nicola Roxon's Medicare Locals are imposed.

I have seen the draft boundaries the Australian General Practice Network has put into place, three versions of which are laid out in the Carla Cranny paper that was produced. I understand that document has no formal status, but it appears to contain the only draft boundaries that are in the public domain. It is incumbent upon Premier Brumby and Prime Minister Gillard to put these boundaries into the public domain before the federal election. People have a right to know how their health regions will be structured and how they will operate before they vote in the federal election in 10 days time. It is extraordinary that Julia Gillard and John Brumby would expect Victorians and Australians to be voting to see their primary and community health-care sectors fundamentally changed and rearranged without knowing what the changes will be.

The most extraordinary aspect of all this is that Premier Brumby and the government signed the deal in the first place without knowing what the outcome of the changes would be. The changes will also affect the acute health sector. The memo makes the point that Victoria has 83 public hospitals. Many small community hospitals have existed continuously for 100 or 150 years with local community boards. There is no need to dissolve these into local health networks.

In country Victoria local boards are in existence now, but Julia Gillard and Kevin Rudd's proposals may well see those boards abolished and amalgamated into larger entities. That is still on the table, and people in country Victoria should be very concerned about what will happen to their local hospitals boards with which they

have had identification in some cases for more than 100 years.

The memo says that the six specialist centres, which also belong in local health, do not belong in local health networks. This is the description of what Victorian bureaucrats are saying, and this deal has been signed by John Brumby, and Victoria is now fighting a rearguard action to stop Julia Gillard and the cohorts from Canberra implementing these changes that may have very unfortunate consequences.

The memo refers to the possibility of the statewide local health network being foreshadowed in commonwealth material. I say that commonwealth material should be released before the election. If the federal government's plan is to gut the health networks that provide that specialist support — the Royal Children's Hospital, the Royal Women's Hospital and the Royal Victorian Eye and Ear Hospital, all of which are critical to the future of Victoria — then those hospitals have to be protected. Why Premier Brumby did not make that a condition of signing the health agreement is beyond me, but certainly Prime Minister Gillard should be prepared to step forward and make those guarantees before the federal election, and John Brumby should stand up for Victoria. He should never have signed this deal in the first place without those protections and guarantees.

TRANSPORT LEGISLATION AMENDMENT (PORTS INTEGRATION) BILL

Second reading

Mr VINEY (Eastern Victoria) — I move:

> That pursuant to standing order 7.07, the resolution of the Council of 22 June 2010 negativing the second reading of the Transport Legislation Amendment (Ports Integration) Bill 2010 be read and rescinded and that so much of the standing orders be suspended as to permit the second-reading question on this bill to be again put.

By way of explanation, as the house would be aware, this bill has been through the dispute resolution process and has been returned to the house after that process for consideration. On advice from the clerks, this is the most efficient mechanism to enable the house to consider that bill after it has been through the dispute resolution process. Agreeing to this motion would mean that we would not have to have another second-reading debate, and that the bill can still be considered in the normal way from the second-reading question, if that is passed, in the normal way either through the committee stage or debate on the bill, as I understand it, in the third reading if members wish to make some further contribution. I commend this mechanism to the house as the most efficient mechanism for allowing the house to reconsider the bill having been through that process.

Mr D. DAVIS (Southern Metropolitan) — The opposition will not oppose this motion. I make the point that this was not among the precisely agreed steps that were put forward in the Dispute Resolution Committee. Opposition members understood that this would be done in the way of the previous bill. I accept that in a technical sense this mechanism achieves the aims that came from the Dispute Resolution Committee, and in that sense the opposition does not oppose it. However, whilst it might be smoothly elegant that this mechanism does everything in one motion, opposition members do not think this is the ideal process.

Notwithstanding that point, I also put on record, as I have on a number of occasions in this house, the manifest deficiencies that exist in the dispute resolution process, including the cumbersome structure and the meeting in private — arrangements that the government forced through when the constitutional amendments were made. The fundamentally antidemocratic approach of the Dispute Resolution Committee is in part mandated by the constitution. This points to the undemocratic nature of the changes that were made and the lack of participation and understanding on what was proposed. That fact is that opposition members have some concerns about the Transport Legislation Amendment (Ports Integration) Bill. We will say more at a later point, but in the circumstances we think even if our policy position were achieved the government could simply frustrate that by appointing people to boards who would not act independently. This is essentially about those two ports — Melbourne and Hastings. We think Hastings should be an independent port, but if the government is not committed to implementing the spirit of the legislative change that would achieve that, we see little point in persisting. If elected to government in November, we will certainly revisit this with a series of changes.

Ms PENNICUIK (Southern Metropolitan) — The Greens will not support the motion to suspend the standing orders, basically because we do not support the provision that has been inserted into the constitution. It is not democratic, and neither is the motion to suspend standing orders to allow for the passage or resurrection of what is in effect, in our opinion, a bill that has been defeated by the upper house and therefore should be regarded as a dead bill, a bill that is of life and an ex-bill that should not appear before this Parliament again before six months has passed. We will not support the motion.

Mr LENDERS (Treasurer) — I rise to speak on only one part of this motion. Both Mr David Davis and Ms Pennicuik said that this is antidemocratic. The only comment I will make on that is to say that the document that this Parliament is governed by is the constitution, and whether people like the constitution or not, it is the constitution. If there is a bill that is deadlocked between houses, the constitution puts provisions in place to try to resolve that. I will exit from the debate by simply stating that for people to come into this house and assert that something is democratic or not democratic in the end is quite a reflection on the Parliament we are in and the rules the Parliament was elected by. This is the procedure for resolving disputes. It is what we have, and it actually tries to resolve a dispute between two elected houses. I support Mr Viney's motion and would like to make that point on democracy.

House divided on motion:

Ayes, 32

Atkinson, Mr	Lenders, Mr
Broad, Ms	Lovell, Ms
Dalla-Riva, Mr	Madden, Mr (*Teller*)
Darveniza, Ms	Mikakos, Ms
Davis, Mr D. (*Teller*)	Murphy, Mr
Drum, Mr	Pakula, Mr
Eideh, Mr	Petrovich, Mrs
Elasmar, Mr	Peulich, Mrs
Finn, Mr	Pulford, Ms
Guy, Mr	Rich-Phillips, Mr
Hall, Mr	Scheffer, Mr
Huppert, Ms	Smith, Mr
Jennings, Mr	Somyurek, Mr
Koch, Mr	Tee, Mr
Kronberg, Mrs	Tierney, Ms
Leane, Mr	Viney, Mr

Noes, 4

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

Motion agreed to.

TOURIST AND HERITAGE RAILWAYS BILL

Second reading

Debate resumed from 27 July; motion of Hon. J. M. MADDEN (Minister for Planning).

Mr KOCH (Western Victoria) — This is a small and specific bill. All operating railway ventures have had extensive consultation with the Department of Transport over a long period in an endeavour to amend the current act or to gain their own.

The purpose of the bill is to repeal the order in council scheme from the Transport Act 1983 and provide a regulatory framework for tourist and heritage railway operators. This has occurred due to the poor legislative settings under the Transport (Compliance and Miscellaneous) Act 1983 that have seen land tenure, be it by an order in council or various leases and the allocation of assets, being inconsistent, outdated or unclear. It is proposed in order to offer greater business acumen and sustainability of the industry, and it seeks to meet operator obligations under the Rail Safety Act, including compliance and training.

It is important to include in *Hansard* the list of operators involved in putting this register together. There are 17 operators and 17 only. I will list not only the operators involved but also where their operations take place. The operators are: Bellarine Peninsula Railway, based at Queenscliff; Central Highlands Tourist Railway, based at Daylesford; Mornington Railway Preservation Society at Moorooduc; Yarra Valley Tourist Railway Society at Healesville; Castlemaine and Maldon Preservation Society, based in Maldon; South Gippsland Tourist Railway at Korumburra; Alexandra Timber Tramway and Museum at Alexandra; Walhalla Goldfields Railway at Walhalla; Red Cliffs Historical Steam Railway at Red Cliffs; Bendigo Tramways; Ballarat Tramway Museum; Portland Cable Trams; Melbourne Tramway Preservation Association, based in Haddon; Steamrail Victoria, which is a mainline operator and operates out of Newport; 707 Operations, a mainline operator, again operating out of Newport; Seymour Rail Heritage Centre, being a main operator and operating out of Seymour; and lastly the Diesel-Electric Rail Motor group, being also a main operator, again operating of Newport.

All 17 of these are not-for-profit operations. They are accredited operational tourist and heritage railway ventures, and they have been consulted not only by the department but also by the opposition, which has carried out its own consultations on the bill. By and large all the operators are very supportive. The opposition has received correspondence from the new proposed members confirming the situation. The only exception to the proposed register is Puffing Billy, but this railway has always had its own statutory provisions under the Emerald Tourist Railway Act, which has been in place since 1977.

It should be noted that the bill refers only to operational, predominantly volunteer-run railways. It is not proposed to accommodate static displays, and it is not applicable to commercial operators such as the Colonial Tramcar Restaurant, active mining operations

or railways that operate within amusement parks across the state.

The main purpose of the bill is to establish a register of all tourist and heritage assets statewide over a period of time. The registration process is not compulsory, but the voluntary obligation offers the opportunity to those who do subscribe and undertake listing to gain access to grant programs and tourist promotions that otherwise would not be available to them. It is by these means of offering support that many of these groups have been encouraged to participate in this new register. Registration will be by way of a small fee, and importantly registration may be withdrawn if a particular rail operator fails to meet occupational health and safety, maintenance, training or other schedules under the prescribed criteria.

Another important provision of the bill is that it repeals all existing current leases, whether they are on a long term or, as many are now, on a monthly basis. The bill introduces new community leases for not-for-profit groups and body corporate organisations which will be in the operators' names. The fees associated with the new leases will be the standard minimum of $104 per annum and will offer tenure and greater certainty to operators and for the state-managed assets under their control. Privately owned assets, although part of the register, will remain in private hands and will not be acquired by the state after registration has taken place or if registration for some reason is withdrawn by participants. I think this is a really important premise. It is clearly acknowledged by those wishing to participate that listing the assets is terribly important so we know where they are. Also, if people retire and their operation goes out of existence or is decommissioned, those assets fall back to any of the private owners who have put those assets forward.

With the use of these new instruments operators are seeking to improve the industry, meeting better standards and increasing their viability, as these ventures in the past have used various parcels of land under VicTrack, local government, the Department of Sustainability and Environment and in some cases even private ownership. I see these as two of the most important parts of the legislation being tidied up, because both the allocation of assets and the allocation of land tenure have been recognised, as I mentioned earlier, as areas that have been inconsistent, in some cases certainly not clear and also outdated.

To assist in managing the tourist and heritage railway operations statewide, it is the purpose of the bill to set up a small advisory group, with membership consisting of four members from the industry and four from government, with further assistance from the Department of Transport as seen to be necessary. I think that is a great step forward for those operators who want to be involved, and it will also add to the ongoing viability of their operations. It is not proposed that this advisory board will be heavily remunerated, as its members will be drawn only from operators, who will provide four members, and government agencies, who will have four representatives. Importantly any disputes, appeals or reviews will be undertaken by the Victorian Civil and Administrative Tribunal, so there is a clear process in place for those who go on the register.

The only concern the opposition has with the proposed bill lies in the area of the insurance of these not-for-profit ventures. In the past, insurance has been ad hoc across all these assets, but now, with the intention of putting this register in place, will that also offer small and large operators a similar insurance premium schedule that will not see smaller operators being disadvantaged? We would like to think that would be the case. In his summing up the minister might give some indication as to what is proposed for asset preservation in the event of loss though various means.

In closing, I indicate the opposition will be supporting the bill. I thank those from the Department of Transport for their briefing and operators who have responded to the consultation process undertaken by the shadow Minister for Public Transport, Terry Mulder. This is a common-sense bill that corrects and ties up many loose ends for these small rail operations, which will now have their own advisory group and great support from the Department of Transport in undertaking what I think is seen collectively as an important part of the tourism industry and of preserving our history.

Ms PULFORD (Western Victoria) — I have recently been contacted by people from the Central Highlands Tourist Railway, which operates the Daylesford Spa Country Railway, and the Ballarat Tramway Museum, both expressing their support for this bill. These groups believe this bill to be the most significant development towards sustainability of the sector since the Transport Act 1983 established the legislative framework for tourist railway operations in Victoria.

The Daylesford Spa Country Railway has been operating since 1981. It relies on the labour of 35 volunteers who maintain and operate the railway. Many diverse tasks need to be done to keep the railway operating and preserve the historic collection of rolling stock and infrastructure. The Daylesford Spa Country Railway offers weekend trips on its diesel engine

through the Wombat State Forest. If you are lucky enough to be in Daylesford for the weekend, you can take a pre-dinner train ride during which drinks and gourmet food are served.

The Ballarat Vintage Tramway is a tourist tram operating around the beautiful and rapidly refilling Lake Wendouree. The Ballarat Tramway Museum is one of a few purely volunteer groups in the world operating tramcars on a public road and over a section of original track. The museum has a display of photographs and tramway memorabilia for visitors. The tramcar fleet and workshops area can also be inspected. The collection includes Ballarat horse tram no. 1, 3 Electric Supply Company of Victoria tramcar bodies and 12 tramcars which initially ran in Melbourne between 1913 and 1951.

Other tourist railways in my electorate of Western Victoria Region that will benefit from the modernised set of arrangements provided by this bill include the Bellarine Peninsula Railway, which runs from Queenscliff to Drysdale, operated by the Geelong Steam Preservation Society; the Melbourne Tramcar Preservation Association, which is located at Haddon; and Portland Cable Trams.

The Tourist and Heritage Railways Bill 2010 will provide a specific tourist and heritage rail asset register, which will be administered by an appointed registrar and will provide a central source of asset information. The primary purpose of this register will be to capture the location and status of all state-owned assets. The registrar will maintain the asset register with assistance from the rail groups. Information will be collected about rolling stock, buildings and other infrastructure. All state-owned assets will be listed on the asset register, which will create an inventory to enable both operators and the state to meet their asset management responsibilities. This will clear up any confusion that some rail groups may have in relation to their insurance obligations as they relate to state-owned assets.

All agreements relating to Crown land vested in VicTrack will be standardised. The Department of Transport will prepare the leases and the registrar will maintain a register of all leases.

An important part of this bill is the voluntary registration scheme that will be established. This registration scheme will enable operators to demonstrate their commitment to continuous improvement and to business best practice.

The bill also enables the establishment of an advisory board to provide advice on the administration of the voluntary registration scheme and to provide advice to the director about tourist and heritage railway matters generally. This will benefit the groups that are participating by enabling centralised organisation of subsidised training and education programs, more strategic and equitable distribution of grants and funding to groups, the use of a common logo for marketing and better access to industry knowledge and resources through the department. It will provide a forum for groups and volunteers to build stronger networks; establish a skills register whereby people with skills that are critical to rail heritage conservation can share this expertise with the group; provide access to assistance to help meet legislative reporting and compliance, risk management and asset management obligations, which are very important for organisations that are predominantly run by volunteers; and possible membership of other Victorian and national tourist schemes.

The bill will provide a specific tourist and heritage rail asset register. As I said, an important feature is that an independent person or entity will be empowered to determine ownership disputes. The voluntary registration scheme will ensure that high standards are acknowledged and maintained. It will also ensure that the contribution of volunteers who keep these railways operating is acknowledged and rewarded in the form of training and networking opportunities. The scheme will allow for more strategic and equitable distribution of opportunities for these groups.

The people from my electorate who are involved in providing these wonderful facilities are very supportive of this bill. They hope it has a speedy passage through this Parliament. It will enable things to operate in a clearer and more modern regulatory framework. Tourist and heritage railways are an important part of the cultural, social and economic fabric of regional Victoria, and I urge the speedy passage of the bill.

Ms HARTLAND (Western Metropolitan) — The previous two speakers have gone over all the technicalities of this bill, so I will not repeat that, but I will just say the Greens are happy to support this bill.

When I was looking through the list of all the groups that this would affect I was pleased to think that I had used a number of those railways, and they are really fantastic institutions.

Another thing that is pleasing about the bill is that it recognises the enormous passion and volunteer hours that railway groups devote to keeping these services up and running, so it is good to see there will be regulation

and assistance. The groups will get help so that they comply with their obligations under the Rail Safety Act.

I know this is completely outside the scope of the bill, but maybe there could soon be some legislation for the Williamstown Railway Museum as well. I thought I should get in a plug while I was at it!

Mrs COOTE (Southern Metropolitan) — I do not have any tourist or heritage railways in my electorate, but maybe I should, because they would run better than the Sandringham line at the moment. The trains do not run at all on that line, so perhaps it would be better to have a tourist line which is run by volunteers. They would get the trains to stations on time and look after all the people who were interested in the railway. People would be fascinated in the actual performance of the railway itself. However, we do not have any tourist line — and we do not have trains that run on time either. If we look at the Sandringham line, we find there are problems most mornings.

The operators of our railways need to take a leaf out of the tourist heritage and railway people's book. The volunteers who run the tourist services run them exceedingly well, and the services run across this state. I refer to some of the railways that are affected by this bill: the Bellarine Peninsula Railway, Queenscliff; the Central Highlands Tourist Railway, Daylesford; the Mornington Railway Preservation Society, Moorooduc; the Yarra Valley Tourist Railway, Healesville; the Maldon Preservation Society, Maldon; the Ballarat railway, which was spoken about before; and the services at Haddon, Seymour and Newport.

The reality is that these heritage railways are run by volunteers who have been running them for a significant time, and they bring an enormous tourist dollar into this state. My concern is that we give them every advantage to make certain that they are able to carry out the very good work they do and that we make it easier for them.

What I do not want to see is the imposition of another level of bureaucracy, because we have seen this government increase the number of bureaucrats. They are very good pen-pushers, but they do not actually get anything done — present people excluded. However, we all agree with this bill and are going to support this bill, but there are some concerns.

This bill is basically to do with tourist railway assets in Victoria. I believe it is important to clarify that the legislation excludes static displays and it does not affect, add to or detract from the Victorian heritage register. However, the registration scheme for tourist and heritage railway groups is voluntary. The bill also sets up an advisory group for the sector, which will comprise eight members — four from the government and four from the sector — with support from the Department of Transport. I think that help and support from the Department of Transport is going to be an absolute misnomer. There will not be any support; it will be to the detriment of the organisations, but I am pleased to know and to see that in fact the operators will have some support.

We have to be mindful of the fact that there are enormous numbers of people across this state who are great enthusiasts of these tourist railways. The tourist railways are terrific. We only have to look at Puffing Billy to see that. Puffing Billy is a national icon; it has entertained children and adults and international and interstate visitors for a considerable time. I suggest that any encouragement we can give and any legislation we can introduce to enhance the operation of these terrific railways is to be lauded. I congratulate all those communities who run excellent services. I support the bill.

Ms TIERNEY (Western Victoria) — I rise to speak in favour of the Tourist and Heritage Railways Bill 2010, which will provide for sustainable tourist and heritage railway operations in Victoria.

There are three key aspects in the legislation before us today. Firstly, the bill establishes a register of tourist and heritage railway assets; secondly, it provides for the modernisation of land tenure and asset allocation arrangements; and thirdly, it establishes a voluntary registration scheme for tourist and heritage railway groups.

I am sure that at one time or another each and every member of this chamber would have enjoyed the experience of a tourist rail facility. In her contribution Ms Pulford mentioned some facilities in western Victoria, but I also want to mention the Portland cable trams, the Bellarine Railway and the Daylesford Spa Country Railway. These railways showcase some of the state's most stunning beauty whilst also informing tourists and locals alike of our rich history. Many of those railways capture the true sense of rural and regional Victoria — its past and what it also has to offer into the future.

Nearly 4000 volunteers are actively involved in our tourist and heritage railways, which are not-for-profit groups. They include many train enthusiasts, many of whom are men who get together and utilise a wide range of skills. Often those skills are connected to older forms of technology. It is not just men who are

involved in heritage railway maintenance and history; it is also women. I recall a situation when I had a funding announcement to make for the Portland cable tram and something like 90 people turned out at the heritage centre. I was taken through the history of the cable tram service by many of the women who play an extremely active role in making sure the service is maintained, and it is considered to be one of the most important elements of the Portland community. It is supported by that community in a general sense, but it also has a special place in the hearts of Portland people as well as regular visitors to the area who have gone there over the summer breaks and whose families for generations have experienced the cable tram.

We also believe the contribution of volunteers to our tourist and heritage railways is enormous. Only a few weeks ago I had the experience of joining the Bellarine Landcare Group and the Cotton On Foundation team to plant over 6000 plants and trees along the Bellarine rail trail. That was a collaboration of the local Landcare group with the Cotton On company, which, over a two-day period, released some 600 employees to join with that group to plant a number of grasses and trees. The Landcare group itself has 40 active members, and as I said, they joined over 600 employees in that project, which will assist in returning grassy woodland vegetation along the rail trail.

I was particularly pleased on that day to see that the Bellarine railway voluntary group was working with and assisting the Bellarine Landcare Group and that it got the group and the Cotton On employees to its luncheon at Drysdale on the day. We know that volunteers are important, and this legislation assists in supporting their excellent work by establishing a voluntary registration scheme for these groups. This scheme will enable the central organisation of training and education, a more strategic and equitable distribution of grants and access to industry knowledge, and it will provide a forum for groups and volunteers to build stronger networks.

The Brumby Labor government is committed to the sustainability of this important sector, which it believes adds a very valuable economic, social and cultural contribution to our state. That is acknowledged through the various heritage and community grants that are available to a variety of the organisations that operate in this sector. I know that in terms of the Portland cable trams there was a funding announcement of $32 000 that has assisted its long-term viability. As a government we do that because we understand the important role that tourism plays, particularly in rural and regional Victoria. There is an estimation that the Portland tramcar generated about $35 million for the local economy over the last six years.

As we know, tourism is essential for our rural and regional locations around the state, and this legislation, again, seeks to underpin that important work. But another important aspect of this legislation is that it will modernise the land tenure and asset allocation arrangements. At present railway and tourist railway groups are uncertain as to what land they are responsible for, as well as their rights, needs and obligations. The current framework lacks clarity and consistency. This bill will nullify these inconsistencies and clarify the confusion that currently exists.

In conclusion, Victoria's tourist and railway operators, groups and volunteers are a valuable part of our tourism industry and our social fabric. I am happy to stand in this place today in support of this important sector and all those who contribute to its preservation with their hard work and commitment to the heritage of our state. This bill will ensure the ongoing viability and sustainability of the tourist and railway sectors, and therefore I commend this bill to the house.

Mr HALL (Eastern Victoria) — My support for this piece of legislation gives me the opportunity to promote Walhalla Goldfields Railway, one of the tourist railways in my electorate. There are several tourist railways in my electorate of Eastern Victoria Region, but Walhalla is certainly my favourite.

It is a short journey from the Thomson River bridge up to the township of Walhalla, but it is a spectacular one because it covers 11 or 12 bridges that have been rebuilt there, and when you see what has been created to re-form that track you are amazed to think about the ingenuity of our forefathers in years gone past in creating such a track, which is now used for the Walhalla tourist railway. It is a short but spectacular journey, and I encourage all members, if they have the opportunity to travel there one day, to take a ride on the Walhalla tourist railway. It will certainly be a memorable experience for all those who undertake it.

I also compliment present and past volunteers of the Walhalla tourist railway committee who have put an inordinate amount of hours and effort into re-establishing that tourist railway operation and are currently operating it today.

Walhalla tourist railway is just one of those organisations that will benefit from this piece of legislation. If any members have the opportunity to journey to Walhalla, they should not miss the experience of a ride on the Walhalla tourist railway.

Motion agreed to.

Read second time.

Third reading

Mr JENNINGS (Minister for Environment and Climate Change) — By leave, I move:

That the bill be now read a third time.

In so doing I thank members for their contributions to the debate.

Motion agreed to.

Read third time.

SUBORDINATE LEGISLATION AMENDMENT BILL

Second reading

Debate resumed from 27 July; motion of Hon. J. M. MADDEN (Minister for Planning).

Mr RICH-PHILLIPS (South Eastern Metropolitan) — I am pleased to make some remarks on the Subordinate Legislation Amendment Bill. The government has advised that the intent of this bill is to provide wider parliamentary and public scrutiny to a range of legislative instruments. The way in which the bill seeks to do this is by requiring that legislative instruments that are likely to impose a significant economic or social burden on a sector of the public undergo a regulatory impact assessment; by requiring that new legislative instruments be tabled in Parliament and published in the *Government Gazette*; and also by requiring that ministerial certificates, including human rights certificates accompanying statutory rules — that is, both regulations and legislative instruments that will be covered by this bill — be tabled in Parliament and subject to scrutiny by the Scrutiny of Acts and Regulations Committee. The bill will allow that committee to recommend the disallowance of a legislative instrument in certain circumstances which are defined in the bill, and it will allow certain legislative instruments to be exempt from the consultation and regulatory impact assessment requirements where it is deemed that they would not have a significant economic and social burden.

This bill comes to Parliament following work undertaken in 2002 by the Scrutiny of Acts and Regulations Committee with respect to subordinate legislation. It follows a pattern that we have seen elsewhere, where SARC and other parliamentary committees have made recommendations to the Attorney-General and we have literally waited years before we have seen those recommendations addressed or adopted in legislation, as we are now seeing with this bill. In this case it is almost eight years since SARC reported on subordinate legislation, and only now are we seeing these proposed changes come before the house.

The coalition parties have determined that we will not oppose this new framework for subordinate legislation established by the bill, but in saying that we do have a couple of concerns with how the framework is likely to operate. The first relates to confusion over what will and will not be a legislative instrument for the purposes of this legislation. This is dealt with in part 3, clause 25(1), of the bill, which sets out the definition of a legislative instrument. It states that:

> legislative instrument means an instrument made under an Act or statutory rule that is of a legislative character but does not include …

and it then goes on to list eight examples of things that are not legislative instruments, including an instrument of a purely administrative character, and it then goes on to provide a further nine descriptions of instruments that are deemed to be of a purely administrative character. So ‘legislative instrument’ is defined very broadly as something that is of a legislative character, and then there are approximately 20 examples of things that are not legislative instruments.

The coalition’s concern relates to the interpretation of ‘legislative character’. This is not explicitly defined in the bill or in the principal legislation, and it is recognised indeed by the government, with the staggered implementation of this legislation, that there will be a degree of confusion as to exactly what ‘legislative character’ means for the purposes of this clause.

We have concerns about how that is likely to be interpreted by agencies and ministers with respect to instruments that could be the subject of this bill, because legislative character, undefined, is a particularly broad concept in the context of the bill.

The bill arises from SARC recommendations that are eight years old, which is fairly typical of the way in which the Attorney-General operates. With respect to exemptions that are provided under this legislation, the coalition acknowledges that the broadening of the Subordinate Legislation Act to cover further legislative instruments is welcome, but concerns have been expressed about the ability to issue exemption

certificates which would remove the requirement for a regulatory impact statement.

The concern about the way the exemptions would operate relates to the interpretation of 'a significant economic or social burden' as it applies to a sector of the public. The bill adopts this new criteria of 'a significant economic or social burden', which is a change from the current wording of 'an appreciable' burden, and with respect to exemptions it provides that the responsible minister, or the Premier as the case may be, can issue an exemption certificate based on their opinion of whether the legislative instrument does impose a significant economic or social burden.

The two issues that have been raised here are, firstly, that it is the broadly held view that the purpose for which legislative instruments are subject to a regulatory impact statement (RIS) is to determine exactly what their economic and social impact is, and it would seem incongruous that the minister is given the capacity to issue a certificate expressing the opinion that there is not a significant burden before an investigation is undertaken and that indeed that can be used as the basis on which the exemption from undertaking that regulatory impact statement can be obtained. Clearly the minister is required to form an opinion that essentially goes to the subject matter that would otherwise be covered by the RIS.

The second concern with that provision relates to the change in wording from an 'appreciable' burden to a 'significant' burden. The coalition has consulted quite widely on this legislation, and I commend the work done by Nick Wakeling, the member for Ferntree Gully in the other place and parliamentary secretary to the Leader of the Opposition, who has had carriage of this bill for us. He has consulted widely on the proposed legislation. Some of the feedback from third parties has raised concerns about the perceived change in burden that would trigger an RIS, being a shift from 'appreciable' burden to what is regarded as a higher test of 'significant' burden, and therefore the lowering of the likely number of instruments that would be required to undergo an RIS from the number required under the old terminology.

The other area of concern is the way in which the legislation will be dependent upon operational guidelines which are yet to be issued, in the form of the Premier's guidelines, and the *Victorian Guide to Regulation*. Again it seems incongruous that we are being asked to make amendments to subordinate legislation provisions, the operation of which will depend upon subordinate guidelines being created by government, which this Parliament has not had the opportunity to consider.

To a large extent the way in which these provisions are going to operate will depend upon the creation of those Premier's guidelines and the *Victorian Guide to Regulation*, which the Parliament does not have the benefit of scrutinising at the time it is being asked to make these changes.

The coalition does believe that this is a step in the right direction. One of the constraints that will be placed on the consideration of subordinate instruments by the Parliament is the same constraint that exists for statutory rules now, and that is the capacity of the Parliament to disallow such instruments or, as is currently the case, statutory rules. That is generally the requirement — that a recommendation for disallowance come from the Scrutiny of Acts and Regulations Committee. As members would probably be aware, unless the legislation that we pass in this house explicitly gives the Parliament the capacity to disallow regulations that are made pursuant to the act passed by this Parliament — and most of the bills that this house is asked to consider do not give the Parliament that explicit capacity — the only capacity that is available to the Parliament to disallow statutory rules made under that legislation is on the recommendation of SARC.

The great failing with that mechanism is that SARC is effectively an organ of government, given that it has a government majority and a government chair. Generally the only basis on which the Parliament would be asked to disallow a statutory rule created by the government would be if a government-controlled committee recommended it. I cannot recall in the 11 or so years that I have been in this place the Parliament ever being asked by SARC to disallow a statutory rule, and that provision would also apply to legislative instruments.

I must say I have wondered whether the best mechanism is for that disallowance capacity to come via SARC rather than being directly vested in the houses of Parliament, as is the case elsewhere. This bill does not go to that extent, but the provisions it introduces are generally an improvement in the consideration of subordinate instruments. The coalition will not be opposing this bill.

Mr BARBER (Northern Metropolitan) — Subordinate legislation can play a greater role in society than lawmakers might generally acknowledge or broadcast. The most potent example of this, at least in whitefella law, was the creation of the Colony of New South Wales. It was created by Governor Phillips's

proclamation at Sydney Cove, which was an exercise of delegated legislative power vested in the government. Victoria was also capable of being established by subordinate legislation, but the Governor of New South Wales, George Gipps, refused to exercise his power and rejected the petition for a separate colony in 1840. Victoria eventually became a separate colony directly by a British act of Parliament and enabled by the New South Wales Legislative Council in 1851. Nonetheless, the potency of executive law making should not be underestimated.

A more contemporary example occurred during World War II, when both the Menzies and Curtin governments were virtually turned into legislators themselves under the extremely wide regulatory scope of the National Security Act 1939. Some things never change; once a war is declared, we want to instantly create a Caesar who can go ahead and do what they want. How truly spoke that person who said that war makes fascists of us all.

However, the ground was laid in a legal sense for these wartime powers a decade earlier in the case of Dignan, which held that a parliament is capable of unbounded delegation. Of course once we have delegated the power to a government or a minister, there are some ministers who turn around and then delegate a hell of a lot more, although some ministers are more inclined to do this than others.

The commonwealth Transport Workers Act 1928 contained a total of three sections; the first and second were the title and royal assent provisions, and section 3 gave the Governor-General wholesale powers to create laws regarding transport workers notwithstanding anything in any other act. The legislation was upheld by the High Court as valid and not contravening the separation of powers. There you go. There is an option to simply pass a piece of legislation that gives Premier John Brumby the power to do everything and then we can all pull our salaries, relax, go home and drink pina coladas, and no-one would probably win a court challenge.

While the power of government to operate free of parliamentary oversight is possible, in the interests of democratic accountability all such delegations should be scrutinised closely, which is particularly the role of an upper house in a bicameral system. As members know, since the Greens have been in this upper house there has been a lot more of this. We have scrutinised, and in some cases attempted to disallow, planning scheme amendments; delegated instruments; water entitlements, successfully, as subordinate instruments to the Water Act; and the code of practice for the welfare of pigs under its act. In one instance the regulations for the Victorian renewable energy target were indicating that it would be okay to burn native forests and call it green power. When I spotted that one in a tabled instrument I did not have to disallow it because the government very quickly went off and corrected its own version.

This bill expands the consultation and RIS (regulatory impact statement) processes which currently only apply to the legal form a legislative instrument takes — namely, a statutory rule, more commonly known or talked about as a regulation. This bill expands these processes to apply all legislative instruments that are anticipated to have a significant burden on social or economic matters across the state. I note that environmental matters are not mentioned there.

The Environment Defenders Office made a submission that with the rise of triple-bottom-line accounting in jurisdictions around the world legislative instruments with a significant burden on the environment should also be a trigger for a RIS. The EDO in its submission gave a good example, being the Fisheries Act. Pretty much all the instruments under the Fisheries Act are about environmental matters in addition to economic and social issues. The government's response to this proposal is that it will further consider the case for the Subordinate Legislation Act to be amended, which is kind of like a polite response to a party invitation saying, 'I cannot come. I am washing my hair that night'.

The new scheme hangs off the concept of a significant burden. Relevant ministers are able to exempt a legislative instrument from the RIS procedure if it does not, in the minister's opinion — more delegation there — create a significant burden on a section of the community. If the burden can be quantified financially, then appendix C of the discussion paper indicates that maybe a burden of $500 000 per annum on the Victorian community is the threshold. Non-quantifiable burdens will of course require different methodological calculations. It would have been far better if these guidelines, or at least the core guidelines that characterise whether an instrument is or is not likely to have a significant impact, formed part of the bill or at least part of the process, given that the bill itself was put out for exposure so the public could better hold a minister's decision to account through judicial review. As every day goes by I am becoming more and more a fan of judicial review.

'Significant burden' is not defined in the bill, but it will be elucidated by guidelines — the irony! — to be prepared by the Premier's office somewhere down the

track. There seems to be no really urgent need for the Department of Premier and Cabinet to do this, because clause 26 provides a reprieve for ministers and their departments until 1 July 2013. If they fail to characterise any legislative instrument as a legislative instrument and do not put it through the RIS or exemption process, the instrument will still be protected from being challenged. This is another example of the government of the day coming to the Parliament and asking us to invest more trust in it, and there is a leap of good faith required on the part of the Parliament — I hope the government appreciates that. This clause could have been drafted a lot more tightly.

According to the guidelines, if an instrument has a significant burden or falls into a lower class, as defined by the guidelines, then a consultation period alone might occur through proposed clause 12(c). Again these will be decisions for the government to make. Members will note a theme here; it is increasingly becoming a habit for the government to rock up to the Parliament requesting us to sign a blank cheque to the executive. It is not just crazy-man Greg Barber who has a problem with that; former Premier Steve Bracks mentioned this phenomenon in his first speech to Parliament, and members could go back and read it if they wish. He made the speech at the same time as he coined the phrase, 'Live, work and raise a family', which none of the government members seem to have forgotten, but they have forgotten what he was warning about the Kennett government.

How the bill will function in practice requires an inspection of the Premier's guidelines and the *Victorian Guide to Regulation*, which the house was informed during the second reading was to be issued shortly. Given that the bill went out as an exposure draft, one could have imagined the guidelines would have been ready and we could have looked at them at the same time. But alas the devil in the detail remains locked up in the Premier's office.

Appendix C of the discussion paper gives an indication as to what type of considerations would need to be given to any given legislative instrument, but there are no guarantees to the Parliament that these will be implemented. In addition to the guidelines there is also the power for the government to issue regulations to exempt a class of legislative instrument under clause 4(2)(a). Because the government is expanding the types of legislative instruments that could undergo a consultation and/or RIS process, it has decided to expand the classes of exemptions from these processes. This is to try to balance the duty of the Scrutiny of Acts and Regulations Committee (SARC) to ensure proper scrutiny of legislative instruments while not overloading its capacity to properly attend to those instruments of a more serious nature. The way this will operate in practice will depend in large part on the assessments of the public service and the minister.

If the relevant minister decides there is no significant burden, the only entity that could challenge that decision is SARC. If a section of the community thought there would be a significant burden, it would simply have to lobby the local member to raise the issue with SARC in the hope that it could recommend that it be disallowed. As Mr Rich-Phillips pointed out correctly, so long as SARC has a government majority, it does not really mean much. The government's second-reading speech claims that the ability for SARC to recommend disallowance of legislative instruments is a boon for openness and transparency. This will only be true when SARC has a non-government majority.

The Victorian Competition and Efficiency Commission, which itself was established by subordinate legislation under the State Owned Enterprises Act — it gives a lot of power there — plays a very important role in that it independently assesses the adequacy of any given RIS. In my view this role is also worthwhile enshrining in legislation rather than it being at the whim of the government of the day. We could turn it into an independent overseer of the things that are not formally included in the bill.

In conclusion, it is a good initiative to increase the scrutiny of legislative instruments — that is why the Greens were so keen to do it when we arrived here — but it could have been done a lot better through this bill. It could furnish the Parliament with its intentions a lot better than it has done. I am sure that in the next Parliament so many more Greens will have been elected that one of them will be able to spend time on the Scrutiny of Acts and Regulations Committee and raise the standard in that area.

Both the Law Institute of Victoria and the Environment Defenders Office recommended that there be a dedicated instruments website that is user-friendly and that the *Government Gazette* be far easier to access. These days I seem to spend an enormous amount of time reading the *Government Gazette*. I am spending a lot more time on that than I am spending on my beloved sci-fi novels or reading the *New Scientist*, so you can imagine I have become a pretty boring dinner guest. But I struggle with the difficulties of the consolidation of legislative instruments. It would be really good if the Victorian Competition and Efficiency Commission and all the departments who display RISs and legislative instruments were able to put all of that on one website. Right now I am particularly concerned

about the consolidation of an instrument whenever it is amended. For example, when we were researching the bulk entitlement order that on a number of occasions the Parliament sought to disallow, we had to look at multiple editions of the *Government Gazette* over many years to see all the times the thing had been amended. In fact, finding the original was extraordinarily difficult. You can never be sure you have found all the amendments, and it is almost impossible to reference a series of documents like that.

With other forms of regulations — for example, planning schemes — as soon as an amendment is made it is instantaneously consolidated into all the existing planning schemes, and there is an entire website devoted to those planning schemes. You do not even see that changes have been made, although there is a list of them, because it now becomes the consolidated planning scheme. We would not imagine that somebody who wants to build a house would have to go through the original plan and decades of different amendments to make sure they had got everything. When the public transport department puts out its ticketing manual, which explains all the terms, conditions and rules that relate to a customer's purchase of a ticket — obviously all those rules cannot fit on the back of a bus ticket, so they have to be there somewhere — it puts out a new consolidated version every time.

However, in the case of bulk water entitlements, being one particular example, the department just does not do that. At the time I sought to approach the Office of Water within the Department of Sustainability and Environment to get hold of the consolidated version, which it must surely use itself, even if it is a specialist area and even if only a small number of people need to know how and when to switch the Eildon Dam on and off. It has become a matter of public interest, and I want to understand the rules around it. The department was very unresponsive in that area.

For that reason I have put forward an amendment to this bill — and I am happy to have that amendment circulated now, although I have recently done so informally to the parties in this Parliament — that would require an instrument maker to ensure that a consolidated version of the legislative instrument is available as soon as practicable after it has been created.

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

Mr BARBER — They would need to ensure, firstly, that an up-to-date consolidated version is prepared, and secondly, that it is available for inspection by any person during office hours — the usual blah, blah, blah — and that it be published on the internet. A failure to comply with this section would not affect the operation of the instrument itself, so I am not trying to mess with the bill in any other way.

I circulated this amendment on Tuesday afternoon when I got here, having drafted it on the previous Friday. I always do my best to try to notify the other parties of a proposed amendment as soon as I can. Then again I do not have the same kind of resourcing that the big parties have. The government has endless resourcing, and the coalition, as the Treasurer informed us yesterday, has a multimillion-dollar policy unit funded courtesy of the Premier's office. With me, it is just me and a few university students on semester break as part of my casual budget, and yet they can turn out high-quality material very quickly.

In this case I present the amendment to other parties and ask that they give it some serious consideration. I believe it is a very simple amendment and will help achieve the exact aims that this bill purports to support, which are openness and transparency.

Ms MIKAKOS (Northern Metropolitan) — I rise to speak in support of the Subordinate Legislation Amendment Bill. Any legislation that relates to the regulation of the relationship between the executive, Parliament and the public is very significant legislation.

The Subordinate Legislation Act sets out numerous procedures for making statutory rules, more commonly known as regulations, whilst also conferring the function of scrutinising the purpose of these regulations on the Scrutiny of Acts and Regulations Committee of the Parliament. These functions include, amongst other things, requirements relating to consultation, the preparation of a regulatory impact statement (RIS) and the power for SARC to scrutinise statutory rules and recommend disallowance by the Parliament.

As we all know, there has been a considerable record of improving Victoria's regulatory framework over many years. Victoria has been at the forefront of significant regulatory reform by becoming one of the first jurisdictions in the world to legislate for the provision of a regulatory impact statement, in the Subordinate Legislation (Review and Revocation) Act 1984, which essentially requires that the executive prepare a regulatory impact statement when making regulations that will have a substantial impact on the public. This was one of the significant reforms achieved by the Cain

government. In 1994 the Kennett government continued this reform by introducing the requirement for ministers to ensure that independent advice is obtained as to the adequacy of a regulatory impact statement and that all requirements of the act have been met.

In addition to these legislative improvements there has been the establishment of an independent regulatory review body known as the Victorian Competition and Efficiency Commission and the Reducing the Regulatory Burden initiative, which includes commitments to reduce compliance burdens and achieve better target regulation. The Brumby government is on track to reducing the administrative burden of red tape by 25 per cent, but as with all regulatory processes there is always more that can be done.

To further strengthen and build upon Victoria's position as a leader in regulatory reform, this bill seeks to amend the Subordinate Legislation Act 1994 to extend the application of certain provisions to legislative instruments that are made under a power delegated by the Parliament.

When I entered Parliament one of my first responsibilities was chairing the regulation review subcommittee of SARC, which conducted an inquiry into the effectiveness of the regulation-making system in Victoria, specifically focusing on the Subordinate Legislation Act 1994. In September 2002 SARC published a written report on our inquiry into the Subordinate Legislation Act 1994. In this report we made a number of recommendations relating to the effectiveness of the regulation-making system in Victoria and the scrutiny functions performed by the committee, including elevating the standard of scrutiny for legislative instruments which were outside the scope of the act because they were not considered to be statutory rules. Whilst many of the recommendations have already been implemented, I am proud to say that this bill gives effect to a further 17 of the final recommendations, bringing the number of recommendations fully or partly supported to a total of 47 out of 55. It is for this reason that I feel a great deal of ownership over this bill.

The bill includes the key recommendation that the Subordinate Legislation Act be extended to cover instruments which are legislative in character. The rationale behind this recommendation is that whilst the act currently imposes a range of requirements on the making of regulations, regulations constitute only part of the total number of subordinate instruments issued by government that are legislative in character. Those instruments that fall outside the scope of the act are not necessarily the subject of any parliamentary scrutiny, nor are they subject to any type of public consultation or other review.

The regulation review subcommittee of SARC exists to scrutinise regulations made in Victoria having regard to a number of principles set out in the act. This bill expands SARC's role in scrutinising government by allowing it to also scrutinise other forms of subordinate legislation known as legislative instruments. This was recommendation 1 of the 2002 SARC report.

As we know, subordinate legislation can have a significant impact on the public, and it is only fair that when it does it should be subject to consistent consultation, analysis and scrutiny requirements, unless there are exceptional circumstances suggesting otherwise. Whether those requirements apply should depend on the impact of the subordinate instrument, not on its legal form. The changes mean that more types of subordinate legislation that have a significant burden on the public will now be the subject of analysis, public consultation and scrutiny through the regulatory impact statement (RIS) process.

Regulatory impact statements are very important documents because they are designed to demonstrate to the public the economic and social costs and benefits of the regulation. The process requires that the government enter into consultation and consider submissions made by interested sectors of the public. The bill requires that the RIS and the proposed legislative instrument undergo a minimum public consultation period of 28 days. This will enable the public to make comment on a broader range of proposed subordinate instruments than has ever been the case in the past. This is an important reform as it will increase government accountability and transparency.

The trigger for the RIS requirements of the act will be revised from 'appreciable economic or social burden' to 'significant economic or social burden' on any sector of the community to provide departments and agencies with clearer guidance as to when an RIS should be prepared. The Premier's guidelines made under the act will continue to provide more guidance as to when a legislative instrument imposes such a significant burden on the public. Under this reform the definition of 'significant burden' will be made clearer and more robust to assist in ensuring that the RIS process better targets instruments that have a significant impact.

Under this bill local laws and other instruments made by local government will continue to be exempt from

the legislation. In 2008 the government launched the Better Practice Local Laws strategy and the guidelines for local laws initiative, which introduced the concept of the local law community impact statement. This is broadly comparable to the regulatory impact statement required for regulations that I have already outlined.

In the same way the bill mirrors the current exemptions that apply to regulations in the wider range of legislative instruments — for example, responsible ministers can exempt legislative instruments from an RIS in certain circumstances, such as when the instrument is of a short duration and it is necessary to respond to an emergency — and it also allows the Premier to exempt legislative instruments where it is in the public interest.

As has been the case to date in respect of regulations, the bill gives the Scrutiny of Acts and Regulations Committee the power to recommend the whole or partial disallowance of a legislative instrument to the Parliament. The bill also requires a copy of each legislative instrument and accompanying ministerial exemption certificate to be laid before each house of the Parliament and also to be provided to SARC.

In order to better target SARC's work, SARC will have four grounds for reviewing legislative instruments — namely, whether a legislative instrument: appears to exceed the power authorised by the enabling act or statutory rule; without clear and express authority from the enabling act or statutory rule, has retrospective effect, imposes penalties, shifts the burden of proof to an accused or provides for subdelegation of delegated powers; is incompatible with the charter of human rights; or has been prepared in substantial or material contravention of the Subordinate Legislation Act or the Premier's guidelines.

These targeted grounds of review in relation to legislative instruments will offset the likely increase in SARC's workload due to the proposed reforms. I remember that this was a concern we had when we conducted the inquiry, and we made some recommendations to try to deal with this issue. By contrast SARC has 14 grounds for reviewing statutory rules, so the framework in relation to legislative instruments will be a lot more focused and targeted to deal with this issue.

The government will prescribe under the act a list of legislative instruments subject to the act, legislative instruments exempt from specified requirements of the act and administrative instruments which are not subject to the requirements of the act. These lists aim to capture as many instruments as possible; however, they are not intended to be exhaustive. They will continue to be updated periodically to ensure that they include new instruments and are accurate.

Finally, the bill provides for a two-year transitional period from the commencement of these new requirements to enable government agencies to better familiarise themselves with them.

In conclusion, I commend the work done by SARC in its report. It is clear that Victoria continues to be a world leader in regulatory reform and scrutiny. I believe this bill will further enhance the government's transparency and accountability to the Victorian public. I commend the bill to the house.

Motion agreed to.

Read second time.

Ordered to be committed next day.

Sitting suspended 11.55 a.m. until 12.01 p.m.

Business interrupted pursuant to sessional orders.

QUESTIONS WITHOUT NOTICE

Planning: coastal developments

Mr GUY (Northern Metropolitan) — My question is to the Minister for Planning. I note the Premier's statement last week that the government cannot tell Victorians where they cannot live and will not close up rural communities, so I ask: can the minister inform the house why it is government policy to do exactly the opposite by hindering development of private land at risk along the Ninety Mile Beach at Toora and particularly at Portland, thus actively seeking to close up private development in regional Victoria?

Hon. J. M. MADDEN (Minister for Planning) — I welcome Mr Guy's questions in relation to these matters. They are particularly important issues, and issues which are even more prominent because of the likely effects of climate change. We have a number of low-lying areas across the coast of Victoria, and in many of these instances, depending on the topography around those low-lying areas, there is potentially an imminent threat — some of it long term, some of it medium term — over the next 100 years or so in relation to the combination of a number of factors. First of all there is the anticipated sea level rise. Through a group of experts we have identified that over the next 100 years there is a likely sea level rise of 0.8 metres in these locations. Once you consider that and the

likelihood of issues like storm surge and potential inundation and you put those matters together, they are worthy of consideration as to how you may or may not develop these locations.

The issue Mr Guy raises by making a comparison between bushfire-affected areas and low-lying areas is an interesting one, but what is important — and probably important, too, in connection with the recommendations made by the royal commission in relation to new development in fire-prone areas — is that this must be examined very carefully. What we are looking to do in many of these low-lying areas is to examine new development very carefully. I have previously made announcements to allow people to develop in some of these low-lying areas because they had an entitlement to do so, but those individuals know with a full degree of understanding what it is they are entering into through relevant consideration of reports and the relevant science needs to be considered in some of those instances, but not all of them. In other announcements I have made in the likes of locations around Port Fairy we have ruled out development in some of those low-lying areas.

I note that Mr Guy's question coincides today with some community members being on the steps of Parliament who no doubt have a particular interest in these matters as well, including matters concerning areas around Gippsland, particularly the Ninety Mile Beach. In the same way, before we allow development in these areas — because there is currently a moratorium on these sites in Gippsland — we have to be well aware of what the likely impacts may be or will be and base our decision on good science. At the current time, whilst we have science around a certain amount of this, we have to identify the impacts on specific locations according to that science.

There is work being undertaken in partnership with local government, and we will continue to work with local government and support local government and also do the work we need to do to give more clarity around the opportunity for people to develop that land, new land, and also recognise that there are implications for those on existing titles who may have dwellings or other buildings in these low-lying areas as to how we confront these issues into the future.

Supplementary question

Mr GUY (Northern Metropolitan) — I thank the minister for his answer. Given that the government has stated that it will not be compulsory to take up a buyback of land in bushfire-prone areas and thus it would not be possible to ban building homes in these locations, I ask: will the government now change planning policy forcing a compulsory ban on residents of Toora, the Ninety Mile Beach and Portland building a home on their own land, or does the minister support one rule for possible fire and a different rule for possible flood?

Hon. J. M. MADDEN (Minister for Planning) — I welcome Mr Guy's interest in these matters, and I take the point he makes; it is a very good point. It is not often that I compliment Mr Guy, but I welcome his question with a compliment. I do compliment some of his views from time to time, but not many of his questions. I compliment him on his question around the consistency of what will happen or where the government may arrive finally concerning land in bushfire-affected areas and some of the issues that we are dealing with in some of the low-lying areas that are potentially under threat from climate change.

What is important — and it has been identified by the bushfires royal commission — is that we need to undertake comprehensive mapping about what is in bushfire-prone areas. What we have undertaken and continue to commit to in partnership with local government is to do the equivalent sort of mapping and scientific research around low-lying areas, so that we know in these low-lying areas whether the issue is just that they are low lying or whether there is the likelihood of tidal surge or erosion around sand dunes and those areas, a combination of effects that might render some of these lands undevelopable. We need to have that science to prove whether or not that is the case. Likewise that would need to be the case around bushfire-affected areas. You need to have the research and understanding based on relevant science as to what the direct impacts on a specific site may or may not be.

What is consistent is that we are committed to undertaking the research and the science to make sure that we know how individual locations are affected long term, not only short term, and whether or not we should allow a development to occur in those locations over the long term.

Given that we are still to determine this and there is work being undertaken, when we have that work done we will be able to provide more clarity. I would anticipate that whether we are talking about bushfires or low-lying land, the government will then need to consider its options based on that thorough research and science that has been undertaken around the land and how that land can be used.

Buses: south-eastern suburbs

Ms HUPPERT (Southern Metropolitan) — My question is to the Minister for Public Transport, Martin Pakula. Can the minister inform the house of what the Brumby Labor government is doing to improve bus services in Melbourne's southern suburbs?

Hon. M. P. PAKULA (Minister for Public Transport) — I thank Ms Huppert for her question. Last week Ms Huppert was in fact with me when I announced the outcomes of two bus reviews that will deliver three new bus routes and improvements to two other routes as part of a $2 million boost to local bus services in Melbourne's southern suburbs. Of course our southern suburbs are not just a great part of the state but a great part of our great commonwealth. You can bank on it.

Mr Viney — Which bank?

Hon. M. P. PAKULA — Which bank? The Commonwealth!

More than 160 members of the local community participated in a workshop. More than 200 people made a submission to the Bayside-Kingston and Boroondara-Glen Eira-Stonnington bus service reviews. That consultation helped us to ensure that the bus upgrades we will implement later this year genuinely reflect the needs of those local communities.

I know Mrs Peulich will be pleased to know that from later this year a new bus route will operate from Waterways estate to Mordialloc station, and that means that residents of the new areas of the Waterways and Epsom estates are going to have access to public transport for the first time and the ability to connect with the trains on the Frankston line. Bus routes 811 and 812 will also be re-routed and extended to provide improved access to the Dingley Village shopping precinct and to provide public transport to the communities around Tootal Road for the first time.

The review also revealed the need for extended operating hours for services that link Elsternwick, Carnegie, Chadstone, Oakleigh and Brighton. Existing route 627 is going to be split into two new routes, and that means longer hours of operation, including Sundays. It will also mean those services that currently terminate well before Middle Brighton will now extend right to Church Street, Brighton. Commuters coming from Oakleigh who want to connect with the Sandringham line will have that opportunity.

The review also recommended examining the bus links once the new Glen Eira Sports and Aquatic Centre is in operation late next year. We are going to improve services to meet the major increase in demand that is expected. We are going to consult with the centre, the council and other members of the community on the changes and increases in frequency that might be necessary to meet the demand when that centre is in operation.

We understand the importance of improving access to all public transport options, whether in new, existing or growing areas as well as the established suburbs. For too long bus services were the poor cousin of public transport. We changed that through the Victorian transport plan. We changed that through the bus reviews. We are determined to be different in regard to our treatment of buses. Determined to be different, just like the Commonwealth Bank!

Rob Hudson and Ann Barker, the members for Bentleigh and Oakleigh in the Assembly, and Ms Huppert, all of whom joined me on the day, are now able to demonstrate to their local communities that they will see much better bus services later this year.

Taxis: communication proposal

Mr KOCH (Western Victoria) — My question without notice is to the Minister for Public Transport, Martin Pakula. Can the minister advise the chamber if details of a proposal marked commercial-in-confidence by Sandor Pty Ltd and Premier Technologies Pty Ltd titled 'TaxiTrigger' were provided to 13CABS or any other entity outside the Department of Transport?

Honourable members interjecting.

The PRESIDENT — Order! I heard what I consider to be an inappropriate remark made by someone on my left. The comment was, 'You're a grub'. That is not the sort of language that I will tolerate in the chamber.

Hon. M. P. PAKULA (Minister for Public Transport) — Once again the opposition is engaging in a tactic I referred to yesterday, which is to make reference to documents, sight unseen, and ask me to comment on them without providing context. Mr Koch asked a question of some detail about a document that he may have in his possession but which is not my possession in the chamber as we speak. I am happy to take the question on notice. I might be able to provide Mr Koch with better information if he provides better context in the supplementary question he will no doubt ask.

Supplementary question

Mr KOCH (Western Victoria) — My supplementary question is: can the minister further advise the house as to how, just one week after a rejection of the proposal by the minister's parliamentary secretary, 13CABS launched TaxiTracker, mirroring almost totally features detailed in the TaxiTrigger proposal?

Hon. M. P. PAKULA (Minister for Public Transport) — Again Mr Koch asserts that there was a rejection by the parliamentary secretary. Again he provides no evidence for his claim, and given that I have undertaken to take the question on notice, I will apply the same rule to the supplementary question.

Rail: Wendouree service

Ms PULFORD (Western Victoria) — My question is for the Minister for Public Transport, Martin Pakula. Can the minister inform the house of what the Brumby Labor government is doing to further improve train services in Wendouree?

Hon. M. P. PAKULA (Minister for Public Transport) — I thank Ms Pulford for her question. Wendouree is a fantastic part of our state and a great part of our commonwealth. As members would be aware, the new station at Wendouree opened back in June 2009. It took a Labor government to build that great new station. It services a community of more than 40 000 people, it gives the people of Wendouree access to direct train services to Melbourne and it means that they do not have to drive into central Ballarat to travel to Melbourne. Since the station opened more than 24 000 passenger trips have been made from Wendouree. That equates to about 150 people using the station every weekday; that helps reduce the strain on CBD parking at Ballarat station, but it also makes for an easier commute for the people of Wendouree.

I was delighted to recently announce an additional two peak services for Wendouree. That brings the number of trains servicing Wendouree to 13 weekday services, or 73 services a week. The two new services are the 5.32 Wendouree to Southern Cross station, that arrives at 6.53, and the 16.37 Melbourne to Wendouree, which arrives at 17.51. Those two additional services provide an added incentive for even more people to either begin catching the train or start their journey from Wendouree rather than Ballarat. Experience tells us that the introduction of new services encourages more patronage growth and certainly also encourages more growth in the local communities.

I and Ms Pulford encourage the people of Wendouree and the surrounding areas who might not have caught the train before to give it a go. Like the very recent restoration of passenger services to Creswick and Maryborough and the upcoming restoration of passenger services at Clunes, the new services for Wendouree are just one more piece of evidence of our government's commitment to improve public transport access for the people of Ballarat and the goldfields area.

VicForests: legislative requirements

Mr BARBER (Northern Metropolitan) — My question is for the Minister for Environment and Climate Change. It relates to the judgement in the courts yesterday in the matter of Environment East Gippsland and VicForests. The judgement related to a number of pieces of legislation that the minister would be familiar with — the Sustainable Forests (Timber) Act, which was created by this government, and the Flora and Fauna Guarantee Act, which was created by a former government in which the minister was intimately involved. What the judgement indicates is that the intent of those pieces of legislation applies to VicForests in the same way as it does to every other citizen in Victoria, where relevant. The environment movement in fact had to do the minister's job for him by taking this matter to court, and therefore I ask: will the minister honour the findings in that judgement, or will he simply, as has happened in past instances, make changes to that legislation and its related regulatory framework in order to exempt VicForests or get VicForests out of its responsibilities?

Mr JENNINGS (Minister for Environment and Climate Change) — I am sure Mr Barber has mixed views about how he hopes I answer this question.

Mr Barber — Answer it fulsomely.

Mr JENNINGS — I am going to answer it fulsomely — have no doubt about that — but I would be very interested to know what Mr Barber, in his heart of hearts, thinks about the existing legislative framework and the existing constructs of the law that he believes led the judge in this matter to reach a conclusion and provide some directions from the court in accordance with those laws. I believe he would be happy with those laws. I believe he has actually confirmed in the way in which he has couched his question that he recognises the validity and strength of those laws and that his invitation is for me to actually confirm the existence of those laws and the maintenance of those laws. I think it is incumbent upon me to actually say it is my intention to uphold them and maintain them. That is my obligation.

But it is very interesting that this morning Mr Barber's leader in the federal jurisdiction, Senator Brown, has been out cutting his lunch, because I heard Senator Brown on ABC radio this morning referring to this matter, calling for legislative change in this area. I am not going to fall into the trap that Senator Brown has fallen into by stating that we need to have some legislative amendments to create a different set of circumstances, because probably his home-based team here in Victoria recognises the strength and validity of the Victorian laws that have led to the cumulative prescriptions and the direction from the court for us to take actions to protect environmental values into the future.

Mr Barber interjected.

Mr JENNINGS — Maybe you and your federal counterpart, perhaps offline, might work in tandem to get a united voice in relation to this matter, because there are a lot of people in the environment movement who actually would be, yes, very pleased that Victorian law has been enforced and interpreted by the court and that some actions have been recommended.

One of the outcomes of the court's determination was that the moratorium on four coupes in the Brown Mountain area along Brown Mountain Creek will have an ongoing injunction subject to the satisfaction of a number of prescriptions and further surveying work leading to the conclusion that logging may be appropriate in that vicinity. Specifically, as I understand it, there is a requirement to establish in that part of the forest a special management zone for the long-footed potoroo, there is a requirement to establish a special protection zone for greater gliders and yellow-bellied gliders and there is a requirement to have ongoing survey work relating to the wellbeing and maintenance of habitat for the giant burrowing frog, the large brown tree frog and the spot-tailed quoll. They are the species that have been subject to the direction of the court.

The way in which those prescriptions could be determined and the way in which that survey work could or should be undertaken will be subject to further consideration by the relevant agencies and parties and subject to further direction by the court. It is my intention, for the aspects that are my responsibility, to comply with the direction of the court and to present that material to the court. Some of that material is not my domain, as Mr Barber would understand, in terms of the operations of VicForests, which is not an agency that I have ministerial responsibility for. It will need to acquit its part of the responsibility for the further consideration of the court before logging could take place in the future, if at all.

Supplementary question

Mr BARBER (Northern Metropolitan) — Just on the minister's last statement, the minister is more than just a traffic cop who is there checking that people are obeying the law. He plays an integral role in this whole process, including in the release of areas for logging through the TRP (timber release plan) and allocation order process. Can the minister tell me — and I am sure many members of this chamber will be interested in his assessment in this area — what is the likely impact of this judgement and these new sorts of requirements and the findings of how these particular activities must be run in light of the high principles of this legislation? What is the likely impact of that for the minister's department in the period between now and next summer's logging season more generally across the state of Victoria?

Mr JENNINGS (Minister for Environment and Climate Change) — Mr Barber has confidence that I have been able to analyse the implications of that decision and to fast-track what it might mean into the future. I have a pretty reasonable feel for those matters, but I am going to get further advice on them. This decision relates to four coupes. There are 53 coupes currently where a moratorium has been put in place in East Gippsland pending further survey and consideration works. We understand the importance of having confidence about the availability of timber through the wood utilisation plan and the timber release plan and of having confidence that the appropriate prescriptions are in place to protect environmental values. Both flora and fauna species and habitat need to be protected now and into the future.

In relation to the coupes that have been questioned here, interestingly enough, in terms of the gestation period of the administrative process that has led ultimately to logging, the wood utilisation plan and the TRPs in question relating to Brown Mountain coupes were actually done before I was the minister responsible for them.

Mr Barber — Going forward?

Mr JENNINGS — Going forward, I am very keen, in accordance with the direction of the court to demonstrate not only under Victorian law but in terms of our capability that we have a high degree of confidence about the availability of material that is being used to provide for prescriptions and protections in the future. The court has set a very high benchmark in relation to the satisfaction of those matters into the future.

Health: federal government plan

Mr SOMYUREK (South Eastern Metropolitan) — My question is to the Treasurer, Mr John Lenders. Can the Treasurer inform the house of the benefits of cooperative federalism, particularly in regard to health outcomes, and can he identify any risks to the clear benefits arising from such cooperation?

Mr LENDERS (Treasurer) — I thank Mr Somyurek for his question about cooperative federalism, particularly about any risks arising for cooperative federalism and about some of the health outcomes we get from cooperative federalism. One of the features of the last two and a half years is that we have managed, through cooperative federalism, to turn around the drift where the commonwealth abdicated responsibility in funding public hospitals in the state of Victoria and have started to load up and take some of the burden, which it has — —

Honourable members interjecting.

Mr LENDERS — Mr David Davis, determined to be different yet again, opens his mouth on this as the shadow minister. I am delighted that he has, and I hope he pays a bit of attention to detail on these matters and discloses all his interests, particularly his shares in the Commonwealth Bank.

Mr Somyurek asked me about the issue of the commonwealth and cooperative federalism. During the 11 years of the Howard government — —

Mr D. Davis — You signed on, and you didn't get the details right.

Mr LENDERS — Mr David Davis talking of attention to detail is somewhat novel. He might have filled in his disclosure form and owned up to the shares he owns in the Commonwealth Bank before he lectures me on attention to detail.

Mr D. Davis interjected.

Mr LENDERS — Before he lectures me on attention to detail, Mr Davis might pay some attention to his own details, and when he talks in this place about the secret state he might pay attention to the detail of disclosing his bank shares.

Mr Somyurek asked me about — —

Honourable members interjecting.

The PRESIDENT — Order! Mrs Peulich!

Mr LENDERS — In those long, dark 11 years of the Howard government we saw at the starting point the commonwealth providing 50 per cent of funding for hospitals and at the end of the Howard government we saw the commonwealth funding 40 per cent of public hospitals and leaving the burden to the states and territories to pick up the costs of servicing the critical need for working families in Victoria, that critical need that takes cost pressures off people and delivers quality services, because the commonwealth neglected them. For the record, that decline from 50 to 40 per cent not only happened during the 11 years of the Howard government, but it all happened during the watch of the then federal minister for health — the one and only Tony Abbott! What we saw then was that you had a blame game; you had a cost shift; you had all these things happening during the time that Tony Abbott was federal health minister.

Now we have a choice of plans for the future. On one side we have a plan which is cooperative federalism, making the hard decisions and paying attention to the detail.

Mr D. Davis interjected.

Mr LENDERS — I know Mr David Davis is determined to be different, but I would suggest that if he wishes to lecture me about attention to detail, he should disclose to this Parliament his shares in the Commonwealth Bank and not hide them.

Mr Somyurek asked about the threats to the future and benefits from cooperation. The benefit from cooperation is that after two and a half years of federal Labor government that jurisdiction is now picking up 43 per cent of the cost of running public hospitals — and the state has not diminished its effort — so what it means is that we are able to treat more patients more frequently in better equipped environments with a well-staffed system, qualified staff and a cooperative commitment to go forward.

These are the issues that need to be addressed. Cooperative federalism works in this particular environment. The risk is that there will be a change of government, and the risk also is for Mr David Davis, if he pays attention to detail — —

Honourable members interjecting.

Mr LENDERS — If he is talking about attention to detail, perhaps he could pay attention to detail and disclose the shares he has hidden from the Parliament, and perhaps he could also explain how any future government would deal with conflicts of interest when the leader of his party, Mr Baillieu, owns shares in

almost every possible company and would be conflicted day after day.

Planning: Ashwood development

Mr D. DAVIS (Southern Metropolitan) — My question is to the Minister for Planning. I refer to the Gateway project in Ashwood where the minister has waived normal planning rules and given permits for the construction of an intensive social housing development that includes a seven-storey residential tower. Now asbestos contamination has been found on the site, construction has been paused and a clean-up has begun, and I therefore ask whether the minister is able to assure the house, given his personal sign-off on the project and the abbreviated process, that all relevant steps and checks were undertaken to detect asbestos and that the community will not be placed at risk.

Hon. J. M. MADDEN (Minister for Planning) — This is the usual form for the opposition — trying to scare and frighten people about any issue around public housing. What we have seen consistently with the other side of the chamber in regard to public housing is not actually stating that its members do not want public housing, but they use every excuse and every possible reason to not support public housing at a specific location. We have these extreme views that come in the form of loaded questions from members of the opposition. They say, 'You have not done enough about public housing', but when we commit to public housing, they do not particularly like aspects of the public housing projects. I would suspect that this is just another one of those questions that is part of a campaign of fear and loathing around public housing in this state.

In relation to a couple of issues let me make the point that Mr Davis is confused on a number of fronts when it comes to responsibility around these matters. A planning permit and planning authority give you an entitlement to then apply for the relevant building permits. I would expect that the contractor, or the developer in this case, would make sure that it has the relevant building permits. If and when it has the relevant building permits, of course it can start the project, but if at any stage it discovers any deleterious material — and I am sure Mr Davis has discovered a few deleterious things in recent days himself; I am happy to pull out the dictionary and explain what 'deleterious' means, but I am sure that he would understand what it means — the obligation is on the person who has discovered it. In Mr Davis's case, he has to take certain actions, and in this case the building contractor would have to undertake certain actions. Many of those actions relate to occupational health and safety, so I would expect that the contractor will comply with occupational health and safety under the relevant regulatory regimes. They do not necessarily sit with me, but I would also expect that the contractor has under the conditions of the building permit also made sure that it complies with all the relevant documents that have been issued.

Aside from that, you have the planning permits, which give you the opportunity to pursue those other steps. I am happy to get my department to take Mr Davis around all the technical issues there, but I am sure that if the relevant occupational health and safety issues have not been followed, the contractor would be prosecuted if it has not complied. I make the point to Mr Davis that if he believes there is an issue that needs to be accounted for in relation to occupational health and safety, I am happy for him to tell WorkSafe and to report it, and I am happy to ask WorkSafe to make sure that nothing undue has taken place on this site.

I am happy to pursue that, but when it comes to a campaign of fear and loathing and basically scaring the community about the impacts of public housing, I say to Mr Davis, 'Shame on the opposition and shame on you'. Shame on his members for trying to say, 'We want more public housing, but we never want it in a specific location', because they are basically scaring people about the prospect of public housing.

I would hope that one day, and one day soon, Mr Davis would make a remark that is complimentary to the public housing we are seeing built in this state and the social housing we are seeing developed in this state. Not only that, I would hope that one day the opposition will make a commitment to those vulnerable people who need the support of governments of whatever persuasion to remain committed to public housing and to providing that in large amounts in this state.

Supplementary question

Mr D. DAVIS (Southern Metropolitan) — I thank the minister for his answer, but I do not think his flippant response is satisfactory in light of the seriousness of the matter, and I therefore ask: will he outline to the house what steps are in place to ensure asbestos contamination is not present on development sites before he calls in to give blanket approval?

Hon. J. M. MADDEN (Minister for Planning) — Again I stand by my comments previously. This is another fear-and-loathing campaign around public housing; it is a scare campaign on your part to make people fearful of public housing. I say shame on you, Mr Davis; shame on you again, because here is an

opportunity for you to support public housing. You might want to make the point that there are shortcuts, but there are no short cuts, Mr Davis. If you have an issue around occupational health and safety, you report it to WorkSafe, but you would not have the courage to do that, Mr Davis. I ask you, Mr Davis, have you today reported that to WorkSafe? I bet not, because again you would prefer to scare people about — —

The PRESIDENT — Order! The minister, through the Chair!

Hon. J. M. MADDEN — Mr Davis would prefer to scare people about public housing than follow proper process and report any concerns to WorkSafe. We know that the opposition has no respect for workers. It would not want to report it to WorkSafe because this is the sort of record that it stands by time and again. It does not support workers and does not support public housing. There is fear and loathing, and we will see more of it from the opposition in the future.

Employment: government initiatives

Mr LEANE (Eastern Metropolitan) — My question is to the Treasurer, John Lenders. Can the Treasurer inform the house about the substantial employment growth as a result of the Brumby Labor government's investment in social housing, and can he identify any risks to these job-creating projects?

Mr LENDERS (Treasurer) — I thank Mr Leane for his question, his support for social housing and his absolute passion for creating jobs in Victoria. I know Mr Leane is a true champion of the NBN (national broadband network). As a former sparky himself he knows some of the jobs that go out there and he also knows the job-busting threat that the federal coalition is in wanting to scrap the NBN and leave 231 regional communities without fast broadband.

But Mr Leane asked about jobs in social housing, and I think it is worth noting that the Australian Bureau of Statistics at 11.30 a.m. today announced that 9800 extra jobs were created in the state of Victoria, and we have not heard a peep from the opposition. Why? Because it is good news. It is actually news in Victoria that means that 9800 more Victorians have jobs. The opposition has been completely, absolutely and totally mute, because for the opposition it is a bad news story when it cannot talk down Victoria. I do not think it has the lack of attention-to-detail defence that Mr David Davis uses with his shares; it just does not like good news.

On the social housing that Mr Leane asked about, what we have seen in Australia over the last two and a half years is a transformation of opportunity in social housing. We have seen a commonwealth government working with state governments, in particular the government of the state of Victoria, to actually boost the housing stock, with part of it being a great stimulus opportunity to create the jobs Mr Leane was asking about.

The national housing building project is estimated to have generated more than 2400 direct, full-time construction jobs. Of course not only are there those jobs in the interim, but there is a boost to social housing stock that gives opportunities to people who have not had decent housing opportunities for a long, long time. These are particularly important opportunities for our citizens to have. The commonwealth has invested strongly in this. During the 11 years of the Howard government we saw a net reduction of $1.2 billion in funding for public and social housing to the states and territories. That funding could have delivered more than 6000 units of social housing had it been maintained during those years.

The leader of the federal coalition, who seeks to be elected Prime Minister on Saturday week, has views on this that are quite interesting. At a forum he was asked a question about what he thought of the federal Labor government's policy of halving homelessness by 2020.

Mr D. Davis — On a point of order, President, on relevance, the Treasurer is now debating the differing views of two federal individuals, federal MPs, including the leader of the opposition. That is straying a long way from state administration.

The PRESIDENT — Order! Mr Davis is correct. It is not in order to debate the answer, and the answer should always be relevant. I am sure the Treasurer is aware of that and will be relevant with the rest of his answer.

Mr LENDERS — Mr Leane, in his question, asked me if I could identify any threats to these job-creating projects. President, I will heed your sound ruling and focus on threats in more general terms.

There is a contest of ideas. When the alternative Prime Minister was asked what he thought about the federal Labor leader's goal of cutting homelessness in half by 2020, he quoted the gospel of Matthew and said, 'The poor will always be with us'.

What we have here is a series of choices. We, as a state, have been working in partnership with the commonwealth to build the social housing stock that had been so woefully neglected through want of federal money up until November 2007. With that

commonwealth cooperation we have been able to build more units of social housing, despite the dog-whistling rhetoric we get at every juncture, as my colleague Mr Madden said earlier, when social housing is proposed.

We are for building infrastructure in partnership with the commonwealth; we are for social housing; we are for jobs; and we are for the NBN and the jobs that go with it. I believe if we work in a cooperative partnership with a good federal government we will deliver these issues that deliver jobs and make Victoria an even better place to live, work, access high-speed broadband and raise a family.

Planning: radio broadcast towers

Mr KAVANAGH (Western Victoria) — My question is to the Minister for Planning, Mr Madden, and it relates to the laws that are applicable to radio broadcast towers in Victoria and planning permits for them. Mr Madden will recall that I mentioned the case of Mr John Howard of Purnim who went away on holiday, came back and found that there was a radio broadcast tower built next to his house. He called the Moyne Shire Council, which sent an official who said, 'Yes, it does not comply with the planning permit, but we will issue one retrospectively, verbally'.

Mr Howard has spent $750 000, he says, fighting this tower, and his house has been devalued by $660 000. But he has been recently told that the council, other councils in Victoria and the Victorian Civil and Administrative Tribunal (VCAT) apply the Telecommunications Act 1997, which actually applies to mobile phone towers and not to radio broadcast towers, and that radio broadcast towers should be considered under the Broadcasting Services Act 1992. Can the minister confirm which is the applicable law for planning permits for radio broadcast towers in Victoria?

Hon. J. M. MADDEN (Minister for Planning) — I welcome Mr Kavanagh's question on these technical matters, and I understand the grievance the gentleman he referred to has in relation to these matters. I also understand he has had ample opportunity to take up these matters.

I do not have a specific answer for Mr Kavanagh today. I am happy to take that on notice and provide the answer to him, particularly if it relates to federal legislation and clarifying the differences in federal legislation. I am happy to provide Mr Kavanagh with any advice in relation to those matters.

But in terms of the gentleman in question, I understand why he should feel quite aggrieved, but I also note that he has had an opportunity to take his matters to VCAT, which is the independent umpire, and I would always encourage individuals to use those forms of appeal and opportunities if they have them.

I also recognise that if he has a concern about the administration of any of these matters, he has other opportunities to appeal those decisions in other courts, and I would suggest that if he feels so strongly in relation to these matters, he should get relevant advice as to whether that is an appropriate mechanism or not.

I also understand — and I am not trying to defend local governments in this instance and the decisions they may or may not have made in this space — that the relevant local government may have made offers to this individual around compensation in relation to these matters. I do not know what the extent of those matters might be, but if an individual has a civil disagreement on a number of fronts in relation to a matter, then that individual — this applies to the individual Mr Kavanagh has mentioned today — needs to consider avenues of appeal that the individual can elect to take up in order to give strength to their position on any of these matters. I would encourage that individual to take up the relevant legal advice and consider the options.

I am happy to provide Mr Kavanagh with additional advice in relation to any technical matters from my department's point of view, and I encourage the member to encourage his aggrieved land-holder to take up and consider the options available to him in relation to these matters.

Supplementary question

Mr KAVANAGH (Western Victoria) — What actions can the minister take in the event that councils throughout Victoria, as well indeed as VCAT, are under a misapprehension about the applicable law in these kinds of circumstances?

The PRESIDENT — Order! Mr Kavanagh's supplementary question, in my view, is inconsistent with the standing orders insofar as he is asking for a legal opinion. That being the case, I will give Mr Kavanagh the opportunity to rephrase his supplementary question. If he cannot do that, I am sure the minister has the gist of the issue and will be able to respond in another way.

Mr KAVANAGH — Thank you for your guidance, President. The question then is: what is the minister

going to do to clarify for local councils the appropriate law that should apply in this situation?

Hon. J. M. MADDEN (Minister for Planning) — I welcome Mr Kavanagh's interest in these matters and specifically the interest he has in assisting the individual concerned. From time to time there will be matters in the planning system that are open, to some extent, to technical interpretation, and there are a range of avenues that I might consider taking up on advice from my department in relation to giving additional clarity to the operation of the planning system. That can be done through advancing technical guidelines out into the planning community or fraternity — particularly local government — to give a more technical definition to some of the vagaries so that those involved better understand the controls, the regulations or the legislation as it currently exists.

On top of that there are always opportunities to put more rigour into legislative or regulatory requirements, and should it ever be shown that there needs to be additional clarity in any of these spaces — and that is clarity that can be accommodated more broadly by the community and the operation of the planning system — I am happy to consider those options.

In this case if it can be shown to me, through advice from my department, that additional clarity may be needed, I would be happy to provide for that in the planning system, and hopefully it would mean that in future local government would not enter into decisions that might end up with something commensurate with the circumstances described today by Mr Kavanagh.

Planning: Docklands development

Mr MURPHY (Northern Metropolitan) — My question is also to the Minister for Planning, Justin Madden. As Mr Madden would be aware, the Docklands precinct of Melbourne presents a range of new living and working opportunities for people, and that is projected to continue as Docklands develops even further over the next 10 years. I ask the minister to advise the house on any recent government announcements to service this growing residential and working population.

Hon. J. M. MADDEN (Minister for Planning) — I thank the member for his question and particularly for his interest in these matters.

The Docklands precinct has been one of the great success stories around the diversity of housing stock and the different housing options in this state. We know that Docklands is home to 6000 people. It is now 10 years since it has been established, and over 19 000 people are employed each day in that precinct, with a number of major corporations involved. We have recently opened the Myer headquarters in Docklands, we have National Foods there and we also have a number of banks.

An honourable member interjected.

Hon. J. M. MADDEN — Which bank? I will tell you which bank, and it is not that bank, although it is hard to mistake which banks you might have an interest in. On this occasion the ANZ Bank and also the National Australia Bank have their headquarters there.

Mr Lenders — There's Members Equity down there too.

Hon. J. M. MADDEN — Yes, and Members Equity Bank too. But we do not have the Commonwealth Bank there yet. Members of this chamber no doubt have a lot of interest in banks; some have more interest in banks than others, and some have a lot more interest in specific banks than others.

Recently my parliamentary colleague the member for Melbourne in the other place, who is the Minister for Education, and I announced that we would undertake a feasibility study for an urban primary school in the Harbour Esplanade area of Docklands to complement the future needs of the Docklands precinct. VicUrban has set aside an area of land within Digital Harbour which could be used to establish a government primary school, should it be required in the future. But we need to consider over the next 12 months what shape or form that might take and also whether there is a sufficient or justifiable need for a school based on the demographic analysis of the current and future population trends. We also need to factor into that the development of a site further up the road known as E-gate.

While it has not been the case that people often educate their children away from home in a different location, there might be that need in this precinct, so we are looking at not only the number of primary-age schoolchildren living in Docklands but also how the working population might choose to enrol their children at a primary school some distance from where they live, closer to where they work, so that the parents are not spending as much time away from their children.

The idea of a school close to a parent's workplace might be attractive to parents and families, so it is important that we investigate these options, that we thoroughly consider them and that we work out the right place and the right size for a primary school.

It is important that we continue to invest in infrastructure in our new and growing communities, wherever they might be. We are a government that is committed to that. My ministerial colleague and I look forward to our urban Docklands school investigation as a groundbreaking study in relation to how we might initiate schools for different housing types and different population groups in the future, making sure that wherever we build new communities we make sure that they are great places to live, work and raise a family.

Sitting suspended 12.58 p.m. until 2.04 p.m.

DOMESTIC ANIMALS AMENDMENT (DANGEROUS DOGS) BILL

Committee

Resumed from 27 July; further discussion of clause 23.

The DEPUTY PRESIDENT — Order! Members of the committee might recall that when the bill was last in committee progress was reported on clause 23. As I understand it Ms Pennicuik has amendment 19 to move. I ask whether she regards this amendment as a test for her other amendments.

Ms PENNICUIK (Southern Metropolitan) — I think it could be regarded as a test for amendments 20 and 21, although it may not be. If I am not successful with amendment 19, I would be very surprised if I were to be successful with amendments 20 and 21. However, amendment 22 is quite different.

The DEPUTY PRESIDENT — Order! I will not formally request that that amendment be a test, but the committee perhaps should be mindful that Ms Pennicuik will not proceed with amendments 20 and 21 in the event that amendment 19 is not successful. We will deal with amendment 22 as a stand-alone amendment.

Ms PENNICUIK (Southern Metropolitan) — I move:

> 19. Clause 23, page 15, line 4, omit "24 hours" and insert "8 days".

This amendment refers to proposed section 84TC(6) to be inserted by clause 23. It provides that:

> A dog may be destroyed under subsection (1) as soon as possible … but no earlier than 24 hours after that record is made.

The current arrangement is eight days, and my amendment would reinstate that such that an animal would be in the custody of a council for eight days before it was destroyed. The reason I move the amendment is that many groups in the community have called for the status quo to remain for the reasons I outlined earlier.

It enables people to become aware that their dog may be at large, and they can reclaim it in that time; 24 hours is not enough time. Also any dog in the custody of a council is no longer a threat to the community. I have not seen any evidence as to why eight days cannot remain, as has always been the case.

Hon. M. P. PAKULA (Minister for Industrial Relations) — The government does not support amendment 19. We say it does not work within the framework of the act. The dogs in question are dogs that have already proved to be a danger to the community by attacking a person or another animal and causing injury. These are dogs whose keeping is strictly regulated. The fact that they are at large means the strict restrictions on them have not been complied with. There is another requirement of course in regard to a dangerous dog, and that is that it should be microchipped, which ensures that council officers can contact the owner and give them time to prove that their dog has escaped due to circumstances beyond their control. Effectively, in the vernacular I suppose, these are dogs that have already been convicted of an offence, and the government believes the 24-hour period is appropriate in the circumstances.

Ms PENNICUIK (Southern Metropolitan) — The minister says the conditions may not have been complied with. Obviously it may be an accident that the conditions have not been complied with; it may not necessarily be by design or due to irresponsibility. The government has been running the line that people need to be responsible, and of course we totally agree that pet owners need to be responsible. The reason a dog is at large may not be that its owner has been irresponsible; there could be another reason. There is nothing in the clause that says the dog has committed, as the minister says, another offence. The only offence it may have committed is being at large, for which it is sentenced to death. If it was not at large, it would be at home with its owner and it would be safe. It could have been at large because some other person, being mischievous, has let the dog out and its owner does not know it. That is why there needs to be more time allowed for circumstances where the dog has committed no offence but has been let out by somebody else and not been claimed by its owner.

Amendment negatived; clause agreed to.

Clause 24

Ms PENNICUIK (Southern Metropolitan) — I move:

22. Clause 24, after line 28 insert —

"( ) Section 84V(2) of the **Domestic Animals Act 1994** is **repealed**.".

This is an amendment which proposes to repeal section 84V(2) of the Domestic Animals Act 1994. For the benefit of members who may not be familiar with that provision in the bill, section 84V(1) of the Domestic Animals Act provides that:

> If a Council, person or body is authorised under this Act to destroy a dog or cat, that person must destroy the animal humanely.

Subsection 84V(2), which is the subsection I wish to see repealed, states:

> A Council, person or body that is authorised under this Act to sell or destroy an animal may give that animal to any person or body that is willing to accept it and which has been approved by the Council of the municipal district in which the animal is held in accordance with a Code of Practice made under section 7 of the Prevention of Cruelty to Animals Act 1986 relating to the use of such an animal in scientific procedures.

I move this amendment because I feel that, if it ever was, it is no longer acceptable for councils to have the ability to hand over animals for use in scientific procedures. That use of animals is personally abhorrent.

The DEPUTY PRESIDENT — Order! I advise the gentleman in the gallery who is taking photos that he is unable to do so while the house is sitting.

Ms PENNICUIK — This is a very broad provision in the Domestic Animals Act. It is certainly the policy of the Greens to, if not totally wipe out, at least strictly limit any use of animals in scientific procedures. I would prefer that never happened. It is time that this provision was removed from this act so that councils would then not be able to give up animals for scientific research.

What we would like to see, as I said in my previous contribution to debate on this legislation, is a move towards dealing with the issue of animals held by councils. Firstly, there should be better regulation of the supply side in terms of puppy farms, the sale of animals, the desexing of animals and in terms of some of the provisions in this bill and in the existing act which go to ensuring as far as possible responsible ownership. Also, when there are animals that do not have a home I would like to see councils move towards re-homing them because, if the other measures are successful, there would be fewer of those animals needing to have homes found for them. This is working well in other jurisdictions around the world. That is the vision I see for animals, not councils destroying them within 24 hours or sending them off for scientific research. I do not think that is appropriate, and I think this provision should be removed from the act.

Hon. M. P. PAKULA (Minister for Public Transport) — I will say this for Ms Pennicuik: she has been absolutely consistent on this issue for as long as I have been in Parliament with her, and I give her credit for that. But even so, the government does not support her amendment. In our view the Greens have misinterpreted the way this power is used. More likely, and perhaps Ms Pennicuik has confirmed this in her contribution, the Greens are simply opposed to the use of animals for research in any circumstances.

The amendment that has been proposed is not in reality connected with the dangerous dogs amendment component of the Domestic Animals Act; that is beyond the purposes of the bill. But it is important to put on the record how this power is being used. All of the recent statistics demonstrate that very few dogs or cats are ultimately used for any form of research in any case — for example, in 2007–08 all of the animals that were used were only used to determine whether changes to management practices in pounds and shelters could improve the welfare outcomes of animals in those circumstances. More importantly, the use of any animals in research is already highly regulated. It is subject to two separate acts of Parliament, the Prevention of Cruelty to Animals Act and the Domestic Animals Act, and to three mandatory codes of practice, the code of practice for the use of animals in research and teaching, the code of practice for the use of animals from municipal pounds in scientific procedures and the code of practice for the care of animals in pounds and shelters. Whilst I appreciate Ms Pennicuik's sincerely and deeply-held views on this subject, the government does not support the amendment and does not believe it furthers the objects of the bill we are debating or is necessary in the circumstances.

Ms PENNICUIK (Southern Metropolitan) — I thank the minister for his comments and for his lesson on the acts and codes which regulate this area. I am sure the minister would understand that I am aware of their existence. I just want to say that the purpose of the bill is to amend the Domestic Animals Act in various ways, which is all I am trying to do here. I am sure the clerks

and parliamentary counsel would not have let me get away with it if it was outside the scope of my abilities.

Obviously I was going to take up the opportunity to at least put that on the record. I hear what the minister is saying about it being useful, but the clause is quite broad, and I just do not think it is appropriate in this day and age that that clause is there. The objects that he mentioned can be achieved in other ways.

Committee divided on amendment:

Ayes, 3

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

Noes, 37

Atkinson, Mr	Lenders, Mr
Broad, Ms	Lovell, Ms
Coote, Mrs	Madden, Mr
Dalla-Riva, Mr	Mikakos, Ms
Darveniza, Ms	Murphy, Mr
Davis, Mr D.	O'Donohue, Mr
Davis, Mr P.	Pakula, Mr
Drum, Mr	Petrovich, Mrs
Eideh, Mr	Peulich, Mrs
Elasmar, Mr	Pulford, Ms
Finn, Mr	Rich-Phillips, Mr
Guy, Mr (*Teller*)	Scheffer, Mr (*Teller*)
Hall, Mr	Smith, Mr
Huppert, Ms	Somyurek, Mr
Jennings, Mr	Tee, Mr
Kavanagh, Mr	Tierney, Ms
Koch, Mr	Viney, Mr
Kronberg, Mrs	Vogels, Mr
Leane, Mr	

Amendment negatived.

Clause agreed to; clauses 25 to 32 agreed to.

Reported to house without amendment.

Report adopted.

Third reading

Hon. M. P. PAKULA (Minister for Public Transport) — I move:

That the bill be now read a third time.

In doing so I thank members of the chamber for their contributions to the debate.

Motion agreed to.

Read third time.

TRANSPORT LEGISLATION AMENDMENT (PORTS INTEGRATION) BILL

Second reading

The PRESIDENT — Order! The question is:

That the bill be now read a second time.

House divided on question:

Ayes, 28

Broad, Ms	Lovell, Ms
Darveniza, Ms	Madden, Mr
Davis, Mr D.	Mikakos, Ms (*Teller*)
Drum, Mr (*Teller*)	Murphy, Mr
Eideh, Mr	Pakula, Mr
Elasmar, Mr	Peulich, Mrs
Guy, Mr	Pulford, Ms
Huppert, Ms	Scheffer, Mr
Jennings, Mr	Smith, Mr
Kavanagh, Mr	Somyurek, Mr
Koch, Mr	Tee, Mr
Kronberg, Mrs	Tierney, Ms
Leane, Mr	Viney, Mr
Lenders, Mr	Vogels, Mr

Noes, 3

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

Question agreed to.

Read second time.

Third reading

Hon. M. P. PAKULA (Minister for Public Transport) — I seek leave to move:

That the bill be now read a third time.

In doing so I thank members for their contributions to the debate.

Mr D. DAVIS (Southern Metropolitan) (By leave) — It is understood that the opposition has objections to the processes behind the Dispute Resolution Committee. My views and the views of the opposition are on record. As a final point, I want to make it clear that if we are elected to government at a later point, we will introduce legislation that will separate these ports and give true independence to Hastings. On this occasion we have not opposed the bill, but we do have concerns about it and they have been expressed in the various debates in this chamber. I want it on the record that in government we will seek to separate the ports to ensure that the port of Hastings has an independent and competitive future.

Ms PENNICUIK (Southern Metropolitan) — Chair, do I have the ability to deny leave?

The PRESIDENT — Order! Yes.

Ms PENNICUIK — I would like to do that, and I will explain why. Very briefly, Mr Lenders said this morning that there are provisions in the constitution that allow bills to go to the Dispute Resolution Committee. Mr Lenders said that because in the constitution we should not be able to say that it is undemocratic when it clearly and certainly is an undemocratic provision. I am also disappointed that opposition members are not opposing this bill when they did oppose it in its first iteration in this house, when it was rejected. We have a six-month rule, and we have it for good reason. Very few bills are opposed — —

Mr Viney — On a point of order, President, I am seeking some clarification. The minister has moved, by leave, that the bill be read a third time. We gave leave to Mr Davis to make some comments. I am trying to get clarity on whether Ms Pennicuik has sought leave to make comments or whether she was denying leave for the bill to be read a third time.

The PRESIDENT — Order! On the point of order, I must admit I am not quite clear, because I thought Ms Pennicuik asked if she could deny leave. She was told she could and she did, and then she went on to speak. I am not quite sure what Ms Pennicuik is speaking on. I will seek some advice.

I am informed that all that is required from Ms Pennicuik is to deny leave, which she has done. She does not then get the chance to explain why. Some people might be interested, but some may not be. The fact is that she has denied leave. Therefore the bill will now go into committee.

Leave refused.

Committed.

Committee

Clause 1

Ms PENNICUIK (Southern Metropolitan) — I would like to ask some questions about clause 1. I will just take a minute to explain why we have ended up in committee because I denied leave for the bill to be read a third time. The reason is that the Greens are opposed to the process that has led to this bill arriving back in the Parliament. In our view the bill was defeated by the upper house and should not have come back through the Dispute Resolution Committee (DRC), a process which we say is fundamentally undemocratic. It is regretful that that process has apparently been entrenched in the constitution. I am making these opening remarks because we are here with a bill that should not be here and I would like to go to the reasons why we have this bill before us.

If you are going to use a process such as the Dispute Resolution Committee process that was inserted into the constitution, there would need to be good reason for it. It seems to me that there is no urgency for anything under the purposes clause of this bill and so I would like to ask the minister some questions about that.

As a result of my conversations about the bill, I understand that under clause 1(a) the Port of Melbourne Corporation and the Victorian Regional Channels Authority are already parties to the Transport Integration Act 2010 by being referenced in the act. Therefore this particular purpose of the bill is not an urgent one because they are already captured under the act.

Hon. M. P. PAKULA (Minister for Public Transport) — Is that a question or a comment?

Ms PENNICUIK (Southern Metropolitan) — That is a question.

Hon. M. P. PAKULA (Minister for Public Transport) — I am advised that the organisations referred to by Ms Pennicuik are only partly caught by the Transport Integration Act for policy purposes. They are not re-established as authorities as other organisations are.

Ms PENNICUIK (Southern Metropolitan) — Thank you, Minister. They are not re-established as authorities but they are subject to it by being named in the act in terms of the policy and broad policy provisions that that act requires, and so they are required to comply with those policy provisions under the act.

Hon. M. P. PAKULA (Minister for Public Transport) — Is Ms Pennicuik seeking clarification?

Ms PENNICUIK (Southern Metropolitan) — Yes.

Hon. M. P. PAKULA (Minister for Public Transport) — Yes.

Ms PENNICUIK (Southern Metropolitan) — As outlined in the second-reading debate on the original bill — not this bill because this bill is a different one — the Greens opposed the other purpose of the bill, which is that the port of Hastings be abolished and that the

Port of Melbourne Corporation become the successor in law of the port of Hastings; that is outlined in clauses 1(b) and (c) respectively.

Our reasons for that are based on the track record of the Port of Melbourne Corporation in terms of it sacrificing the long-term health of Port Phillip Bay, from my point of view, during the channel deepening project. We are also concerned that the arguments put by the government for the development and expansion of the port of Hastings seem to be taking precedence over the health and ecology of Western Port bay. They are our reasons for not supporting the amalgamation of the Port of Hastings Corporation and the Port of Melbourne Corporation.

My question is: why is the government now moving with this provision to amalgamate the ports of Melbourne and Hastings in light of all the work that needs to be done and has been shown to be needed to be done in terms of the long-term ecology over the next 100 years in the port of Hastings and the biosphere region around it? Why is that work not being done, with the port of Hastings then fitting into that, rather than the port of Hastings being the priority and Western Port bay being a secondary consideration?

Hon. M. P. PAKULA (Minister for Public Transport) — The short answer to Ms Pennicuik's question is that even though the development of the port of Hastings is, as she indicates, not happening today — it is some time away — there is a lot of preparatory work that needs to be done. The Port of Hastings Corporation at this stage has four employees. It does not have the wherewithal to do the necessary preparatory work, and in those circumstances the amalgamation is viewed by the government as warranted and necessary.

Ms PENNICUIK (Southern Metropolitan) — In the Dispute Resolution Committee, which of course is a private committee, discussions were held about my concerns about the health and ecology of Western Port bay. When is the government going to do the overall studies that are required on Western Port bay and what type of development can be sustainably done in that biosphere region before going ahead with any plans to expand the port of Hastings?

Hon. M. P. PAKULA (Minister for Public Transport) — I am advised that the environmental studies are commencing about now and they will take a couple of years. They require the expertise of the Port of Melbourne Corporation, which has been through this kind of thing before in order to undertake the studies in the way that they need to be done.

Ms PENNICUIK (Southern Metropolitan) — Is the minister saying that it is the job of the Port of Melbourne Corporation to make decisions about the future health of Western Port bay in terms of its state, national or international significance and the biosphere region? Is it the job of the Port of Melbourne Corporation or is it the job of the whole of the Victorian government in concert with the national government under the commonwealth Environment Protection and Biodiversity Conservation Act?

Hon. M. P. PAKULA (Minister for Public Transport) — It is obviously under the Transport Integration Act provisions. It is a job for all of government to do the relevant work, but the Port of Melbourne Corporation has a role in making some of the recommendations that the government will ultimately be required to act upon.

Ms PENNICUIK (Southern Metropolitan) — I know that the minister is getting frustrated, but I am also getting frustrated about this particular issue. During discussions in the Dispute Resolution Committee the chair of the committee in particular did not seem to grasp what I was getting at here. Minister Pakula has said that advisers in briefings have said to him, which is what the chair of the DRC also said, that what the government appears to have in mind is that at some stage the port of Hastings will be expanded. The minister has conceded that this will not happen for a while yet, so there is no urgency for this bill. That is what disappoints me about the coalition supporting it — that there is absolutely no urgency for it.

The government proposes that the port of Hastings will be expanded and studies will be done and that that needs to be done by the Port of Melbourne Corporation because there are not enough people in Hastings to do it. But my point is that it is not the job of the Port of Melbourne Corporation or the Department of Transport to be the custodians of the health of Western Port bay. That is a state government and national government responsibility, because the bay surrounds our wetlands and is caught under the Environment Protection and Biodiversity Conservation Act, which addresses threshold issues about Western Port bay and where the port fits, not what the port wants to do and where Western Port bay fits.

Hon. M. P. PAKULA (Minister for Public Transport) — I understand Ms Pennicuik has expressed this view in a number of different forums now and we just disagree about whether or not the bill is necessary now. The government says it is. There is preparatory work that needs to be done. Of course the government and the Port of Melbourne Corporation is subject to all

the relevant state and commonwealth environmental regulations in regard to this, but the Port of Melbourne Corporation has an important role in doing some of the work that is needed to be done in order to prepare Hastings for those studies and for the work that needs to be done for its future development.

Ms PENNICUIK (Southern Metropolitan) — I will not labour the point any longer. I think the minister and I fundamentally disagree. Where we are coming from is that the amalgamation of the Port of Hastings Corporation and the Port of Melbourne Corporation needs to be of secondary importance to the health of Western Port bay and the biosphere region — not the other way round, which is the way the government is approaching it. This is why we have this bill and have had it rammed through the Dispute Resolution Committee when it was not an urgent bill. We obviously have a fundamental disagreement with regard to the approach.

Mr RICH-PHILLIPS (South Eastern Metropolitan) — Just to reiterate the coalition's position with respect to this issue, as articulated in the second-reading debate, we continue to support the corporate and operational separation of the Port of Melbourne Corporation and the Port of Hastings Corporation and the further development of the port of Hastings, with the necessary environmental caveats as a container port with connections and an alternative route down the Western Port Highway. That has been our position as articulated by the shadow minister for ports, Denis Napthine, for a number of years and it is a position that, notwithstanding the government's pursuit of this legislation, we will pursue in government if we are elected in November.

Clause agreed to; clauses 2 to 59 agreed to.

Reported to house without amendment.

Report adopted.

Third reading

Hon. M. P. PAKULA (Minister for Public Transport) — I move:

That the bill be now read a third time.

I thank members for their contributions to the debate.

Motion agreed to.

Read third time.

BUSINESS OF THE HOUSE

Orders of the day

Mr VINEY (Eastern Victoria) — I move:

That order of the day, government business, no. 4, be read and discharged.

Motion agreed to.

WORKING WITH CHILDREN AMENDMENT BILL

Second reading

Debate resumed from 24 June; motion of Mr LENDERS (Treasurer).

Mr RICH-PHILLIPS (South Eastern Metropolitan) — I rise to make some comments on the Working with Children Amendment Bill and to state that the coalition will not be opposing this amendment bill. This is the second time in a couple of months that the Parliament has been asked to come back and make amendments to the Working with Children Act 2005 and the Child Employment Act 2003. It does raise questions as to what degree of coordination is taking place between the Minister for Industrial Relations and the Attorney-General that we are having amending bills on working-with-children legislation coming so quickly to the Parliament, when presumably these matters would or should have been under development concurrently within the two ministers' respective areas of responsibility. Nonetheless we now have a second piece of legislation seeking to amend the Working with Children Act and to make consequential amendments to the child employment legislation.

The bill seeks to make changes to the information required for some applications for an assessment notice and to expand the powers of the Secretary of the Department of Justice to gather that information, as the secretary is the responsible agent. It removes the obligation from the secretary to consider charges against a person that have been finally dealt with — that is, in terms of their either having been withdrawn or dismissed. It reduces the time allowable for a person who is a category 1 applicant to make a submission against the issuing of a negative notice under the working-with-children regime. It provides the secretary with the ability to suspend an existing assessment notice during a reassessment period. It provides that members of the Australian Federal Police are exempt from having to apply for a working-with-children check. It makes it an offence for a registered sex

offender to apply for a working-with-children check. It also allows information gathered during the course of a check to be shared with officials from other states and territories.

The coalition is not going to oppose this bill, but it has a couple of concerns about the way in which it will potentially operate. One of the key issues with the bill and indeed with the child protection regime in Victoria that we have concerns about is the government's continued failure to appoint an independent children's commissioner. We have raised this matter as policy over an extended period of time now because we have the belief that an independent children's commissioner should be appointed in Victoria to protect the interests of Victoria's children.

In the child protection framework we have seen a number of issues reported on, particularly by way of Ombudsman's reports criticising the way in which the Department of Human Services has discharged its responsibility with respect to child protection. The legislation before the house does not go to the child protection framework to any great extent, though there may be indirect overlaps given that the people implementing that framework presumably would be required to meet the working-with-children check requirements. However, it has been clear from those Ombudsman's reports that the government has been derelict in its duty to children in the custody of the state and to other children coming to the attention of the Department of Human Services. Yet with this legislation and the principal legislation we have the government putting in place a framework purporting to protect children in other environments from people who may be unsuitable to come into contact with them, when clearly the government has not got its own house in order with respect to its obligations to protect vulnerable children.

With respect to the specific amendments in this bill, the bill introduces a new offence of a registered sex offender — who is a person currently covered by the Sex Offenders Registration Act of 2005 — who is identified pursuant to that legislation to apply for an assessment notice for a working-with-children check. That particular provision is something that the coalition certainly has no objections to, but it notes that there is already a provision in the Sex Offenders Registration Act 2004 that creates an offence for a registered sex offender under that legislation to apply to work in a workplace where they will come into contact with children. What the provision in this bill is doing is creating an offence of applying for a working-with-children check, and it is the view of the coalition that those two offences are largely analogous; however, the penalties that this bill seeks to impose for that offence are dramatically different from the penalty that exists under the Sex Offenders Registration Act. It seems incongruous that we have what on the face of it are largely similar offences under different pieces of legislation that attract substantially different penalties. It again raises the question of just how carefully and thoroughly this framework has been put in place.

I note that the bill is in part the product of a review that was undertaken at the end of the three-year period of the initial working-with-children regime to correct and address a number of concerns that were raised, and I note that a number of those concerns had previously been raised by the coalition in the initial debate on the principal legislation and in subsequent debates. It would have been preferable had those matters been dealt with at the time they were first raised.

One of the other matters that the coalition has noted with this legislation is the requirement for the secretary to not issue an assessment notice for a person who is classified as a category 1 person. Under the legislation three categories are established to identify people who may have committed various offences that impact upon their suitability to be in the presence of children — working with children. Category 1 is the category that covers the people with the most serious offences that are regarded as making them unsuitable. Categories 2 and 3 are lower level offences that make a person potentially unsuitable to be working in an environment with children. The category 1 offenders are people who have been convicted of serious violent, sexual or drug offences against a child, specifically where a child was the victim, whereas categories 2 and 3 pertain in some cases to similar offences where the victim was not a child.

The amendments this bill makes change the time frame in which a person who is a category 1 applicant, and therefore refused an assessment notice, can appeal against the assessment notice, and that period is to be set at 14 days. However, while that person is appealing a decision not to grant an assessment notice, they may continue to work in an environment with children. I understand this provision exists basically to allow people who have been incorrectly categorised as category 1 applicants to contest their categorisation in that manner. But one of the consequences of that is that a person who is appropriately categorised in category 1 could conceivably be in an environment working with children for a period of 14 days while their application for review is being considered. If this regime is to work as intended, it is not entirely clear how potentially exposing children to people categorised as category 1

for a period of 14 days is consistent with the purposes of the legislation.

The bill also provides for the secretary to seek any information that the secretary desires in relation to the consideration of an assessment notice, and the matter we raise here relates to the privacy provisions as outlined in the Charter of Human Rights and Responsibilities, and it is not clear that the way in which this bill seeks to handle information pursuant to that provision — this is clause 5 of the bill, which expands the provision with respect to the seeking of information — is consistent with the provisions of the Charter of Human Rights and Responsibilities. It seems, although that matter is not explicitly dealt with as a conflict, that this is a recurring theme with legislation that originates from the Attorney-General's area. The great champion of the Charter of Human Rights and Responsibilities seems quite happy to ignore it when he is bringing forward legislation that on the face of it appears to offend against the charter. We see very few statements of compatibility from the Attorney-General which highlight conflicts between his legislation and the charter, notwithstanding many third-party advocates highlighting those deficiencies against the bills.

One of the other areas that we see as a sensible shift is the inclusion of the Australian Federal Police as being exempt from the requirements of obtaining a working-with-children check. When the initial legislation was passed this issue was raised because the current legislation provides for Victoria Police to be exempt from the requirements to obtain working-with-children checks. Indeed, the coalition raised the issue of the Australian Federal Police also being exempt at the time the principal legislation was put in place. The government's view at that time, because it is very rarely willing to accept anyone else's advice, was that the Australian Federal Police rarely come into contact with children in their work and therefore there was no reason for an exemption to be explicitly set out in the legislation. The government has since changed its view as to the contact the AFP does have with children in the community and has now agreed, as we originally thought it should have, to provide an exemption for the Australian Federal Police in the same way as Victoria Police have an exemption.

In summary, the coalition parties will not oppose the legislation. The bill makes a number of minor changes with respect to the framework surrounding working-with-children legislation. In many cases they address issues that we had previously raised as concerns, and accordingly we will not oppose the bill.

Ms PENNICUIK (Southern Metropolitan) — I would like to make some remarks on the Working with Children Amendment Bill 2010 that we have before us, understanding that the purpose of the bill is basically to amend the provisions under which people who work with children are cleared to do so.

It is interesting that in the second-reading speech the Attorney-General says in the third paragraph:

> The … community has demonstrated its commitment to protecting children by embracing the working-with-children check scheme. Since its commencement in 2006, over 613 000 applications have been received, demonstrating the value placed by the community in the protection of children.

As of 30 April 2010, 422 people have been issued with negative notices thereby preventing them from engaging in child-related work. I did a calculation on that, and it turns out that 0.0006 per cent of the people who have applied have received a negative notice. We would have to say it is a good thing that so few people are receiving a negative notice, but it is also good that people who deserve to receive a negative notice are receiving them.

We are supportive of the working-with-children checks, as is the rest of the community. However, as I have said on other occasions when the subject has been before the house, it is only part of the answer. There are people who are a danger to children who will not be caught by a working-with-children check because they do not have a history that is recorded within the justice or correction system, so they may not be picked up by a working-with-children check. Even so, it is good to have it in place.

The Attorney-General made the point when the regime was first instituted that there would be a review after three years. I understand that review was conducted last year. When we asked about the review we found submissions had been made to the Department of Justice and after the submissions had been made there was stakeholder feedback predominantly through a series of targeted meetings held between September and November 2009. However, none of this was made public. It has been pretty much an internal review by the Department of Justice.

As I have said before about reviews conducted by the Department of Justice, it could improve the transparency of those reviews by making them public and more accessible. The processes, procedures, submissions, final report and conclusions of the department should be made public. I do not understand why these things are internal to the Department of

Justice when they are about issues of such public importance.

Basically, the bill is fairly simple. The regime that is in place has been reviewed. As a result a number of things have been included in the bill, such as a provision enabling the secretary to consider an application that does not include the prescribed information. It clarifies and sets out how the secretary can do that. The bill provides, as Mr Rich-Phillips mentioned, for members of the Australian Federal Police to be exempt from a working-with-children check as is the current position with members of Victoria Police. However, it provides that if an AFP member is suspended and seeks to rely on the exemption and engage in child-related work, they must notify employers of that suspension.

At clause 9 the bill gives the secretary greater power to deem an application as being withdrawn. Clause 10 reduces the time lines for an applicant to make a submission against a negative notice. At the moment it is 28 days, but this will be reduced to 14 days, which is a lesser time for the applicant to make a submission against it. However, it also means that the secretary can issue a negative notice in a shorter time if the evidence before the secretary indicates that is what should be done.

Clause 18 provides that in considering whether it is appropriate to revoke an assessment the secretary can do anything he or she can do when considering an application — that is, a police check, or they can speak to any employee under the Public Administration Act. That issue was raised by Mr Rich-Phillips, and I will also refer to it, but the secretary is not required to consider any matter other than the matter that has given rise to the revocation. That makes it easier for the secretary to get information on an applicant. The bill will also allow the secretary to make inquiries on an application to the Director of Public Prosecutions (DPP) and any employee within the meaning of the Public Administration Act, and also to go to any source.

Mr Rich-Phillips has raised that issue and it is one that I, too, wish to raise in terms of the privacy provisions in the Charter of Human Rights and Responsibilities and any provisions under the Privacy Act. We attempted to seek the view of the privacy commissioner but were unable to do that.

What needs to be clarified concerns the meaning of any employee within the meaning of the act. Clause 6, which amends section 11(1)(c) so that the secretary can make inquiries to, or seek information on the application from any person or source that the secretary thinks fit, which seems quite wide. It may be that it is not wide because it is only public servants within the provisions of the act and/or the DPP, but it is worth having that clarified by the government because otherwise it leaves those privacy concerns unanswered. They are certainly not answered in the second-reading speech, which is where we go to look for the answers to those things.

Clause 22 inserts a new section 39A into the act so that sex offenders registered on the Sex Offenders Registration Act 2004, persons subject to extended supervision orders or interim extended supervision orders under the Serious Sex Offenders Monitoring Act 2005 and persons subject to a detention or supervision order may not apply for a working-with-children check. Currently they would be refused under a working-with-children check, but this new section means they are not even able to apply, which seems reasonably sensible.

The bill seems fairly straightforward and implements what we are told were the findings of the review of the act after the first three years of its operation. Apart from those queries we have raised regarding the ability for the secretary to seek information from any person or source that the secretary thinks fit, the other provisions in the bill seem reasonable and the Greens will support them.

Mr ELASMAR (Northern Metropolitan) — I rise to speak on the Working with Children Amendment Bill 2010. The bill arises from the necessity to streamline the current process of renewal of applicants' working-with-children checks, to further clarify the responsibilities of applicants and to empower the secretary to suspend any child carer who is charged with an offence against children.

The Working with Children Act 2005 arose from a commitment by the Brumby Labor government to do all in its power to protect the most defenceless and vulnerable people in our community, and they are our children. The process established to determine the suitability of adults working with children is cumbersome and time consuming, but it is a small price to pay for the relative peace of mind of the overall community.

The proposed amendments currently before the house are basically the streamlining of processes and technical housekeeping matters. The bill also contains a proposal to exempt members of the Australian Federal Police force in line with the exemption already granted to members of the Victoria Police force.

All renewal applications for working-with-children police checks will be due in 2011. Since its commencement in 2006 over 613 000 applications have been received, and as of 30 April this year 420 people have been issued with a negative notice. This obviously prevented these unsuitable people from being allowed to work with children in our community.

The amendments propose a more efficient renewal process, and they reduce the burden on the Victorian community whilst maintaining effective and proper safeguards. The bill will allow for the working-with-children check card to be used as proof of identity by people who are renewing their assessment notice, as the proof of identity documentation will have been previously provided when they first applied for an assessment notice.

To facilitate the renewal process the Department of Justice will be issuing renewal notices. However, a new application will be required with all the proof of identity documentation after 10 years. It is the government's intention that the working-with-children check will apply to all salaried or voluntary child-related work in 20 broad occupational groups.

In 2009 the Brumby government invited key stakeholders and members of the public to make submissions concerning a technical review of the Working with Children Act. I understand the feedback from that consultative process was positive. However, the review identified areas that needed to be improved in order for us to maximise its effectiveness.

An important aspect of the bill is that it also incorporates a provision which makes it a criminal offence for a person who is registered as a sex offender under the Sex Offenders Registration Act 2004 and a person who is subject to extended supervision, supervision or detention orders to apply for an assessment notice under the Working with Children Act.

The bill also includes as unsuitable for the child-care industry those persons who have been convicted of child pornography. The bill also makes provision for the suspension of assessment notices by the secretary where circumstances demand that a person be removed from contact or working with children.

The amendments make absolute sense and are worthy of support from this house. The safety of Victoria's children is paramount, and it is our collective responsibility to ensure that we protect them to the best of our ability. I commend the bill to the house.

Mr TEE (Eastern Metropolitan) — I rise to briefly respond to a couple of issues that were raised in the debate by both Ms Pennicuik and Mr Gordon Rich-Phillips dealing with the issue of privacy, but also more directly with the reference in clause 6, which amends section 11(1)(c) of the act, to the definition of 'source'. The context of the inquiries that were made by Ms Pennicuik and Mr Rich-Phillips goes to the issue of when the secretary of the department is seeking to exercise his or her discretion as to whether or not to provide a working-with-children check.

The question is: from what source can the secretary obtain information? The sources that the secretary relies upon are government departments and agencies, and this would include, for example, corrections. The secretary of the Department of Justice may investigate the behaviour of the applicant if he or she is a client of Department of Human Services (DHS), if he or she is on a community order or indeed if he or she is in prison. It is a mechanism that is available for the secretary, in those circumstances, to get together information as to whether or not a person is suitable to be granted a working-with-children card. Another example might be where the secretary wants to seek from DHS information about the applicant's behaviour towards children in the past and the contact that DHS has had with the applicant. In summary, the 'source' that is referred to in clause 6 is a government department or agency.

Two follow-up questions arise. The first one relates to the privacy implications. If the secretary asks DHS for information, what authority does DHS have to make that information available? That is the issue that Mr Rich-Phillips raised. The Secretary of the Department of Justice will not seek information from DHS without the consent of the applicant, so the privacy of the applicant will be protected in that before the secretary obtains private information — outside of the department of course — she will obtain the consent of the applicant.

The second issue is: what right of reply does the applicant have should the departmental secretary find information which causes her to think that the applicant is not a suitable person to be granted a working-with-children card? Again, if the source of the information provides information which is adverse to the applicant, then that information is made available to the applicant so the applicant knows what information the secretary of the department has used, should she decide to decline the application.

That information can then be used as grounds for an appeal if the applicant feels aggrieved, and there are

appeal rights to the Victorian Civil and Administrative Tribunal. With those short words, I commend the bill to the house.

Motion agreed to.

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

Third reading

Motion agreed to.

Read third time.

ASSOCIATIONS INCORPORATION AMENDMENT BILL

Second reading

Debate resumed from 29 July; motion of Mr JENNINGS (Minister for Environment and Climate Change).

Ms HUPPERT (Southern Metropolitan) — I am delighted to rise to make a few brief comments in support of the Associations Incorporation Amendment Bill 2010. This is the second part of the process of updating and reforming the regulatory framework applying to incorporated associations, and it follows on from the Associations Incorporation Amendment Act 2009.

Incorporated associations play a very important role in our society, and this is a sector which is on the increase. In my comments regarding the 2009 act I pointed out that as of 30 June 2008 there were 34 385 incorporated associations in Victoria. As of 30 April 2010 that number had grown to 35 915. Incorporated associations vary greatly in size and purpose and include such diverse groups as local sporting clubs and housing associations entering into multimillion-dollar contracts.

The community and not-for-profit sectors play a vital role in making our communities livable, inclusive and fair, delivering and facilitating a broad range of community services including aged care, children's services and social services. Many of these organisations are incorporated associations. I am sure that, like me, many of my colleagues here and in the Assembly have been involved in the community sector as members or office-bearers of incorporated associations and will join me and incorporated associations around Victoria in welcoming the changes brought about by this legislation.

As was the case with the previous bill, this bill will have the effect of enhancing the rights of members of incorporated associations and improving internal governance arrangements for those associations. I want to highlight a number of the measures introduced by the bill.

Currently the act provides for two classes of incorporated associations, prescribed and non-prescribed. The division marking the difference between these is having annual revenue in excess of $200 000 or assets in excess of $500 000. The bill introduces a three-tier system of reporting obligations that is based on total revenue and reflects the system the commonwealth is introducing for companies limited by guarantee, which is of course another vehicle that is very commonly used by organisations seeking to provide services in the not-for-profit sector.

The first tier, which is associations with under $250 000, includes approximately 92 per cent of all incorporated associations. For those incorporated associations the reporting requirements will remain the same as the current requirements for non-prescribed associations. Associations with assets or revenue between $250 000 and $1 million will be required to have their accounts reviewed by an independent accountant but not audited. This will save them approximately two-thirds of what they currently spend on auditing and will affect approximately 5 per cent of incorporated associations previously falling within the description of prescribed associations. The third tier of those with over $l million will continue to comply with the current requirements for prescribed associations.

A number of the other changes proposed in this legislation reflect the changing nature of incorporated associations, in particular associations whose predominant purpose is the delivery of services. The bill will repeal the general ban on trading, which will allow incorporated associations to engage in trade or trading activities in support of their purpose. The act will continue to prohibit associations from securing pecuniary profit for their members or distributing surplus assets to members or former members on winding up.

At the same time the act continues to protect incorporated associations by introducing specific duties for office-holders and providing for civil penalties for improper use of information or of position by an office-holder. While these duties already exist at common law, codifying them will ensure that committee members are aware of the duties which they are required to comply with.

One issue often raised by office-bearers of incorporated associations is their liability for the actions of the incorporated association they are members of. This is not only an issue for larger associations that enter into large-scale commercial contracts, it may also be of concern for some smaller associations, such as a sporting group which enters into a lease or licence for use of a sporting ground or gym. The bill addresses this by introducing an indemnity for members of the committee of an incorporated association.

The measures I have outlined — together with the other measures provided for in the bill, which have been comprehensively outlined in the second-reading speech — will continue the role played by the Brumby Labor government in developing and supporting the volunteer, community and not-for-profit organisations which play such an important role in our society. I commend the bill to the house.

Mr GUY (Northern Metropolitan) — I intend to make some brief remarks about the Associations Incorporation Amendment Bill 2010. From the outset I inform the house that the coalition parties will not be opposing the bill. I also do not want to run over a lot of the ground Ms Huppert has put on the record. However, as we have heard, the purpose of the bill is to amend the Associations Incorporation Act 1981 in relation to governance arrangements, reporting requirements, grievance and dispute resolution procedures, and other matters.

There are some main provisions, two of which I will quickly run through. As I stated earlier, I do not want to go through the actual specifics, but it is worthwhile noting that the bill contains various amendments that include the removal of the requirement for an incorporated association (IA) to have a separate statement of purposes. That will instead have to be part of the association's rules. There are provisions to be grandfathered to further assist associations — in clause 49 — but the bill also sets out certain measures that must be dealt with in the rules of an association, including the provision regarding its name and purposes and the rights and obligations of members. The definition of office-holder will be broadened to include employees who participate in making substantial decisions affecting the association.

The bill also provides for an association to execute a document or contract by two committee members or a committee member and the secretary, where the secretary is not a committee member him or herself, which will override any provisions of an IA's rules — that is in clause 14. The bill will also facilitate the holding of meetings, general or committee, using technology that allows participating members to clearly and simultaneously communicate with other participants. It removes the requirement for an IA secretary to be a resident of Victoria. Obviously Australian residency is still necessary. That is in clause 20.

The position of secretary, which was formerly shown as a public officer, of an IA has certain necessary functions under the act, but the bill provides that where a vacancy occurs in that position the committee of an IA is required to fill the position within 14 days, pending a permanent appointment in accordance with the rules of the association.

The bill also provides that a committee member failing to attend three consecutive meetings without leave will thereby cease to hold office. There are some points around duties and civil penalties, which I will look at. It should be noted the bill seeks to codify these legal duties owed to an incorporated association by an office-holder by adopting similar concepts to those applicable to directors under the companies law, including duties of care and diligence, good faith, proper purpose and a duty to avoid trading while insolvent. The business judgement defence available to directors under the Corporations Law is also provided for in the bill.

There is a provision for establishing circumstances where it is reasonable for an incorporated association's office-holder to rely upon information or advice provided by third parties in the course of carrying out duties, and adding criminal penalties for an incorporated association's office-holders who knowingly or recklessly make improper use of information about their office to benefit themselves or cause detriment to an incorporated association. The bill will empower courts to impose civil pecuniary penalties on office-holders where they act without the necessary mental intent. The maximum civil pecuniary penalty is $20 000. There are also powers for the court to order the payment of compensation to an association that has suffered damage.

I am informed the bill reconfigures what conflicts of interest must be disclosed and how an incorporated association's committee member must deal with these conflicts. The current provisions permit a conflicted committee member to attend a committee meeting, but not to vote. This is a proposed change to prohibit both attendance and voting while the relevant matter is being considered, and in that case committee members will act in good faith but also be indemnified against liabilities incurred in the course of performing their duties.

We have some concerns on this side of the house. There are queries over the practical application of the grievance and dispute resolution provisions, including what constitutes an unbiased decision-maker. The new civil penalty provisions have the potential to discourage people from wishing to take up an office-holder position in an incorporated association by increasing their personal exposure to liability, and that is a fair point to raise, but there are a number of provisions where the statute will override what may be rules of incorporated associations such as the execution of contracts. Having said that, the coalition does not oppose the bill and, as I said at the start, it will monitor its progress with some interest.

Mr BARBER (Northern Metropolitan) — This is a hard bill to go out and consult on, because there are 35 000 incorporated associations in Victoria, and every one of them is going to be affected by the legislation we are debating today. They are all very different and have very different aims and purposes. They all operate, though, under what has been up until now a fairly simple framework where the act encourages people, after meeting a few basic requirements, to go on and run their cause or charity or interest or sporting activity in a way that is user-friendly and simple to operate.

The bill is a second-stage amendment to the Associations Incorporation Act following a review of the act in 2005 chaired by a former member of the Legislative Council, Dianne Hadden; she did not get any acknowledgement for her work from other members of this place. In 2008 the Victorian government's action plan, *Strengthening Community Organisations*, came out.

We will not be opposing the bill, but we want to put some red flags around a couple of items, which I will talk about towards the end of my contribution. The bill removes the current requirement for an incorporated association to have two separate foundation documents: one being a statement of purposes and the second being the actual rules. I have always thought that is a bit odd. Many of us have had incorporated groups before or been part of the formation of a new group, but not so many of us have been part of winding one up. That becomes important with some of the other provisions that I will get to in a minute. In any case, a transitional provision will be inserted to allow groups that have those two separate documents to continue in that way. Schedule 2, which is contained in clause 50, specifies the matters to be provided for in the rules, obviously being name, purposes, rights, obligations and liabilities of its members, resignation and cessation of membership and the process for the appointment and termination of secretary. It is all the usual stuff.

PilchConnect, which is the Public Interest Law Clearing House's specialist legal service for these sorts of community organisations, notes that this means the model rules contained in the old regulations will need to be redrafted. It also points out that some pretty extensive community education will be required in order to ensure committees and members of associated incorporations are aware of their obligations under the amended act.

The bill cuts some of the red tape and simplifies some of the regulatory compliance for incorporated associations, first of all in relation to annual reporting and audit requirements. There will now be three tiers of associations with differentiated reporting requirements based on the amount of its revenue. Tier 1 associations with a total revenue of less than $250 000 must simply maintain adequate and accurate accounting records and prepare and submit them to its annual general meeting (AGM) and Consumer Affairs Victoria. Tier 2 associations with total revenue between $250 000 and $1 million must have their accounts reviewed after the end of each financial year by a independent accountant, which always costs you a few bob, and if you are a charity you seek to get someone to do it for nix as well. That now becomes relevant for larger organisations. Tier 3 associations with revenue of $1 million or higher must have their accounts audited by an independent auditor, and they must continue to submit a copy of the audit report and financial statements to their members at the AGM and to the registrar at Consumer Affairs Victoria. That is certainly a welcomed amendment.

I am also pleased to see that some of the recommendations that PilchConnect made in its submission have been taken up. It submitted that revenue thresholds be changed so they are consistent with those in the commonwealth Corporations Amendment (Corporate Reporting Reform) Act; the ability for there to be committee and general meetings via technology — Skype and so forth; and the ability for records in languages other than English to be kept on the basis that an association is able to provide an English translation if requested. In relation to members and members' rights, the bill clarifies the rights of members of incorporated associations relating to the circumstances in which members can inspect or get a copy of the rules and minutes and their right to be notified of the date, time and place of general meetings. It is all the usual stuff but somewhat improved by the bill.

The exposure draft of the bill contained a clause that would have required the incorporated associations to keep a register of members and to grant access to the register to all members. This was removed due to the

possibility of the provision leading to the disclosure of the personal circumstances of members — for example, if you are a member of a support group for victims of sexual assault you may be able to access their details. This blanket removal, instead of a more nuanced modification, was favoured because of the apparently limited time the government had to draft the bill, which is surprising given how long we have been going. But as a temporary measure it is probably better than the free-for-all provision in the exposure draft. If we were to redraft the bill to achieve a better version of this provision I think we could, for example, allow certain associations to apply for an exemption.

Disciplinary and dispute resolution procedures can be quite important, even at your local tennis club. The principles of natural justice are included in an incorporated association's disciplinary procedures. The incorporated association's grievance or dispute resolution procedures must also give each party to the dispute an opportunity to be heard and have the outcome of the dispute determined by an unbiased decision-maker.

The bill ends the prohibition on trading by incorporated associations — that is, entering into trade. There is still going to be not-for-profit trading. There will be no surplus assets being distributed to members in the event of winding up. That helps to maintain the safeguard.

The question of insolvent trading, which I referred to earlier, and voluntary administration is a complex one. It is very easy to start up an incorporated association with your little kit — I have done it before — but folding one up can be very difficult, and I have also had some peripheral involvement with that in the past. Consumer Affairs Victoria, which received and considered the submissions, suggested that the new sections relating to receivership, administration and winding up — that is, new sections 37AC to 37AH — are not designed for a layperson and that, indeed, even legal advisers who are not liquidation specialists may have difficulty understanding them. That is a very difficult area, and when you have volunteers doing it with limited or quite possibly no resources at their disposal, which may be the reason the group itself is folding, this gets very hard indeed. These are very difficult issues being put up for people who are volunteers. In practice these provisions, we hope, will only be used by specialists. An insolvency body made submissions advocating for the inclusion of these provisions to promote uniformity in the requirements applicable to the liquidation and winding up of all incorporated bodies, given that suppliers and employees would like to receive the same treatment regardless of the sort of organisation they have been dealing with.

We have some difficulties, though, with the bill in the way the commonwealth Corporations Law matters have been applied. The bill makes members of the association's committee, the secretary and an employee who is able to influence decisions that affect the whole or a substantial part of the association's operations office-holders for the purpose of the act. It imports a number of provisions from the commonwealth Corporations Act 2001 to specify that, albeit in modified form. As noted in the second-reading speech and by PilchConnect in its submission, these duties are already considered to apply to committee members but not to employees or the public officer or secretary by virtue of the common law. What is happening here is a bit of codification.

In the Corporations Act there are defences to some breaches of the act. The so-called business-judgement rule applies as a defence to absolve an office-holder of liability in respect of a business judgement — that is, when an informed decision is made in good faith in the interests of the association you are making a business decision and that therefore would protect your incorporated status or limit your liability through that status.

The bill also introduces a reliance-on-information defence where a decision has been made relying on information provided by a competent person. The existing criminal regime in this area is thought to be ill suited, obviously, for these duties, and for this reason the bill introduces a modified Corporations Act civil penalty regime where the maximum penalty for a breach is $20 000 rather than $200 000. This should certainly make things a bit easier. However, incorporation of these provisions in this way makes the legislation exceedingly difficult to navigate.

Ms Beattie, the member for Yuroke in the other place, claimed that the community groups that participated in the consultation made submissions in support of the reform. I know that PilchConnect and Volunteering Victoria expressed support for the policy rationale underlying these elements but they raised serious concerns about the drafting of the provisions, which Ms Beattie did not mention. PilchConnect made submissions emphasising how 'exceedingly difficult' the act will be to navigate if these provisions are inserted. In order to know what the act refers to in part VIIIAA of the applied corporations legislation a person will need to have a copy of the Corporations Act and related legislation handy. They will need to understand how that act applies in modified form to the Associations Incorporation Act. The language of the Corporations Act is far from accessible to the average person reading it, most likely, for the first time. These

amendments, while they have a good policy rationale, are certainly going to require a degree of sophistication when things get interesting. As I said earlier, these are usually people who are modest volunteers trying to give something back to the community.

PilchConnect in its submission said:

> We suggest that the current complicated and legalistic approach is not in line with the original (and ongoing) intention that the act be a simple and inexpensive means by which unincorporated non-profit associations may obtain corporate status.
>
> We think this approach is inappropriate and will be confusing for people involved in the NFP [not-for-profit] sector …

If this makes people reluctant to become office-holders, we will have a real problem. As I said, it is at odds with the original idea of a simple incorporation system. I have been advised that the plan is for a third amendment to the act next year to again make it more user-friendly and less confusing, and I urge that submissions made by groups such as PilchConnect be taken seriously.

There is also a call by the member for Murray Valley in the other place for the minister to respond to the view of the Scrutiny of Acts and Regulations Committee about the interaction of the Corporations Act provisions and the Charter of Human Rights and Responsibilities, particularly in regard to compulsory appearance, the answering of self-incriminating questions, the reversal of a presumption of innocence in the case of insolvent trading provisions, and the absolute liability provisions of the Corporations Act. We know SARC also raised concerns about the level of legal complexity that such a hybrid approach may present to many small voluntary and non-profit incorporated associations.

The Greens will not oppose the bill; indeed we support a number of its amendments. We want to stress, however, that without further amendments to ensure that its provisions are made easier to understand, the act may no longer serve its fundamental and primary purpose, which was always about providing a simple and inexpensive regulatory framework for associations to incorporate.

Mr TEE (Eastern Metropolitan) — I thank the house for providing me with the opportunity to speak briefly in relation to this bill. I indicate that I want to confine my comments to a number of amendments, which I now seek to have circulated.

Government amendments circulated by Mr TEE (Eastern Metropolitan) pursuant to standing orders.

Mr TEE — The amendments deal with two very minor matters. They were flagged in the debate in the Assembly and are a response to concerns that have been raised by organisations. The first amendment goes to the prohibition in the bill in its current form on association committee members living overseas. What a number of associations have said to us is that if that were to come into effect, it would disqualify a number of their committee members. Aid organisations in particular have a number of committee members residing overseas, as you would expect with those organisations. The amendment that will be moved by Minister Madden removes the requirement that committee members reside in Australia. It is still a requirement that the secretary reside in Australia, but committee members may reside overseas, which may be entirely consistent with their role as committee members.

The second amendment that has been circulated, which is again a relatively simple but important amendment, relates to the rule that requires that a member of a committee must not miss three consecutive meetings without leave. This amendment was requested by associations on the basis that that rule might meet the needs of some associations but would not be appropriate for others; it might be consistent with the wishes of some but not consistent with the wishes of others. This is a matter that can be picked up in the rules of the particular incorporated association. It is I think therefore a matter that ought not to be in the legislation but rather ought to be considered by each association as it devises its rules. The association may decide to incorporate these sorts of requirements in its rules as it progresses. Those are the two amendments that the government proposes to move this afternoon.

Mr BARBER (Northern Metropolitan) — In accordance with the rules of the house I think I have a chance to have a second go now that amendments that were not available to me when I first spoke have been circulated.

The ACTING PRESIDENT (**Mr Somyurek**) — Order! Mr Barber is welcome to do so by leave.

Mr BARBER (Northern Metropolitan) (*By leave*) — I had checked as to whether such amendments were forthcoming, but at the time I spoke I was not informed they were coming.

Clause 19 contains provisions that did not exist in the exposure draft. They cover the two matters that Mr Tee just raised — that is, if a member misses three consecutive meetings without leave they lose their office, as they also would if they ceased to reside in

Australia. The first of these is problematical, because you could imagine a situation where a hostile committee exploits a member's absence and calls meetings that are difficult to attend and so knocks off the member. You would not want that to happen. Is the ALP a corporate association? I do not think it is; I think it is just a group of people.

On the second matter, the member could be residing overseas in order to actually implement or even oversee the association's purposes if it is an aid group or international sporting organisation et cetera. For those reasons we welcome the government's house amendments and will support them and move things through the committee as quickly as we possibly can.

Motion agreed to.

Read second time.

Committed.

Committee

Clauses 1 to 18 agreed to.

Clause 19

The DEPUTY PRESIDENT — Order! The minister has some government amendments relating to this clause, and they have been circulated and discussed by some members of the committee during the second-reading debate. I consider the minister's amendment 1 to be a test for amendments 2 to 4.

Hon. J. M. MADDEN (Minister for Planning) — I move:

1. Clause 19, lines 24 to 27, omit all words and expressions on these lines.

Because the amendments are all linked to clause 19, I will make some general comments. Clause 19 of the bill will substitute section 27 of the Associations Incorporation Act 1981. Section 27 provides for circumstances in which a member of the committee of an incorporated association must retire and may be removed from office, and is modelled upon an equivalent provision in section 219 of the Co-operatives Act 1996. These proposed amendments to clause 19 of the bill will firstly amend proposed section 27(2) to remove the circumstance of a committee member being required to retire or be removed from office if they absent themselves from three consecutive meetings of the committee without leave. Currently proposed section 27(2)(a) is a matter that can be dealt with by the rules of an incorporated association.

The amendments will also amend proposed section 27(2) to remove the circumstance that a member of a committee other than the secretary must retire or be removed from office if they cease to reside in Australia. The effect of that will be that a member of the committee of any incorporated association, excluding the secretary where the secretary is also a member of the committee, need not reside in Australia. The secretary of an incorporated association will be required to reside in Australia, and the office of the secretary will become vacant if the secretary ceases to reside in Australia.

The DEPUTY PRESIDENT — Order! It is my understanding that late notice of the amendments was given to the opposition. I am not sure about the Greens. Is the opposition in a position to comment on and participate in a vote on these amendments?

Mr GUY (Northern Metropolitan) — Yes, Chair. On behalf of the Liberal Party and The Nationals I acknowledge your point that there was an issue with notice; however, the coalition has gone through the amendments and will not be opposing them.

The DEPUTY PRESIDENT — Order! Is Mr Barber satisfied?

Mr BARBER (Northern Metropolitan) — Yes.

The DEPUTY PRESIDENT — Order! Mr Tee referred to the import of the amendments in his contribution to the second-reading debate. As I have indicated, I regard this amendment as a test for the minister's amendments 2 to 4.

Amendment agreed to.

The DEPUTY PRESIDENT — Order! We will take the other amendments en bloc, because the principle has been established by amendment 1.

Hon. J. M. MADDEN (Minister for Planning) — I move:

2. Clause 19, line 28, omit "(b)" and insert "(a)".

3. Clause 19, line 31, omit "(c)" and insert "(b)".

4. Clause 19, page 11, line 1, omit "(d)" and insert "(c)".

Amendments agreed to.

The DEPUTY PRESIDENT — Order! The Minister for Planning has two further amendments, being amendments 5 and 6. I regard his amendment 5 to be a test for amendment 6.

Hon. J. M. MADDEN (Minister for Planning) — I move:

5. Clause 19, page 11, line 13, omit "or".

I have probably made any necessary comments in my previous remarks.

Amendment agreed to.

Hon. J. M. MADDEN (Minister for Planning) — I move:

6. Clause 19, page 11, line 14, omit all words and expressions on that line and insert —

"(d) in the case of the secretary of an incorporated association, the secretary ceases to reside in Australia;".

Amendment agreed to; amended clause agreed to; clauses 20 to 53 agreed to.

Reported to house with amendments.

Report adopted.

Third reading

Motion agreed to.

Read third time.

CIVIL PROCEDURE BILL

Second reading

Debate resumed from 29 July; motion of Mr JENNINGS (Minister for Environment and Climate Change).

Mr RICH-PHILLIPS (South Eastern Metropolitan) — The Civil Procedure Bill is a bill to introduce a number of reforms to civil procedure in Victoria's courts following the Victorian Law Reform Commission's review of civil justice of May 2008. The bill makes a number of substantial changes to the way in which the civil jurisdiction will operate in Victoria's courts and has aroused a number of concerns across the legal profession, some of which I will detail in due course. It is the coalition's intention to move amendments with respect to this legislation when it goes into the committee stage, so I ask that those amendments now be circulated.

Opposition amendments circulated by Mr RICH-PHILLIPS (South Eastern Metropolitan) pursuant to standing orders.

Mr RICH-PHILLIPS — The main provisions of the bill introduce a paramount duty to further the administration of justice and overarching obligations for participants in civil proceedings such as to act honestly, to not make frivolous or vexatious claims, to take only those steps necessary to determine the dispute, to cooperate in the conduct of proceedings, to not engage in misleading or deceptive conduct, to use reasonable endeavours to resolve the dispute and to narrow the issues, to ensure that the costs incurred are reasonable and proportionate to the complexity of the dispute, to minimise delay and to disclose the existence of all critical documents. That paramount duty and those obligations are created by clauses 16 to 26 of the bill.

The bill also empowers courts to impose sanctions for breaches of the overriding obligations, including preventing a party taking certain steps in the proceedings and making costs orders or ordering compensation. Parties will have to certify that they have read and understood the obligations, and legal practitioners will have to certify that any allegations, denials or non-admissions have a proper basis. Those provisions are covered by clauses 28, 29, 41 and 42.

The bill requires parties to take reasonable steps to resolve a dispute prior to commencing proceedings or to clarify and narrow the issues through exchange of prelitigation information and documents, and to consider options not involving court procedures. That is covered by clause 34, which is the subject of the coalition's proposed amendments and a matter I will address in more detail shortly.

The bill prohibits the use of information or documents so disclosed pursuant to the prelitigation process other than for the resolution of the dispute or in civil proceedings arising from the dispute. The bill allows the rules of court to exclude certain classes of proceedings from the prelitigation requirements. That is covered by clause 32, which is related to the amendments that we will be proposing in the committee stage. The bill requires parties or their lawyers to certify whether the prelitigation requirements have been complied with and set out any reason why they have not been.

The bill gives courts a wide power to make orders to manage proceedings, such as giving directions, identifying issues at an early stage, encouraging the parties to settle, fixing timetables, limiting the number of witnesses or the time taken for examination. The bill empowers the courts to make any order considered appropriate if a party fails to comply with their obligations to give discovery. The bill leaves it to the

rules of the court to set down the requirements for discovery pursuant to those provisions.

The bill standardises and changes the test for obtaining summary judgement from a requirement that the other side's case be hopeless in a general sense to a requirement that it have no real prospect of success. That is covered by clauses 60 to 63. Finally, the bill empowers the court to make an order referring parties to non-binding appropriate dispute resolution, which is covered by clause 66.

As I said, this bill marks substantial changes to the way in which civil proceedings will operate in Victorian courts. It has given rise to a number of concerns across the legal profession and I will address a number of those in this presentation. The coalition has sought extensive consultation with bodies from across the profession, including the Law Institute of Victoria (LIV), the Victorian Bar Council, the Public Interest Law Clearing House, the Australian Lawyers Alliance, Liberty Victoria and the Federation of Community Legal Centres as well as practitioners and legal firms and has received a range of comments on the contents of the bill.

One of the first concerns we have with this legislation is the cost impact of the shift to the new civil regime and whether it will be the case that the bill will unnecessarily shift the cost of civil litigation out of the court system and onto the parties in terms of shifting from a litigated model to these alternative prelitigation mechanisms and whether that will simply end up imposing additional unwarranted costs on the parties who are seeking to have a matter determined.

While it would seem from the introduction of the paramount duty and the overarching obligations that hinge off that paramount duty that the intent of this legislation is that parties to litigation will proceed in good faith, the reality is that it is not always the case that parties to litigation proceed in good faith; that has certainly been put to us by a number of the parties who have provided comments. While the mechanisms that this bill is seeking to put in place with respect to civil proceedings are designed for parties working in good faith and designed to provide hopefully expedient and alternative prelitigation resolution of matters, it is our view that that will only occur where the parties are operating in good faith. If you have a situation where that is not the case, these mechanisms provide a very real opportunity for a party who is seeking to delay a settlement to do just that by using the prelitigation mechanisms that are being put in place. It would seem that the enforcement of the overarching obligations as laid down in the legislation would be critical to ensuring that the prelitigation mechanisms that are specified are not used simply as a rogue's charter, a means for a vexatious litigant or a frivolous case or by a party that is seeking to avoid a settlement actually reaching a final outcome. Concerns have been expressed, particularly with respect to the settlement of debts, and the coalition has received representations from a number of third parties in that regard.

The Law Institute of Victoria has commented on that prospect, as has the Australian Collectors and Debt Buyers Association, where issues are not in dispute in a proceeding. A proceeding is simply initiated to obtain a settlement where the actual issues are not in dispute. There are concerns that the prelitigation mechanisms being put in place by this legislation will act to slow down the reaching of a settlement rather than enhance the reaching of a settlement. That is a concern particularly where other parties concerned may be smaller litigants who do not necessarily have the resources to proceed through the prelitigation mechanisms as well as then sustain a litigation matter.

The cost of the prelitigation mechanisms gives cause for concern. I indicated we are concerned that substantial costs can be associated with that. One issue relates to the capacity of parties to prelitigation procedures to recover their costs. It would seem that the advice that we have received is that the capacity to recover costs pursuant to prelitigation procedures will only occur if those matters actually proceed to litigation. If a matter goes to a prelitigation procedure, as is required under this legislation, and it is resolved at that prelitigation stage, there would then not seem to be a mechanism by which the parties to that prelitigation can have orders for the cost of the prelitigation made without actually proceeding to a litigated outcome. That would seem to be a significant flaw with the legislation, and that has been raised particularly by a number of legal practitioners and professional bodies.

Another concern we have is a prohibition on the use of disclosed documents for a purpose other than prelitigation activities. While we recognise that obviously there is a need for integrity where documents are made available through a disclosure mechanism for the prelitigation stage, we are concerned that the prohibition on the use of those documents for any other matter, particularly where those documents may disclose criminal conduct or dishonest conduct, is potentially too broad. The effective immunity that is imposed by that provision would prevent the use of those documents or those documents being provided, for example, to the police, even where those documents identified criminal conduct, unless the party that received those documents was to seek the permission of

the court. As such it in effect seemed to be creating an immunity over any matters disclosed in documents that are received through such a disclosure mechanism.

We are concerned about the cost that implementing this new civil procedure mechanism will have on the legal profession. It has now been reported that since the criminal procedure legislation was altered by this Parliament, pursuant to the bill that the house dealt with, I think, last year or maybe early this year, there have been substantial costs for practitioners in implementing the new criminal framework. It would seem that is also a real prospect with the implementation of this new civil framework. The concern is that, particularly initially, those costs will be borne by parties to litigation as the profession comes to terms with the impact and the operation of the new procedures.

Another issue coalition members are concerned about goes to the subject of the amendments that we will be proposing. These amendments relate to the requirement for prelitigation processes to be undertaken. The amendments we will be seeking to insert in the bill go to clause 34, which is the provision relating to prelitigation requirements. It is in chapter 3 of the bill, which specifies that prelitigation mechanisms are required, and specifically clause 34, which is where the coalition will be seeking to insert its amendment in a section entitled 'Prelitigation requirements' that specifies:

> Each person involved in a civil dispute must take reasonable steps, having regard to the person's situation and the nature of the dispute —
>
> (a) to resolve the dispute by agreement; or
>
> (b) to clarify and narrow the issues in dispute in the event that civil proceedings are commenced.

As I indicated earlier, the coalition's concerns are that this provision could be used where there are not matters in dispute — such as in a proceeding for the recovery of a debt — simply to delay a decision or a settlement of that matter. It is a matter that has been taken up by the Law Institute of Victoria. In advice that the coalition has received from the law institute with respect to prelitigation requirements generally, the law institute has stated:

> The LIV is concerned that there are a number of important categories of civil disputes which are not presently exempted by clause 32 of the bill from the prelitigation requirements …

It is clause 32 that puts in place exemptions from the requirements to undertake prelitigation requirements. The LIV has gone on to list a number of categories of characteristics of civil disputes which the LIV believes should be exempted from prelitigation requirements.

In drafting and preparing our amendments for this section, we have had regard to the particular characteristics that the Law Institute of Victoria set out in its advice — the matters it believes should be the basis for exemptions. We have not listed them as the exemptions as suggested by the LIV. In seeking to amend the prelitigation requirement clause, however, we are seeking to insert them as matters which could be taken into account when having regard to whether any reasonable steps could be taken with respect to prelitigation requirements.

It is therefore the essence of our amendments that we will seek to move from a model that requires that each person in a civil dispute must take reasonable steps to a model in which each person in a civil dispute must take such steps, if any, as are reasonable. In effect that reduces the obligation on parties to civil disputes to undertake a prelitigation requirement in those cases where there are not reasonable steps. Our amendments would then provide that the matters set out by the law institute as matters which should be the basis of an exemption could be taken into consideration in the determination of whether there are any reasonable steps that may be taken pursuant to clause 32.

As I said, there have been a number of matters that the coalition has received responses on with respect to this legislation, and in regard to that general provision I will quote further from subsequent advice from the law institute on the question of the ability of parties to recover debts under the civil jurisdiction. Further advice from the LIV dated 29 July on the question of whether this bill has the potential to make it more difficult for parties to recover debts through civil procedures states:

> The bill, if passed as currently drafted, may provide an opportunity for debtors to delay. Some debtors may take advantage of the legislative provisions for this purpose.

On a related matter the advice goes on:

> In the LIV's view, this possibility is less of a concern than the requirement that all civil matters (unless specifically exempted) are subject to the prelitigation requirements, including those debt recovery matters where there is no suggestion of there being any issue in dispute.

This reinforces the concerns the coalition has with respect to such matters — that this could become a rogues' charter where these prelitigation mechanisms are simply used to delay reaching settlement of a debt. It is for that reason that we will be pursuing the amendments I outlined earlier to provide greater scope for parties not to undertake prelitigation requirements

where it is not appropriate for such mechanisms to be employed due to the nature of the dispute.

With respect to the same matter I would also like to refer to a briefing paper which has been released by Corrs Chambers Westgarth with respect to the new civil proceedings legislation. In its briefing paper headed 'Corrs in brief — July 2010 — Victoria takes ADR to the next level' — ADR being alternative dispute resolution — Corrs quoted the Attorney-General on the bill and concluded that:

> However, as has been seen in other jurisdictions, the additional procedures provided for in the bill —

being the ADR —

> may simply lead to a more drawn out and costly litigation process for those with a genuine dispute, where the decision of a court is necessary.

That again reinforces the concern expressed by the coalition that in matters where a determination by a court is required — and again I use the example of small debt recovery — the provisions of this bill have the prospect of being used as a rogues' charter: a mechanism by which a resolution can be delayed as long as possible by a debtor.

For those reasons the coalition will be seeking to amend the bill. As I said, we are not going to oppose it, but we have concerns about how this legislation will operate, particularly with respect to where costs will be borne, the ability to award costs of prelitigation procedures and the prospect of these prelitigation mechanisms making it more complex and more expensive for small litigants to reach settlement than would otherwise be the case. I look forward to exploring those matters in some detail with the minister in committee.

Ms PENNICUIK (Southern Metropolitan) — The Civil Procedure Bill 2010 emerged from the Victorian Law Reform Commission's review of the civil justice system and the report that was released in March 2008. I understand the civil procedure advisory group was then formed to consider recommendations of the VLRC's review. That advisory group was chaired by the Chief Justice and included representatives from the Supreme, County and Magistrates courts, VCAT (Victorian Civil and Administrative Tribunal), the Victorian Bar, the Law Institute of Victoria, the Federation of Community Legal Centres and the Department of Justice.

As the Attorney-General outlined in his second-reading speech, the bill aims to reform and modernise the laws, practices, procedures and processes for the resolution of civil disputes that may lead to legal proceedings and for the initiation and conduct of civil proceedings and appeals. The key aim is to encourage people and to give them the tools to resolve their cases without going to court, with the greater aim of creating a more accessible civil justice system. These are worthy aims, which the Greens support. We are talking here about civil proceedings, not criminal proceedings, and the aim of keeping those proceedings out of the courts if possible is a good aim and one to which all the parties represented on the civil procedure advisory group are, I think, committed — and so we have the bill before us.

The bill is divided into certain parts, and the first substantial part of the bill is part 2.1 — amazingly — which sets out the overarching purpose and obligations under which this regime of prelitigation will occur. Under this part judges and magistrates will be required to give effect to the purpose when exercising their powers — that is, all decisions made along the way in the course of litigation, final decisions on costs et cetera.

Clause 9 outlines the guiding objects that form the basis of the larger overarching purposes that are outlined in clause 7 — that is, the concrete things to consider, such as just determination of issues, public interest in avoiding litigation and the efficient use of judicial resources. The court may have regard to a range of matters in giving effect to clause 7, including the prelitigation actions of the parties — that is, whether or not they have complied with the new requirements — so that, particularly if something proceeds to court, the court can have regard to what happened in the prelitigation phase if such prelitigation was not successful and the matter did proceed to court.

Under part 3.1 the new prelitigation requirements in that part aim to build a culture that encourages parties to resolve matters without going to court. This process, it is said — and certainly it is the aim under this part — is to assist parties in narrowing the issues if they do proceed to court, perhaps enabling them to offload or decide not to proceed with certain matters, so narrowing the issues. If they cannot resolve the issue outside court, they will go into the court with fewer issues needing to be resolved, and that also is a good thing.

Clause 34(1) of the bill states:

> Each person involved in a civil dispute must take reasonable steps …
>
> (a) to resolve the dispute by agreement; or
>
> (b) to clarify and narrow the issues …

As I said, if the matter does proceed to court, the court may have regard to non-compliance for the purpose of giving effect to clause 7.

Part 3.2 of the bill relates to how prelitigation costs are to be apportioned, and the general rule is that each party will bear its own costs. However, the court can take failure to comply with the prelitigation requirements into account in deciding costs — that is, the normal rule may not apply if a party has not complied with the requirements under part 2.1.

I suppose that is an incentive for parties to comply or to attempt to reach a prelitigation agreement. I should have said, too, that the overarching obligations in part 2.1 — that is, clauses 7 to 9 — apply to all parties, legal practitioners and other representatives of parties, law practices, any person who provides financial or other assistance to any party and expert witnesses.

The overarching purpose of this bill is to encourage people to work towards a speedy resolution and to include alternative dispute resolution where appropriate. We have not had a lot of representations from parties or stakeholders on this bill. We did, however, look for a couple, and we did notice that the Victorian Bar, which I notice was represented in the civil procedure advisory group, said it was supportive of the legislation and described it as a great collaborative effort. It said it was surprised at some of the criticism that the Attorney-General had to make of barristers, but it also highlighted some of the other things which it thinks should be implemented either through this legislation or alongside it. I believe they are issues worth raising, such as proper court facilities which allow access to people of all abilities. There are simply not enough courts for the business they are required to do, and the Supreme Court facilities are supremely outdated, they say. I have been into the Supreme Court, and while there has been some updating, there probably needs to be more done in that court, particularly in terms of people with disabilities et cetera, but I know the Chief Justice has that in her sights.

The Victorian Bar also raised the issue of the prompt appointment of judges — delays in appointments are contributing to the delays in parties having their cases heard in court when they do go to court — and legal aid funding, which remains inadequate and means that ordinary Victorians risk having to attend court unrepresented. The underfunded system is effectively propped up by the pro bono efforts of lawyers. Barristers contributed more than $7 million in this way last year. It is wonderful that they did, but I agree that we need more resourcing of legal aid, and that is something that the Greens have raised on many occasions.

We praise barristers who do pro bono work, and I think the Victorian Bar makes a good point — that there are a lot of barristers who do pro bono work in particular for cases of public interest or for people who otherwise, due to their circumstances, would not be able to be represented, and it is fantastic that they do that — but we also need to increase resourcing to the legal aid fund.

The Law Institute of Victoria did not contact us, but I have become acquainted with its concerns regarding the bill before us. Basically they are that in its view important categories of litigation have not been included. The institute wrote a letter to Mr Clark, the member for Box Hill in the other place, which Mr Clark was kind enough to forward to me so that I could understand where the subsequent amendments which the coalition has put forward came from, and I note that the amendments put forward by Mr Rich-Phillips pretty well mirror the concerns outlined in the law institute's letter and the dot points that it outlined in that letter. In its letter it refers to clause 32, which is in part 3.1. Clause 32 lists situations where parts 3.1 and 3.2 of the bill will not apply, and the institute wanted to add to that list, so it had a list of dot points. I think there are close to a dozen dot points which it wanted to add to the list in clause 32, which would be basically to say that, in the particular circumstances listed by the law institute, parts 3.1 and 3.2 will not apply, so this whole regime will not apply.

I note that the coalition in its amendments has applied the law institute's recommendation not to clause 32 but to clause 34, and the way its amendments read would be that the parties, or whichever person is involved in the prelitigation process, may take into account all relevant circumstances, including the list proposed in subclause (3)(a) to (k), which I will not read out now but which is based on the law institute's letter and perhaps is a better way of going about it rather than totally saying that this cannot apply and the parties must take it into account.

I have to say I still have not made up my mind on these amendments. Firstly, I have only just seen them in the last little while. Secondly — —

Mr Tee — They cannot be any good.

Ms PENNICUIK — As I look through the bill at clauses 32, 33 34 and also clause 43, all of which have some bearing on these amendments, my questions about them, since I have only just been presented with

them, are: one, are they necessary; and two, do they do any harm?

I am not sure that I know the answers to those questions. I have had a view put to me by the coalition, which is proposing the amendments, and just in the last little while the government has put to me its view of the amendments. It is fair to say that I am still looking at the amendments in terms of the whole bill and how they would work, and also in terms of whether they are necessary and whether they would do more harm than good. That is how I will be looking at the amendments. I will be listening to the debate and the minister's answers to questions in committee when we get to look at the amendments.

One good point that has been raised by the Law Institute of Victoria and is included in the amendments, is whether it is appropriate if there is an important test case or a case of public interest, that it should be settled in a prelitigation regime or whether, because it is a test case or a public-interest issue, it should in fact proceed to court. I am not sure whether that important issue is clearly expressed in the bill.

Clause 43 states that a party that does not comply must provide reasons for non-compliance, and that could include that aspect. However, I am not sure that is specific enough in that of course a person could say that is the reason, but it does not mention that specifically.

The Attorney-General gave some examples of reasons for non-compliance that could be put in writing, including:

> … where property is at risk of dissipation or destruction if advance notice of proceedings were given; where a party is terminally ill; where a limitation period is about to expire and a cause of action would be statute barred if legal proceedings were not commenced immediately.

That does not mention an issue of public interest or an important test case, which is important.

I could not locate any other issues of concern with the bill. We have had similar issues before. There was the Criminal Procedure Bill and then there was the Criminal Procedure Legislation Amendment Bill following maybe a year later. I could forecast that we might have the civil procedure amendment bill because we might find as this legislation comes into operation that some tweaking needed to be done. Sometimes that happens when a new large regime is introduced, but there is nothing in this bill that would concern me. It is good that we are moving to resolve things outside the court, in the periphery of the court. It is almost in the court precincts but not in the actual courtroom. It is good that people are able to do these things without having to go through the trauma and expense of a court case, if that is at all possible, and with the assistance of people who have expertise and experience.

With those remarks, I look forward to the committee stage which will consider the coalition's amendments and the government's reaction to those amendments.

Mr TEE (Eastern Metropolitan) — I welcome the opportunity to speak on the Civil Procedure Bill. It is important legislation. It is about allowing more Victorians to access our courts. It is about ensuring that our courts, which are a community asset and are funded by the taxpayer, are not dominated or monopolised by corporations with deep pockets which can afford to outspend and waste court time in order to outlast their rivals. This bill is very much about making sure that we use court time more efficiently and that we can open up our courts so that more Victorians can have access to judges.

It is also about accepting and acknowledging the reality that almost all cases never go to court. Almost all cases settle. It is about avoiding the situation of having them settle at the door of the court, having them settle after years of court procedures and practices which have in effect delayed the progress of a case and chewed up time and money. We know that some of those court procedures are centuries old, and a lot of them obfuscate rather than shine a light on the truth. This bill is about encouraging people to try to find a way to bypass those lengthy processes, which are often unnecessary.

That does not mean that on all occasions we should not allow people to go to court. People are entitled to go to court, but we know that the vast majority of cases never end up in court. We also know there is a culture of bullying, and we know where those at the big end of town have the resources they can use the court processes to avoid justice. This really tries to circumvent that situation. It attempts to ensure that people have their day in court where necessary, but also, in the overwhelming majority of cases, people are encouraged to sit down and amicably resolve their cases without years of delay, without the unnecessary hostility and without the paper warfare that is often involved as people go through the process leading up to a trial. It is about turning the culture of our courts around. It is about saying to parties that they need to work cooperatively and about saying to lawyers and barristers — indeed to the court itself — that their role is to facilitate the resolution of disputes. It is not about the process itself. There are obligations on judges as well as on the parties, and opportunities For judges to take control of cases by setting time limits and time

frames, to try to ensure that parties can truncate proceedings so that, where appropriate, matters are referred to alternative dispute resolution.

It is about the courts having power to limit the time that they can take to lead evidence, limit the time for cross-examination, indeed limit the number of witnesses and limit the amount of written submissions or oral submissions. There is a role for the courts and also for the parties. The bill tries to change the culture, and it does this in a number of ways. An important way is to allow courts to take into account the behaviour of parties before the litigation commences, in which case it allows the court to take into account whether or not the parties have sought to resolve the case before going to court.

Prelitigation becomes the focal point of this area, and then there is a range of obligations in terms of both the prelitigation process and the court process. When you read through the bill and think about it, you will notice that these obligations are really about what is currently best practice. It is about ensuring we lift everybody up to the standards of behaviour that you would expect in our courts so that there are obligations and people do not make frivolous or vexatious claims, or claims that do not have a proper or factual base. There are obligations to cooperate with parties and the court, and there are obligations to use reasonable endeavours through alternative dispute resolution processes. There are obligations to ensure that the amount of money spent on a case is really proportionate to that case. If a junior and a senior counsel are not necessary then they ought not be engaged. There ought to be a reference to the complexity of the case and indeed the amount of money involved so that you do not have cases where the amount in dispute is gobbled up by the litigation process.

Together all of these things provide what is a powerful tool in terms of the conduct of proceedings and the behaviour of parties. They provide assistance for lawyers so that if you do have an overzealous client there is an obligation on the lawyer to tell the client that we are about trying to resolve the issue in dispute rather than trying to outrun and outgun the opponents. It is about ensuring that those ethical obligations are given voice, and that there are penalties. If you do breach these obligations and act in a cavalier or cowboy manner, the court can impose penalties. It can order that a lawyer, for example, be required to personally bear any costs.

Then we come to some of the more specific obligations, and these are the subject of amendments that the Liberal Party is trying to introduce. The scheme proposed by the bill requires that each party must exchange appropriate correspondence and information and documents that are critical to the resolution of the dispute. People should not be surprised when they get to court; they should not be ambushed. Everybody should be required to put their cards on the table, up-front and early, so that all the parties to the dispute know what they are dealing with and know how strong or weak their case is. The earlier the parties know the strength of their case and the earlier they know the cards that are stacked against them, the more likely they are to make a decision which is appropriate and reasonable in the circumstances.

The first requirement is that information should be made available. The second requirement is that you consider alternative dispute resolution (ADR) processes. That is another appropriate mechanism. If there is an offer to resolve the dispute, to negotiate or to go through an ADR process, then you must not unreasonably refuse that obligation. As Ms Pennicuik has mentioned, if you do not want to go through that process, if you do not want to be involved in the prelitigation process, you need to be able to explain why you have decided not to do so.

There are good grounds for not proceeding with the prelitigation process — for example, one of the clients may be terminally ill, or the subject matter of the dispute might disappear. There are grounds in terms of the expiry of limitation periods where you would not want to get involved in the prelitigation process and where it would not be appropriate to do so. But overwhelmingly parties have found, sometimes despite their initial concerns, that once they get involved in the dispute resolution process they are surprised by the outcomes, because ADR allows the parties to take control of the issues in dispute. It allows both sides to sit around the table as equals.

Therefore it is important — and this is what the bill does — to steer people in that direction. I do not apologise for trying to promote that behaviour. Of course if a party does not have a good reason for engaging in prelitigation attempts to resolve a dispute, that is something the court can consider when determining the relevant cost orders. But it is important to note that what the bill does is encourage prelitigation. It does not make it compulsory. Parties can still have their day in court, but their behaviour before they go to court can be taken into account at the end of the day after following the court process. That is the time when the court will consider whether or not parties should have refused prelitigation steps because of the nature of the cases.

In a nutshell, that is the model provided for in the court. There are rule-making powers within the court, and this again was something that the advisory group, which Ms Pennicuik referred to, wanted. We are at the start of a journey and the parties recognise that. As we move forward we will grow and learn, behaviours will change and culture will change, and arising out of that we might look at rules that will evolve as we go through the prelitigation process. We might have particular rules dealing with particular types of matters, so that we will have rules that are appropriate to different cases and that meet the needs of different types of cases.

There are also provisions, which I want to briefly take the house to, dealing with the discovery process. We know the discovery process can be one of the best examples or the worst excesses of our legal system. The second-reading speech refers to a case where a party spent some $40 million on the discovery process alone, a process that involved 120 legal professionals. The bill provides the courts with discretion in terms of limiting or expanding what the parties are obliged to do in relation to discovery. It also provides the power for the courts to act where parties have failed to comply with their discovery obligations or where they have used discovery to delay, frustrate or avoid their obligations. These are welcome reforms and significant changes. They are about changing the culture. As I said, the changes made by the bill are the start of a journey rather than the conclusion. It is about that culture, and it is the most significant overhaul we have seen for some 20 years.

I want to briefly go through the amendments that have been circulated this afternoon by Mr Rich-Phillips. I think the first point to make is that we might have received these amendments not long ago, but there is nothing new in them. The government set up an advisory group to consider the development of these important reforms. The parties on that advisory group included the Law Institute of Victoria (LIV) and the Federation of Community Legal Centres. All the members of those bodies considered the same material that is now the subject of these amendments.

The law institute fronted the advisory group and went through the bill and suggested each and every one of the matters that are now the subject of these amendments. The advisory group considered those matters and had sympathy for some of them — and I will go to those in a minute — but broadly decided it would be better if we allowed these issues to be at the discretion of the court and to allow the development of the rules by the parties.

This relates to some of the matters that Ms Pennicuik mentioned, such as where a limitation period is about to expire. The second-reading speech deals with that issue specifically as an example of where compliance with a prelitigation requirement would be excused. There is no doubt about that; it is set out in the second-reading speech. As I indicated, the case of a person with a terminal illness is the sort of matter where it would not be, in the language of the bill, reasonable to participate in the prelitigation requirements. Those are two examples of circumstances out of the many that are identified in amendment 2.

When you look at the amendments — the list of other exemptions that have been put by the LIV and that have been rejected by the advisory group for good reason — in totality it is almost impossible to imagine a case which would not be excluded from the prelitigation process. The categories are so vague and so broad that we end up in exactly the position we are in now, where big companies, banks and credit organisations can use their muscle to bully their rivals through a court process and effectively use the processes to get the outcomes they want.

Ms Pennicuik says it is these matters that are to be taken into account, but this bill provides that it would be very difficult for a court to say, 'You are a bank that did not participate in a civil dispute which involves a joining of a party, but it was not reasonable for you to do so in the circumstances'. When you look at the language of the circulated amendments you see that essentially the exclusions provided for are so broad that as long as you fit into one of them it is very difficult for the court to say you should have participated in the prelitigation process.

For example, looking at amendment 2, part of which proposes to insert subclause (3)(e) to clause 34, which is the exemption for multiparty disputes, you find that many disputes involve multiple parties and it is easy to argue that it is not practical to involve all required parties. Proposed subclause (3)(f) of clause 34 in amendment 2 would give an exemption for personal financial hardship; again, that is a very vague exemption. It might be appropriate on a case-by-case basis, but it should be a matter for the courts to decide rather than for a party to hide behind that obligation.

The critical point for me is the exemption from the requirement to undertake prelitigation requirements provided for by amendment 2 for the insertion of subclause (3)(h) of clause 34 for proceedings in the nature of debt recovery. As we know, debt recovery proceedings are some of the hardest cases in terms of the impact that they have on the lives of individuals. I

would not have thought there could be a more critical matter that you would want to have the parties try to resolve before they go into a lengthy, expensive, drawn-out litigation process. You would think that debt recovery proceedings are exactly the sorts of matters where you want to give the parties an opportunity to sit down and try to find a way forward.

Mr Rich-Phillips says that on some occasions — in terms of debt recovery, for example — this might be another delay. There is no greater delay than the litigation process. All we are saying is that up-front, before you go down the track to that process, can you sit down and try to resolve it? It is not a massive cost impost. It is not a massive time impost, particularly when you contrast prelitigation requirements with the length of delays involved in court processes. There is no penalty in the proceedings if the prelitigation process is unsuccessful, but there is an enormous penalty if parties are required to go through that court process.

You can imagine a situation where, at the end of the day, on a debt recovery matter the banks decide to push through because after 18 months or 2 years all they face is a costs order, and by that stage they would have achieved their outcome in terms of the nature of the litigation.

The other category in the bill where you would think that prelitigation was essential — and which screams out for ADR or alternative dispute resolution — is a civil dispute involving a mortgage action for possession of land. That is a critical case where, if the parties could possibly find a way forward to resolving it, then they should do so before they spend 18 months going through long and protracted court processes. We could also look at the resolution of a civil dispute that requires the approval of the court. Is it not better if the parties can sit down and come up with an agreement which can be endorsed by the court?

It is critical to remember that you do not have to reach agreement in order to be successful in the prelitigation process. Sometimes, and the legislation expresses this, it is just about narrowing the issues in dispute. Ms Pennicuik mentioned the setting of a precedent, and that is a great example. Sometimes it is about narrowing the issues you are fighting over when you go forward in terms of the precedent you want to set. You can agree on a lot of issues as part of the prelitigation process so that when you go to court you are only arguing about a narrow range of matters. My experience of negotiating is that until parties sit down, they are often reluctant to be involved; often they are concerned about being involved. But once they get involved they are surprised, because it is an empowering experience. They have control over the outcomes, but also they can use the prelitigation process to achieve some lateral outcomes that they would not normally get.

Ms Pennicuik asks: what is the risk of these amendments? They are taken together and, as I said, it is difficult to imagine a case that does not fit within these exemptions. The cases that should be negotiated are exactly the ones that are identified and will be made exempt. We do not want to have another fight and find another reason for those at the big end of town to hide behind these matters, when all we are asking is that they sit down to try to resolve the matters that are in dispute. We support the bill, and we oppose the amendments.

Motion agreed to.

Read second time.

Committed.

Committee

Clauses 1 to 33 agreed to.

Clause 34

The DEPUTY PRESIDENT — Order! It is my view that this is a stand-alone amendment, whereas Mr Rich-Phillips's amendment 2 will test amendment 3.

Mr RICH-PHILLIPS (South Eastern Metropolitan) — I move:

1. Clause 34, line 22, omit "reasonable steps" and insert "such steps, if any, as are reasonable".

While I accept this is a stand-alone amendment, the intention is that essentially it be considered with amendment 2. The purpose of these amendments is to alter the requirement for prelitigation, as outlined in the second-reading speech. Currently, clause 34 provides at subclause (1) that:

> Each person involved in a civil dispute must take reasonable steps, having regard to the person's situation and the nature of the dispute —
>
> (a) to resolve the dispute by agreement; or
>
> (b) to clarify and narrow the issues in dispute in the event that civil proceedings are commenced.

The purpose of amendment 1 is to change the clause to read:

> Each person involved in a civil dispute must take such steps, if any, as are reasonable —

and it will then go on with the other requirements. Basically, it is our contention that cases may arise where there are not reasonable steps that may be taken. In my second-reading contribution I used the example of an action seeking settlement of a debt where the issue is not in question; they are not matters that can be dealt with through a prelitigation mechanism, but there is the possibility for such a mechanism to be used to delay reaching a settlement. It is our view that this amendment will provide flexibility as to the application of the prelitigation requirements, and in cases where there are no reasonable steps, obviously there would not be a requirement to take steps.

In a similar vein, proposed amendment 2 simply seeks to elaborate on matters that may be taken into account in determining a person's situation and the nature of the dispute, so it merely provides examples, if you like, of matters that could be considered when determining the situation and nature of the dispute.

Ms PENNICUIK (Southern Metropolitan) — I would have thought that amendment 1 would be a test for amendment 2. However, I do not think it is.

The DEPUTY PRESIDENT — Order! If Mr Rich-Phillips is happy to accept amendment 1 as a test of all three amendments, then I am happy to go that way.

Mr RICH-PHILLIPS (South Eastern Metropolitan) — Essentially, although technically not a test for our intentions, they are related, so I am happy to take them together.

The DEPUTY PRESIDENT — Order! The Chair will then treat amendment 1 as a test for all three amendments.

Ms PENNICUIK (Southern Metropolitan) — Having listened intently to the arguments put forward by Mr Rich-Phillips in support of his amendments, and the counterarguments put forward by Mr Tee as to why the government will not support the amendments, I have come to the view that the Greens will not be supporting the amendments. I think that in any case people will take many of these things into account without us having to list them — the problem always with listing things is that you leave things off the list.

However, as Mr Tee has said, this proposed amendment puts some things on the list that you probably would not want on the list, because you want people involved in debt recovery, for example, or in an action with a bank to try to come to an arrangement before going to court. I pick up the point that Mr Tee made in his contribution to the debate, which I neglected to make, and that is the imbalance that is often seen where an ordinary citizen is up against an organisation with a lot of resources and power. Dragging that person through litigation is not a good idea, so encouraging the parties to come to an agreement outside court is a good thing.

The criteria I used to decide whether I would accept the amendments was to ask myself if they are necessary, and I am not sure that they are. Although the issue around a precedent, a test case and the public interest is not mentioned anywhere else in the bill as far as I can see, perhaps in terms of the process that is outlined in the bill you could under clause 43 supply that as a reason why you did not go through the prelitigation process, and that reason would become obvious in terms of the circumstances on a case-by-case basis, so perhaps it does not need to be listed. But it would have been useful if it had been listed by the Attorney-General in his second-reading speech when he listed the other obvious reasons why you would not proceed with prelitigation, such as terminal illness and other matters.

That is one of a long list of possible reasons that people would not pursue a prelitigation process. On my criteria — is it necessary and will it do harm? — it is probably not necessary. Mr Tee has outlined that in some cases it would be counterproductive and that it would not so much cause harm but be counterproductive to the purposes of the bill, which is to encourage parties to resolve their disputes outside of court. For those reasons I will not support the amendments proposed by Mr Rich-Phillips.

Mr RICH-PHILLIPS (South Eastern Metropolitan) — In response to Ms Pennicuik raising the issue of an imbalance of resources between litigants, I have to say that is essentially one of the reasons we are seeking these commitments: so that the prelitigation mechanisms cannot also be used as a tool to delay a matter which will ultimately be litigated. Our concern is that inserting a prelitigation process requires good faith on the part of the parties to any particular matter. If a party is approaching a matter not in good faith, they can merely use the prelitigation mechanisms as a further delaying tactic prior to delaying the matter during the course of litigation. So it is actually the case that the point Ms Pennicuik raises is one where we are also concerned and one reason why this amendment should be made.

Mr TEE (Eastern Metropolitan) — I will not traverse the reasons the government will be opposing Mr Rich-Phillips's amendments other than that I think there is some support for some of the issues, in my mind, that Ms Pennicuik raises — that is, this legislation is not designed to require prelitigation where there is a time-critical element, where the subject matter might disappear or where an expiry period or a time limitation period applies. Where we are talking about a test case or a case that is going to set a precedent, it is often very important that those cases go through the prelitigation stage, because the prelitigation stage requires you to try to resolve the issue. That might not be relevant in a test case — it might be, but it may not be — but more importantly the prelitigation stage is about clarifying and narrowing the issues in dispute, and that is absolutely critical. It means that the parties might be able to agree on the facts so that when they get to court the court then has to consider the facts as agreed. Then the issue for the court is: what are the legal consequences of that agreed factual situation? That might avoid lengthy witness evidence and lengthy cross-examination while the court determines what factually occurred.

It might just be that you could agree on some of the witness evidence — the expert witness evidence — going in untested. In one extreme you might just narrow the number of witnesses or the number of issues on which they will be required to give evidence. In the other extreme you might be able to remove the need for all witnesses because you turn up to the court with an agreed statement of facts. So I think that even in a test case it is often helpful to go through the prelitigation requirements.

In terms of the issue raised by Mr Gordon Rich-Phillips about the inequity of the parties, all we are asking is that the parties take what might be hours or what might be days to sit down to try to resolve the dispute before they go into a hearing process that may take months or years. In terms of this process being abused by people who are simply trying to delay the inevitable, I think that is a minute consideration. Why would you essentially want to throw the baby out with the bathwater by throwing out all of the other exemptions? What we are asking the parties to do is to sit down and try to let common sense prevail, even if they just narrow the number of issues in dispute. It is difficult to imagine that that process could be abused, and we ought not, for the sake of that minor risk, throw everything away.

Ms PENNICUIK (Southern Metropolitan) — Without getting into a protracted legal argument, I just want to clarify what I meant by test case. I was not suggesting that the fact that a case was going to set a precedent or be in the public interest should automatically disqualify the parties from entering prelitigation, but that it would be a legitimate reason under clause 43 for not entering it.

The DEPUTY PRESIDENT — Order! I will put amendment 1 moved by Mr Rich-Phillips to the test. Mr Rich-Phillips has accepted that it will be a test for his further amendments 2 and 3.

Committee divided on amendment:

Ayes, 18

Atkinson, Mr	Kavanagh, Mr
Coote, Mrs	Koch, Mr
Dalla-Riva, Mr	Kronberg, Mrs (*Teller*)
Davis, Mr D.	Lovell, Ms
Davis, Mr P.	O'Donohue, Mr
Drum, Mr	Petrovich, Mrs
Finn, Mr	Peulich, Mrs
Guy, Mr	Rich-Phillips, Mr
Hall, Mr	Vogels, Mr (*Teller*)

Noes, 22

Barber, Mr	Mikakos, Ms
Broad, Ms	Murphy, Mr
Darveniza, Ms	Pakula, Mr
Eideh, Mr	Pennicuik, Ms
Elasmar, Mr	Pulford, Ms
Hartland, Ms	Scheffer, Mr
Huppert, Ms	Smith, Mr
Jennings, Mr	Somyurek, Mr (*Teller*)
Leane, Mr	Tee, Mr
Lenders, Mr	Tierney, Ms (*Teller*)
Madden, Mr	Viney, Mr

Amendment negatived.

Clause agreed to; clauses 35 to 92 agreed to.

Reported to house without amendment.

Report adopted.

Third reading

Motion agreed to.

Read third time.

PRIMARY INDUSTRIES LEGISLATION AMENDMENT BILL

Second reading

Debate resumed from 29 July; motion of Mr JENNINGS (Minister for Environment and Climate Change).

Ms LOVELL (Northern Victoria) — I rise to speak on the Primary Industries Legislation Amendment Bill, and in doing so I will flag that the Liberal-Nationals coalition will not be opposing this bill. The bill amends four existing acts: the Catchment and Land Protection Act 1994; the Livestock Disease Control Act 1994; the Primary Industries Legislation Amendment Act 2009 and the Veterinary Practice Act 1997.

The main provisions of the bill are to amend the Catchment and Land Protection Act (CALP act) to align provisions in the act for pest animals with the provisions for pest plants. The bill provides that the secretary will take all reasonable steps to control restricted pest animals on any land in the state. This step has been taken because of a pest animal called the red-eared slider turtle, which is found in waterways in areas around Melbourne. Originally these turtles were brought into the country as pets, but they have been allowed to get into our waterways. The red-eared slider turtle is a particularly aggressive feeder and is a major threat to the biodiversity of Melbourne's waterways.

Pest animals have long been a problem in this state. Foxes, rabbits and dogs are amongst the pest animals that cost this state many millions of dollars every year. I am told that the cost of damage annually across Australia because of foxes or dogs in particular is about $228 million, and $17.5 million of that is in the sheep industry alone. Dogs and foxes attack sheep, particularly lambs, and kill or badly injure animals which then need to be put down. It is estimated that about 30 per cent of lambs are taken by dogs or foxes. This legislation will add pest animals to pest plants in the act.

One area that remains unresolved, and which used to be clearly set out in the CALP act, is the issue of who is responsible for what roadside weeds. Previously the CALP act provided that it was the responsibility of the adjoining land-holder, but the Road Management Act 2004 complicated the issue of who is responsible for roadside weeds. This issue still needs to be sorted out.

The bill will also better define the circumstances that can lead to the spread of noxious weeds. In particular clause 8 deals with vehicles and the need for drivers to take reasonable precautions when they move between land and road and between road and land. This is one of the major issues for land-holders along the north–south pipeline, who are very concerned about their biosecurity, with workers coming in and out of different properties. There is an area where at some stage there had been an outbreak of Johne's disease, which had been devastating for many of the farmers in the area. Those farmers are very concerned about biodiversity and the spread of disease between properties along the pipeline. They asked for strict controls to be put on the workers who were travelling in and out of their properties, but unfortunately those controls were not adhered to.

The bill also addresses consent and notification requirements of authorised officers entering and carrying out certain duties on private land. The bill provides that an authorised officer can enter a property without a warrant and take photographs in an area where it is suspected that there are animals. Clause 12 of the bill sets out what samples can be taken by an authorised officer when they are executing a warrant.

The amendments that will be made to the Livestock Disease Control Act will improve rigour in regard to prevention and control of disease in livestock by having the need for vendor declarations and property identification codes inserted into the legislation. Vendor declarations have been used for some time and must be provided by a seller of livestock. Both a seller and a purchaser will be required to keep that declaration for three years. The three-year period will be reduced from the seven-year period that applies at the moment, which will simplify arrangements for both sellers and purchasers. Property identification codes have been used for some time by the livestock industry, but this legislation provides that saleyards and agents will also use the codes.

The bill also makes changes to the Honey Bee Compensation and Industry Development Fund to allow it to be used for programs and projects to improve the apiary industry. Previously the then Bees Compensation Fund could only be used if there was an outbreak of disease in the apiary industry, and now money will be able to be used for development projects. This is a good move for the apiary industry, which is an important industry for Victoria.

The bill will also change the constitution and membership of the Cattle Compensation Advisory Committee and the Sheep and Goat Compensation Advisory Committee. This change has been brought about to reflect the restructure of the Victorian Farmers Federation. The legislation refers to various positions within VFF, such as the president of the pastoral group and presidents of associations that represent stud breeders and stock agents and other people who make up the membership of these compensation committees. The VFF positions are now redundant, so this bill sets up a process for industry groups to nominate members of the advisory committees. Opposition members have one concern with this clause — that is, because this is an enabling clause, the regulation for the process of

determining the membership will not be done until 2011.

The bill also amends two other acts: the Primary Industries Legislation Amendment Act and the Veterinary Practice Act. These amendments relate to the registration and fee payment requirements for veterinarians with interstate practice rights in line with the implementation of the national recognition of veterinary registration schemes and procedural practices for that under the Veterinary Practice Act. Many of us in northern Victoria deal with cross-border issues all the time, so these amendments are welcome. The implementation of national recognition of veterinary registration has provided a practical solution to what has been a cross-border issue for us in the north of Victoria for many years. Formerly, a veterinarian who was registered in New South Wales could not practise in Victoria and vice versa unless they registered in both states. This provision will simplify procedures for veterinarians who are on the border of Victoria and New South Wales or Victoria and South Australia.

As I said at the beginning of my contribution, the Liberal-Nationals coalition will not be opposing this legislation.

Mr BARBER (Northern Metropolitan) — The Greens will support this bill.

Ms PULFORD (Western Victoria) — The Primary Industries Legislation Amendment Bill amends four acts: the Catchment and Land Protection Act, the Livestock Disease Control Act, the Primary Industries Legislation Amendment Act, and the Veterinary Practice Act. The bill makes a number of amendments to these pieces of legislation to improve identification and elimination of pests, and it also improves some of the operations for veterinary practice.

The Catchment and Land Protection Act essentially deals with the management of invasive pests. The cost of controlling weeds and pest animals in Victoria is estimated to be around $1 billion per annum — a significant amount. This legislation provides powers to control restricted pest animals. The minister's second-reading speech referred to the red-eared slider turtle. Whilst it is not a pest in some other parts of the world — it is a pet elsewhere — it is evident in some Victorian waterways and the problem is currently being treated. There is a real need for us to control this pest animal and the impact that it has on our waterways. The amendments will enable the declaration of new pest animal species and enable entry to private land to treat infestations. These will be similar powers to those that already exist for the control of weeds on the state prohibited weeds list.

The amendments to the Livestock Disease Control Act make up probably the greatest part of this bill. This act deals with the surveillance, detection, prevention and control of disease. It also provides for the administration of compensation funds and some data collection capacity. Among other things, the amendments in this bill repeal the definition of 'pig' — the explanatory notes suggest we should all just use the regular definition of 'pig' — and insert a number of new definitions as well.

The bill inserts a new section in the Livestock Disease Control Act enabling the minister to declare unusual circumstances of disease in livestock or circumstances of the death of livestock and sets out how such a declaration operates. It also provides a new requirement for vendor declaration when livestock is transported in circumstances of sale, particularly relating to cattle or prescribed livestock. If passed, the bill will enable the prohibition of removal of livestock from a quarantine area, which is very important in controlling risk. It also amends the name of the Bees Compensation Fund to its new name, the Honey Bee Compensation and Industry Development Fund.

There are just three clauses in this bill that relate to the Primary Industries Legislation Amendment Act 2009, and these concern the implementation of arrangements that have been discussed and agreed by the Primary Industries Ministerial Council. These discussions and agreements relate to a move to a national registration for veterinarians. These are minor amendments to improve the operation. These arrangements were agreed to at a ministerial council meeting in 2008, and it is now the case that some minor changes need to be made. It is important to note that this legislation is supported by the Australian Veterinary Association.

Finally, the bill again makes a very small number of amendments to the Veterinary Practice Act, and these relate to the operation of the Veterinary Practitioners Registration Board of Victoria, including some clarification of the way in which complaints are investigated.

This is an important bill that will improve the operation of four pieces of legislation that are essential, effective and modern in their operation: legislation that deals with the detection and control of pests, the notification of disease and identification, and the registration and conduct of veterinarians. Our primary industries are an essential part of the Victorian economy and an essential part of our way of life in Victoria. This legislation will

serve the sector well into the future, and I commend the bill to the house.

Motion agreed to.

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

Third reading

Mr JENNINGS (Minister for Environment and Climate Change) — I move:

That the bill be now read a third time.

I thank members for their contributions to the debate.

Motion agreed to.

Read third time.

BAIL AMENDMENT BILL

Second reading

Debate resumed from 29 July; motion of Hon. J. M. MADDEN (Minister for Planning).

Mr RICH-PHILLIPS (South Eastern Metropolitan) — I am pleased to rise to speak on the Bail Amendment Bill 2010. This is a bill that the coalition will not be opposing; however, we do have a proposed small amendment with respect to clause 5, and I ask that that be circulated now for the purposes of the debate.

Opposition amendments circulated by Mr RICH-PHILLIPS (South Eastern Metropolitan) pursuant to standing orders.

Mr RICH-PHILLIPS — The purpose of this bill is to amend various aspects of the law relating to bail and bail justices. It amends the Bail Act 1977 to redraft and make minor changes relating to the conditions of bail, sureties and deposits, variation of bail, revocation of bail, further bail applications and appeals. The bill provides that a bail justice can remand a person in custody for a maximum of two working days, which is a change from the present provision of eight working days. The bill abolishes the common-law right of a surety to arrest the person for whom they are surety.

The bill amends the Bail Act to require a decision-maker to take into account any issues that arise due to the Aboriginality of a person when making a determination under the act in relation to that person. It amends the Magistrates' Court Act 1989 to create a new legislative framework for bail justices, which includes the fixed five-year term of appointment, mandatory professional development requirements, procedures for removal from office and cessation of full-time appointment at the age of 70 with the provision that a person can be an acting bail justice up to the age of 75.

The bill arises from the Victorian Law Reform Commission's review of bail. However, it fails to implement a number of the recommendations that were contained within that law reform commission report, including provisions with respect to making clearer the conditions which can be imposed upon a person who is granted bail, the reimbursement and better training of bail justices, the better provision of information to victims about people who have received bail, and improved records of prior offending history.

One of the concerns the coalition has with the bill relates to the reduction in the period of time for which a bail justice can remand a person in custody. Under this legislation that period will be reduced to a maximum of two working days from the current provision of eight working days. Our concern here is one of practicality in non-metropolitan areas, where the only mechanism which may be available to remand a person in custody is a bail justice. If a bail justice can only remand a person for two days, there may be limited capacity in a country area by which that person can be brought before a magistrate in order for a longer remand period to be put in place. So we do have concerns about the practical impacts of that two-day maximum period working in country Victoria.

We also have concerns about clause 5 of the bill, which will be the subject of our amendments. Clause 5 seeks to insert a new section 3A in the Bail Act. The proposed section is entitled 'Determination in relation to an Aboriginal person' and states:

> In making a determination under this Act in relation to an Aboriginal person, a court must take into account (in addition to any other requirements of this Act) any issues that arise due to the person's Aboriginality, including —
>
> (a) the person's cultural background, including the person's ties to extended family or place; and
>
> (b) any other relevant cultural issue or obligation.

It is the view of the coalition that that provision has merit. It is relevant that those matters be taken into consideration, but it is also our view that the provision should not apply only to Aboriginal people. We recognise that in a multicultural society, like the one we have in Victoria, that the criteria that this provision seeks to have taken into account with respect to

Aboriginal people — cultural background and other relevant cultural issues et cetera — could be equally applicable to non-Aboriginal people in the Victorian community, whether they be people who were born in different communities in Australia or whether they be people who were born overseas and have come to Australia as migrants. We believe there is no basis to restrict that provision to people of Aboriginal background. Given that provision does have merit, and taking those cultural factors into consideration, we believe the court should have the capacity to take those factors into consideration with respect to all people under the Bail Act. We will be seeking to amend clause 5, which proposes to insert section 3A, to provide that it would apply to all people and not be restricted to people of Aboriginal background.

The other matter that I will touch on briefly relates to the issue of the legislative framework that is to be put in place with respect to bail justices. There is a requirement to have fixed-term appointments for mandatory professional development and a requirement to cease holding office at the age of 70 years. Although the coalition will not be opposing these provisions with respect to bail justices, I reiterate our support for the current provisions with respect to justices of the peace. I note that the Attorney-General has made some adverse comments about the role and function of justices of the peace in the Victorian community. The coalition parties are very supportive of the role played by justices of the peace in supporting the community and relieving pressures on Victoria Police officers in particular with respect to undertaking functions such as certifying documents et cetera. We believe justices of the peace play an important role in the community under the current structure and we do not support comments that have been made by the Attorney-General with respect to justices of the peace. In not opposing the provisions with respect to bail justices we are keen to make a distinction between what this legislation will do in relation to the appointment of bail justices and the regime that exists for justices of the peace.

With those words I reiterate that we will not oppose this legislation, but we will seek to broaden the provisions with respect to cultural background to ensure that they apply not only to people of Aboriginal background but to all people in the Victorian community.

Ms PENNICUIK (Southern Metropolitan) — I am pleased to make some comments on the Bail Amendment Bill 2010. The bill does a range of things, which, according to the purposes statement in the bill, are:

> (a) to amend the Bail Act 1977 —
>
> (i) to clarify and amend the law relating to conditions of bail, sureties and deposits, variation of bail, revocation of bail, further bail applications and appeals; and
>
> (ii) to require a decision-maker to take into account any issues that arise due to the Aboriginality of a person when making a determination under the act in relation to the person;
>
> (b) to amend the Magistrates' Court Act 1989 to create a new legislative framework for bail justices —

which is basically the bulk of the bill.

Clause 5 inserts into the Bail Act new section 3A, which would require that a decision-maker must take into consideration issues that arise due to a person's Aboriginality, including their cultural background and any other relevant cultural issue or obligation. I note that the coalition has circulated an amendment that would drastically alter that provision. The Greens are supportive of the clause due to the overrepresentation of Aboriginal people in the justice and corrections systems and the finding that we have had from years of studies and from the royal commission into deaths in custody that indigenous people are overrepresented in custody all around Australia. That is why the new provision proposed to be inserted by clause 5 is good and why it was a recommendation of the Victorian Law Reform Commission, which looked at bail provisions in the state of Victoria. Incidentally this is the second bill before us today that has emerged from a law reform commission review.

The bill makes changes to conditions of bail, to revocation of bail and to sureties, most of which are in line with the recommendations of the Victorian Law Reform Commission's review of the regime. One of them that I would like to draw attention to is clause 11 (2), which substitutes section 12(1A) of the principal act with a new subsection. Currently a person can be remanded in custody for up to eight days before appearing in court if they are not granted bail. The bill improves this so that they must appear before a court on the next working day, or if that is not practical, within two working days. However, the law reform commission's recommendation 48 states:

> The new Bail Act should stipulate that bail justices may only authorise the continued detention of the accused to the next business day. If the local court is not sitting that day, the accused must be taken to a court in that region that is sitting.

It envisages a court in the region that is close by. While the bill goes a fair way in reducing the time accused people spend in custody, it does not entirely implement

the recommendation of the Victorian Law Reform Commission.

Clause 15, which substitutes section 18 of the principal act with new sections, does not allow for variations to bail conditions by consent, which were recommended by the Victorian Law Reform Commission. Sometimes requests to vary by consent can be for minor reasons, such as a change of address, and we should not need to be going to the Magistrates Court to have a variation. The law reform commission recommended there be some flexibility in that regard.

Other parts of the bill go to the regime covering bail justices — for example, the bill makes it easier to suspend a bail officer and imposes a code of conduct on bail justices. It provides that the secretary rather than the Governor in Council can suspend a bail justice and provides that the secretary can do so if that bail officer has contravened the code of conduct. There is also compulsory compliance with the code of conduct and the ability of the secretary to direct a class of or all bail officers to receive accredited training, which are also good things.

I have previously raised with the government the fact that I have had conversations with or representations from bail justices over the years on certain issues, such as their remuneration. I have raised those in the Parliament and with the Attorney-General. Notwithstanding that there has been a Victorian Law Reform Commission review and that we have this bill before us, I am not aware of the extent of consultation there may or may not have been with bail justices regarding the changes in the bill that will apply to them. I would be interested to hear what government speakers have to say in that regard. Obviously you would want to have the bail justices broadly supportive of any changes in conditions which will apply to them. Many, if not all, of them are volunteers, and they are called out to perform their tasks at odd hours — in the middle of the night or early in the morning. They provide a service to the community which is important and necessary and requires some expertise and involves a lot of inconvenience, so it is important that they be broadly supportive of the changes this bill provides for in terms of how they are regulated.

There were a couple of other issues that were drawn to our attention. One is recommendation 42 of the Victorian Law Reform Commission's report, which states:

> The bail justice system should be retained and reformed in accordance with the recommendations in this report. The Department of Justice should commission an independent review of the bail justice program in three years to determine whether it is working well, or whether another system should be instituted. In the long term, an after-hours bail court should be considered.

I would be interested to know whether the government is considering a review in three years following this recommendation of the Victorian Law Reform Commission's report.

Recommendation 3 was that:

> The forms contained in the Bail Regulations 2003 should be redrafted in plain English …

That is occurring, because obviously when you are dealing with people who come before the bail justices, it is helpful if everybody can understand what is being put in front of them.

Recommendation 9 is interesting:

> The Bail Act should contain a purposes provision. The purposes of the Bail Act should be to:
>
> have within one act all general provisions dealing with bail;
>
> established processes to ensure the prompt resolution of bail after arrest;
>
> ensure bail hearings are conducted in a fair, open and accountable manner;
>
> ensure bail is not used to punish accused people;
>
> limit or prevent offending by accused people while on bail by providing for the imposition of conditions of bail commensurate with any such risk;
>
> promote transparency in decision making;
>
> ensure the safety of the community, including alleged victims and witnesses;
>
> ensure the bail system does not perpetuate the historical disadvantage faced by indigenous Australians in their contact with the criminal justice system;
>
> promote public understanding of bail practices and procedures;
>
> reform the bail laws of Victoria.

Obviously some of those things have appeared in the bill, but it would have been helpful to have those overarching purposes in the act as the guiding principles of the act, which is something we see in other bills and acts that come before us.

There were quite a lot of recommendations which I will not quote verbatim, but I refer to recommendations 14, 16, 20, 21, 22, 23, 24, 25, 26, 27, 28, 36 — and 15 — which relate to Victoria Police and their interaction with the bail system and make recommendations as to how that could be improved.

What does the government have to say about that? Obviously not all of that would have been appropriate to appear in this bill, but it could appear in regulations or in police guidelines, because the Victorian Law Reform Commission did identify some problems with regard to the police.

Recently we have had bills before us which have increased police powers. When we have recommendations from the Victorian Law Reform Commission, we should balance them with the responsibilities of the police as to how they behave. I would be interested to know whether they are being implemented or are intended to be implemented.

Another interesting recommendation was recommendation 50:

> The Department of Justice should continue to encourage diversity of bail justices by promoting the bail justice program among women, younger adults and people of diverse cultural backgrounds.

What is the Department of Justice doing about that? Recommendation 54 states:

> The Department of Justice should provide regular information to bail justices. Material should be available electronically … and on a website accessible by bail justices so new appointees can access past material.

It has come to my mind that this came out of the Victorian Law Reform Commission, as did the Criminal Procedure Bill. It would be good if the Summary Offences Act and the Control of Weapons Act went through the same process. That is something I would think about pursuing, because those particular changes to police powers et cetera did not seem to come out of any thorough or comprehensive review.

The Greens will support the bill. We will not be supporting the amendment put forward by the coalition.

On the new provision to take account of the Aboriginality of a person who may be appearing before a bail justice, the Australian Institute of Criminology in 1995 noted that Aboriginal people were in prison at 13 times the rate of non-Aboriginal people. This year a recent study into indigenous women offending found that although there are less indigenous women in custody, they are currently the fastest growing prisoner population and are severely overrepresented. The report suggested that causes of the increases are complex and varied between jurisdictions.

Citing the finding of the New South Wales Select Committee on the Increase in Prisoner Population, the most significant contributing factor was the increase in the remand population, while increases in police activity and changes in judicial attitudes to sentences were also important. There was no evidence to suggest that an increase in actual crime accounted for the increase in prisoner population, so we think this is an important provision, given the history of overrepresentation of Aboriginal people in custody and the terrible history of deaths of Aboriginal people in custody, and that includes in remand.

Ms MIKAKOS (Northern Metropolitan) — I am pleased to rise to speak in support of the Bail Amendment Bill. In order to ensure that the law is responsive to the changing needs and expectations of our community, the Bracks and Brumby Labor governments have been undertaking the most significant reform of criminal legislation in Victoria in over 150 years. This bill is just one aspect of that wide-sweeping reform.

As we know, bail is a long-established practice in our criminal law and, under the Bail Act and the human rights charter, accused people in Victoria have a general right to remain in the community until their charges can be heard by a court. This ensures that people who have been accused of crimes but who have not been convicted of committing them do not unnecessarily spend time on remand. In some cases, however, the criminal justice system recognises that a person must be kept in custody to ensure the safety of witnesses, the safety of the community or to ensure that the accused will appear in court.

The Bail Act was enacted in 1977, based largely in common law, and over the years it has been amended many times. In 2004 the Attorney-General commissioned the Victorian Law Reform Commission to review the Bail Act and look at its practical operation to ensure that it was consistent with the overall objectives of the criminal justice system.

The report was tabled in Parliament in October 2007. The Victorian Law Reform Commission conducted wide-ranging consultation with courts, prosecutors, legal practitioners, police, government agencies, bail justices, community groups and the public. In its reports the commission made 157 recommendations for reform to ensure that the bail system functioned simply, clearly and fairly.

The Brumby Labor government is responding to the Victorian Law Reform Commission recommendations in two stages. This bill responds to 40 recommendations and represents the first stage of the reforms of Victoria's bail system. In relation to some of the issues Ms Pennicuik raised about police, I

can assure her that a lot of those other matters will be dealt with in stage 2 of the process.

Overall the bill aims to establish a new legislative framework for the operation of the after-hours bail system. It was noted by the law reform commission that courts make only a small proportion of bail decisions. The majority — up to 90 per cent — are made by the police. Bail applications are only heard by the Magistrates Court if police do not grant bail. It is estimated that the police grant over 25 000 bail applications each year and the Magistrates Court grants approximately 3000. Applications may also be heard by bail justices, who are trained lay people who hear applications for bail when police have refused bail or a court is not open.

The bill establishes a five-year fixed-term appointment for bail justices. They will be eligible to apply for reappointment before their term of office comes to an end. It also contains provisions that, should a bail justice contravene adherence to a new code of conduct, they may be required to undertake further training or counselling or be subject to independent investigation and possible removal from office. The Secretary of the Department of Justice can suspend a bail justice and removal from office can occur by the Governor in Council acting on the Attorney-General's recommendation following an independent investigation.

In relation to the conditions of bail, the ability to impose conditions can allow an accused person to live in the community as long as they adhere to those conditions. Failure to do so may result in the removal of their liberty by being remanded in custody until the charges are dealt with.

The amendments in this bill clarify the purposes of imposing bail conditions and the kinds of conditions that can be imposed to better reflect current practice. A new section requires decision-makers to consider the imposition of bail conditions on an accused in the following order: on his or her undertaking without other conditions; on his or her undertaking with conditions about conduct; and with a surety or deposit of money with or without conditions about conduct.

Bail conditions may only be imposed to reduce the likelihood that an accused person will fail to attend court, commit an offence while on bail, endanger the safety or welfare of the public or interfere with witnesses or otherwise obstruct the course of justice in any matters before the court. All bail conditions will also be required to take into account the individual circumstances of the accused, and the bail justice retains the discretion to have regard to the circumstances of each case.

In relation to marginalised and disadvantaged people, we all know that they are overrepresented in our criminal justice, and the biggest overrepresentation is by indigenous Australians. I particularly refer members of the coalition to chapter 10 of the Victorian Law Reform Commission report at page 168, which states:

> Indigenous Australians continue to be overrepresented in the criminal justice system. They are 12 times more likely to be held in Victorian prisons than other Australians. Between 1999–2000 and 2002–03 the proportion of indigenous prisoners on remand in Victoria increased from 50 per cent to 61 per cent. Between 2002–03 and 2004–05, indigenous Australians were 23 per cent more likely to be on remand when in prison in Victoria compared to other Australians. The number of indigenous Australians apprehended by police in Victoria increased by 65 per cent between 1993–94 and 2002–03, compared to an increase of 27 per cent for other Australians over the same period.

I place those statistics on the record because it is important we acknowledge that there is a serious problem in the overrepresentation of indigenous Australians in our criminal justice system and a greater preponderance of them are remanded in custody. This bill addresses the needs of accused persons who are members of the indigenous community in recognition of this law reform commission report and in particular acknowledges that there should be a specific provision for accused people who are of indigenous background.

It will be possible to take into account a person's cultural background and cultural obligations, events and ceremonies whilst making a bail determination. The bail decision-maker will retain the ultimate discretion and will be able to determine how much weight to attach to these factors.

I refer members to the Victorian Law Reform Commission report at page 180, which states:

> Indigenous Australians have a unique history of disadvantage in their interaction with the criminal justice system. Remedying this disadvantage calls for a unique response. Recognising the needs and circumstances of indigenous Australians by including an indigenous-specific provision in the new Bail Act does not mean the claims of other disadvantaged groups will be ignored by bail decision-makers.

For those reasons I categorically disagree with the opposition's amendments. It is necessary that we address this important issue.

On other matters, the bill also clarifies procedures with regard to sureties to ensure that when a surety is prescribed it is reasonable and appropriate. It is imperative that people who are accepted to provide a

surety are able to meet their obligations, as it determines whether or not the accused abides by the conditions of bail. There are also provisions in the bill which relate to appeals of decisions to grant bail by the Director of Public Prosecutions and which make clarifications to the law.

In conclusion, this bill is about ensuring that we have the right balance between the rights of the accused who has not yet been convicted of a crime, and the need to ensure the safety of our community and the attendance of the accused at court. It is another step towards modernising Victoria's criminal justice system, and I commend the bill to the house.

Mr TEE (Eastern Metropolitan) — I will briefly respond to a couple of issues raised in the debate. In terms of the consultation, which was the issue raised by Ms Pennicuik, there was extensive consultation with bail justices as part of the development of the Victorian Law Reform Commission's recommendations. Once those recommendations came out there was some disagreement in that some of the justices of the peace did not support the recommendation that there be a legislative delineation of their powers as administrative. That was a recommendation that the VLRC made that the bail justices did not support. As a result, that recommendation was not proceeded with in this bill.

The aspects of the bill that were proceeded with were incorporated into a consultation paper that was made available to the bail justices, and as part of that consultation there were some nine responses from bail justices, all of which were broadly supportive of these reforms.

Turning briefly to the amendments proposed by Mr Rich-Phillips, as indicated by Ms Mikakos we will not be supporting those. The VLRC identified the deficiency in that bail justices are currently able to, and required to, consider the background of individuals, but what the law reform commission found was that bail justices did not consider their Aboriginality. That meant that on occasions inappropriate conditions were placed on Aboriginals — for example, the bail justice might require an Aboriginal person to reside at a particular address. We know that members of the Aboriginal community sometimes reside at a number of addresses, and because of the requirement to reside at a particular address that member of the Aboriginal community might breach that requirement by staying at one of a number of addresses. The breaching of that condition might result in that person being brought back into custody.

The VLRC said the provision to check everyone's background should be maintained, but for the Aboriginal community, in view of the high rates of contact with the justice system, an issue identified by Ms Mikakos, and in view of the unique position of the Aboriginal community in terms of its history and country, it ought to be something that the bail justices need to give particular consideration to. That is the reason we put it into the bill, and that is the reason we will be opposing the amendments proposed by Mr Rich-Phillips.

Motion agreed to.

Read second time.

Committed.

Committee

Clause 1

Ms PENNICUIK (Southern Metropolitan) — On clause 1, I just wanted to repeat the question I asked in my contribution to the second-reading debate, which is whether the Department of Justice is intending to take-up the recommendation of the Victorian Law Reform Commission to review the program in three years?

Mr TEE (Eastern Metropolitan) — The position of the government is that no decision has been made in relation to the three years. We want to bed down these changes, and we will make a decision then.

Clause agreed to; clauses 2 to 4 agreed to.

Clause 5

The DEPUTY PRESIDENT — Order! I invite Mr Rich-Phillips to move his amendment 1, and I indicate to him that I regard that amendment as a test for his further amendments 2 and 3.

Mr RICH-PHILLIPS (South Eastern Metropolitan) — I move:

1. Clause 5, lines 3 and 4, omit "**in relation to an Aboriginal person**" and insert "**must take into account person's background etc.**".

The purpose of this amendment, and indeed amendments 2 and 3, is to broaden proposed section 3A with respect to a determination in relation to an Aboriginal person. The intent of the amendment is to provide that the clause would apply to all people. The requirement would be to take the cultural background

and other relevant cultural issues or obligations of any person subject to this provision into consideration.

Ms Mikakos, in her contribution on the second-reading debate, set out as reasons for the cultural characteristics of Aboriginal people to be taken into consideration the prevalence of Aboriginal people in custody and on remand, as did Mr Tee when he spoke. It is the coalition's view that the cultural backgrounds of all people should be taken into consideration, and in moving this amendment I note that it in no way diminishes or takes away from those provisions with respect to Aboriginal people. However, we do not see the reason for the clause, as drafted by the government, to be to the exclusion of people who are non-Aboriginal. We believe that those provisions should apply equally to non-Aboriginal people who have particular cultural background factors. This amendment is basically to broaden that provision to cover all people; not just Aboriginal people.

Mr TEE (Eastern Metropolitan) — We agree that the cultural and broader background of all individuals should be taken into account, and that is the current position. What the Victorian Law Reform Commission found was that in relation to the Aboriginal community there was a gap in that the cultural backgrounds and circumstances relevant to them were not being taken into consideration. That was a deficiency that the law reform commission identified, and this amendment seeks to address that deficiency. It is not a particularly radical or new provision. It is a provision that applies in New South Wales and Queensland, and it simply picks up something that the law reform commission identified as missing, bearing in mind that we have an issue where the Aboriginal communities are a small part — 0.6 per cent — of our Victorian population but a much larger part of our justice system for all the wrong reasons. Therefore we need to try to address that particular situation and fix that anomaly.

Ms PENNICUIK (Southern Metropolitan) — The Greens will not be supporting this amendment. As Mr Tee pointed out, the Victorian Law Reform Commission found that even though there is a requirement under the current regime that a person's cultural background is taken into account, bail justices were not taking into account the special requirements of Aboriginal people and their Aboriginality when making decisions regarding whether or not to grant bail and under what conditions.

Mr Tee mentioned in his contribution an example where a person may be required to reside in one place when in fact they may reside in more than one place, but there could be any number of conditions that were attached to the granting of bail which may be inappropriate due to someone's Aboriginality. The Victorian Law Reform Commission made a finding that it was the case that it was not being taken into account. When we take that finding into consideration with the knowledge that the whole of the Australian community has known for a long time — that Aboriginal people are way overrepresented in the justice system and are incarcerated at a far greater rate than non-Aboriginal people — we have to take every measure possible to ensure that that does not continue.

I only have one question for the minister about the measure, which is: following on from this, is there proactive training available to bail justices on how to take it into account, seeing as the law reform commission has found the bail justices have not hitherto been doing so?

Hon. J. M. MADDEN (Minister for Planning) — I would anticipate that there will be assistance and training in that area.

Committee divided on amendment:

Ayes, 18

Atkinson, Mr	Kavanagh, Mr
Coote, Mrs	Koch, Mr
Dalla-Riva, Mr	Kronberg, Mrs
Davis, Mr D.	Lovell, Ms
Davis, Mr P.	O'Donohue, Mr
Drum, Mr	Petrovich, Mrs
Finn, Mr (*Teller*)	Peulich, Mrs (*Teller*)
Guy, Mr	Rich-Phillips, Mr
Hall, Mr	Vogels, Mr

Noes, 21

Barber, Mr	Murphy, Mr
Darveniza, Ms (*Teller*)	Pakula, Mr
Eideh, Mr	Pennicuik, Ms
Elasmar, Mr	Pulford, Ms
Hartland, Ms	Scheffer, Mr
Huppert, Ms	Smith, Mr
Jennings, Mr	Somyurek, Mr
Leane, Mr (*Teller*)	Tee, Mr
Lenders, Mr	Tierney, Ms
Madden, Mr	Viney, Mr
Mikakos, Ms	

Amendment negatived.

Clause agreed to; clauses 6 to 42 agreed to.

Reported to house without amendment.

Report adopted.

Third reading

Motion agreed to.

Read third time.

Sitting suspended 6.35 p.m. until 8.02 p.m.

CLIMATE CHANGE BILL

Introduction and first reading

Received from Assembly.

Read first time on motion of Mr JENNINGS (Minister for Environment and Climate Change).

Statement of compatibility

Mr JENNINGS (Minister for Environment and Climate Change) tabled following statement in accordance with Charter of Human Rights and Responsibilities Act:

In accordance with section 28 of the Charter of Human Rights and Responsibilities, I make this statement of compatibility with respect to the Climate Change Bill 2010.

In my opinion, the Climate Change Bill 2010, as introduced to the Legislative Council, is compatible with the human rights protected by the charter. I base my opinion on the reasons outlined in this statement.

Overview of bill

The bill will:

include a preamble recognising the overwhelming scientific consensus that human activity is causing climate change and include overarching policy objectives for Victoria's response to climate change, together with guiding principles which the minister is to apply in administering certain sections of the act;

establish a target to reduce Victoria's greenhouse gas emissions by 20 per cent compared with 2000 levels by 2020;

create an obligation for government decision-makers to take into account climate change when making decisions or taking any action under a specified legislative provision;

require the preparation of a climate change adaptation plan every four years which will provide for an outline and a risk assessment of climate change impacts on Victoria and the government's priorities in response to those impacts and risks;

require the preparation of biennial reports on climate change science and emissions data for Victoria, which will include reporting on Victoria's progress in meeting the legislative target;

provide for a once-off independent review of the act by 31 December 2015;

make amendments to the Environment Protection Act 1970 to expressly empower the Environment Protection Authority (EPA) to regulate the emission or discharge of greenhouse gas substances, facilitate the operation of the Climate Communities Fund account, and enable the Premier and the minister to enter into climate covenants for the purpose of facilitating measures and activities directed at climate change; and

establish a new forestry and carbon sequestration rights framework to facilitate the development of the emerging carbon sequestration industry on private and Crown land, repeal the Forestry Rights Act 1996 and make consequential amendments to other acts.

Human rights issues

1. Human rights protected by the charter that are relevant to the bill

Section 19 — Cultural rights

Section 19 of the charter provides that Aboriginal persons have the right to maintain their distinctive spiritual, material and economic relationship with the land and waters and other resources with which they have a connection under traditional laws and customs.

The bill protects the rights in section 19 of the charter by requiring that any carbon sequestration agreement entered into by the Secretary of the Department of Sustainability and Environment relating to Crown land not be inconsistent with the requirements of any relevant law, including requirements relating to native title and Aboriginal cultural heritage.

Further, the bill provides that, in entering into a carbon sequestration agreement relating to Crown land, the secretary must have regard to the interests of indigenous groups in the relevant area.

Section 20 — Property rights

Section 20 of the charter provides that a person must not be deprived of his or her property other than in accordance with law. 'Property' includes statutory rights such as licences.

The bill makes amendments to the Environment Protection Act 1970 to expressly empower the EPA to regulate the emission or discharge of greenhouse gas substances. This has the potential to engage section 20 of the charter if the EPA relies on this power to amend existing licences, so as to limit the discharge or emission of greenhouse gas substances.

The right would only be engaged if such licences were held by individuals, as section 6(1) of the charter specifies that corporations do not have human rights. It is unlikely that licences would be held by individuals.

Even if the section 20 right is engaged, I consider that the bill does not limit property rights. The thresholds for the emission or discharge of greenhouse gas substances will be prescribed by regulations or set out in statutory policies which will be accessible, precise and not arbitrary. Any impact on property rights will therefore be in accordance with the law, as permitted by section 20.

Section 18 — Taking part in public life

Section 18 of the charter provides that the right to participation in public life includes the right, and the opportunity, without discrimination, to participate in the conduct of public affairs, directly or through freely chosen representatives.

The bill promotes the right to participation in public life by including community engagement as a guiding principle which the minister must take into account in certain situations.

The bill requires the minister, when preparing a climate change adaptation plan and reporting on climate change and emissions data, to consider the guiding principles, where relevant in the circumstances. The guiding principles provide opportunities for public consultation on decisions which may affect the community.

I consider that this reflects a balance between promotion of the right to participate in public life and the efficient use of government resources for the protection of the environment, in accordance with the aims of the bill.

The bill does not limit or restrict the existing enjoyment of the right to participation in public affairs.

Conclusion

I consider that the bill is compatible with the charter because it does not limit or restrict any rights under the charter.

Gavin Jennings, MLC
Minister for Environment and Climate Change

Second reading

Ordered that second-reading speech be incorporated into *Hansard* on motion of Mr JENNINGS (Minister for Environment and Climate Change).

Mr JENNINGS (Minister for Environment and Climate Change) — I move:

That the bill be now read a second time.

Incorporated speech as follows:

Introduction

President, this bill is not only landmark legislation for the state of Victoria; it is landmark legislation for Australia.

Climate change is the greatest challenge of our generation. There has never been a stronger case for action. It is a concern common to all humankind and a responsibility shared by all levels of government, industry, communities and the people of Victoria.

The Climate Change Bill 2010 provides a strong framework for Victoria to tackle global warming — it establishes a clear emission reduction target and new legislative provisions to underpin the programs needed to achieve this target.

This bill puts Victoria well ahead of the rest of Australia in taking strong and decisive action and gives effect to the Victorian climate change white paper, *Taking Action for Victoria's Future*, which sets out 10 actions to clean up our environment, cut emissions and stimulate new investment in clean energy and technology.

Through this bill, Victoria will lead the nation by adopting a target to reduce greenhouse gas emissions by at least 20 per cent by 2020, compared to 2000 levels (equivalent to 40 per cent per capita).

This bill will also provide the Environment Protection Authority with the express power to regulate the emission of greenhouse gases in Victoria and establish standards which provide an effective ban on the construction of new coal-fired power stations based on conventional brown coal technologies.

This bill demonstrates our government's determination to act early and cut our emissions, giving Victoria every possible advantage in adapting to the impacts of a changing climate, leading the nation in renewable and low-emissions energy, and creating new jobs and opportunities across the state.

Two years ago, here in this chamber, I held the nation's first climate change summit, which began the conversation about Victoria's transition to a low-carbon future.

Last November, this house unanimously endorsed a strong resolution recognising the overwhelming scientific evidence that human activity is causing global warming.

This Parliament also urged the federal Senate to pass a national scheme to reduce greenhouse gas emissions, and called on the international leaders gathering in Copenhagen to prepare an effective, binding international agreement.

Regrettably, neither of these things occurred — and if Victoria is to keep up with other major economies that have made substantial commitments to initial, unilateral action, we must once again show strong leadership by implementing change ahead of the nation. Victoria's strong leadership in cutting emissions will not only help our environment — it will also help create new economic opportunities for our state.

As noted economist and writer Thomas Friedman said: 'Demand for clean energy … and energy efficiency is clearly going to explode; it's going to be the next great global industry'.

Climate change is a huge challenge for the state, but also a great opportunity. Perhaps nowhere is this more obvious than when we consider energy.

In the last year alone in Europe and the US more than 50 per cent of new energy capacity was renewable, and total global investment in solar PV reached a record $40 billion.

Globally, nearly 80 gigawatts of renewable power capacity was added in 2009:

China alone added 37 gigawatts of new renewable power;

in Europe and the US, over 50 per cent of new capacity was renewable;

total global investment in solar PV reached a record $40 billion in 2009.

In addition:

India plans to build 20 gigawatts of solar power by 2022;

Japan is targeting 28 gigawatts of solar power by 2020.

Clean energy is also creating new jobs with an estimated 1.5 million people employed now world wide in the renewable energy industry.

In our own state we have added 434 megawatts of renewable energy to our supply in just the last three years. We are planning a great deal more, because I am determined to position Victoria as the most attractive location for investment in low-emission technology. If we succeed, renewable energy production could more than double every five years for the foreseeable future, creating more investment and more jobs, particularly in regional Victoria.

This bill positions Victoria in front of the wave of change coming our way. Our government is committed to taking bold actions to reduce our greenhouse gas emissions and transform our economy. I trust this bill will enjoy the same unanimous support in this Parliament that was shown for these very sentiments last November.

The case for action is clear — we know that climate change poses huge challenges for our economy, our environment and our way of life. According to the CSIRO, Victoria is already warmer as a result of global warming. We are seeing increasing numbers of extreme weather events: drought, heatwaves, storms and floods. And as we were so tragically reminded just 17 months ago, we live in one of the most bushfire-prone environments in the world.

If we are to limit the impact of climate change, we need to change the way we live and work, the way we produce and use energy, the way we plan our cities and protect our environment.

This is why we are taking action as a state government.

With this bill, Victoria is signalling that we are not prepared to wait for a national carbon scheme to be legislated, or make our commitments dependent on a binding global agreement.

The landmark legislated measures in the bill are backed by substantial investment from the Victorian government and by new initiatives and programs set out in the Victorian climate change white paper action plan.

Through the white paper we will reduce the emissions of Victorian brown coal-fired generators by up to 4 million tonnes within the next four years, culminating in a total saving of 28 million tonnes by 2020 — equivalent to the closure of two units of Hazelwood power station.

These measures are necessary, not only to reduce emissions and clean up the environment, but also to ensure energy security for our state with a clear timetable for new investment in gas and renewable generation.

The white paper action plan also puts our state on track to generate 5 per cent of our electricity from solar energy by 2020 — helping to secure Victoria's position as Australia's 'solar state', and a leading destination for clean technologies.

Most importantly, being ahead of the game means more and better jobs for Victorians from the new industries, technologies and markets that will flow from a low-carbon future. That is why earlier this year our government released the $175 million *Jobs for the Future Economy* statement outlining many programs to create these jobs.

Building on Victoria's strong leadership

The bill will continue this government's strong record of tackling climate change in Victoria. This legislation builds on a raft of reforms that the government has already announced, including the land health and biodiversity white paper, Jobs for the Future Economy, the future energy statement and Ready for Tomorrow.

When it comes to climate change, we have already well and truly established our credentials. Over the last 10 years, Victoria has taken significant steps to tackle greenhouse emissions and make a smooth transition to a low-carbon economy.

Victoria was the first state to:

set a mandatory energy efficiency target for electricity retailers, implemented through the energy saver incentive scheme;

introduce a mandatory energy, water and waste resource efficiency program for the biggest commercial energy and water users;

adopt the 5-star energy efficiency standard for new homes, which will increase to a 6-star standard from May 2011;

introduce a mandatory 10 per cent renewable energy target to drive new investment (the Victorian renewable energy target);

adopt a market-based approach to managing and protecting native vegetation on private land (Victoria's ecoMarkets programs, including BushTender, BushBroker and EcoTender);

introduce an integrated energy technology development policy and delivery mechanism, through the energy technology innovation strategy; and

introduce Climate Communities, an innovative program, a great program, to promote and support local action on climate change.

So while this bill heralds a new era in addressing Victoria's climate challenges and opportunities, it also represents years of hard work and effort by the state government and by many local councils, communities, industry groups, businesses and other organisations across Victoria.

It also reinforces that responding to climate change is a shared community responsibility. We will all need to make some changes in our daily lives if we are to cut emissions by 40 per cent on a per capita basis, conserve our resources and reduce economic and social impacts, and ensure Victoria remains a prosperous and sustainable state.

Preamble and policy objectives

The Climate Change Bill 2010 begins with an unequivocal statement that the Victorian government acknowledges the overwhelming scientific consensus that human activity is causing climate change; that Victoria is particularly vulnerable to its adverse effects; and that early action is necessary.

Greenhouse gas emissions reduction target

The bill establishes a target to reduce greenhouse gas emissions in Victoria by 20 per cent by 2020, compared to 2000 levels — which equates to a 40 per cent reduction in per capita terms.

Let there be no mistake — this is a very challenging target.

Victoria's emissions must be cut from a projected 130 million tonnes of carbon dioxide equivalent in greenhouse gases to around 96 million tonnes within 10 years.

We will achieve these reductions through energy efficiency, increased use of solar, wind and other renewable energy sources, increased gas and a significant reduction in brown coal generation, improved agricultural practices and carbon sequestration. The white paper sets out the initial actions required to set us on a path to meet this target.

Creating the right conditions for emissions abatement will encourage low-carbon investment within Victoria and make it more cost effective to achieve long-term emissions reductions. It will also support the development and uptake of clean technologies and systems, and position Victorian businesses for international leadership in these areas.

This target is a new benchmark for action in Australia. But we consider it to be a minimum target based on what the state can put in place over the next four years. Going further will require strong action by the federal government by 2014.

The scientific consensus of the Intergovernmental Panel on Climate Change is that if dangerous levels of global warming are to be avoided, developed countries will need to reduce emissions by 25 to 40 per cent by 2020 based on 1990 levels. Therefore, while Victoria's target is a significant step, more may still be needed.

Victoria has for some years called for a long-term national emission reduction target of 80 per cent by 2050, which is the desirable level of reduction supported by this scientific opinion.

This bill provides that if a national emissions trading scheme is introduced, an immediate review of this bill will be conducted.

The bill also provides for an independent review of the act by 2015 to examine whether any further action is needed at the state level to improve on our target — regardless of whether the commonwealth has acted by that time.

Regulation of greenhouse gases

The bill will amend the Environment Protection Act 1970 to establish express powers for the Environment Protection Authority to regulate greenhouse gas emissions through state environment protection policies, waste management policies and regulations, and the operation of the works approval and licensing regime.

As a first step following the passage of this bill, it is intended that the Environment Protection Authority will use this power to set an emissions intensity standard for new power stations. The government is proposing a standard of 0.8 tonnes of carbon dioxide equivalent per megawatt hour (tCO2/MWh), which will prevent the construction of any new power stations based on conventional brown coal technologies. The introduction of the standard will be subject to public and industry consultation, and an assessment of economic and social impacts.

These amendments to the Environment Protection Act will also clarify that regulations may be introduced that set a greenhouse gas 'trigger' to require licensing and works approvals for general industrial and commercial sites that are large emitters and energy users. This will enable the government to ensure that best practice standards and technologies are used by Victorian industry — giving our businesses an edge in a low-carbon economy and avoiding 'locking in' inefficient, long-lasting technologies.

Any changes in this regard will also be subject to consultation through regulatory impact statements or equivalent processes.

This power may be used for other purposes in the future, such as establishing emissions standards for existing power stations — with the aim of moving Victoria's brown coal generators into line with international best practice and providing a strong investment signal to upgrade technology.

Again, any new standards in this area will be subject to full public consultation and regulatory impact statements.

Decision-making framework

The bill establishes a strong climate change decision-making framework to reduce future risks and ensure good long-term outcomes for Victoria, which is a first for Australia.

This framework will require decision-makers to consider both the impacts of climate change on a particular decision, and how the decision will contribute to Victoria's greenhouse gas emissions.

The bill sets out relevant considerations for decision-makers, providing clarity, certainty and consistency across government decision making.

This framework will apply to a range of statutory decisions listed in schedule 1 of the act. This list is a first step and more decisions may be added over time.

The bill also amends the Transport Integration Act 2010. Victoria leads Australia in developing modern transport legislation that supports an integrated and sustainable transport system — and the Climate Change Bill will take this a step further by ensuring that climate change is considered in decisions about Victoria's transport system.

To support the implementation of the framework, a detailed package is being developed to guide decision-makers. This will provide clarity and transparency and arm public sector staff with the knowledge and tools they need to make good decisions.

Climate Communities

The bill also amends the Environment Protection Act 1970 to establish the Climate Communities Fund account within the Environment Protection Fund.

In November 2009 I announced a new Climate Communities program to support grassroots community efforts to adapt and adjust to climate change, and to give an expanded focus to Victoria's Sustainability Fund. Under this bill, the

Sustainability Fund will be renamed the Climate Communities Fund.

The Climate Communities program is being expanded across four streams — households, businesses, community groups and schools — and the fund will be used to support the full range of projects covered by the extended program. It will also support programs focused on more efficient resource use and improved waste management.

Climate covenants

This bill establishes a framework for voluntary climate covenants between the Victorian government and communities, industries and regional bodies.

Based on the successful sustainability covenants implemented by the Environment Protection Authority, these climate covenants will empower organisations that want to move beyond compliance with legal requirements to be more proactive and cutting edge in their responses to climate change.

Climate covenants recognise that many groups and organisations across Victoria are keen to take that extra step and gain that extra edge in taking action on climate change. These covenants provide clear support from the government for this creativity, innovation and leadership.

Climate covenants will also help secure new jobs for Victoria by identifying and responding to skills gaps in our emerging sustainable industries.

Adaptation plans

Even with strong action to reduce emissions, some climate change impacts are now inevitable — and we must adapt to those impacts. The bill provides for a statewide climate change adaptation plan to be prepared every four years to document the progress of impacts on Victoria, analyse future trends, and outline how the Victorian government proposes to respond.

This legislated process will ensure that Victoria is operating from a holistic, whole-of-government perspective; that our strategic response to managing climate impacts is based on the best evidence; and that Victorian communities have a clear picture of what risks they face and what the government intends to do about those risks.

Carbon sequestration rights

The bill will establish a new comprehensive rights-based framework for the exploitation of carbon sequestered by vegetation and in soil on private and Crown land.

The existing legal framework for forest carbon, contained in the Forestry Rights Act 1996, was established a decade ago. It needs to be updated to ensure consistency with the approaches being used in other states and to better reflect the likely requirements of any future national carbon market.

The bill will repeal the Forestry Rights Act 1996 and replace it with a new framework for forestry and carbon rights.

In relation to private land, the bill will:

provide statutory recognition for a new class of proprietary rights for forestry, carbon sequestration and soil carbon as interests in land; and

enable the making of forest and carbon management agreements, which will contain ongoing management obligations and be capable of binding successors in title.

In relation to Crown land, the bill will:

empower the Secretary of the Department of Sustainability and Environment to manage Crown land for the purposes of carbon sequestration;

facilitate the assessment of Crown land available for carbon sequestration; and

enable carbon sequestration rights and soil carbon rights to be granted in relation to Crown land to third parties through carbon sequestration agreements.

These reforms will make it easier and simpler for private land-holders to separately buy and sell land, trees and sequestered carbon — reducing red tape and the costs associated with participating in emerging carbon markets.

They will also improve investor confidence, positioning Victoria to take full advantage of national carbon markets or government-funded programs to establish carbon sinks.

These new laws will also support the establishment of the Victorian Carbon Exchange, which will enable the purchase of Victorian offsets and create a market incentive for Victoria's land-holders and forest operators to create offsets through activities such as soil carbon sequestration, changed farming practices and new forest plantations.

Reporting and review

Finally, the bill will promote transparency and accountability by providing accessible information to the Victorian community on climate change science and emissions data.

This includes a requirement for the minister to regularly report on Victoria's progress towards meeting the emissions reduction target contained in the bill.

The bill also provides for an independent review of the entire act after five years. This will ensure that the purposes and objectives of the act are being achieved in what is likely to be a rapidly changing global environment and context. It will also enable us to ensure that we have the systems and processes in place to provide the high-quality data and knowledge needed to inform our actions and keep us moving in the right direction.

Conclusion

This bill is one of the most important pieces of legislation to come before this Parliament for some time.

It is important in terms of the specific measures it contains, such as our benchmark target for reducing emissions.

It is also important in terms of the support it provides for the critical actions and reforms set out in the Victorian climate change white paper.

But most importantly of all, this bill says clearly and unequivocally that Victoria will be a leader on climate

change; that we are prepared to set our target, in law, to meet the challenge and work together to create a cleaner, better environment. Victoria will not sit back and run the risks of higher costs and greater damage from climate impacts, and we will not stand by and let opportunities slip through our fingers as the pressure for action becomes stronger and more urgent day by day.

This is a considered, fair and far-sighted piece of legislation. It will maintain Victoria's leadership on climate change and will create a new 'climate of opportunity' for our state.

l urge the Parliament to support this bill and — in doing so — send a strong message that the case for action on climate change is clear, and unambiguous, and that we need to act now to ensure that our legacy to future generations of Victorians is one of a strong economy, sustainable communities and a better, cleaner world.

I commend the bill to the house.

Debate adjourned on motion of Mr RICH-PHILLIPS (South Eastern Metropolitan).

Debate adjourned until Thursday, 19 August.

CONSUMER AFFAIRS LEGISLATION AMENDMENT (REFORM) BILL

Introduction and first reading

Received from Assembly.

Read first time for Hon. J. M. MADDEN (Minister for Planning) on motion of Mr Jennings.

Statement of compatibility

For Hon. J. M. MADDEN (Minister for Planning), Mr Jennings tabled following statement in accordance with Charter of Human Rights and Responsibilities Act:

Human rights issues

In accordance with section 28 of the Charter of Human Rights and Responsibilities, I make this statement of compatibility with respect to the Consumer Affairs Legislation Amendment (Reform) Bill 2010.

In my opinion, the Consumer Affairs Legislation Amendment (Reform) Bill 2010, as introduced to the Legislative Council, is compatible with the human rights protected by the charter. I base my opinion on the reasons outlined in this statement.

Overview of bill

The objectives of the bill are to consolidate and modernise many of Victoria's consumer acts, as well as repealing redundant and otherwise unnecessary legislation.

The bill:

repeals the Disposal of Uncollected Goods Act 1961 and inserts a new framework for dealing with the disposal of uncollected goods into the Fair Trading Act 1999;

repeals the Introduction Agents Act 1997 and inserts a compliance framework for introduction agents into the Fair Trading Act 1999;

repeals the Carriers and Innkeepers Act 1958 and inserts modernised provisions to allow accommodation providers to limit their common-law liability into the Fair Trading Act 1999;

re-enacts the Sales of Goods (Vienna Convention) Act 1987 and the Sea-Carriage Documents Act 1998 in the Goods Act 1958;

amends the Consumer Affairs Legislation Amendment Act 2010 to prohibit certain debt collection practices and provide compensation to consumers who have experienced humiliation or distress as a result of those practices. The bill also makes various statute law revision amendments to that act;

amends the Estate Agents Act 1980 to remove redundant provisions, simplify compliance requirements and strengthen penalties for breaches of audit requirements;

amends the Conveyancers Act 2006 to simplify compliance requirements and strengthen penalties for breaches of audit requirements;

changes requirements for off-the-plan sales by amending the Sale of Land Act 1962 to increase the cap on deposits for off-the-plan sales, enhance disclosures and strengthen safeguards for the handling of deposits;

amends various consumer acts by standardising powers for the issuing of infringement notices;

repeals the balance of the Landlord and Tenant Act 1958 and inserts a savings provision for prescribed premises under that act into the Residential Tenancies Act 1997 to ensure protected tenants can maintain their tenancies;

modernises definitions in the Motor Car Traders Act 1986 and allows certain people to apply for permission to act as a licensee;

amends the Travel Agents Act 1986 by clarifying supervision requirements for travel agents;

amends the Victorian Civil and Administrative Tribunal Act 1998 to give VCAT greater capacity to award costs in owners corporation disputes;

makes consequential amendments and other amendments to a number of other acts.

Human rights issues

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

Section 8 — Right to equality

Section 8(3) of the charter provides that every person is equal before the law and is entitled to the equal protection of the law without discrimination and has the right to equal and

effective protection against discrimination. Section 3 of the charter provides that 'discrimination', in relation to a person, means discrimination within the meaning of the Equal Opportunity Act 1995 on the basis of an attribute set out in section 6 of that act.

Part 2, division 2 — introduction agents

Introduction agents provide a service introducing clients to other people who might be interested in having a personal relationship with the client. The proposed sections 93AM(1)(a) and (g) in clause 7 of the bill will impose a restriction on persons under 18 years and on represented persons from operating as introduction agents. In doing so, it places a limit on the right to equality, on the basis that such persons will not be permitted to engage in this occupation. I note that these restrictions are in line with many other licensing acts in Victorian legislation such as licensees under the Motor Car Traders Act 1986 and agents' representatives under the Estate Agents Act 1980.

Consideration of reasonable limitations — section 7(2)

(a) the nature of the right being limited

The right to equality requires that Victorian laws apply generally to people without discrimination. Discrimination may be direct (immediately apparent on the face of a law) or it may be indirect (where the practical effect of a law impacts more harshly on a people possessing a particular attribute). Both direct and indirect discrimination may breach the charter. Like all rights set out in the charter, the right may be subject to reasonable limitations under section 7(2) of the charter.

(b) the importance of the purpose of the limitation

The purpose of the limitation imposed by the eligibility criteria is to ensure that persons acting as introduction agents can adequately perform the duties of introduction agents, and may be held fully accountable for their actions.

The limitation is also intended to protect minors (who do not have the necessary level of maturity) and represented persons (whose ability to make reasonable judgements in respect of certain matters is impaired) from being employed in positions where there is a potential for harm due to contact with vulnerable members of the public.

(c) the nature and extent of the limitation

The provision will have the effect of excluding persons under 18 years and represented persons from operating as introduction agents.

(d) the relationship between the limitation and its purpose

The restriction is directly related to the purpose of the legislation, which is to ensure that consumers deal with introduction agents who are responsible and fully accountable for their actions. Ensuring that minors and represented persons, who may not make appropriate judgements when dealing with vulnerable members of the public, do not act as introduction agents is directly connected to this objective.

Age limits necessarily involve a degree of generalisation, without regard for the particular abilities, maturity or other qualities of individuals within that age group. In this clause, age is being used as a proxy measure of the maturity and capacity of an individual. It is reasonable in this particular context for Parliament to set an age limit reflecting its assessment of when a person will have the sufficient maturity to make responsible decisions.

Regarding represented persons, it is also reasonable that their eligibility to perform this service be restricted. Represented persons are those who are unable, by reason of a disability, to make reasonable judgements in respect of personal matters and their other circumstances, and have thus been appointed a guardian to assist them to make decisions.

(e) any less restrictive means reasonably available to achieve its purpose

In my opinion, there are no less restrictive means available to achieve the restriction's purpose.

Section 13 — Right to privacy

Section 13 of the charter prohibits interferences with privacy that are 'unlawful' or 'arbitrary' and prohibits the unlawful attack on a person's reputation. The United Nations Human Rights Committee has said that a law which authorises interference with privacy must be precise and circumscribed. The requirement that all interferences must not be arbitrary means that even interferences with privacy that are provided for by law should occur in accordance with the provisions, aims and objectives of the charter and should be reasonable in the particular circumstances.

Disclosure of personal information will engage the right to privacy.

Part 2, division 1 — uncollected goods

Proposed section 32ZZA in clause 3, as well as clause 6, engage the right to privacy. The provisions will have the effect of permitting the Roads Corporation to release information about the registered operator of an uncollected motor vehicle to a bailee who wishes to dispose of that vehicle. These two provisions are intended to allow the bailee of an uncollected motor vehicle to contact a registered operator of the vehicle to inform the operator that the vehicle has become an uncollected good and may be disposed of by the bailee unless the operator takes delivery of the vehicle. Without this provision, the operator may be unknowingly deprived of their right of possession of the vehicle. Hence, the provision is intended to benefit the operator by increasing the likelihood that the operator can regain possession of their vehicle.

In my opinion, the interference with the privacy of the registered operator does not limit the right as it is neither unlawful nor arbitrary. The ability of the bailee to access the information is limited. The bailee must provide the Roads Corporation with information establishing their need for the registered operator's details. The Roads Corporation may only grant the application for information if satisfied that the application is being made lawfully. The bailee must enter into a confidentiality agreement with the Roads Corporation under section 92(4) of the Road Safety Act 1986 to ensure that information will only be used for the purposes specified in the agreement.

Section 15 — Freedom of expression

Section 15 of the charter provides that every person has the right to freedom of expression which includes the freedom to

seek, receive and impart information and ideas of all kinds, whether within or outside Victoria. Section 15 also provides that the right may be subject to lawful restrictions reasonably necessary to respect the rights and reputation of other persons; or for the protection of national security, public order, public health or public morality.

Part 4 — amendments to the Consumer Affairs Legislation Amendment Act 2010

Clauses 23 and 70 (new sections 93M and 162AA) prohibit a range of debt collection practices, including the disclosure of debt information to persons who do not have a legitimate interest in that information, and the making of various false or misleading representations about a debt. To the extent that these provisions may engage the right to freedom of expression, in my opinion the right is not limited. The restrictions are intended to protect the right to privacy and reputation of debtors from interference caused by the unwarranted disclosure of debt information, and to protect public order by ensuring that debtors are not misled regarding their rights concerning the debt they are alleged to owe or the debt collection process.

Section 20 — Property rights

Section 20 of the charter provides that a person must not be deprived of his or her property other than in accordance with law.

Part 2, division 1 — uncollected goods

Division 1 of part 2 introduces a new framework to allow people to dispose of other people's goods that are uncollected in a manner that is confined and structured, rather than arbitrary and unclear in cases where other legislation does not make provision for such disposals. I consider that the new framework, which allows bailees to dispose of uncollected goods, engages but does not limit property rights.

At common law, bailees face onerous duties to safeguard goods and can generally only dispose of goods if it is absolutely necessary to do so, or where the goods have been abandoned. New section 32ZS(6) in clause 3 will ensure that the bailor of any property will be able to agree with the bailee to override the terms of the part to make other provision for the disposal of uncollected goods if this is desired.

Where the bailor (and, in the case of more valuable goods, other people known to have an interest in the goods) is known and can be contacted, the bailee is obliged to give written notice to the bailor and wait 28 days before sale can occur. If there is a dispute about the charge or other aspects of the bailment (for example, the condition of the goods after the bailment), either party may apply to VCAT or a court to resolve the dispute during this time.

Where a bailor has failed to collect goods in accordance with the terms of a bailment or where the bailor is not known or cannot be located, the bailee must retain possession of the goods for extended periods of time (the period of time being dependent on the value of the goods). High-value goods must be disposed of by either publicly advertised auction or a public auction.

A bailee may also apply to a court or VCAT to dispose of the goods. This ensures that there is independent oversight of any disposal outside of the two methods described above.

Any surplus proceeds from the sale of goods disposed of (after the bailee has deducted their reasonable costs) remains the property of the owner and can be claimed from either the bailee or, in due course, the registrar of unclaimed money.

Therefore, any deprivation of property that may occur under this part is appropriately confined and would be in accordance with law. Consequently, section 20 of the charter is not limited.

Part 2, division 3 — accommodation providers

New section 93U (clause 12 of the bill) clarifies existing common law which allows innkeepers to take a lien over guests' property (except motor vehicles, by virtue of section 31 of the Carriers and Innkeepers Act 1958).

Proposed section 93U allows an accommodation provider to take a common-law innkeeper's lien over goods owned by a guest where the guest has failed to pay for contractually agreed services. The lien must end when the guest pays the agreed sum. Because a guest can avoid deprivation of property by paying the agreed sum, the right is not limited.

Conclusion

I consider that the bill is compatible with the charter because, to the extent that some provisions may limit human rights, those limitations are reasonable and justified in the circumstances.

Hon. Justin Madden, MLC
Minister for Planning

Second reading

Ordered that second-reading speech be incorporated into *Hansard* on motion of Mr JENNINGS (Minister for Environment and Climate Change).

Mr JENNINGS (Minister for Environment and Climate Change) — I move:

That the bill be now read a second time.

Incorporated speech as follows:

This bill represents the second tranche of reforms from the consumer affairs legislation modernisation project, a project that has undertaken significant reform of the consumer affairs statute book and contributed to the Brumby government's commitments to modernise and consolidate Victoria's statute book, cut red tape and reduce the regulatory burden on business.

I will now describe some of the key proposals in the bill.

A new framework for the disposal of uncollected goods

The bill introduces a new framework for uncollected goods that clarifies how a person can dispose of goods that have been left in the possession of that person but not claimed. The law modifies the common law which provides that, in the absence of an agreement for the disposal of unclaimed goods, bailees — people receiving goods — can generally only dispose of such goods if it is absolutely commercially

necessary to do so, or if the goods have been abandoned. Both such defences are difficult to prove and if the bailee cannot prove them, he or she may be liable in an action of conversion.

To remedy this, the Disposal of Uncollected Goods Act 1961 was enacted. However, discussions with the Victorian Automobile Chamber of Commerce, whose members are among the main users of the legislation, highlighted several problems with the current legislation, including confusion about its application and that the process that it outlines is costly and difficult to use.

The legislation is also narrow in scope, and does not resolve uncertainty that exists in many bailment situations such as involuntary bailments.

To remedy this, the bill introduces a new framework that is modelled on a similar framework in New South Wales. The framework will not apply in circumstances where other legislation provides for the disposal of uncollected goods.

The New South Wales legislation operates across all bailments, and it ensures that bailees are able to recover their charges, while any surplus from a sale under the legislation is handled as unclaimed money to be returned to its owner.

As a general rule, if the provider of the goods is known — and in the case of higher value goods, any other person the bailee knows holds an interest in the goods — goods can be disposed of 28 days after correct written notice is given. In other instances, goods must be held for varying periods according to their value. Bailees can also apply to a court for an order to dispose of goods. Methods of disposal vary according to the value of the goods, and additional safeguards will apply for the disposal of motor vehicles. Importantly, if the provisions do not meet their needs, providers and receivers will be able to make their own agreements for the disposal of uncollected goods.

This new framework will allow the repeal of the Disposal of Uncollected Goods Act 1961 and part IVA of the Landlord and Tenant Act 1958, which provides for the disposal of goods left behind at the end of tenancies not covered by the Residential Tenancies Act 1997.

Simplified regulation of introduction agents

The Productivity Commission, in its report of the review of Australia's consumer policy framework, recommended that there should be a review of occupations that are licensed or registered in only one or two jurisdictions and recommended that unnecessary regulation be identified and repealed.

Victoria and Queensland are the only jurisdictions that require registration of introduction agents.

Having reviewed the regulatory framework, it has been concluded that registration of introduction agents now represents an unnecessary burden.

The bill therefore proposes the repeal of the Introduction Agents Act 1997 and the insertion of a new part into the Fair Trading Act 1999 that simplifies regulation of the sector, and introduces a negative licensing system.

The bill prohibits a range of people operating as an introduction agent. For example, sex work service providers are prohibited from operating as introduction agents to ensure that the public can clearly distinguish between introduction agents and sex work service providers.

Many existing safeguards relating to introduction services are also retained, including minimum content requirements for introduction agreements, restrictions on prepayments and a cooling-off period.

Limitation of accommodation providers' liability

Because many tourists only stay in Victoria for short periods, it is important for the tourism industry that tourists can use Victorian traveller accommodation with the confidence that they will be able to obtain redress quickly for the loss of property. At common law, this has been achieved by making an innkeeper strictly liable for the loss of guests' goods. Only limited defences are available to this liability, such as an act of God or the fault of the guest.

However, the liability imposed by the common law is clearly onerous for innkeepers. Consequently, the Carriers and Innkeepers Act 1958 limits that liability where an innkeeper displays the required signage. The current provisions, introduced in 1970, limit liability to $100 for goods not in safekeeping, and $2000 for goods kept in safekeeping.

The bill modernises this framework by introducing provisions modelled on recent Queensland legislation as a new part of the Fair Trading Act 1999. Many of the modernised provisions reflect recommendations made by the Scrutiny of Acts and Regulations Committee in its review of the Carriers and Innkeepers Act 1958 in 1998.

Reflecting these recommendations, one of the key changes made in the new part will be to modernise terminology. For example, an 'innkeeper' will become an 'accommodation provider'.

Liability limits will be adjusted to $300 for goods not in safekeeping, a level similar to that in Queensland, and $3000 for goods kept in safekeeping provided that the accommodation provider displays the relevant signage. Accommodation providers will be able to refuse a request to place something in safekeeping if they have a reasonable excuse for not doing so. The liability limits will not apply where the loss is caused by the intentional or negligent act or omission of an accommodation provider.

These new provisions will allow the Carriers and Innkeepers Act 1958 to be repealed.

Amendments to the Goods Act 1958

To improve usability for users of Victoria's mercantile law, the bill consolidates the Sale of Goods (Vienna Convention) Act 1987 and the Sea-Carriage Documents Act 1998 into the Goods Act 1958. The bill also repeals the now redundant offence of signing an untrue bill of lading.

Debt collection practices

As part of the process of modernising Victoria's regulation of debt collectors, the bill prohibits the use of several unfair debt collection practices in the collection of debts and the repossession of goods in trade or commerce. The prohibited practices will be used to determine who is prohibited from acting as a debt collector.

No Australian jurisdiction has directly prohibited a wide range of unfair debt collection practices in the manner proposed in this bill. This is an important reform to ensure that businesses collecting debts, whether or not those debts are being collected on behalf of someone else, and consumers are aware of what is unacceptable.

One of the prohibited practices directly replicates a prohibition that will apply under the Australian Consumer Law, namely the prohibition on the use of physical force, undue harassment and coercion. It is intended that the new section will operate in a manner that is consistent with, and not alter the effect of, the provision in the Australian Consumer Law.

Other key prohibited practices relate to the impersonation of public officials, the use of documents that resemble official documents such as infringement notices, threats to take possession of goods where no entitlement exists, disclosure of debt information and the use of certain false or misleading representations about debts such as false representations that a debt is a fine or other penalty.

In its report on the review of Australia's consumer policy framework, the Productivity Commission noted that 'As a matter of jurisprudence, court-based damages do not extend to many instances when non-pecuniary detriment may arise, nor to cases of irritation or nuisance … despite the fact that such nuisance has as much validity in an economic sense as other sources of detriment'.

The bill therefore proposes that where a person collecting a debt has engaged in a course of conduct using prohibited debt collection practices, that person, or a person involved in the conduct, is liable to pay damages of up to $10 000 to compensate consumers for the humiliation or distress caused. It is expected that the conduct involved would have to be oppressive and unacceptable before such damages are awarded. Similarly, damages under the statute will not be available in the event of a one-off accidental or technical breach of the section, and costs will be able to be awarded in the event of frivolous or vexatious litigation.

Allowing access to emotional distress damages for poor debt collection practices is not novel. Such damages have been commonplace in the United States for many years. Similarly, the United Kingdom has recognised damages for anxiety including distress arising from harassment by creditors and debt collectors through its Protection from Harassment Act 1997. Such damages help to ensure that the costs of consumer detriment, so far as money can do it, are borne by those people who, through the use of unfair debt collection practices, cause the detriment.

Amendments relating to estate agents and conveyancers

The bill updates some aspects of the regulation of estate agents and conveyancers. These reforms include bringing the processes for submitting audit reports into line with the Corporations Act 2001, streamlining a range of conduct requirements, and removing confusion about what constitutes a registered office.

Increased deposit limits for off-the-plan sales of land

Following representations from industry stakeholders concerned about the constraints placed on transactions relating to off-the-plan sales of land, the bill proposes to increase the maximum deposit allowed from 10 per cent to 20 per cent for these sales.

To minimise the risks associated with this change, two additional safeguards are proposed.

First, all contracts for off-the-plan sales of land will have disclosures advising that the amount of deposit is negotiable, warning that a significant period of time may elapse between the day a contract is signed and when a person becomes the registered proprietor, and warning that the value of the property may change between the day a contract is signed and when a person becomes the registered proprietor.

Second, the ability to establish joint accounts will be removed. Instead, all deposit money will have to be held by someone who has a fiduciary responsibility for that money.

The bill also improves access to legal advice during the cooling-off period for sales of land.

Amendments relating to owners corporations

Following stakeholder feedback, the bill makes three amendments to improve the operation of owners corporations.

First, the bill simplifies delegations from an owners corporation to a committee. Owners corporations must currently delegate powers to committee by instrument. The bill will allow such delegations to be made by resolution recorded in the minutes of a general meeting to simplify the process that owners corporations must follow to ensure that committees are armed with necessary powers while ensuring that owners corporations are aware of what functions a committee is empowered to carry out.

Second, the bill simplifies processes for witnessing the use of the owners corporation's seal in connection with owners corporation certificates. A registered manager or an owners corporation chairperson will be able to witness the use of the seal, rather than requiring two lot owners.

Finally, the bill amends the Victorian Civil and Administrative Tribunal Act 1998 to confer on VCAT greater flexibility to award costs in disputes relating to unpaid arrears of owners corporation fees. To date, costs orders have been limited to legal costs, leaving many owners corporations out of pocket for the costs of pursuing arrears of fees. Such fees are used for the provision of important functions such as building insurance. It is therefore vital that owners corporations are not prevented from pursuing those arrears because of the costs of doing so.

Other amendments

The bill amends several consumer acts to standardise powers relating to the issuing of infringement notices across the consumer affairs portfolio.

Section 112A of the Fair Trading Act 1999 is amended to ensure that courts do not make costs orders against a consumer when a consumer exercises their right to move a matter into the no-cost small claims list at VCAT. Such costs orders defeat the intent of the section to ensure consumers have access to low-cost redress.

Following the case *Astvilla v. Director of Consumer Affairs Victoria*, section 143 of the Fair Trading Act 1999 is amended to clarify that the section applies not only to directors who are

knowingly concerned in criminal contraventions but also to directors who are knowingly concerned in civil contraventions. This will make it easier to obtain injunctions against directors who are knowingly concerned in contravening conduct.

The balance of the Landlord and Tenant Act 1958 is to be repealed in this bill. The few remaining protected tenants will retain their protections, although the bill clarifies that only the partner of a protected tenant can take over the tenancy in the event that the tenant dies, resolving ambiguity about who may take over a tenancy.

The bill modernises definitions in the Motor Car Traders Act 1986 and allows certain people to apply for permission to act as a licensee.

The Travel Agents Act 1986 is amended to clarify the status of the manager of each place where a travel agency business is conducted.

Finally, the bill includes statute law revision, as well as consequential amendments relating to the change of the short title of the Prostitution Control Act 1994.

I commend the bill to the house.

Debate adjourned for Mr GUY (Northern Metropolitan) on motion of Mr Koch.

Debate adjourned until Thursday, 19 August.

LIQUOR CONTROL REFORM AMENDMENT BILL

Introduction and first reading

Received from Assembly.

Read first time for Hon. J. M. MADDEN (Minister for Planning) on motion of Mr Jennings.

Statement of compatibility

For Hon. J. M. MADDEN (Minister for Planning), Mr Jennings tabled following statement in accordance with Charter of Human Rights and Responsibilities Act:

In accordance with section 28 of the Charter of Human Rights and Responsibilities, I make this statement of compatibility with respect to the Liquor Control Reform Amendment Bill 2010.

In my opinion, the Liquor Control Reform Amendment Bill 2010, as introduced to the Legislative Council, is compatible with the human rights protected by the charter. I base my opinion on the reasons outlined in this statement.

Overview of bill

The purpose of the bill is to amend the Liquor Control Reform Act 1998 to:

make responsible service of alcohol training requirements mandatory in respect of general, on-premises, packaged liquor and late night licences;

require all licensees to make free drinking water available to patrons on licensed premises when liquor is consumed;

exempt specified low-risk business types from the requirement to be licensed, subject to meeting specific conditions, including a requirement that such exempt businesses notify the director of liquor licensing;

enable other low-risk business types to also be exempt from the requirement to be licensed in the future by prescription in the regulations;

to make provision in relation to licensed premises that provide sexually explicit entertainment;

require licensees to notify the director of liquor licensing that they intend to provide sexually explicit entertainment and make it an offence if they fail to do so and impose specific fees;

simplify the terminology used in the act when referring to members of the police;

require that licence and permit applications be publicly displayed for 28 days from a date specified by the director of liquor licensing;

require licensees to display on their premises the most recently issued and received copy of their licence; and

correct an unintentional drafting error to allow on-premises licences to authorise the supply of liquor on premises (other than licensed premises) for up to three periods of the day, rather than for one of three periods of the day.

Human rights issues

Many licensees regulated by the act are bodies corporate, rather than individuals. Such bodies are not protected by charter rights. However, to the extent that the provisions of the bill relate to individuals, or affect licensees or permittees who are natural persons, the rights to freedom of movement, privacy, and freedom of expression are engaged by the bill.

Freedom of movement

Section 12 of the charter provides that every person lawfully within Victoria has the right to move freely within Victoria. Section 148B of the act engages this right by providing that a person can be issued with a 'banning notice', which can ban a person from being present at a designated area (or all licensed venues in a designated area) for up to 72 hours. Currently, a person can only be issued with such a ban if a 'relevant police member' suspects on reasonable grounds that the person is committing or has committed a crime.

Clause 22 extends this power by enabling a 'member of the police force' (rather than only a 'relevant police member') to issue a banning notice. This means an increase in the number of police members empowered to issue a banning notice.

The amendment is a practical step which simplifies the operation of the act. The term 'relevant police member' has

little practical significance in terms of the number of police officers who are currently empowered to use the banning order powers. The use of the term is a historical quirk of the act. Currently, under section 148N, to become a 'relevant police member' a member need only be authorised either verbally or in writing by a police member with a rank of sergeant or above. As such, there is no practical reason to maintain the distinction between a 'relevant police member' and other members of the police force.

In accordance with section 7(2) of the charter, I now turn to consider whether the limitation imposed on freedom of movement by clause 22 is demonstrably justifiable in a free and democratic society.

(a) the nature of the right being limited

The right to freedom of movement is not regarded as an absolute right in international law and can be subject to reasonable limitations.

(b) the importance of the purpose of the limitation

The purposes of the banning notices are to reduce alcohol-related violence and disorder. They are aimed at protecting public order and the rights and freedoms of others, including the right to life in section 9, the right to privacy in section 13, the rights in respect to property in section 20 and the right to liberty and security of the person in section 21 of the charter.

The aim of expanding the power to issue a banning notice from 'relevant police members' to all 'members of the police force' is to simplify the operation of the act. As discussed above, there is no practical reason to maintain the distinction between 'relevant police members' and other members of the police force.

(c) the nature and extent of the limitation

As discussed above, the effect of clause 22 is to allow banning notices to be made by any member of the police force, rather than only 'relevant police members'. For the reasons given above, this will make little practical difference in differentiating between those who can and cannot issue a banning notice.

The banning notice provisions have been previously considered in the statement of compatibility for the Liquor Control Reform Amendment Act 2007. As discussed in that statement, the limitation on freedom of movement is carefully circumscribed by a number of safeguards. The power to ban a person from a designated area can only be exercised by members of the police force. Bans can only be put in place for up to 72 hours, and only apply to designated areas. The director may designate areas, but can only do so if he or she believes that alcohol-related violence or disorder has occurred in the immediate vicinity of licensed premises in the area and that the giving of banning notices is likely to be an effective means of reducing alcohol-related violence or disorder in the area.

Further, a member of the police may only issue a ban if he or she believes on reasonable grounds that the ban may prevent the person to whom it is issued from continuing to commit the relevant offence or from committing any further offences. In making this determination, the member of the police force is required to consider the apparent state of health of the person and whether that person is capable of comprehending the ban.

Section 148B(6) prohibits the giving of a banning notice in respect of the designated area if the member of the police force believes or has reasonable grounds for believing that the person lives or works in the designated area.

(d) the relationship between the limitation and its purpose

The limitation imposed is directly and rationally connected to its purpose.

(e) any less restrictive means reasonably available to achieve its purpose

In my opinion, there are no less restrictive means available to achieve this purpose.

For these reasons, I consider that the limitation imposed on freedom of movement by clause 22 is demonstrably justifiable in a free and democratic society.

Privacy

Section 13(a) of the charter protects a person's right not to have his or her privacy, family, home or correspondence interfered with in a manner that is unlawful or arbitrary. The protection of privacy is not absolute, and disclosures that are authorised by law and which are not arbitrary are permissible under the charter. To the extent that they apply to individuals, clauses 8, 19 and 27 of the bill engage the right to privacy.

Clause 8 amends section 10(4)(c) of the act to provide that a club licence is subject to a condition that the club register be open for inspection by, among others, a 'member of the police force'. Currently, the provision refers to an 'authorised member of the police force'. The effect of the amendment will be to increase the number of police officers who may inspect a register. However, similarly to the amendment to section 148B, above, this amendment serves to simplify the language of the act and will have no significant practical effects. Currently, to become an 'authorised member of the police force', a police member need only be authorised either verbally or in writing by a police member with a rank of sergeant or above.

Further, I consider that the provision is neither unlawful nor arbitrary, as the type of information that must be made available in the club registers is clearly defined, and police access to that information is necessary to ensure that the regulatory regime can be adequately monitored and enforced. I therefore consider that clause 8 is compatible with the right to privacy under section 13(a) of the charter.

The right to privacy is also engaged by clause 19. Clause 19 inserts new section 108AE, which provides that a licensee must allow a member of the police force or a compliance inspector to inspect the licensee's approved responsible service of alcohol program register. The register contains the names of all persons who serve liquor on or from the licensed premises, the date they first served alcohol on or from the premises and information about the RSA training undertaken by those persons.

In my opinion, any interference with the right to privacy occasioned by this provision is neither unlawful nor arbitrary. The circumstances in which the register must be made available for inspection are prescribed by the act. The register

will contain very limited information about the persons serving liquor at a licensed venue, and will only be accessible to particular persons for the purposes of ensuring compliance with the act. Clause 19 therefore does not limit the right to privacy under section 13(a) of the charter.

Clause 27 further engages the right to privacy. That clause amends section 148P of the act to provide that the director or a member of the police force may disclose certain information to a licensee, permittee, or his or her agent or employee. The information that may be released relates to banning notices issued under section 148B of the act. Currently, the act allows a 'relevant police member' to disclose this information; the bill expands this to include any member of the police force. This corresponds with the amendment to section 148B (discussed above) which will allow all members of the police force to issue a banning notice.

I consider that any interference with the right to privacy under clause 27 is neither unlawful nor arbitrary. The types of information that can be shared under this section, and the persons who are authorised to give and receive that information, remain carefully circumscribed. The provision serves the reasonable purpose of ensuring licensees can be made aware of persons who should not be present on their premises. For these reasons, I consider that clause 27 does not limit the right to privacy under section 13(a) of the charter.

Freedom of expression

The right to freedom of expression in section 15 of the charter has been interpreted in some jurisdictions to include a right not to impart information. This right may be engaged by clauses 6, 12, 16, 17 and 24.

Clause 6 requires certain types of low-risk businesses that seek an exemption from the act to notify the director that they intend to supply liquor in accordance with specified conditions and that they are seeking an exemption from the act. Clause 17 requires a licensee to notify the director within 21 days of commencing to provide sexually explicit entertainment on the licensed premises.

Clause 12 of the bill provides that an applicant for the grant, variation or relocation of a licence must display a notice of the application on the licensed premises (or the premises sought to be licensed) for a period of 28 days (or such shorter period as determined by the director) from the date determined by the director. Such information is already required to be displayed under section 34(1) of the act; this clause simply clarifies that the period in which the information must be displayed begins at the date determined by the director, rather than from the date the application is made.

Clause 16 similarly provides that licensees or permittees must display their most recent licence or permit on the licensed premises. Section 101 of the current act already provides that a licence or permit must be displayed; this amendment clarifies that the provision refers to the licence or permit that was issued most recently.

Clause 24 amends section 148D of the act to provide that a person must, on request, give his or her name and address to a member of the police force where the member of the police force intends to give a person a banning notice under section 148B. The amendment will also require that the person to whom the request is made may ask the member of the police who makes the request to supply his or her name, rank and place of duty. Previously, section 148D only referred to 'relevant police member' rather than 'member of the police force', so the effect of the amendment is to expand the number of police force members who may request a name and address, and who must supply their own name, rank, and place of duty if requested under that section. The amendment corresponds with the amendment to section 148B (discussed above) which will allow all members of the police force to issue a banning notice.

To the extent that clauses 6, 12, 16, 17 and 24 impose any restriction on free expression, I consider that they come within section 15(3) of the charter, as they are a necessary component of the effective regulation of alcohol sales and consumption, and so are reasonably necessary to protect public order and public morality.

Accordingly, I consider that clauses 6, 12, 16, 17 and 24 are compatible with the right to freedom of expression in section 15 of the charter.

Conclusion

For the reasons given in this statement, I consider that the bill is compatible with the Charter of Human Rights and Responsibilities.

Hon. Justin Madden, MLC
Minister for Planning

Second reading

Ordered that second-reading speech be incorporated into *Hansard* on motion of Mr JENNINGS (Minister for Environment and Climate Change).

Mr JENNINGS (Minister for Environment and Climate Change) — I move:

That the bill be now read a second time.

Incorporated speech as follows:

The Brumby government is committed to maintaining Victoria's reputation as one of the most livable, attractive and prosperous areas in the world for residents, businesses and visitors. This bill aims to enhance the Liquor Control Reform Act 1998 by addressing a number of policy and technical issues.

The purpose of the act is to regulate the supply and consumption of liquor in Victoria. Liquor licensing plays an important part in the business and social culture of Victoria, and at the heart of the government's policy on liquor licensing is the need to minimise alcohol-related harm.

The purpose of the bill is to amend the act to:

strengthen and extend training requirements for responsible serving of alcohol (RSA);

mandate the provision of free drinking water in licensed premises where alcohol is consumed on site;

exempt specified businesses from the need to be licensed;

regulate licensed venues that provide sexually explicit entertainment;

extend the licence payment date until 31 March each year.

Responsible service of alcohol training

Responsible service of alcohol training is one important component of a risk management strategy to reduce and minimise alcohol-related harms. This training provides licensees and staff who work in licensed venues with the skills to manage their legal obligations as well as promote responsible consumption of alcohol. In late 2009 the Liquor Control Advisory Council recommended that more staff who work in licensed venues should be required to undertake responsible service of alcohol training and that legislative measures be strengthened to facilitate this.

The bill amends the act to extend mandatory responsible service of alcohol training requirements to additional licence types that pose higher risks of alcohol-related harm.

Staff who serve alcohol in late night, on-premises and general licensed venues, such as hotels, pubs, nightclubs, restaurants and bars, will now be required under the act to complete responsible service of alcohol training. Existing staff and licensees will be required to complete RSA training within 12 months of the changes being enacted and complete RSA refresher training every three years. New staff will be required to complete RSA training within one month of first serving liquor.

Affected licensees will also be required to maintain a register containing a certificate or record of the most recent RSA training completion.

The director of liquor licensing will have the authority to exempt an individual or class of individuals from mandatory RSA requirements based on an evaluation of the risk of harm arising from the misuse and abuse of alcohol supplied under the licence and the extent of the burden imposed on the licensee by the RSA requirement.

New offences have also been created relating to a failure to undertake RSA training, failing to maintain a training register, or allowing or permitting a staff member who has not undertaken training to serve alcohol on the licensed premises.

This will mean that more staff who work in licensed premises, and who typically play a more direct role than the licensee in supplying alcohol, will be better equipped to identify underage patrons, refuse service of alcohol if a patron is intoxicated, and manage patrons appropriately. This will positively influence serving practices within licensed venues and contribute to creating a safe and enjoyable environment for staff, patrons and the wider community.

Mandatory provision of free drinking water

It is important that drinking water is readily available where alcohol is consumed because the drinking of water can slow down alcohol consumption, reduce the potential for intoxication and prevent dehydration associated with the consumption of alcohol.

Accordingly, the bill will require all licensed premises, where alcohol is consumed on site, to provide free drinking water to patrons. The amendment will not specify the means of providing the water, and licensees will be free to determine whether free drinking water is supplied on display or on request.

If a licensed venue fails to provide free drinking water they will be liable for an infringement penalty of 3 penalty units or where a licensee is prosecuted for failing to comply with the act a maximum penalty of up to 30 penalty units.

The bill will enable the director of liquor licensing to exempt licensees from the requirement to provide free drinking water based on an evaluation about the risk of harm arising from the misuse and abuse of alcohol supplied under the licence and the extent of the burden imposed on the licensee by the requirement. Each case will be assessed on its own merits, however, this may include situations where winemakers provide tastings at outdoor farmers markets or where licensees do not have access to potable water.

Specified business exemptions

The third amendment provides that small business bed-and-breakfast operators, hairdressers, butchers and gift maker and florist businesses will be eligible for an exemption from the requirement to be licensed if they comply with certain conditions specific to each business type.

In 2009 the Brumby Labor government introduced a liquor licensing compliance directorate to free up police resources and to ensure that licensees were complying with their obligations under Victoria's liquor laws. The compliance unit completed over 25 000 inspections in its first year of operation.

Intelligence gathered by the compliance directorate has enabled us to exempt these small businesses from paying renewal fees with the confidence that they generally serve alcohol responsibly and therefore do not cost the Victorian community much to regulate. This also addresses concerns raised by industry following the implementation of the risk-based fee structure.

The exemption provisions will balance the need for the government to effectively monitor the incidental supply of alcohol in the community whilst recognising that for these businesses the supply of alcohol forms a very small and incidental part of their operations. This bill will therefore reduce the financial and regulatory burden on these businesses.

Exempt businesses will be able to supply limited quantities of alcohol to guests or clients as an ancillary function of the services they provide. These businesses will be required to notify the director of liquor licensing that they intend to supply liquor as an exempt business and must ensure that they do not supply liquor to minors.

Each exemption is intended to operate automatically upon notification to the director, but requires ongoing compliance with the relevant conditions. Failure to comply with these conditions while supplying liquor will mean the business is effectively supplying liquor without a licence and may result in enforcement action being taken against such businesses.

Sexually explicit entertainment venues

The bill will also amend the act to incorporate the regulation of licensed premises that provide sexually explicit entertainment as one of the objects of the act. This amendment will clarify the intention of the act to regulate these venues. The amendment recognises that the way sexually explicit entertainment licensees run their businesses uniquely affects the wellbeing of patrons, staff and the community, and reinforces the need for regulation that adequately addresses these distinctive characteristics and wider impacts.

The bill also amends the act to impose an annual licensing fee regime for licensed venues that provide sexually explicit entertainment. The bill will impose a base fee of $30 667.29 on these venues, increasing up to $61 334.45 for those venues with a poor compliance history.

The bill will also require licensees who intend to provide sexually explicit entertainment to notify the director of liquor licensing, and failure to notify where required will attract a penalty of up to $1194.

Fee renewal time frames

The bill will also extend the licence payment date until 31 March each year giving licensees additional time to pay the fee and where appropriate provide additional time for a licensee to make a hardship application.

Technical changes

The bill will also make some technical changes to the Liquor Control Reform Act 1998 to improve its operation.

These include streamlining the language that is used to refer to members of the Victoria Police in the act and clarifying which members of the police can exercise the law enforcement provisions in the act.

Finally, the bill will amend the act to require liquor licence applicants to display the public notice of their application from the date specified by the director of liquor licensing rather than the date the application was made. This amendment will clarify how long a person has to object to a licence application. Licensees will also be required to display the copy of their liquor licence most recently provided by the director of liquor licensing.

I commend the bill to the house.

Debate adjourned for Mr GUY (Northern Metropolitan) on motion of Mr Rich-Phillips.

Debate adjourned until Thursday, 19 August.

LOCAL GOVERNMENT AND PLANNING LEGISLATION AMENDMENT BILL

Introduction and first reading

Received from Assembly.

Read first time for Hon. J. M. MADDEN (Minister for Planning) on motion of Mr Jennings.

Statement of compatibility

For Hon. J. M. MADDEN (Minister for Planning), Mr Jennings tabled following statement in accordance with Charter of Human Rights and Responsibilities Act:

In accordance with section 28 of the Charter of Human Rights and Responsibilities, I make this statement of compatibility with respect to the Local Government and Planning Legislation Amendment Bill 2010.

In my opinion, the Local Government and Planning Legislation Amendment Bill 2010, as introduced into the Legislative Council, is compatible with the human rights protected by the charter. I base my opinion on the reasons outlined in this statement.

Overview of the bill

The purpose of the Local Government and Planning Legislation Amendment Bill 2010 (the bill) is to:

amend the Local Government Act 1989 (the LG act) to improve governance and democratic processes in local government, including improvements to conflict-of-interest laws and amendments to the timing and conduct of electoral representation reviews;

amend the City of Melbourne Act 2001 (the Melbourne act) to enable the council to enter into environmental upgrade agreements and levy associated charges;

amend the Planning and Environment Act 1987 to make miscellaneous amendments relating to development assessment committees;

make consequential amendments to the Crown Land (Reserves) Act 1978 and the Environment Protection Act 1970; and

repeal the Local Government (Consequential Provisions) Act 1989.

Provisions that engage human rights

Provisions in the bill that engage human rights protected under the Charter of Human Rights and Responsibilities (the charter) include:

limits on council publications during elections;

various amendments to conflict of interest;

removal of a defence to prosecution; and

altered disclosures in ordinary returns.

Council publications during elections

Clause 5 of the bill proposes to substitute a new section 55D in the LG act.

The existing provision prohibits a council from printing, publishing or distributing electoral matter during an election period for a council election, or for authorising such actions.

Following concerns that the existing provision is unenforceable because it contains no penalties or other

consequences for a breach, the bill proposes to introduce a process to certify council publications during elections and to impose penalties on councillors or council staff who breach the provision.

The amendment to section 55D may be perceived as engaging the right to freedom of expression under section 15 of the charter because it prohibits a councillor or a member of council staff from authorising, printing, publishing or distributing electoral material during an election period using council resources or on behalf of the council.

This amendment will not limit the right to freedom of expression. It only prevents the improper use of the council or council resources for printing, publishing or distributing material that is intended or likely to affect voting in an election. Such actions are rightfully prohibited, as they involve the use of public resources for private or partisan purposes.

The amendment does not limit the freedom of expression of a councillor or a member of staff when not using council resources or acting on behalf of the council.

Conflict of interest

Part 2 of the bill includes a number of amendments relating to conflict of interest that might be perceived as engaging:

the right to privacy under section 13 of the charter;

the right to freedom of expression under section 15 of the charter; or

the right to participate in public life under section 18 of the charter.

The conflict-of-interest provisions in the LG act require a councillor, a member of a council special committee or a member of council staff who has a conflict of interest, to disclose the conflict of interest and to not participate in the decision on the matter.

Amendments in this bill to the conflict-of-interest provisions in the LG act include:

changing the definition of the gift disclosure threshold, for the purpose of defining an indirect interest from $200 to $500;

excluding gifts, other than election campaign donations, that were received more than 12 months before the person became a councillor, committee member or member of council staff;

specifying that where a person has a controlling interest in a company that has a direct interest, the person is also regarded as having a direct interest;

altering the definition of an assembly of councillors, when a councillor must disclose a conflict of interest; and

extending the application of the conflict-of-interest rules for council staff to include the exercise of statutory powers of the chief executive officer.

The conflict-of-interest provisions engage the right to privacy in section 13 of the charter. Section 13(a) of the charter protects a person's right not to have his or her privacy, family, home or correspondence interfered with in a manner that is unlawful or arbitrary. An interference with privacy will not be unlawful if it is permitted by law, certain and appropriately circumscribed. An interference will not be arbitrary if the restrictions on privacy it imposes are reasonable in the particular circumstances and are in accordance with the provisions, aims and objectives of the charter.

The interference with privacy is lawful and is not arbitrary. It ensures a level of transparency for decision making by officials who are required to act in the public interest and must be clearly seen to be avoiding situations where they have personal or private interests. Further, a councillor who has a conflict of interest in a matter to be considered at a public council meeting may disclose the details of their conflicting interest to the chief executive officer in writing before the meeting to avoid having to disclose those details in a public forum.

The conflict-of-interest provisions also engage the right to take part in public life as set out in section 18 of the charter as they may prevent a councillor from participating in the decision-making process. While the conflict-of-interest provisions engage the right under section 18 of the charter, in my view the limitation is reasonable and demonstrably justified in a free and democratic society under section 7(2) of the charter, for the reasons discussed below:

(a) the nature of the right being limited

Section 18 protects rights in relation to political participation in Victoria. The conduct of public affairs is a broad concept, which embraces the exercise of governmental power by state and municipal government.

(b) the importance of the purpose of the limitation

The bill requires a councillor, a member of a council special committee or a member of council staff who has a conflict of interest, to disclose the conflict of interest and to not participate in the decision on the matter. The intent of the conflict-of-interest rules is to ensure that people involved in public life in local government do not exercise public duties in matters where they have a private or personal interest. This is consistent with public expectations and with reasonable standards of probity.

(c) the nature and extent of the limitation

The conflict-of-interest provisions operate in clear and defined circumstances. A councillor is only required to abstain from participation in decision making if they satisfy one of the criteria set out in the existing act or clauses 10, 11, 12 or 13 of the bill.

(d) the relationship between the limitation and its purpose

There is a direct relationship between the limitation and the purpose of preventing conflicts of interest, and ensuring impartiality, transparency and accountability in local government.

(e) any less restrictive means reasonably available to achieve its purpose

There are no less restrictive means reasonably available to achieve the intended purposes.

The conflict-of-interest provisions also engage the right to freedom of expression in section 15 of the charter as they prohibit a person with a conflict of interest from participating in the discussion of a matter in a council, special committee or assembly of councillors meeting. The right is not limited however, because such discussions form part of the decision-making process and any limitation on a person's participation in the process is justifiable for the reasons outlined above. Further, the amendments do not restrict a person with a conflict of interest from freely expressing their views as a private citizen.

No-knowledge defence

Clause 15 of the bill repeals section 79A of the LG act, which provides that it is a defence to a prosecution if the person can prove they did not know they had a conflict of interest in the matter. Clause 9 inserts a related provision in section 77A, which exempts a person from having a conflict of interest if he or she does not know, and would not reasonably be expected to know, the circumstances that give rise to the conflict of interest.

This promotes the right, under section 25 of the charter, to be presumed innocent in criminal proceedings until proven guilty according to law. These amendments do not limit the right to be presumed innocent. Rather, they remove an existing limitation which can place an onus of proof on the defendant.

Register of interests

Clause 20 of the bill amends the types of interests that must be disclosed in an ordinary return by a councillor, member of a special committee or a nominated council officer. It will specifically only require the disclosure of gifts that exceed the gift disclosure threshold of $500 and which were not received as hospitality when attending an event or function in an official capacity.

This amendment may be regarded as engaging the right to privacy and reputation under section 13 of the charter by requiring the disclosure of gifts received in a private capacity. (Ordinary returns may be examined by any member of the public following a written request to the chief executive officer.)

The amendment does not unreasonably limit the right to privacy. It is not an arbitrary interference, as the nature and circumstances of the disclosure are clearly set out in the LG act and these disclosures are required to ensure a standard of transparency and accountability that the community expects of people who hold public office.

Environmental upgrade charges

Clause 35 of the bill inserts new provisions in the Melbourne act, including inserting a power for the Melbourne City Council to levy an environmental upgrade charge to recover funds advanced by a lending body for the purpose of funding environmental upgrades.

This provision engages property rights under section 20 of the charter. Section 20 states that a person must not be deprived of his or her property other than in accordance with the law. However, the right is not limited by the bill because any deprivation of property is in accordance with the law and is not arbitrary. The legislation specifically provides that the council may only levy the charge in accordance with an environmental upgrade agreement to which the property owner consents as a primary party. It also prohibits the council from levying an environmental upgrade charge unless any occupiers who would be required to pay part of the charge have consented in writing to the levying of the charge. As such, a charge is not arbitrary as it may only be levied with the consent of the owners and occupiers who would be required to pay the charge and any charge will be imposed in accordance with the law.

Conclusion

I consider that the bill is compatible with the Charter of Human Rights and Responsibilities because it does not unreasonably limit human rights in ways that cannot be fully justified in a free and democratic society.

Justin Madden, MLC
Minister for Planning

Second reading

Ordered that second-reading speech be incorporated into *Hansard* on motion of Mr JENNINGS (Minister for Environment and Climate Change).

Mr JENNINGS (Minister for Environment and Climate Change) — I move:

That the bill be now read a second time.

Incorporated speech as follows:

This bill makes a range of amendments to acts dealing with the operation and activities of local councils.

It amends the Local Government Act 1989, the City of Melbourne Act 2001 and the Planning and Environment Act 1987. It also makes consequential amendments to the Crown Land (Reserves) Act 1978 and the Environment Protection Act 1970, as well as repealing the Local Government (Consequential Provisions) Act 1989.

Part 2 of the bill makes amendments to the Local Government Act 1989. This includes a number of refinements to the conflict-of-interest rules that the Parliament approved in 2008.

The 2008 amendments made extensive changes to how conflicts of interest were defined and managed within local government. This represented a major raising of the standards of conduct expected of people in public office within local government.

Local councillors face potential conflict-of-interest situations much more frequently than anyone else in public life. However, councils have responded positively to the changes and have participated actively in consultation processes as part of the recent review of the conflict-of-interest arrangements.

This bill deals with a number of practical issues raised in the review while retaining and extending the important framework established in 2008.

It is proposed to amend the way gifts are defined for the purpose of conflicts of interest. Gifts will only include gifts

from a single source that have an aggregate value of $500 or more. This threshold will also apply to election campaign donations and to disclosures in ordinary returns.

Gifts, other than election campaign donations, that were received more than 12 months before a person became a councillor, member of a special committee or a member of council staff will be exempt. Reasonable hospitality, received when attending a function or event in an official capacity, will also be exempt.

An amendment to the definition of 'direct interest' will ensure that, where a person holds a controlling interest in a company, any direct interests of that company are regarded as direct interests of the person.

A shift in the treatment of residential amenity will mean that a councillor will no longer have a conflict of interest only because the residential amenity of his or her relative is affected. However, a councillor will still have a conflict of interest if the relative's property value is affected or if the councillor's own residential amenity is likely to be altered.

The nature of exemptions from conflicting duties will be clarified. A councillor or council officer will not be considered to have a conflict of interest because of a conflicting duty if the relevant duty is only a position held as a representative of the council on another organisation and as long as there is no remuneration for that position.

The definition of an 'assembly of councillors', where councillors are required to disclose conflicts of interest, will be refined. It will include council advisory committees and planned or scheduled meetings that include at least half the councillors and a member of council staff that consider matters that are likely to be the subject of a council decision or action.

The bill also proposes that records of assemblies of councillors be reported to council meetings and incorporated in council minutes. This provides more transparency and will allow any errors in the record to be corrected.

The conflict-of-interest rules applying to council staff will be amended so that they apply to the exercise of responsibilities of the chief executive officer. This will mean, for example, that staffing decisions would become subject to conflict of interest.

Two pre-2008 requirements are proposed to be removed by this bill. Firstly, a longstanding requirement for a councillor to disclose a conflict of interest in a matter when he or she will not be attending the relevant meeting is being removed. This provision is unnecessary. This change does not alter the need for a councillor to disclose the conflict of interest at any meeting where the councillor is present or to make relevant disclosures in primary and ordinary returns.

The other pre-2008 requirement is one that states that it is a defence in a conflict-of-interest prosecution if the defendant can prove that he or she did not know of the conflict of interest. This is inconsistent with the right to be presumed innocent under the Charter of Human Rights and Responsibilities because it places the onus of proof on the defence. The provision will be replaced by a general exemption where a person does not know and could not be reasonably expected to know the circumstances giving rise to the conflict of interest.

Part 2 of the bill also makes changes to the timing of electoral representation reviews.

All councils that are required to have electoral representation reviews have had their electoral structures independently reviewed by the Victorian Electoral Commission between 2003 and 2008. It is now considered that comprehensive reviews of electoral structures are required less often unless particular circumstances warrant otherwise.

Consultation with the local government sector generally supported increasing the maximum time between full reviews from every second election cycle to every third election cycle.

In introducing this change the bill also provides that, in the event that the number of voters in any wards vary from the average by more than 10 per cent in two successive election cycles, a full electoral representation review must be conducted. Existing provisions already allow for subdivision reviews if minor boundary changes are required between full electoral representation reviews.

It is anticipated that transitional arrangements, to move from two-term reviews to three-term reviews, will result in some councils having their next electoral representation review after two elections since their last review and other councils after three elections since their last review.

The bill also alters the process for initiating an electoral representation review. In future, the Victorian Electoral Commission must conduct all reviews and must give the council at least 60 days notice before commencing a review of the council's electoral structure.

The bill also amends the requirements relating to council publications during council elections. In future, the council will only be allowed to print, publish or distribute specified material during the 32-day election period if the material has been certified by the chief executive officer as not containing prohibited electoral matter. The act will include penalties of up to 60 penalty units for councillors and officers who breach this provision.

The bill also includes a change to the definition of a 'senior officer'. The remuneration threshold, used to define which staff are senior officers, will be indexed annually to increases in the remuneration of executives under the Public Administration Act 2004.

Provision is also made to address a concern that councillors may have conflicts of interest when dealing with their own WorkCover arrangements as a result of amendments to the Accident Compensation Act 1985. The bill will amend the Local Government Act 1989 to clarify that council WorkCover responsibilities, in respect of councillors, are administrative responsibilities of the chief executive officer.

Part 3 of the bill inserts a new part 4B in the City of Melbourne Act 2001.

The purpose of the amendments to the City of Melbourne Act 2001 is to allow the council to use its rating powers to help secure private lending to building owners that will fund environmental upgrades of commercial buildings in the city.

This amendment will significantly assist the expansion of the Melbourne City Council's 1200 Buildings program.

The amendments will specifically allow the council to enter into 'environmental upgrade agreements' with lending institutions and building owners that will result in lending institutions advancing funds to building owners to pay for environmental improvements to buildings that have been assessed and approved by the council through the Sustainable Melbourne Fund.

Funds advanced to the building owner under the agreement will be recovered by the council, on behalf of the lending institution, through an environmental upgrade charge levied on the property. This will provide a greater level of security for the lending institution because any unpaid charges become a charge on the land that is subject to penalty interest rates and can be recovered, if necessary, on the sale of the land.

The new arrangement will also enable the 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 will contribute to the repayment of the environmental upgrade charges while receiving compensating benefits in the form of reduced energy costs and improved working conditions.

The amendments will allow the council to delegate its powers to approve environmental upgrade agreements to the chief executive officer, subject to any conditions the council wishes. The chief executive officer must, however, ensure that quarterly financial statements provided to the council include details of all new and outstanding environmental upgrade charges.

By supporting the expansion of the 1200 Buildings program, these amendments will assist in creating additional investment and employment in the city while improving building design, reducing energy consumption and reducing greenhouse gases.

Part 4 of the bill makes amendments to the Planning and Environment Act 1987 to facilitate the operation of development assessment committees.

The Planning Legislation Amendment Act 2009 was passed by both houses in 2009 in accordance with the decision of the Dispute Resolution Committee. This decision included agreement that only a limited number of development assessment committees could be established and that the Minister for Planning could not use powers under section 20 of the Planning and Environment Act 1987 to exempt the minister or the council from public consultation to introduce planning controls that defined the areas where development assessment committees could make decisions.

Since the passing of the Planning Legislation Amendment Act 2009, a number of technical issues have been identified that limit the ability to effectively define areas where development assessment committees would make decisions.

In order to address these technical issues, the bill renames and amends a number of definitions. This includes specifying a 'DAC activity centre area' as a contiguous area in a planning scheme, and subject to a planning scheme amendment, as the areas where development assessment committees would operate, and amendments to the suburbs identified as 'relevant activity areas' to ensure consistency with suburb names under the Geographic Place Names Act 1998.

Part 5 of the bill makes consequential amendments to the Crown Land (Reserves)Act 1978 and to the Environment Protection Act 1970. It also repeals the Local Government (Consequential Provisions) Act 1989 which becomes a spent act.

I commend the bill to the house.

Debate adjourned for Mr GUY (Northern Metropolitan) on motion of Mr Koch.

Debate adjourned until Thursday, 19 August.

MINERAL RESOURCES AMENDMENT (SUSTAINABLE DEVELOPMENT) BILL

Introduction and first reading

Received from Assembly.

Read first time for Hon. M. P. PAKULA (Western Metropolitan) on motion of Mr Jennings.

Statement of compatibility

For Hon. M. P. PAKULA (Minister for Industrial Relations), Mr Jennings tabled following statement in accordance with Charter of Human Rights and Responsibilities Act:

In accordance with section 28 of the Charter of Human Rights and Responsibilities, I make this statement of compatibility with respect to the Mineral Resources Amendment (Sustainable Development) Bill 2010.

In my opinion, the Mineral Resources Amendment (Sustainable Development) Bill 2010, as introduced to the Legislative Council, is compatible with the human rights protected by the charter. I base my opinion on the reasons outlined in this statement.

Overview of the bill

The bill makes amendments to the Mineral Resources (Sustainable Development) Act 1990 and the Victorian Energy Efficiency Target Act 2007. In the case of the Mineral Resources (Sustainable Development) Act 1990, the purpose of the amendments is to:

provide for two new types of licences (prospecting licences and retention licences);

to require mining licence applications and applications for retention licences to describe the mineral resources to which they will relate;

to provide for a new procedure for the endorsement of work plans and variations to approved work plans before they are approved;

clarify the purpose of the act;

repeal redundant provisions; and

improve the operation of the act generally.

In the case of the Victorian Energy Efficiency Target Act 2007, the purpose of the amendments is to further provide for how an assignment of the right to create energy efficiency certificates may be made.

1. Human rights protected by the charter that are relevant to the bill

Section 13 — privacy

Section 13(a) of the charter protects a person's 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 if it is permitted by law, certain and appropriately circumscribed. Any interference will not be arbitrary if the restrictions it imposes are reasonable in the particular circumstances and are in accordance with the provisions, aims and objectives of the charter.

I note that the majority of licence-holders will be corporations, and that only persons have human rights (section 6(1) of the charter). Nevertheless, an individual could be a licensee.

Clause 28 (new section 112A) provides that the minister may require the holder of a retention licence to re-evaluate the economic viability of mining a mineral to which the licence relates and to report to the minister on the results of that re-evaluation. In my view, this clause does not engage a licensee's privacy interest because it relates to the economic viability of mining for the relevant mineral rather than the economic viability of the licensee's business. However, to the extent a person's privacy interest may be engaged, I consider that the requirement is reasonable in a regulated industry such as the mining industry and no issue of incompatibility with the privacy right in the charter arises.

Section 20 — property

Section 20 of the charter provides that a person must not be deprived of his or her property other than in accordance with law. This right requires that powers which authorise the deprivation of property are conferred by legislation or common law, are confined and structured rather than unclear, are accessible to the public and are formulated precisely.

A number of clauses in the bill engage the right to property, in terms of affecting rights under licences approved under the act.

Clause 11(2) and (3) (new section 25(1)(ba) and (c)) allows a minister to grant a prospecting licence to a party who is not the holder of the exploration or retention licence in respect of that area where the licence was first registered more than two years before the application and the minister has waived the need for the licence-holder's consent under section 25A of the principal act. However, the processes under section 25A of the principal act require that, in order for a licence-holder's consent to be waived, consideration be given to whether granting the application for the prospecting licence would significantly interfere with work being carried out (or proposed to be carried out) by the licence-holder, would be unfair to the licence-holder or whether a waiver would in any other way be inappropriate.

Clause 21 (new sections 38A(2)(2A) and 38A(2)(2B)) provides that on the seventh anniversary of the initial registration of an exploration licence, the minister must, unless he or she decides otherwise, cancel the licence in relation to at least a further 20 per cent of the total number of graticular sections and, on the 10th anniversary of an initial exploration licence, at least a further 10 per cent. The new provisions follow on from sections 38A(1) and (2) of the principal act which provide for 25 per cent of the licence to be cancelled on the second anniversary of the licence and a further 35 per cent on the fourth anniversary. Section 38A(3) of the principal act provides that the areas in relation to which a licence is to be cancelled are those identified by the licensee in a notice to the minister at least 30 days before the relevant anniversary or, in the absence of such a notice, those selected by the minister. These cancellations are consistent with the purpose of ensuring that land which has been allocated for exploration and that is not being efficiently worked is made available for competitive reallocation. In that regard, I note that under section 15(6)(ba) and (c) of the principal act, an applicant for a licence (including an exploration licence) must satisfy the minister that they genuinely intend to do work and that they have an appropriate work program in order to be granted such a licence.

Clause 22 provides that the minister may cancel a licence where the minister is satisfied that the holder of a mining licence has not carried out mining on land covered by the licence for a continuous period of two years (new section 38(1)(b)(iiia)), or where, in the case of a retention licence, mining of the mineral resource would not be economically viable (new section 38(1)(b)((viia) and (viib)) or the licensee has failed to comply with a requirement of new section 112A in relation to re-evaluation of the economic viability of a proposed operation (new section 38(1)(b)(viic)). Again, in my view, it is relevant that under section 15(6)(ba) and (c) of the principal act, an applicant for a licence (including an exploration licence) must satisfy the minister that they genuinely intend to do work. While under new clause 15(6A) an applicant for a retention licence will not have to satisfy the minister that the applicant genuinely intends to do work if the minister considers it unnecessary or inappropriate in the circumstances, new clauses 15(6B) and 15(6C) require that an applicant for a retention licence satisfy the minister that the described mineral resources in the application are already being mined under a mining licence or that there is a reasonable prospect the relevant mineral will be commercially viable to mine in the future. In any event, before cancellation under this section, the minister must give notice of the intention to cancel the licence and invite the licensee to give reasons why the licence should not be cancelled.

Any deprivation of property that occurs as a result of these provisions will take place under powers conferred by legislation, in accordance with the law, and only where necessary to ensure efficient ground turnover by making ground allocated for exploration that is not being efficiently worked available for competitive reallocation. I note that any decision by the minister is potentially subject to review by the courts.

In my view, these provisions are not incompatible with the property right in the charter.

Section 19 — right to culture

Section 19(1) provides that all persons with a particular cultural, religious, racial or linguistic background must not be denied the right, in community with others, to enjoy their culture. Section 19(2) provides that Aboriginal peoples must not be denied the right with other members of the community

to, among other things, maintain their distinctive spiritual, material and economic relationship with land and waters. A critical aspect of protecting the cultural rights in section 19(2) is to ensure that Aboriginal peoples can effectively participate in, and benefit from, decision-making processes which balance their rights with other rights and interests (*Mahuika et al v. New Zealand*, communication no. 547/1993: New Zealand 27/10/00, UN doc CCPR/C/70/D 547/1993).

I have considered whether the creation of new licence types is inconsistent with the cultural rights of Aboriginal persons protected under section 19(2) of the charter.

As noted above, clause 8 of the bill (new sections 14B and 14C) creates two new types of licence: prospecting licences and retention licences. Clause 9 amends section 15(1) of the principal act to permit the granting of those new licences. Neither of these licence types extends the range of permissible activities for a licensee in respect of land subject to an exploration or mining licence under the principal act. The holder of a prospecting licence is authorised to prospect, explore and mine land covered by the licence; the holder of a retention licence is authorised to explore and carry out work to establish the economic viability of the described mineral resource in the licence area. Similarly, neither licence extends the types of land in respect of which a licence may be granted under the principal act.

I do not consider that these amendments limit the cultural rights of Aboriginal persons.

Section 5A of the principal act provides that the granting of licences, permits, rights or any authorities under the act, as well as the undertaking of exploration, searching or mining, must be in a way that is not inconsistent with the Native Title Act 1993 (commonwealth) and the Land Titles Validation Act 1994.

Section 6 of the principal act provides that land in respect of which an ongoing protection declaration is in force under the Aboriginal Heritage Act 2006 cannot be subject to a licence or other authority under the act.

Under section 18 of the principal act, the minister must notify any person or body nominated by the minister responsible for administering the Aboriginal Heritage Act 2006 and any registered Aboriginal party (within the meaning of the Aboriginal Heritage Act 2006) for the area to which the application relates, before granting a licence. Any such person is entitled to object to the licence being granted under section 24 of the principal act and to have their objection heard in a procedurally fair manner.

Further, once a licence has been granted, a work plan required under a mining licence must include a community engagement plan for consulting with the community (section 40(3) of the principal act). This plan must be approved before mining activities commence. Sections 39A and 77K of the principal act respectively require licensees and holders of an extractive industry work authority to consult with the community throughout the period of the licence by sharing with the community information about any activities authorised by the licence that may affect the community; and giving members of the community a reasonable opportunity to express their views about those activities.

Further, under section 45(1)(a)(xi) and (xii) of the principal act, a licensee must not do any work within 100 metres laterally of any Aboriginal place within the meaning of the Aboriginal Heritage Act 2006 that is recorded in the Victorian Aboriginal Heritage Register or land in respect of which an ongoing protection declaration is in force under the Aboriginal Heritage Act.

Accordingly, in my view, no issue of incompatibility with Aboriginal cultural rights arises.

Section 24 — fair hearing

Section 24(1) protects the right of a person charged with a criminal offence or a party to a civil proceeding to have the charge or proceeding determined by a competent, independent, and impartial court or tribunal after a fair and public hearing. In *Kracke v. Mental Health Review Board & Ors* (General) [2009] VCAT 646, Bell J. held that the right to a fair hearing in section 24 of the charter is not limited to judicial proceedings but can include administrative proceedings. His Honour observed that whether the right applies to administrative proceedings falls to be assessed on a case-by-case basis. In Kracke, Bell J. noted that, in assessing compliance with the right, regard may be had to the whole decision-making process, including reviews and appeals.

I have considered the effect of the following clauses on the fair hearing right: clauses 21, 22, and 28. In each case, I consider that the procedures provided for in the bill and the principal act, including the rights of appeal or review that are available, are appropriate to the nature of the particular interests that are at stake. In my opinion, there are no incompatibilities with section 24 of the charter.

Conclusion

I consider that the bill is compatible with the charter.

Martin Pakula, MLC
Minister for Public Transport

Second reading

Ordered that second-reading speech be incorporated into *Hansard* on motion of Mr JENNINGS (Minister for Environment and Climate Change).

Mr JENNINGS (Minister for Environment and Climate Change) — I move:

That the bill be now read a second time.

Incorporated speech as follows:

The Brumby government is pleased to introduce legislation today that will ensure that Victoria's mineral resources are:

managed sustainably and responsibly;

continue to contribute to the state's economy; and

continue to contribute to employment within regional communities.

This bill contains amendments that form part of the first stage of the Mineral Resources (Sustainable Development) Act 1990 (MRSDA) review. As part of the first stage, this bill

addresses administrative reform, one of the objectives being to ensure that there is a healthy balance between the retention of licences by proponents and turnover of these licences to investors in order to ensure that mining goals are being met.

Issues of greater complexity which require more research and more consultation with experts, industry and other government agencies will be reserved for the second stage of the review scheduled for late 2011 and early 2012.

This bill will provide industry with a clear signal that Victoria is committed to ensuring a modern regulatory framework. It will also provide the community with clarity and certainty, particularly in relation to the operation of compensation provisions and consent provisions.

I now turn to the key provisions of the bill.

Purpose of the MRSDA

This bill amends the purpose of the MRSDA to reflect the importance of mineral exploration in promoting a sustainable minerals sector.

Licensing and ground turnover

The state has an interest in ensuring that the licensing system encourages the development of the state's mineral resources and a viable mining industry.

At present, there are two licence types:

(a) an exploration licence; and

(b) a mining licence.

An exploration licence gives the exclusive right to explore for the resource and apply for a mining licence. A mining licence gives the right to mine and take ownership of the minerals which are owned by the state until extracted.

Currently, there is no limit on the number of renewals of exploration licences, with some licences being over 20 years old. This bill will place a limit on the number of renewals on exploration and it will strengthen the relinquishment requirements attached to exploration licences. This will improve competition and encourage new investment in the industry.

The bill will also ensure that the identification of a mineral resource be a precondition for the granting of a mining licence. This is in line with practices in some other states such as Western Australia.

The bill provides for two new licences:

(a) a retention licence; and

(b) a prospecting licence.

A retention licence will apply where a mineral resource has been identified but is not currently commercially viable to mine. It will enable the holder to undertake certain activities. This includes intensive exploration, economic and other studies and research and development, targeting the definition of a feasible mining and/or processing venture. A retention licence will also provide the holder with the right to apply for a mining licence when the holder is ready to mine.

A prospecting licence will provide greater clarity on the right of small-scale prospectors and miners but will ensure a healthy turnover of ground. Holders of prospecting licences will be granted a prospecting licence for a relatively short term — up to five years. Prospecting licences will not require identification of a mineral resource. The licence will not be renewable but the holder will have the right to apply for a retention licence or mining licence.

The tourist mine authority provisions which have historically been used to regulate occupational health and safety matters will be repealed in this bill, as occupational health and safety matters are now dealt with under the Occupational Health and Safety Act 2004.

This bill also makes amendments to broaden the range of conditions which the minister may impose on a licence. This will include technology and project development milestones.

Compensation and consent

In order to improve clarity of the compensation provisions in the MRSDA, the bill allows landowners and miners more freedom to make private compensation arrangements and to distinguish the grounds for on-site and off-site compensation.

Consent provisions will be amended to provide that consent for low-impact exploration (limited to hand-held tools) on private land need not be in writing. This will allow for informed verbal consent from the landowner if it is preferred by both parties. This will remove a land access barrier that has been identified by industry.

The bill will allow for consent to be verbal, however, the authority holder will be required to inform the landowner of their rights — including the right to have written consent or to refuse consent — prior to consent being given.

Statutory endorsement of work plans

The bill provides for the inclusion of statutory endorsement of mining and extractive work plans. The statutory endorsement will give statutory recognition to the current administrative practice of work plan endorsement. This will be a major benefit to industry as it will provide for streamlined approvals by reducing or eliminating duplication of referrals to other agencies.

In the current non-statutory endorsement process, the Department of Primary Industries (DPI) refers the draft work plan to other agencies for input and sign off. When agreement is reached on the acceptability of the work plan, it is then endorsed by DPI. A duplication of referrals occurs at the planning permit stage when a local council re-refers the planning permit application to agencies to which non-statutory referrals have already been made, and with which agreement has already been reached by the endorsement process. Statutory endorsement will ensure this duplication of referrals is avoided.

Miner's rights and tourist fossicking authorities

This bill will retain the miner's right and tourist fossicking authorities in their current form. However, to reduce the administrative burden for members of the public, the bill will introduce the option for miner's rights and tourist fossicking authorities to increase the term for which a miner's right and tourist fossicking authority can be granted. This will be from 2 years to 10 years.

Fit and proper person

The bill provides clarity on the grounds for which a person is to be considered as 'fit and proper'. This will ensure transparency and understanding of the operation of the provision. The bill will also extend the operation of the fit and proper person provisions to 'associates of the applicant'. This will aid in ensuring that rights to publicly owned resources are allocated to appropriate persons.

Licence rentals

The bill provides that rentals should be paid on all licence types, not just mining licences, and that rentals should be payable from registration of the licence, rather than from registration of the work authority. This will ensure an appropriate level of cost recovery for administrative activities.

Repeal of the Mining and Environment Advisory Committee

The bill repeals part 4 of the MRSDA, which deals with the Mining and Environment Advisory Committee. The Mining and Environment Advisory Committee has not met in over a decade and has not been a fully functioning committee.

Royalties

The bill makes amendments to ensure greater clarity be provided in the MRSDA on the calculation method for coal royalties. This is to ensure that the calculation of royalties (which is based on 'net wet specific energy' of brown coal) is done using consistent and accurate methodology, and is consistent with the current requirement that the net wet specific energy of coal is to be measured in a manner that represents coal at, or close to, the point of mining.

It is important to note that this bill does not address royalty rates and exemptions as part of the first stage of amendments to the MRSDA.

Other amendments

The bill amends the Victorian Energy Efficiency Target Act 2007. The amendment will give persons accredited for the purpose of the greenhouse gas abatement scheme established under that act and who are engaged in certain prescribed activities greater flexibility as to how they satisfy the requirements for creating abatement certificates.

Conclusion

In introducing this bill, the government is determined in improving the efficiency and effectiveness of the Mineral Resources (Sustainable Development) Act 1990 and regulations governing minerals and extractive industries. This bill seeks to ensure the responsible and sustainable use of Victoria's resources for the benefit of all Victorians.

I commend the bill to the house.

Debate adjourned for Mr GUY (Northern Metropolitan) on motion of Mr Koch.

Debate adjourned until Thursday, 19 August.

PLANT BIOSECURITY BILL

Introduction and first reading

Received from Assembly.

Read first time for Hon. M. P. PAKULA (Western Metropolitan) on motion of Mr Jennings.

Statement of compatibility

For Hon. M. P. PAKULA (Minister for Industrial Relations), Mr Jennings tabled following statement in accordance with Charter of Human Rights and Responsibilities Act:

In accordance with section 28 of the Charter of Human Rights and Responsibilities, I make this statement of compatibility with respect to the Plant Biosecurity Bill 2010.

In my opinion, the Plant Biosecurity Bill 2010, as introduced to the Legislative Council, is compatible with the human rights protected by the charter. I base my opinion on the reasons outlined in this statement.

Overview of bill

The bill introduces a new legislative framework for regulating plant, pest and disease control and plant product description in order to improve responsiveness to biosecurity threats in Victoria, by:

preventing, monitoring, controlling and eradicating plant pests and diseases;

providing for the packaging, labelling and description of plants and plant products;

facilitating the movement of plants, plant products, used packages, used equipment and earth material within, into, and out of, Victoria; and

repealing the Plant Health and Plant Products Act 1995.

Human rights issues

Section 13 — right to privacy

Section 13(a) of the charter protects a person's right not to have his or her privacy, family, home or correspondence interfered with in a manner that is unlawful or arbitrary. An interference with privacy will not be unlawful if it is permitted by law, certain and appropriately circumscribed. Any interference will not be arbitrary if the restrictions it imposes are reasonable in the particular circumstances and are in accordance with the provisions, aims and objectives of the charter.

In my view, there is an important distinction between searches conducted in the context of criminal offending and searches conducted in a regulatory context. Regulatory searches generally have an instrumental focus connected with the need to provide incentives to comply with the relevant legislative framework.

Each of these search powers contains internal safeguards in the form of either a requirement that an inspector has

reasonable grounds for believing that the documents are relevant to determining compliance with the bill or independent verification by a magistrate who must be satisfied of the relevance of the documents before issuing a warrant.

Entry and search of land and premises without warrant

Clause 76 provides for a power to enter and inspect premises at any reasonable time. To exercise the power under clause 76, the inspector must reasonably believe that the premises are being kept for the propagation, growing, sale, storage, delivery, treatment, packaging, or preparation for sale of any plants or plant products and entry is necessary to monitor for pests and diseases. It would create a significant burden on inspectors if they were required to obtain a warrant in respect of each premises such that it would risk frustrating the monitoring regime set up under the act or, alternatively, require commitment of significantly greater resources. In contrast, given the regulatory context within which the sale of plants and plant products occurs, owners and occupiers of premises are likely to have a lower expectation of privacy. The power does not extend to entering residential premises, where a greater expectation of privacy would arise (see *R v Grayson* [1997] 1 NZLR 388, 407).

The Canadian case law supports the proposition that searches in a regulatory or administrative context may attract a lower standard of protection than searches in a criminal context reflecting the different interest in privacy in both contexts (see, for example: Thomson Newspapers v Canada (1990) 67 DLR (4th) 568 (SCC); *R v McKinlay Transport* (1990) 68 DLR (4th) 568 (SCC); *Comite Paritaire de l'Industrie de la Chemise v Potash* (1994) 115 DLR (4th) 702 (SCC)). The entry and inspection power in clause 76 is restricted to monitoring for pests and diseases only. Further, when exercising the power under clause 76, an inspector must cause as little inconvenience as possible and must not remain on the land any longer than is reasonably necessary.

Clause 86 provides that an inspector, having found a disk or other device for the storage of information, may operate equipment at the premises to access the information. Usage of the equipment is limited to accessing the data stored on the device and does not permit any further search of the data stored on the equipment.

Clause 108 provides for a power to enter private property in a declared 'control area' to apply bait or deal with baiting or other equipment in order to monitor, control or eradicate any pest or disease. A declared control area allows the Governor in Council to specify prohibitions, restrictions and/or requirements that are to operate in that area for the purpose of preventing the entry to or spread of pests or diseases within the control area (clause 19).

The powers of an inspector to enter private property, on notice, under clause 108 are confined to applying bait or installing, inspecting or retrieving any lure, bait, trap or any other equipment to monitor, control or eradicate any pest or disease. An inspector may exercise this power either on 24 hours notice to the occupier or with the occupier's consent but may only enter residential premises with the occupier's consent. The power must be exercised at a reasonable time and an inspector must cause as little inconvenience as possible and not remain on the premises for any longer than necessary when exercising it.

Clause 113 provides that, when exercising powers under the bill in relation to exotic pests and diseases, an inspector has the power to enter and search any place, excluding residential premises, if the inspector believes entry is reasonably necessary to monitor for exotic pests and diseases. An exotic pest or disease is any organism, bacterium, fungus, virus et cetera that is not present in Victoria or is being controlled, contained or eradicated in Victoria. Following entry, inspectors may fumigate and disinfect plants, bee products and other items and exercise other powers relating to exotic pests and diseases. An inspector must inform the occupier that he or she is authorised to enter and inspect and give the occupier an opportunity to allow entry; cause as little inconvenience as possible and not remain on the premises for any longer than necessary.

In respect of the powers in clauses 108 and 113, it has been recognised in both the New Zealand and Canadian case law that a search without a warrant will be appropriate where the process of obtaining a warrant would have a disproportionate adverse effect. Powers of warrantless search have been accepted where there is an emergency or potentially dangerous situation (see K Tronc et al, *Search and Seizure in Australia and New Zealand* (1996), 47-53), a serious threat to safety or property (*R v Williams* [2007] 3 NZLR 207, at [20]), or where there is a risk to the safety of the public (*R v Feeney* (1997) 115 CCC (3d) 129). In that regard, before the power in clause 108 can be exercised, an area has to be designated a control area and before the power in clause 113 can be exercised an inspector must reasonably believe that entry is necessary to monitor for exotic pests and diseases.

A key issue for those charged with monitoring, controlling or eradicating a pest or disease in the control area is the ability to respond quickly and effectively to the problem before the pest or disease spreads. The spread of a pest or disease within Victoria carries with it the risk of long-term damage to Victoria's biosecurity (including the marketability and commercial value of Victorian plants and plant products). This concern is heightened where exotic pests or diseases are involved. The carefully circumscribed powers in clauses 108 and 113 reflect an appropriate balance between protecting Victoria from biosecurity risks by seeking to monitor, control or eradicate a pest or disease in a control area — or an exotic pest or disease — and the individual occupier's reasonable expectation of privacy in relation to non-residential premises. Neither power entitles an inspector to enter and search residential premises without the owner or occupier's consent.

In my view, these clauses do not provide for arbitrary or unlawful interferences with privacy and are not, therefore, incompatible with section 13 of the charter.

Powers to stop and search vehicles

Clause 77 provides that an inspector may stop a vehicle that the inspector reasonably believes is being used to transport plants or plant products for the purposes of examining plants or plant products in the vehicle. Clause 114 provides that an inspector may stop, board, enter, search and detain any vehicle in the exercise of powers relating to exotic pests and diseases.

Given the importance of restricting the movement of plants and plant products and the risks associated with such transport if left unregulated, there is a significant interest in inspectors being able to stop and search vehicles for the limited purpose of examining plants or plant products in the vehicle. A person

transporting plants or plant products is likely to be participating in a regulated activity and would have a lower expectation of privacy as a result. A search under clause 77 must be exercised at a reasonable time and only where an inspector reasonably believes or suspects the vehicle is being used to transport plants or plant products. The search power in clause 114 applies where an inspector is exercising his or her power under the act in respect of exotic pests and diseases. As discussed above, the spread of an exotic pest or disease within Victoria carries with it the risk of long-term damage to Victoria's biosecurity (including the marketability and commercial value of Victorian plants and plant products). These powers are crucial to ensuring that inspectors are able to prevent the spread of such exotic pests and diseases, and are not inconsistent with the right to privacy.

Further inspection powers

Clauses 80 and 82 provide that an inspector may inspect, count, examine or mark for identification any plant, plant product, used package, used equipment or earth material and that an inspector may take photographs or measurements or make sketches or recordings. Both powers are exercised by an inspector when determining compliance with the act and both powers can only be exercised at a reasonable time. The powers are necessary to enable an inspector to properly fulfil his or her monitoring functions under the act. The power to inspect is appropriately limited to specified items that are regulated for the purposes of the act. The power to take photographs, measurements or make sketches or recordings, while expressed more broadly, is particularly appropriate for inspectors who are required to inspect and identify plants, plant products and suspected pests given that it is unlikely they will always be in a position to identify a plant, plant product or pest with any certainty during an inspection. Such aids are likely to assist in the subsequent identification or confirmation of the type of plant, plant product or pest that the inspector has examined.

In my view, these clauses do not give rise to any incompatibility with the charter.

Search warrants

Clauses 89 and 90 permit searches of premises under warrant. Clause 94 provides for seizure of items obtained outside the scope of the warrant during a search under that warrant. It is possible that, in some cases, the seizure of items by an officer exercising a search power under warrant pursuant to clause 94 may engage the right to privacy. In my view, however, any interference with privacy authorised by this provision will be neither unlawful nor arbitrary. The statutory precondition of an independently issued warrant acts to prevent an unjustified exercise of the search power. The inspector must have reasonable grounds for believing that the evidence is of a kind which could have been included in the search warrant, and that there is a risk of concealment, loss or destruction of the relevant evidence. This risk would make it impracticable for an inspector to obtain a further warrant. There is a strong public interest in the investigation of regulatory offences of this nature, which have the potential for significant harm to biosecurity. Finally, I also note the discretion of a court under the Evidence Act 2008 to exclude unlawfully or improperly obtained evidence, which would include evidence obtained in breach of a charter right. Further, when executing a warrant, inspectors must, generally, announce their presence before entry and allow an occupier to allow entry before using force (clause 92), and give details of the warrant to the occupier (clause 93).

In my view, these clauses do not provide for arbitrary or unlawful interferences with privacy and are not, therefore, incompatible with section 13 of the charter.

Collection and inspection of personal information

Clause 15(6) provides that the secretary may maintain a database containing details of the properties in respect of which a property identification code has been issued. A property identification code is issued on application of the owner or occupier of a property where a prescribed plant is grown. By notifying the secretary, the owner or occupier voluntarily brings themselves within the regulatory framework of the act. Under that framework, the database is an important mechanism for effective monitoring of prescribed plants. Clause 15(7) provides that the database may only be perused for the purpose of administering the act and only by an inspector or person authorised in writing by the secretary.

Clause 49 provides that the secretary must keep a register of accredited persons. Accredited persons are also persons who have chosen to participate in a regulated industry. A person must not access the register unless the person is employed in the administration of the legislation and is authorised in writing by the secretary to access the register.

Clause 112 provides that an inspector may require the person having custody of any records relating to ratepayers to provide the inspector with a ratepayer's name, address or other contact details. The power to require this information can only be exercised by an inspector in relation to their official powers. It is a necessary power for ensuring the efficiency and effectiveness of the inspectors' functions.

In my view, these clauses do not give rise to any incompatibility with the charter.

Section 12 — freedom of movement; section 21 — liberty

I have considered whether requirements under clause 77 for a person to stop their vehicle or present their vehicle for inspection at a later time and place, or stop their vehicle or have it detained under clause 114, or stop at a road barrier under clauses 110 and 111, limit the right to freedom of movement. I consider that any restriction on a person's freedom of movement would be minimal, and would not amount to detention or deprivation of liberty so as to engage the right in section 21 of the charter. While a person would be required to stop their vehicle under both clauses, they would not otherwise be prevented from moving from the area. To the extent that the right to freedom of movement may be limited I consider that any such limitation would be a reasonable limitation for the purposes of section 7(2) of the charter and therefore compatible with the right.

Section 15 — freedom of expression

The right to freedom of expression in section 15 of the charter has been interpreted in some jurisdictions to include a right not to impart information. Section 15(3) of the charter provides that special duties and responsibilities are attached to the right to freedom of expression and that the right may be subject to lawful restrictions reasonably necessary for the protection of national security, public order, public health or public morality.

Clause 15(5) requires an owner or occupier of a property that has a property identification code to advise the secretary of any change in name, address or telephone number. Given that an owner or occupier voluntarily brings themselves within the regulatory framework of the act by growing a prescribed plant and having a property identification code, no issue of incompatibility with section 15 of the charter arises.

Clause 78 authorises an inspector to require a person to answer a question or take reasonable steps to provide information. An inspector must exercise this power at a reasonable time and for the purposes of determining compliance with the act. Failure to answer a question or take reasonable steps to provide information is punishable by a fine (clause 132). Harmful plant pests and diseases can impact upon the production and market access of Victoria's agricultural plants and products, and can also impact upon native flora and amenity plantings. Inspectors need to be fully informed of any plant biosecurity issue to undertake their statutory functions. To the extent that clause 78 imposes any restrictions upon freedom of expression, I consider they are reasonably necessary for the protection of public order and/or public health in terms of section 15(3) of the charter.

Clause 130 enables a court to make an adverse publicity order upon a conviction. An adverse publicity order may involve requiring an offender to publicise or notify the particulars of the offence, its consequences, the penalty imposed and any other related matter to a specified person or class of persons. This information is likely to already be on the public record as a consequence of judicial proceedings. The power gives further effect to the principle in section 24 of the charter that hearings should be public, but also provides a potential order to deter further offending, either by the individual concerned or more generally. However, the order can only be made by a court and therefore attracts all of the attendant safeguards for court proceedings, including a fair hearing. To the extent that the right to free expression is limited by such an order I consider it is reasonably necessary for the maintenance of public order. Similarly, any interference with the reputation of an individual would not be unlawful. Accordingly, the power is compatible with the right to free expression in section 15, and the right to reputation in section 13 of the charter.

Section 20 — right to property

Section 20 of the charter provides that a person must not be deprived of his or her property other than in accordance with law. This right requires that powers which authorise the deprivation of property are conferred by legislation or common law, are confined and structured rather than unclear, are accessible to the public and are formulated precisely.

A number of clauses in the bill potentially deprive a person of his or her property:

> Clauses 19, 22, 23, 25, 26, 27, 35 and 45 authorise one or more of the Governor in Council, minister, secretary or an inspector to make orders or directions which have the effect of requiring the disposal and or destruction of property regulated under the act including plants, plant products, plant vectors, used packages, used equipment, earth material, bees, honey, beeswax, honeycomb, beehives, or pollen. Clause 24 provides a power of seizure of plants or plant products.
>
> Clauses 87, 89, 90, 94 and 96 authorise inspectors to seize documents or other items.
>
> Clause 104 authorises an inspector to detain any package that does not comply with the requirements set out in the act.
>
> Clauses 81, 105, 113(1)(d), and 115 authorise inspectors to take samples of certain items regulated under the act where the inspector reasonably believes those items may be affected by a pest or disease.

In my view, each of these provisions contains sufficient safeguards such that no issue of incompatibility with the property right in the charter arises.

In that regard, it is relevant that each of these powers is formulated precisely. Inspectors must give copies of seized documents to the person they were seized from (clause 95); give notice of detention or seizure where plants or plant products are seized (clause 97); and then return of plants and plant products after examination if not affected by a pest or disease and not prohibited (clause 99); return packages detained under clause 104 within 48 hours; and return documents and other things as soon as they are no longer required or within three months (clause 106).

The purpose of the destruction and disposal powers in the bill are to ensure that pests and diseases and, in particular, exotic pests and diseases, are prevented from entering into Victoria and, if they do enter into Victoria, are not permitted to spread.

Finally, in terms of taking samples, in many if not all cases, the taking of samples may well amount to such a minimal interference with property that it may be incorrect to say that section 20 of the charter is engaged. Assuming it is engaged, however, any deprivation of property that occurs as a result of the amendment will take place under powers conferred by legislation, in accordance with the law, and only where necessary to deal with issues of plant biosecurity.

Section 24 — fair hearing

Section 24(1) protects the right of a person charged with a criminal offence or a party to a civil proceeding to have the charge or proceeding determined by a competent, independent, and impartial court or tribunal after a fair and public hearing.

In *Kracke v Mental Health Review Board & Ors* (General) [2009] VCAT 646, Bell J held that the right to a fair hearing in section 24 of the charter is not limited to judicial proceedings but can include administrative proceedings. His Honour observed that whether the right applies to administrative proceedings falls to be assessed on a case-by-case basis. In Kracke, Bell J noted that, in assessing compliance with the right, regard may be had to the whole decision-making process, including reviews and appeals. While recognising the broader scope of section 24 in light of overseas jurisprudence, Bell J said, at [417], that 'the term "proceeding", and also "party", suggest section 24(1) was intended to apply to persons and bodies who conduct proceedings with parties. To be a "civil proceeding", there would need to be a certain kind of procedure and means for identifying those parties.'

I have considered the effect of the following clauses on the fair hearing right: clauses 24, 25, 26, 27, 48, 50, 51, 58, 60 and 102. In each case, I consider that the procedures provided for in the bill, including the rights of appeal or review that are available, are appropriate to the nature of the particular

interests that are at stake. In my opinion, there are no incompatibilities with section 24 of the charter.

Clause 137 intends to preclude any appeal in relation to, or review of, an action taken by the minister, secretary, an inspector or any other person that would stop, prevent or restrain that person from taking any action in relation to, or in consequence of, an outbreak or suspected outbreak of an exotic pest or disease within Victoria or within any other part of Australia. The provision is subject to a statement made under section 85 of the constitution on the basis that the provision intends to deprive the Supreme Court of its jurisdiction. In my view, section 24 does not apply to the type of administrative decisions covered by clause 137. Therefore, the preclusion of appeal or review of such decisions does not engage section 24 of the charter. Even if the right is engaged, I consider any limitation is reasonable pursuant to section 7(2) of the charter.

Section 25(1) — presumption of innocence

Section 25(1) of the charter provides that a person charged with a criminal offence has the right to be presumed innocent until proven guilty according to law.

Clause 132(1)(a) makes it an offence for persons to obstruct or hinder an inspector exercising the inspector's powers under the proposed act "without reasonable excuse". In my view, this provision does not transfer the burden of proof, because once the defendant has adduced or pointed to some evidence, the burden is on the prosecution to prove beyond reasonable doubt the absence of the exception raised. Furthermore, the burdens do not relate to essential elements of the offences and are only imposed on the accused to raise facts that support the existence of an exception, defence or excuse. Courts in other jurisdictions have generally taken the approach that an evidential onus on an accused to raise a defence does not limit the presumption of innocence. However, even if these provisions limit the right to be presumed innocent in section 25(1) of the charter, the limitation would be reasonable and justifiable under section 7(2). The defences and excuse provided relate to matters within the knowledge of the accused and, if the onus were placed on the prosecution, would involve the proof of a negative which would be very difficult.

Accordingly, I consider that this provision is compatible with section 25(1) of the charter.

Section 25(2)(k) — self-incrimination

Section 25(2)(k) of the charter protects the right of persons charged with a criminal offence not to be compelled to testify against themselves or to confess guilt. In Victoria, the failure to provide a protection against the use in criminal proceedings of evidence derived from compulsory questioning amounts to a limit upon the right against self-incrimination in section 25(2)(k) of the charter.

In the Major Crime decision, Chief Justice Warren held that the right is at least as broad as the privilege against self-incrimination protected by the common law, and applies to protect a charged person against the admission in subsequent criminal proceedings of incriminatory material obtained under compulsion, regardless of whether the information was obtained prior to or subsequent to the charge being laid and held that the right extends to include both direct use and derivative use immunity (see *Re an application under the Major Crime (Investigative Powers) Act 2004* [2009] VSC 381). The Chief Justice did not rule out the possibility that a denial of derivative use immunity might be capable of justification in a regulatory context.

Clause 117 authorises an inspector to require a person to answer any question and produce for inspection any record or document for the purpose of preventing, controlling or eradicating an exotic pest or disease or any plant or plant product. Clause 118 expressly abrogates the privilege against self-incrimination by providing that the person cannot refuse to answer. However, if the person asserts the privilege, the answers are not admissible as evidence in criminal proceedings against that person. While the answers may not be used in criminal proceedings, it is possible that these answers will provide investigative clues to finding other evidence that incriminates the person. That evidence will be admissible in criminal proceedings, and it is intended that it be so.

Before requiring a person to answer a question or produce a document, an inspector must inform the person as to the effect of clause 118. That clause provides that a refusal or failure to furnish an answer, record, or document constitutes an offence under the proposed act and that the person cannot decline to answer any question or produce a document on the ground that the answer, record or document might tend to incriminate the person.

However, I am of the view that the limitation is reasonable under section 7(2) of the charter for the following reasons:

(a) The nature of the rights being limited

This has been outlined above. There are a number of rationales for the right against self-incrimination. These include that the state should not be able to compel an individual to assist it to prove that they have committed an offence, the concern about oppressive government conduct, the related concern about reliability of evidence, and the protection of privacy.

(b) The importance of the purpose of the limitation

The inspectors' questioning powers are important to ensure inspectors are able to obtain all relevant information where there is a need to prevent, control or eradicate an exotic pest or disease. The abrogation of the privilege is designed to protect the public interest in ensuring that inspectors have adequate powers to fulfil their functions of protecting Victoria against the spread of exotic pests and diseases.

It is possible that such powers will reveal the commission of a criminal offence and lead to the discovery of incriminating evidence. For example, answers to questions may lead to the discovery of an exotic plant or disease which, together with other evidence, reveals that the exotic plant was deliberately introduced by the person questioned. It is important that such offences be prosecuted. However, it would be extremely difficult to do so, if the actual exotic plant were not admissible in evidence.

(c) The nature and extent of the limitation

As outlined above, the provision compels a person to answer a question or produce a record or other document even if it may tend to incriminate that person. Before requiring a person to answer a question or produce a document, an inspector

must inform the person as to the effect of clause 118, that is, that they cannot refuse to answer the question, but they can assert the privilege in which case any answers given cannot be used against them in criminal proceedings.

Here, the aspect of the right at issue relates to the use of derivative evidence. In providing for a direct use immunity, the 'principal matter' covered by the privilege is protected (see *Hamilton v Oades* (1989) 166 CLR 486, at p 496). While the use of derivative evidence engages one aspect of the rationale for the privilege — that a person should not be required to assist the state in building a case against him or her — it does so to a lesser extent than the direct use of evidence because of the fact that the derivative evidence exists independently of the will of the accused (see *Environmental Protection Authority v Caltex* (1993) 178 CLR 477). This is particularly so in the context of clause 118 which extends the immunity beyond the answers of the person, to documents and records that are produced in accordance with the inspectors' powers. Further, it does not engage the most important principles underlying the right, namely the risk of improper interrogation techniques (including torture) or the unreliability of evidence obtained through such methods. As the Constitutional Court of South Africa has recognised, the ability to use derivative evidence does not negate the essential element of the right (see *Ferreira v Levin* [1995] ZACC 13, [153]).

It is also relevant that the questioning powers may only be used for the regulatory purpose of preventing, controlling or eradicating an exotic pest or disease or any plant or product that the inspector has reasonable grounds for suspecting is infected or infested with an exotic pest or disease (see *R v Jarvis* [2002] 3 SCR 757). To the extent that incriminating evidence may be derived from those answers, it is incidental to that purpose.

(d) The relationship between the limitation and its purpose

There is a close relationship between the limit and its purpose. Answers to questions posed by an inspector, and relevant records and other documents, are likely to be information in the sole knowledge of the questioned. The abrogation of the privilege facilitates compliance with the act by enabling an inspector to access to information and evidence that is difficult or impossible to ascertain by alternative evidentiary means. There is a significant public interest in maintaining Victoria's biosecurity, and in prosecuting any regulatory breaches.

(e) Less restrictive means reasonably available to achieve the purpose

I consider that there are no less restrictive means reasonably available to achieve the purpose of this limitation. The inclusion of a derivative use immunity would undermine the ability to prosecute offences. There are very real difficulties with the inclusion of a derivative use immunity in the context of these regulatory powers. In particular, it would risk exclusion of the principal evidence of an offence, namely the actual exotic plant or disease. A person could effectively immunise themselves against prosecution simply by disclosing to the inspectors the location of an exotic plant or disease.

I have also considered whether the provision engages the right to free expression and/or privacy. In my view, the power is a crucial aspect of ensuring that an inspector is able to carry out his or her functions under the act. Further, there is no element of arbitrariness given that it can only be exercised in furtherance of an inspector's powers under the act and a person must be informed of the effect of a failure to respond. As discussed above, the right to freedom of expression includes the right not to impart information. To the extent that the powers compel expression, I am satisfied that the power is reasonably necessary for the protection of public health in terms of section 15(3) of the charter. In my view, no issues of incompatibility with section 13(a) and 15 of the charter arise.

Conclusion

I consider that the bill is compatible with the charter because to the extent that some of its provisions may limit human rights, those limitations are reasonable and demonstrably justified in a free and democratic society.

Martin Pakula, MLC
Minister for Public Transport

Second reading

Ordered that second-reading speech, except for statement under section 85(5) of the Constitution Act, be incorporated into *Hansard* on motion of Mr JENNINGS (Minister for Environment and Climate Change).

Mr JENNINGS (Minister for Environment and Climate Change) — I move:

That the bill be now read a second time.

Incorporated speech as follows:

This bill will repeal and replace the Plant Health and Plant Products Act 1995 which has until now provided the key legislative framework in supporting the government's role in protecting Victorian plant industries from pests and diseases, and in facilitating the timely movement of produce to local, interstate and overseas markets.

This bill is the result of a comprehensive review of the Plant Health and Plant Products Act 1995 and will substantially improve the ability of government to respond to new plant pests and disease outbreaks.

The new bill is an important component of the government's wider biosecurity strategy for Victoria. This strategy aims to protect primary industries, the environment, social amenity and human health from threats by plant and animal pests and diseases and invasive plant species. The new bill will provide an improved legislative framework for the more effective management of plant pests and diseases.

Across Victoria there are more than 11 000 plant-based agricultural enterprises including grains, fruit and vegetables, nursery and cut flower industries. These plant industries make a significant contribution to our state economy. In 2007–08, Victoria accounted for $386 million of the nation's horticultural exports whilst grain exports were valued at $508 million. Victoria's forest industries are estimated to generate over $1 billion annually through timber production and amenity and tourism benefits. The long-term viability of plant industries in Victoria relies on maintaining its pest and disease-free status enabling sustainable production and

allowing regulated plants and plant products to move within Victoria, interstate and to overseas markets.

The bill's objectives are to:

provide for the preventing, monitoring, controlling and eradicating of plant pests and diseases;

provide for the packaging, labelling and description of plants and plant products;

facilitate the movement of plants, plant products, used packages, used equipment and earth material within, into and out of Victoria; and

repeal the Plant Health and Plant Products Act 1995.

The bill remakes many provisions in the Plant Health and Plant Products Act 1995. Existing powers to protect plant industries and the natural and built environment from pests and diseases at the border and within Victoria will be enhanced.

Border protection will be strengthened by broadening the list of things that can carry pests or diseases into Victoria. This includes earthmoving machinery, rocks, sand and gravel.

A new section will enhance emergency response capability by enabling the declaration of an infected place in the event of a detection of an exotic pest or disease.

A requirement for property owners to apply for a property identification code (PIC) will assist in the rapid contact of growers who may be impacted by a pest or disease. The successful PIC system in place in Victoria extends to plant industries under the Livestock Disease Control Act 1994. PIC implementation will be on a plant industry-by-industry basis and is strictly subject to industry consultation and support.

To monitor the movement of plant material and other host material (used equipment, packaging and earth materials), the bill provides for certification, packaging and labelling of plant and plant products, and for co-regulation arrangements together with third-party inspection services.

The bill will facilitate more efficient certification services in the future by enabling assurance certificates, plant health certificates and plant health declarations to be transmitted electronically.

Minor improvements will be made to packaging and labelling requirements. The very successful co-regulation arrangements introduced as part of the current act will be maintained.

Four new powers for inspectors will boost the monitoring of compliance with the requirements of the bill. To provide an alternative to taking a person to court or fining a person for committing an offence, enforceable undertakings and adverse publicity orders are introduced. Revision of the penalty levels for offences will provide consistency with the Sentencing Act 1991.

Redundant and unnecessary provisions of the current act will be repealed, including those dealing with the approval of certification schemes, sales of prohibited seeds, country of origin labelling and labelling of plants for propagation. The country of origin labelling requirements in the current act will not be replaced because these are now fully covered by commonwealth legislation.

Complementary, wide-ranging non-legislative activities and tools will be implemented in support of the bill. This includes biosecurity educational initiatives used to promote industry adoption of biosecurity planning. Industry collaboration will be improved using a cross-industry policy forum of government and industry leaders.

In the development of this, the Department of Primary Industries (DPI) extensively consulted with plant industry stakeholders. DPI considered and addressed any concerns raised in some 40 industry submissions. Strong industry support for the new bill has been noted.

The bill will boost the department's capability to manage plant biosecurity issues in closer collaboration with plant industries and other state jurisdictions.

Section 85(5) of the Constitution Act 1975

I wish to make a statement under section 85(5) of the Constitution Act 1975 of the reasons for altering or varying that section by this bill. Clause 139 of the bill states that it is the intention of clause 137 to alter or vary section 85 of the Constitution Act 1975.

Clause 137 of the bill will prevent the institution or continuation of court proceedings that may stop, prevent or restrain the minister, the secretary, an inspector or any other person from taking any action under the bill in response to certification by the minister under clause 42 that an outbreak of an exotic pest or disease exists in Victoria or in any part of Australia outside Victoria.

Clause 42 will enable the minister to certify that an outbreak of an exotic pest or disease exists in Victoria, or that an outbreak of an exotic pest or disease exists in a part of Australia outside of Victoria and it is necessary or expedient to take action, including making an order under the new act, to prevent or reduce the risk of the spread of the pest or disease to Victoria. This clause replaces the existing section 28A(1) of the Plant Health and Plant Products Act 1995 which was inserted in 2004.

The reason for preventing the institution or continuation of any proceedings in the Supreme Court that would seek to stop, prevent or restrain action taken in response to an outbreak or suspected outbreak of an exotic pest or an exotic disease in Victoria or in any part of Australia outside Victoria, is that any preventive action to be taken following such an outbreak must be put in place immediately. Any delays in taking such action caused by proceedings before a court, even by a matter of hours, could result in the rapid spread of a pest or disease, adding significantly to the impact and costs of any eradication response.

If there is an outbreak of an exotic pest or disease such as fire blight in another state, Victoria would have to

take immediate response actions such as imposing bans on the movement of plants until the situation and the risks to Victoria were fully evaluated.

I commend the bill to the house.

Debate adjourned for Ms LOVELL (Northern Victoria) on motion of Mr Koch.

Debate adjourned until Thursday, 19 August.

PRIVATE SECURITY AMENDMENT BILL

Introduction and first reading

Received from Assembly.

Read first time for Hon. J. M. MADDEN (Minister for Planning) on motion of Mr Jennings.

Statement of compatibility

For Hon. J. M. MADDEN (Minister for Planning), Mr Jennings tabled following statement in accordance with Charter of Human Rights and Responsibilities Act:

In accordance with section 28 of the Charter of Human Rights and Responsibilities, I make this statement of compatibility with respect to the Private Security Amendment Bill 2010.

In my opinion, the Private Security Amendment Bill 2010, as introduced to the Legislative Council, is compatible with the human rights protected by the charter. I base my opinion on the reasons outlined in this statement.

Overview of bill

The bill makes amendments to the Private Security Act 2004 (the act) to implement a nationally agreed approach to the regulation of the private security industry. Specifically, the bill:

extends the application of the act to a new licensable activity (providing 'private security training');

prescribes additional offences and thresholds that will result in mandatory disqualification from licensing;

makes fingerprinting mandatory for licence applicants and allows for the retention and use of those fingerprints for ongoing probity checks and for limited law enforcement purposes;

allows the chief commissioner, who has responsibility for regulating the industry, to cancel a licence if its holder, or any officer of the body corporate who is a holder, or any 'close associate' of the holder (as defined in the act) is convicted of certain specified offences; and

creates a procedure for the decisions on licensing applications to be made by the chief commissioner or reviewed by the Victorian Civil and Administrative Tribunal (VCAT) on the basis of intelligence information that is not disclosed to the applicant.

Human rights issues

The bill raises a number of human rights issues. In my view and for the reasons that I set out below, the limitations on charter rights in the bill are reasonable and demonstrably justified in a free and democratic society as required by section 7(2) of the charter.

Right to a fair hearing

Clauses 16 and 17 of the bill provide that where a decision of the chief commissioner to refuse a licence is made (or proposed to be made) on the basis of protected information, the applicant is not entitled to be provided with reasons for that decision to the extent that those reasons relate to the protected information. 'Protected information' refers to information, the disclosure of which:

is likely to reveal the identity of, or endanger the safety of, members of the police force, informants, or others involved in an investigation or subject to an investigation;

risks an ongoing police investigation or the disclosure of police investigative methods; or

is otherwise not in the public interest.

The applicant is entitled to seek a review of the chief commissioner's decision at VCAT. Under the procedure set out in clause 23 of the bill, if the chief commissioner notifies VCAT that a decision to refuse a licence was based on evidence that included protected information, a special review procedure applies. VCAT must first hold a closed hearing to determine whether the information has rightly been classified as protected information. If VCAT determines that any of the material constitutes protected information, then the hearing of the remainder of the proceeding must also be closed to the extent that it relates to protected information.

Neither the applicant nor his or her representative is entitled to be present at the closed hearing but VCAT must appoint a special counsel to represent his or her interests. The special counsel may take instructions from the applicant prior to the hearing. However, after the special counsel has heard the chief commissioner's grounds for licence refusal, including any protected information, he or she may no longer communicate with the applicant without the leave of VCAT. Should the special counsel require further information from the applicant after the hearing has begun, he or she may seek leave to provide the applicant with a list of written questions which the applicant may then respond to in writing.

Section 24(1) of the charter provides that a person who is a party to a civil proceeding has the right to have the proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing. In *Kracke v. Mental Health Board & Ors* (General) [2009] VCAT 646, Bell J interpreted 'civil proceeding' in section 24(1) as encompassing proceedings that are determinative of private rights and interests in the broad sense, including administrative proceedings. This is likely to include a decision-making process that impacts on a person's right to engage in a livelihood (see, eg, *R (Wright) v. Secretary of State for Health* [2009] UKHL 3). For that reason, both the decision of the chief commissioner to refuse

or cancel a licence and the subsequent review before VCAT need to be assessed for compliance with section 24(1) of the charter. In making that assessment, the whole decision-making process, including avenues for review and appeal, needs to be examined in the round.

The right to a fair hearing under section 24(1) encompasses the principle of 'equality of arms'. This principle means that everyone who is a party to a proceeding must have a reasonable opportunity of presenting his or her case to the court or tribunal under conditions that do not place that party at a substantial disadvantage to his or her opponent. The bill engages this principle by restricting a licence applicant's access to 'protected information', and by preventing some applicants from directly presenting their case to VCAT on review of the chief commissioner's decision to refuse a licence.

In my view, however, the provisions relating to protected information are nevertheless compatible with the charter. The concept of a 'fair' hearing is a flexible one that requires a balancing of competing interests to be undertaken. For that reason, and for the reasons given below, it may be that the scheme does not even amount to a prima facie limit on the section 24(1) right. Assuming that there is such a limit, however, I consider that the limit is reasonable and justifiable in a free and democratic society in terms of section 7(2) of the charter. In making this assessment, I have had regard to the following factors.

Nature of the right being limited

The principle of equality of arms is an important element of the section 24(1) right. However, it is well recognised that there may be restrictions on the right to a fully adversarial procedure where strictly necessary in the light of a strong countervailing public interest, such as the need to protect police investigative techniques: see, eg, *A v. the United Kingdom*, European Court of Human Rights, Grand Chamber, application no. 3455/05, 19 February 2009.

Importance of the purpose of the limitation

The purpose of the restrictions on access to protected information is to maintain the confidentiality of certain categories of police intelligence while still allowing the information to be used to assess a person's fitness to participate in the private security industry. These provisions ensure that all available information that is relevant to an applicant's probity can be considered by the chief commissioner and by VCAT, while ensuring that there is no disclosure of information which could place persons at risk, compromise police investigations or disclose investigative techniques. The provisions serve the important purpose of protecting the confidentiality of intelligence information where it is in the public interest to do so.

The necessity of using such material to assess an applicant's probity is evidenced by the Australian Crime Commission's special intelligence operation into the private security industry, which has identified criminal infiltration in the private security industry and criminal methodologies seeking to circumvent security licence registration and other legislation. It is against this background, and with a view to effectively combating these elements, that the Council of Australian Governments has taken an interest in the uniform regulation of the private security industry. This legislation is designed to implement a national agreement and in order to give effect to the desire for such uniformity.

Nature and extent of the limitation

The limitation will operate in some cases to prevent applicants from knowing the full case against them and from directly presenting their case to VCAT. However, protections are in place to ensure that the right to a fair hearing is not unreasonably limited. These include:

The fact that VCAT must determine whether or not the information does actually constitute 'protected information' for the purposes of the bill (new section 150C). This ensures that the special procedures will only apply where there is a genuine need to maintain the confidentiality of the information.

The fact that VCAT (itself a 'public authority' for the purposes of the charter) is given the power to determine what weight to give to protected information in its decision-making process (new section 150D(2)(a)).

The appointment of special counsel to ensure that the rights of the applicant are represented at the hearing.

Relationship between the limitation and its purpose

The limitation is directly and rationally connected to its purpose of protecting the confidentiality of intelligence information.

Any less restrictive means reasonably available to achieve its purpose

There are no less restrictive means reasonably available to achieve the purpose of protecting confidential intelligence information. In particular, consideration has been given to whether it would be sufficient to provide for a scheme that envisages documents being provided to an unsuccessful applicant with the confidential information redacted, or that requires applicants to be provided with a summary or 'gist' of any protected information. The government has rejected these options because it does not consider them to be sufficient in this context to meet the aim of preventing disclosure not only of the content of criminal intelligence, but also, so far as is possible, its very existence. The applicant retains the right to access all evidence or information against him or her that does not amount to protected information, and retains the right to receive reasons for the decision not to grant him or her a licence, whether those reasons be based on written or oral evidence, to the full extent that they do not disclose protected information.

Conclusion

Accordingly, I consider even if the right to a fair hearing is limited by these provisions, any such limitation is reasonable and justifiable.

I have considered the recent decisions of the European Court of Human Rights and the House of Lords in *A v. the United Kingdom* (European Court of Human Rights, Grand Chamber, application no. 3455/05, 19 February 2009) and *Secretary of State for the Home Department v. AF* [2009] UKHL 28. These decisions suggest that where fundamental interests such as the right to liberty are at stake, a special counsel system will not necessarily suffice to meet the requirements of a fair hearing if the system entails a complete

denial of the ability of the accused person to respond to the case against him or her. However, the scheme at issue here differs in two fundamental ways from those at issue in the European and United Kingdom decisions. First, the matters at stake for the appellants in those cases — including their rights to liberty, freedom of association, and privacy — were of far greater consequence than the matters at stake for applicants for a private security licence. Secondly, new section 150D(3)(b) of the act will provide an additional safeguard for licence applicants that was not present in those cases. It will allow the special counsel, with the leave of VCAT, to go back to the applicant with further written questions after the hearing has commenced. This provision ensures that the special counsel can adequately represent the applicant's interests at the hearing once the special counsel becomes aware of the full case against the applicant.

The provisions are therefore compatible with section 24.

Freedom of expression

Section 15 of the charter protects freedom of expression. This encompasses the freedom to seek, receive and impart information and ideas of all kinds. The right can lawfully be restricted as reasonably necessary to respect the rights and reputations of other persons, or for the protection of national security, public order, public health or public morality.

I do not need to decide whether or not the scheme of the bill relating to protected information (described above) engages the special counsel's right to impart or the applicant's right to receive information in terms of section 15. That is because any intrusion is reasonably necessary to protect public order by ensuring that sensitive criminal intelligence is kept appropriately confidential so as not to compromise criminal investigations. Further, the provisions are reasonably necessary to protect the rights of persons identified in protected information for security of the person, as disclosure of the protected information may result in a risk to the safety of police officers, police informants, and people under investigation. The right to freedom of expression is therefore not limited by these provisions.

Right to associate

Clause 18 of the bill inserts a new section 47(1)(ab) into the act requiring the chief commissioner to cancel the private security licence of a person if a 'close associate' of theirs is convicted of a disqualifying offence. 'Close associate' is defined in the act as a person who participates in the management of a private security business or who exercises significant influence over or with respect to the conduct of a private security business in specified ways (such as by holding an interest in the business or exercising a power to participate in managerial decisions). Private security licence-holders therefore remain free to associate with prohibited persons and are only restricted from permitting such persons to be involved in the running of their private security business.

Section 16(2) of the charter provides that every person has the right to freedom of association with others, including the right to form and join trade unions. The right protects the freedom of individuals to form legal entities in order to act collectively for the furtherance of the common interests of members. Whether the right extends to the protection of commercial associations set up primarily for economic gain is, though, by no means clear. Accordingly, the right may well not be engaged at all.

Assuming that the right is properly regarded as limited by clause 18, in my view, this limitation is reasonable and demonstrably justified under section 7(2) of the charter for the following reasons.

Nature of the right being limited

It is clear from the international and comparative case law that the right to associate is not absolute and is susceptible to reasonable and proportionate limitations.

Importance of the purpose of the limitation

The purpose of the limitation is to prevent individuals who are considered unfit to participate directly in the private security industry from doing so indirectly (by exercising significant influence over or with respect to the conduct of a private security business).

Nature and extent of the limitation

The limitation is restricted by the definition of 'close associate' to particular kinds of business associations in the private security industry.

Relationship between the limitation and its purpose

The measure is clearly rationally connected to its purpose.

Any less restrictive means reasonably available to achieve its purpose

There are no less restrictive means available. In particular, there is no employment relationship through which improper associations can be managed in a less restrictive way.

Right to privacy

Section 13(a) of the charter provides that a person has the right not to have his or her privacy, family, home or correspondence unlawfully or arbitrarily interfered with.

(i) Fingerprinting

Section 22 of the act currently empowers the chief commissioner to request a full set of fingerprints from applicants for security licences, 'close associates' and officers of the body corporate but only if there is reasonable doubt as to their identity and proof of identity cannot reasonably be ascertained by other means. Clause 12 of the bill amends section 17 of the act to require the mandatory provision of a full set of fingerprints by the applicant himself or herself. The chief commissioner may also require that any close associate of the applicant provide a full set of fingerprints.

The bill provides that the fingerprint data may be retained by the chief commissioner until the licence to which it relates expires, is refused, or is cancelled. This allows the chief commissioner to ensure the ongoing probity of the applicant by identifying any licensees whose fingerprints are found in suspicious circumstances. Where a security guard has been present at a crime scene for legitimate purposes, it also allows for expeditious elimination of their prints as possible suspect prints.

The mandatory provision and retention of fingerprints engages the privacy right in section 13(a) of the charter.

However, in my view, for the following reasons, the collection and retention of fingerprints in order to ensure the ongoing probity of participants in the private security industry does not, in itself, amount to an interference with the right to privacy that is unlawful or arbitrary.

First, provision and retention of this information will be specifically authorised by the act.

Secondly, while I accept that fingerprints contain unique biographical information about an individual and therefore the taking of them engages the privacy right, the case law suggests that fingerprinting is at the lower end of intrusiveness in terms both of the intimacy of the information that is revealed and also the duration and invasiveness of the process by which the information is collected.

Finally, the purpose of taking the fingerprint information is highly important. As noted above, the Australian Crime Commission has identified criminal infiltration of the private security industry. In this context, the collection of fingerprint data is essential to enable the chief commissioner to accurately verify the identity of an applicant and any existing criminal convictions they may have. The retention of that information for the duration of the licence will be of vital assistance in ensuring the licensee's ongoing fitness to work in the security industry.

(ii) Interference with livelihood

The act prohibits certain people from operating in the private security industry — most notably, those who have committed certain disqualifying offences in the recent past. Clauses 5 to 8 of the bill extend the application of the act to the provision of 'private security training'. Clause 9 of the bill extends the specified offences for which individuals are mandatorily disqualified from the industry to include a range of additional offences relating to terrorism, drug trafficking or cultivation, violence, use of controlled weapons, dishonesty, or robbery. Clauses 14 and 15 extend the circumstances in which the chief commissioner may refuse to grant a licence by allowing the chief commissioner to refuse to grant a licence to a person convicted or charged with any offence (not just indictable offences) which the chief commissioner considers would render a person unsuitable to hold a private security licence or to be involved or connected with a private security business.

The equivalent right (to private life) under article 8(1) of the European Convention on Human Rights (ECHR) has been held to comprise, to a certain degree, the right to establish and develop relationships with other people. For that reason, broad measures banning individuals from employment have been found to limit this right where they affect an individual's ability to develop relationships with the outside world to a very significant degree and create serious difficulties for them as regards the possibility to earn their living (e.g., *Sidabras and Dziautas v. Lithuania* (application nos. 55480/00 and 59330/00)).

In my opinion, it is unnecessary in this context to decide whether the privacy right in the charter is of similar reach. The measures in the bill are not comparable to the more far-reaching restrictions that have been found to engage article 8(1) of the ECHR. The restriction is limited to employment in a specific industry, only extends for 5 to 10 years from the date of conviction (depending on the significance of the offending), and is not of a kind that will give rise to social stigmatisation of the sort comparable to that arising in many of the European cases.

Right not to be punished twice

Section 26 of the charter provides that a person must not be tried or punished more than once for an offence in respect of which he or she has already been finally convicted or acquitted in accordance with law. I have considered whether the clauses in the bill extending provisions in the act that require or, in certain circumstances, permit the chief commissioner to refuse or cancel a private security licence following conviction (clauses 9, 14, 15 and 19) limit the right not to be punished twice. In my opinion, they do not because they are not punitive in nature. A person who commits a disqualifying offence becomes a 'prohibited person' for the purposes of the licensing regime because the conviction is deemed, under the scheme of the act, to render him or her unfit to operate in the private security industry, not so that he or she can be further punished. The same can be said of provisions in the act that give the chief commissioner the discretion to refuse to grant a licence on the basis of previous offending. It is clear from the act that any such refusal would be because the chief commissioner considers that the offending renders the person unsuitable to hold the licence rather than for any punitive motive.

Clause 19 of the bill (amending section 61(a)(i) of the act) makes provision for a court to cancel or suspend a licence upon convicting the individual of any offence. It is less clear that this provision does not contain a punitive purpose since the measure appears to be in the discretion of the court and is not clearly tied to considerations of a convicted individual's fitness to operate in the private security industry. However, in my view, an order under section 61(a)(i) of the act is properly regarded as part of the available suite of punishments directly consequent on conviction and, accordingly, does not constitute a second punishment. This conclusion is confirmed by the fact that the order is made by the same court that made the conviction within the same criminal proceedings that resulted in the conviction. For that reason, the right not to be punished twice in section 26 of the charter is not engaged.

Right to property

Section 20 of the charter provides that a person must not be deprived of his or her property other than in accordance with law. It is conceivable that private security licences could be regarded as property for the purposes of this right due to their pecuniary value. However, since deprivations under the act, as extended by the bill, are clearly provided for under law, they do not, in my view, limit the right. Further, the procedures for internal and external review of decisions cancelling a licence (which I discussed above) provide a valuable safeguard against arbitrary deprivation of any property interest.

Conclusion

For the reasons given above, I consider that the bill is compatible with the charter.

Justin Madden, MLC
Minister for Planning

Second reading

Ordered that second-reading speech be incorporated into *Hansard* on motion of Mr JENNINGS (Minister for Environment and Climate Change).

Mr JENNINGS (Minister for Environment and Climate Change) — I move:

That the bill be now read a second time.

Incorporated speech as follows:

The private security industry plays a vital role in preventing and detecting crime and in maintaining good order, public safety and security of property. In Victoria, there are approximately 25 000 licensed individuals and 650 licensed businesses who are involved in providing personal and public security services. They work as crowd controllers, security guards, investigators, and bodyguards — that is, the so-called manpower sector of the industry — in a wide variety of roles and in a diverse range of places, such as major sporting, musical and cultural events, shopping malls, pubs and nightclubs, and other entertainment venues. In all cases, they make social interaction safer and property more secure. The demand for their services rises when a large, seasonal event takes place — for example, at the Australian Open in Melbourne in January each year, when many additional security guards and crowd controllers are required for the duration of the tournament. In these circumstances, this increase in demand is met by using interstate guards and controllers.

The Private Security Act supports this industry and regulates those who participate in it. It does this by ensuring that those who work as security guards and crowd controllers and the like are suitable for the activities that they carry out and are not recently found guilty of offences that would compromise their integrity. It also stipulates that the regulator of the industry is able to impose a certain minimum and relevant standard of training on members of the industry.

The Private Security Amendment Bill will amend the Private Security Act so as to provide even greater public confidence in the private security industry and to allow participants in the industry to take up work around Australia with increased ease.

It does this by:

introducing new licensable activities and clarifying the scope of existing ones;

prescribing additional offences — such as offences that involve assault, dishonesty, firearms, robbery, drugs, and terrorism — and thresholds that will result in mandatory disqualification from being licensed for a number of years;

making fingerprinting of licence applicants mandatory for identity verification and ongoing probity monitoring; and

allowing the regulator, namely, the Chief Commissioner of Police, to refuse a licence or cancel an existing one if the applicant or holder is the subject of criminal intelligence such that his or her presence in the industry would be against the public interest, subject to the applicant having the decision reviewed in VCAT.

As a result of the Council of Australian Government's directive, all Australian states and territories are bringing their private security legislation in line with the changes now being made to the Victorian act. This will help harmonise the law that applies to the manpower sector and will facilitate those persons from interstate to assist Victoria in its times of greater need in private security services while also helping Victorians travel and work elsewhere in Australia.

I commend the bill to the house.

Debate adjourned for Mr DALLA-RIVA (Eastern Metropolitan) on motion of Mr Koch.

Debate adjourned until Thursday, 19 August.

TRADITIONAL OWNER SETTLEMENT BILL

Introduction and first reading

Received from Assembly.

Read first time on motion of Mr JENNINGS (Minister for Environment and Climate Change).

Statement of compatibility

Mr JENNINGS (Minister for Environment and Climate Change) tabled following statement in accordance with Charter of Human Rights and Responsibilities Act:

In accordance with section 28 of the Charter of Human Rights and Responsibilities, I make this statement of compatibility with respect to the Traditional Owner Settlement Bill 2010.

In my opinion, the Traditional Owner Settlement Bill 2010, as introduced to the Legislative Council, is compatible with the human rights protected by the charter. I base my opinion on the reasons outlined in this statement.

Overview of bill

The bill seeks to:

(a) recognise certain groups of Aboriginal people as the traditional owners of particular lands in Victoria and give effect to particular rights of these traditional owners over these lands, as recognised by the state in the bill;

(b) provide an alternative mechanism for the resolution of native title claims in Victoria through the making of agreements with traditional owners which offer a range of benefits, including rights equivalent to native title, in return for withdrawal of native title;

(c) provide for access to management, ownership and/or procedural rights to Aboriginal people in relation to future use and development of certain lands and natural

resources to which they have Aboriginal traditional and cultural associations;

(d) provide for the making of agreements between the state and traditional owner group to give effect to those rights and interests and the making of related and consequential amendments to other acts.

The bill is enabling legislation that creates a framework for agreement making between the state and a given traditional owner group entity for an area of Crown land. The legislation will only be given effect as and when the Attorney-General, on behalf of the state, enters into a recognition and settlement agreement (RSA) with a traditional owner group entity.

The bill is in the following parts:

Part 1 provides the preamble, purpose and definitions.

Part 2 sets out the structure for agreement making. The RSA is the overarching agreement that primarily recognises the traditional owner group entity as the traditional owners for an area and enables the recognition of certain rights of traditional owners over public land that is subject to the agreement. The RSA includes four sub-agreements, being a land agreement, a land-use activity agreement, a funding agreement and a natural resource agreement.

Part 3 of the bill enables the making of a land agreement which may include grants of unreserved Crown land with or without conditions (clauses 14 and 15); appointment of a traditional owner land management board over public land (clause 12(7)(b)), and the grant of public land to the traditional owner group for the purposes of joint management with the state as reserved public land (clause 19).

Part 4 enables the establishment of land-use activity agreements which provide a new streamlined regime for recognising traditional owner rights in public land when activities occur on that land, whilst accommodating third-party interests. These agreements replace the future acts scheme under the Native Title Act 1993 and are analogous with this scheme.

Part 5 provides for the provision of funding to the traditional owner corporate entity through the establishment of a trust that provides annual income to ensure the traditional owner corporate entity can fulfil its responsibilities under the agreement into the future.

Part 6 enables the making of a natural resource agreement to facilitate traditional owners access to and use of natural resources for personal, domestic and non-commercial communal needs.

The bill also amends the Conservation, Forests and Lands Act 1987 to link RSAs to the appointment of traditional owner land management boards under that act, which are the vehicle for delivering joint management of public land, as well as making consequential amendments to other legislation.

Human rights issues

1. Human rights protected by the charter that are relevant to the bill

Section 19(2) — Distinct cultural rights of Aboriginal people

Consistent with international human rights instruments, including the United Nations Declaration on the Rights of Indigenous Peoples, section 19(2) of the charter provides that Aboriginal persons hold distinct cultural rights and must not be denied the right with other members of their community to enjoy their identity and culture; to maintain and use their language; to maintain their kinship ties; and to maintain their distinctive spiritual, material and economic relationship with the land and waters and other resources with which they have a connection under traditional laws and customs.

This bill is a significant milestone in the ongoing protection of these rights and an important step to ensuring the rights can be fully exercised. The bill recognises that Aboriginal people have lived for more than a thousand generations in this state and have maintained complex societies with many languages, kinship systems, laws, polities and spiritualities. They enjoyed close spiritual connections with their country and developed sustainable economic practices for their lands, waters and natural resources. Through this bill, the state will make agreements which formally recognise particular traditional owner groups and their traditional and cultural association with an area of Victoria. In doing so, the bill promotes the rights contained in section 19(2)(a) and (d) of the charter. These rights are specifically incorporated in the bill in clause 9.

In particular, agreements provided for in this bill will afford traditional owners unique rights to own or manage certain public lands identified in an agreement, access and use certain land and natural resources within the agreement area, and be involved in defined decision-making processes that affect Crown land. The making of agreements directly linked to those lands and natural resources gives practical effect to the continued exercise of the relationship that Aboriginal people have to their traditional lands and the ability to continue to enjoy culture on that land.

Also, relevant to section 19(2)(d), clause 93 ensures that traditional owner groups with whom the state makes an RSA will have sole responsibility for the management and protection of Aboriginal cultural heritage within their agreement area under the Aboriginal Heritage Act 2006 on application to the Victorian Aboriginal Heritage Council.

The bill protects and allows for the continued expression of the rights at section 19(2)(d) of the charter whilst also allowing for the continued expression of the other cultural rights that are not tied specifically (or solely) to land at sections 19(2)(b) and 19(2)(c) of the charter. It also does not affect the continued enjoyment of identity and culture more broadly by Aboriginal people (section 19(2)(a)).

Section 8 — Recognition and equality before the law

Section 8(3) of the charter provides that every person is equal before the law and is entitled to the equal protection of the law without discrimination and has the right to equal and effective protection against discrimination.

This bill takes positive steps to advance the rights of the Aboriginal traditional owners of Victoria. It does so by recognising, protecting and providing for the exercise of cultural rights by Aboriginal people over areas to which they have traditional and cultural association by providing for grants of land to traditional owners, including culturally significant land, and for joint management of public land.

The rights to which this bill relates belong to a distinctive group of people in Victoria, not to all Victorians. They are rights to land that belongs to Aboriginal people who can demonstrate traditional and cultural association with the land. Non-Aboriginal people as well as Aboriginal people who do not have a traditional and cultural association with that land do not hold these rights. This is a distinction already recognised at section 19(2)(d) of the charter.

Providing for the exercise of certain rights over Crown land by Aboriginal people who can demonstrate traditional cultural associations but not to others is essential to implement section 19(2) of the charter and is not discriminatory. However, if any discrimination does occur, section 8(4) of the charter further provides that measures taken to assist or advance persons or groups of persons disadvantaged because of discrimination do not constitute discrimination. This bill seeks to restore some of the traditional rights that Aboriginal people enjoyed for more than a thousand generations prior to the arrival of Europeans in Victoria. The failure of the common law to recognise native title and traditional ownership of land discriminated against the property rights of Aboriginal people. This bill is only one step in the long process of addressing this discrimination which was deeply entrenched in our legal system prior to the High Court decisions in *Mabo v. Queensland* (No. 1), 1989 166 CLR 186; and (No. 2), 1992 175 CLR 1. The High Court has also recognised in those decisions that acts which extinguish the property rights (native title) of Aboriginal people specifically are discriminatory.

The failure of previous governments to redress this discrimination and to recognise and protect the rights of Aboriginal people to lands in Victoria has given rise to historical disadvantage which this bill seeks to address. This bill is one of the many measures that must be taken to redress this disadvantage.

Section 12 — Freedom of movement

Clause 13 sets out that if a land agreement provides for the grant of an estate in fee simple in land that is the subject of the agreement, the minister must take steps to recommend to the Governor in Council that an estate in fee simple be granted to the traditional owner group subject to the conditions in the agreement. The granting of land in fee simple under the bill may result in public land becoming private land held by the traditional owner group. In limited cases, people who had previously accessed the land whilst in public ownership, either formally or informally, may be prevented from doing so by the provisions under this bill. In my view, the limitation is reasonable and demonstrably justified in a free and democratic society under section 7(2) of the charter, for the reasons discussed below.

Section 13 — Privacy and reputation

Section 13 of the charter guarantees the right not to have one's privacy unlawfully or arbitrarily interfered with. An interference with privacy will not be unlawful if it is permitted by law, certain and appropriately circumscribed. An interference will not be arbitrary if the restrictions on privacy it imposes are reasonable in the particular circumstances and are in accordance with the provisions, aims and objectives of the charter.

Pursuant to clause 3 of the bill, in order to recognise a 'traditional owner group', the Attorney-General may require the provision of personal information in order to be satisfied that the members of the group are the traditional owners of the land, based on Aboriginal traditional and cultural associations with that land. Such personal information may include a person's name and address and information about their family, including genealogical information. This requirement engages the right to privacy in section 13 of the charter.

The interference with privacy, however, is not unlawful or arbitrary. The provision of private information occurs with the consent of the traditional owner group in accordance with the law. The interference with privacy is not arbitrary because the request for information will be limited to such information as is necessary to ascertain who has connections with the land in order to identify the particular Aboriginal group. Without such information it would be impossible for the scheme to operate. Further, in performing his or her functions under the bill, the Attorney-General has an obligation to act in accordance with the charter and privacy legislation and not to seek any information that is not relevant to the decision to gazette a 'traditional owner group'. For these reasons the right to privacy is not limited.

Section 20 — Property rights

Section 20 provides that a person may not be deprived of their property except in accordance with the law.

The bill does not affect the property rights of individual people as the granting of land and procedural rights over land only apply to Crown land and the charter does not protect the property rights of the Crown. The introduction of the bill will not affect any existing property rights, in particular, land-use agreements do not apply to any rights such as leases that are in existence at the time at which a land-use activity agreement is registered (clause 73(2)).

Part 3 (division 4) of the bill enables the granting of Aboriginal title, being an estate in fee simple, of some Crown land to traditional owner groups for the purpose of joint management with the state. The granting of Aboriginal title to traditional owner groups is always subject to a standard set of limitations on the grant, and the grant can only be made after the commencement of an agreement that includes special provisions which enable the Crown to regain its authority to manage the land.

The limitations include, among other things, that Aboriginal title is inalienable (clause 19(2)); the land is taken to be land reserved for the purposes for which it was reserved immediately before the grant (clause 20(2)); and that the right to occupy, use, control and manage the land is transferred to the Crown (clause 20(1)). Any existing interests in the land, such as leases and other use and occupation rights, will be initially extinguished to accommodate the making of the grant, but will be automatically reinstated by the legislation as if the grant had not been made.

While the granting of Aboriginal title places conditions on the use of that property by traditional owner groups, it cannot be described as deprivation of property because it recognises traditional owner property rights where no such recognition previously existed.

Traditional owners who are native title holders or who may hold native title have certain rights over Crown land recognised at common law and subject to the Commonwealth Native Title Act 1993. To the extent that these rights are property rights, the bill may engage with the right to property of these traditional owners. The bill enables agreements to be made which may be implemented in whole or in part by an indigenous land-use agreement under the Native Title Act. Through such a mechanism, traditional owners may, by agreement, opt out of the protection of their rights afforded by future act system of the Native Title Act 1993 in favour of a land-use activity agreement provided for at part 4 of the bill. Such a process would be by agreement and in accordance with the law and, in my view, would not limit the right to property under the charter.

Under part 4 of the bill, traditional owners may also have their property rights recognised in the bill affected by a decision by the Victorian Civil and Administrative Tribunal (VCAT) or the minister. In such cases the minister and the VCAT would be bound in each individual case to act compatibly with the charter and as such, any deprivation of property would be in accordance with law and not arbitrary.

I am satisfied that the bill does not limit the right to property.

Section 24 — Right to a fair hearing

Division 3 of part 4 of the bill deals with negotiation, arbitration and determination processes in relation to land-use activities. A 'traditional owner group entity' or a 'responsible person', as defined in the bill, has the right to apply to VCAT for a determination. Proceedings at VCAT clearly fall within the scope of section 24 of the charter and are compatible with that right.

Subdivision 3 of part 4 allows the minister to request VCAT to determine the matter within a specified time that is not less than six months. The minister can only exercise this power in certain limited circumstances, namely, where the matter is urgent and at least four months have passed since the application to VCAT was made. Where VCAT fails to make a determination within the specified time and the minister is satisfied that the VCAT is unlikely to determine the matter within a reasonable period after that, the minister may determine the matter himself or herself where he or she is satisfied that it is in the interests of the state to do so. The minister can also substitute a VCAT determination where he or she is satisfied that it is in the interests of the state to do so.

The minister, who is not an 'independent court or tribunal', has no obligation to comply with section 24 of the charter in exercising powers under subdivision 3 of part 4. However, clause 63 of the bill provides that the minister will afford procedural fairness by allowing each party to make written submissions and make written comments in response to submissions made by other parties involved in the matter.

However the minister and the VCAT would each be subject to judicial review in the Supreme Court pursuant to the Administrative Law Act 1978. I am satisfied that the processes created by part 4 of the bill do not limit the right to a fair hearing.

2. Consideration of reasonable limitations — section 7(2)

Section 12 — Freedom of movement

(a) the nature of the right being limited

Section 12 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. This right may be limited where Crown land with current public access is granted to traditional owner groups as freehold title and that access is reduced or denied.

(b) the importance of the purpose of the limitation

As noted in the discussion above, land agreements under this bill serve a number of important purposes, including providing for the protection and promotion of Aboriginal cultural rights by increasing the access that Aboriginal traditional owners have to their traditional lands and also to address past discrimination against Aboriginal people in Victoria. The granting of land would be a component of the overall settlement package with a traditional owner group which is in lieu of future compensation claims.

(c) the nature and extent of the limitation

The bill sets out the conditions in which a recognition and settlement agreement may be entered into and what land may be granted as part of an agreement. Clause 12(2) states that only unreserved public land may be granted as an estate in fee simple. Further, clause 12(4) requires the consent of the minister administering the land and clauses 12(7), (8) and (9) state that a grant may be subject to certain conditions. In determining whether to give his or her consent, the minister would be bound to act in accordance with the charter. In doing so, the minister may take into account any significant public interest, including public access, to determine whether or not a parcel is appropriate for transfer, and/or any conditions on the transfer. Furthermore, parcels of land which might be granted to traditional owner groups, being only unreserved Crown land, may in some cases be already subject to restricted access.

(d) the relationship between the limitation and its purpose

There is a direct relationship between the limitation and the purpose of promoting Aboriginal cultural rights, settling land claims of traditional owner groups and redressing past discrimination.

(e) any less restrictive means reasonably available to achieve its purpose

There are no less restrictive means reasonably available to achieve the intended purposes.

Conclusion

I consider the bill is compatible with the Charter of Human Rights and Responsibilities because the provisions in the bill do not in any way limit human rights but rather enhance the distinct cultural rights of Aboriginal people recognised at section 19(2) of the charter.

Gavin Jennings, MLC
Minister for Environment, Climate Change and Innovation

Second reading

Ordered that second-reading speech be incorporated into *Hansard* on motion of Mr JENNINGS (Minister for Environment and Climate Change).

Mr JENNINGS (Minister for Environment and Climate Change) — I move:

That the bill be now read a second time.

Incorporated speech as follows:

Introduction

When Prime Minister Paul Keating introduced what is now the Native Title Act into federal Parliament in 1993, he described it not only as a 'milestone' but as an 'opportunity':

> an opportunity to respond to the challenge of the Mabo decision and to end what he termed as 'the pernicious deceit of terra nullius'; and
>
> an opportunity to forge a new relationship between indigenous and non-indigenous Australia.

Since that time, of course, Victoria has seized similar opportunities.

In 2004, our government recognised — in our constitution — Victoria's Aboriginal people as the 'original custodians of the land', which makes up the state of Victoria.

And in 2006, Victoria's Charter of Human Rights and Responsibilities recognised that Aboriginal people have distinct cultural rights — including the right to 'enjoy their identity and culture' ...

... and the right to 'maintain their distinctive spiritual, material and economic relationship with the land, waters and other resources to which they have a connection under traditional laws and customs'.

These simple acts of recognition — both straightforward and transformative — were long overdue, and I am very proud that they were finally achieved by a government of which I am a member.

But despite the progress we have made there is still much work to do and many more opportunities to seize.

One of those opportunities is land justice — the recognition of relationship to country and all that this relationship entails.

The bill I present to the house today signals the government's intention to make good on this opportunity.

This bill provides for the recognition of distinctive traditional owner groups in Victoria, identified by their group name, and to enter into agreements that give effect to the rights they hold in land and natural resources in concrete and meaningful ways.

The native title journey

Let me first explain why we are taking this step and seizing this opportunity.

Until now, traditional owner groups have had no concrete avenue for the recognition of their rights in land, other than through the commonwealth's native title system — a complex legal system that was never intended to address land justice in the more settled regions of Australia.

Despite the constraints of this legislation, our government has been determined to heal some of the damage caused by the Kennett government's litigious approach, which resulted in the negative determination of the Yorta Yorta claim.

That is why we have entered into a cooperative management agreement that recognises the Yorta Yorta as traditional owners of their country. Through negotiation, rather than litigation, we have also achieved two consent determinations under the Native Title Act — one with the Wimmera peoples in 2005 and another with the Gunditjmara people in 2007.

These achievements, however, have been against the odds — confined within the walls of a relatively narrow approach under the Native Title Act.

The Native Title Act approach

While the Native Title Act represents a major step forward for Australia, there are nevertheless certain shortcomings in the approach taken under the act. Firstly, it examines whether previous grants have extinguished native title, and this requires a costly, complex, parcel-by-parcel investigation of historical tenures.

And, secondly, it seeks to determine whether claimants still hold a customary title that must have survived 180 years of European colonisation. This means Aboriginal people are required to prove that they have maintained a continuous connection with their country and that they form a society with a normative system of law and custom significantly unchanged since the beginning of colonisation.

Of course, in Victoria's case this test is almost impossible to meet given the rapid occupation of the land since settlement. For example, between 1851 and 1861, Victoria's migrant population doubled nearly four times over.

And in the century that followed, we saw a raft of government policies which greatly impacted those Aboriginal people who survived the earlier onslaught of disease, violence and dispossession. This included policies which sought to either exclude Aboriginal people from the population or absorb them imperceptibly within it.

Either way, ties to country were often severed.

Despite this legacy, Victoria's traditional owners survived — through sheer resilience, determination and heroism.

Law and custom, cultural practices and traditional owner identities endure. Yet the events and policies of nearly two centuries cast traditional owners from country, broke their means of subsistence and undermined their systems of law and relationships to country and to each other.

This, of course, makes the task of meeting contemporary connection tests almost insurmountable.

Missed opportunities

The native title system has also not functioned well for those who manage or want to do business on Crown land. It has caused confusion and delay for government, public utilities, park managers and, for example, industry wanting to do business on Crown land, such as the mining and forestry sectors.

The reality is that when there is a possibility that native title may one day be claimed or might one day be found by the courts to exist, the actions of land managers or developers or miners on Crown land are delayed by the complex future acts regime of the Native Title Act.

In the meantime, opportunities to work with traditional owners — to do business, to contribute to economic self-sufficiency, to harness knowledge in land management — are also being missed.

The need for reform is clear — and even clearer when you consider that since 1994, questions of native title have been resolved over only 15 per cent of Crown land — and it has taken too much time.

For example, the Yorta Yorta endured 8 years of litigation; the Wimmera people's claim took 10 years; and the Gunditjmara, 11.

And for the Gunaikurnai people of Gippsland — the next claim close to completion — it is 13 years since they first lodged their claim. And with 14 claims still outstanding, it will take over 50 years to resolve native title in Victoria at this rate of resolution.

What is more, the financial cost has been large — more than $40 million from the public purse — of which 80 per cent has been associated with the technical nature of determining whether native title is extinguished.

Meanwhile, the businesses and industries who want to utilise Crown land have been left waiting on the sidelines.

An alternative approach

It is time then, President, to seize a new opportunity — and find a new way — that works for Victoria.

A new way that delivers the practical and symbolic recognition of traditional owners' rights in Crown lands ...

... and a new way that provides certainty to land managers, to industry and to developers.

That is why, in 2008, our government established a steering committee for the development of a native title settlement Framework.

That steering committee was chaired by prominent indigenous Australian and 2009 Australian of the Year, Professor Mick Dodson. It brought together key government agencies, traditional owner representatives from the peak Victorian Traditional Owners Land Justice Group, and representatives from Native Title Services Victoria.

This was an unprecedented collaboration and I want to take this opportunity to thank the committee members for their work and acknowledge the pivotal role of the Victorian Traditional Owners Land Justice Group.

Last year, this government adopted the steering committee's report and recommendations, subject to a funding contribution from the commonwealth, which was looking for a new direction in native title.

In June this year, we entered into a national partnership agreement to assist settlements under this bill, under which we will continue to press the commonwealth to share funding for future settlements.

Meanwhile, relevant agencies have been building the framework for bringing this alternative system into operation — all with the backing of enthusiastic stakeholders.

Overview of the bill

This bill establishes the legal framework for a state-based system that enables the government to enter into agreements directly with traditional owner groups, outside any court setting.

Through these agreements, the government will recognise traditional owner groups based on their traditional and cultural associations to certain land in Victoria and recognise their rights in relation to access, ownership, management, use, and development of certain public land.

The bill's approach is to put the question of native title to one side in exchange for recognition and a range of benefits related to that recognition.

Traditional owner groups will agree to withdraw existing native title claims, if they have one, and agree to not make native title or compensation claims into the future.

This is an important step forward because these agreements continue in perpetuity, and will give all the parties finality and certainty.

The agreement is registered as an indigenous land-use agreement under the Native Title Act and all potential native title claimants are legally bound to that agreement. It will also allow for existing settlement groups such as the Gunaikurnai people to take up these new options.

Some key definitions and terms

Let me draw attention to some important definitions.

First, the term 'traditional owner group' allows for recognition by the state, where it is due, without reliance on the determination of native title, and yet it is compatible with the positive determinations of native title made to date.

Government still requires those seeking traditional owner recognition to show that they are descended from the Aboriginal people present at the time of European settlement, and to demonstrate their relationship with, or association to, their country. This is a necessary and rigorous standard, and one that traditional owners also support for their own cultural integrity.

Secondly, the bill recognises the rights held by traditional owner groups. This is unique to the Victorian approach.

The Native Title Act left the question of what constituted native title rights and interests to each native title group to define in accordance with their law and custom.

Yet determinations over the last 17 years have recognised interests which are remarkably similar in form — for example, rights to fish, hunt and gather, to camp, to use and enjoy land, to conduct cultural and spiritual activities, to protect places of significance.

This bill defines these rights — and in doing so ensures clarity for all concerned.

It sets out the traditional owner rights that the state will recognise wherever it enters into a traditional owner settlement, rights consistent with Victoria's Charter of Human Rights and Responsibilities.

The traditional owner rights recognisable under the bill are, of course, qualified or limited by other laws of the state, including the bill itself. Existing rights and interests of persons other than traditional owners remain unaffected. This includes existing rights of public access, and rights to use Crown land and resources under existing leases, licences, permits and authorisations.

Agreement making

To return to the agreement-making provisions of the bill, the bill empowers the Attorney-General to enter into a recognition and settlement agreement with a traditional owner group entity for a given area.

Four subagreements sit below a recognition and settlement agreement, each of which is an agreement in its own right, and which will be entered into simultaneously by the state and a traditional owner group entity.

The four subagreements require the consent of relevant ministers who administer legislation with which the bill will interact. This ensures a coordinated, whole-of-government approach.

Land agreements

The first of these agreements — land agreements — deals with granting land or joint management of land and will increase the access of traditional owners in Victoria to their traditional lands in four ways:

Handing back of freehold over unreserved public land without ongoing conditions.

Handing back of freehold over unreserved Crown land, subject to conditions which might include restrictions on the title or conditions about how the land is managed into the future.

Establishing a Traditional Owner Land Management Board over public land.

On this point there are many instances of joint management operating across Australia. Joint management preserves valuable traditional knowledge and cultural practices and applies this knowledge to conservation, land and resource management. Importantly, joint management also creates employment and economic opportunities for traditional owners.

And lastly, handing back Aboriginal title to traditional owners over public land, for ongoing joint management.

This involves new legal constructs and concepts for Victoria, and as such, it warrants special mention.

Aboriginal title can be granted over any public land, including national and state parks. The traditional owner group entity will become the owners in perpetuity with conditions. The estate held by the traditional owner corporate entity will be inalienable and unable to be encumbered. It is worth noting that state game reserves are not subject to these provisions, recognising their special status to the state's hunting groups. The agreement will ensure that the state will continue to use, occupy, control and manage the land.

Similar arrangements have been in place for decades in other jurisdictions.

Land-use activity agreements

The next form of agreement — land-use activity agreements — will replace the future acts regime in the commonwealth system and will recognise and protect traditional owner rights in public land, as well as existing third party rights.

It will set in place a process whereby activities on Crown land will be able to proceed and traditional owners and proponents will both be provided with procedural rights broadly analogous to those under the Native Title Act.

Under the bill, a land-use activity is defined by reference to common activities that are carried out on, or affect, Crown land, such as building works by a land manager, approval of mining activities, and so on. The definition is exhaustive, to provide certainty to land managers, Crown land users and developers and traditional owners alike.

A land-use activity agreement will operate over all Crown land within a given area of traditional owner recognition, but with agreed exclusions, such as areas with existing infrastructure and Crown land set aside for identified future uses.

The land-use activity agreements will categorise future land-use activities on Crown land into four basic types — thus simplifying the 10 subdivisions of future acts in the Native Title Act. They are:

routine;
advisory;
negotiation; and
agreement activities.

Each of these types will each afford a different level of procedural rights and responsibilities to the traditional owner group and the proponent responsible for carrying out the activity. And the level of procedural rights and requirements is commensurate with the likely impact of that class of activities on the recognised traditional owner rights in land.

In relation to negotiation activities, both parties are required to negotiate in good faith to seek to reach agreement about the activity proceeding, including any conditions to which the consent to proceed is subject, and the provision of any community benefits by the proponent to the traditional owner group entity.

'Community benefits' are broadly defined in the bill so as to allow flexible, negotiated outcomes that may provide an

economic, cultural or social benefit, as agreed by a traditional owner group entity.

Where a proponent and a traditional owner group entity are not successful in reaching agreement about negotiation activities proceeding, the Victorian Civil and Administrative Tribunal (VCAT) will act as a dispute resolution and arbitration body.

VCAT's determinations may be about conditions that apply to the negotiation activities, including whether a proponent must make a 'community benefit payment' — a payment of compensation for the impact of land-use activity on the traditional owner group's rights — and if so, then the amount and in some instances, the timing of payment.

The bill has built in mechanisms for dealing with delays and particularly urgent circumstances that might affect the state's interests.

Where a matter is considered urgent, the minister is empowered to request VCAT to make a determination within a particular time frame not less than six months from when the parties first applied to VCAT. If the time frame cannot be met, the minister may make a determination on the same terms that VCAT may.

Analogous with the Native Title Act and only in limited circumstances, the minister may also override a determination made by VCAT, but must indicate his or her intention to do so within one week of VCAT making a determination.

Like negotiation activities, agreement activities require good faith negotiations between the proponent and the traditional owner group entity to reach agreement that the activity may proceed.

Agreement activities are land-use activities with a significant impact, such as the sale of public land, and require the consent of the traditional owners.

Importantly, any land-use activity is exempt if it is for the purposes of emergency protection of human life, property or the environment.

By way of the land-use activity agreement between the state and the traditional owners being a part of an indigenous land-use agreement under the Native Title Act, all future act requirements under that act will have been consensually contracted out.

The land-use activity regime will extend its operation incrementally over the Crown land estate over time, as settlements are reached with each of the traditional owner groups across the state over the next decade or so. This gives land managers and land users time to adjust to what will be a simplified regime.

The bill provides that a register of land-use activity agreements is to be established, to enable proponents and land managers to easily identify whether a land-use activity agreement is in operation in a given area.

Funding agreements

Funding agreements will provide a sustainable funding base for traditional owner corporate entities to be able to perform their functions and meet their responsibilities into the future, including effective engagement in land-use activity negotiations with industry and developers.

Through the funding agreements, trusts will be established that deliver an annual income to recognised traditional owner group entities.

The trust will have a board of directors who will manage the funds for the benefit of the group entity and who will be appointed by the minister. The settlement package as a whole, including the establishment of the trust, represents a just and fair alternative to compensation entitlements under the Native Title Act.

Natural resource agreements

Natural resource agreements document the aspirations of traditional owner group members to non-commercial forms of access and use of natural resources.

The bill enables new, streamlined, fee-free authorisation orders to be issued to traditional owner group entities. These will cover hunting, the harvesting of certain plants and the taking of forest produce or water, but only for 'traditional purposes' — that is, for any personal, domestic or non-commercial communal needs of traditional owner group members.

In relation to fishing, regulations will be developed to exempt traditional owners from the need to hold a recreational fishing licence.

The rights recognised under authorisation orders will, of course, be subject to laws of general application such as for firearm use, public health, public land management and safety and environmental protection. All existing rights of use and access currently enjoyed by all Victorians continue unaffected.

Conclusion

Our government has been determined to do things differently — to build an alternative approach, and a better approach, to land justice in Victoria.

The Traditional Owner Settlement Bill is about recognising the special relationship Aboriginal people have with their land, and it sets the pieces in place for a meaningful and practical recognition of our unique traditional owner groups in Victoria.

It represents a new approach, which will:

fast-track resolution of claims lingering in the courts;

end public expenditure on limited outcomes;

provide for the good management and appropriate development of Crown lands and natural resources; and

foster positive relationships between the government and Victoria's traditional owners.

And the result of these reforms will see improved processes, quicker outcomes and more certainty for all those people involved in, and affected by, the native title process.

This is a landmark reform — but we could not have done it alone.

I want to again acknowledge the outstanding work of the steering committee and its chair, Professor Mick Dodson. They have done a wonderful job.

I want to also commend and thank the Victorian Traditional Owner Land Justice Group for the leadership and goodwill they have provided. We would not have been able to progress this important reform without a cohesive peak body representing Victoria's traditional owners.

I would also like to acknowledge the Attorney-General and Deputy Premier, the Minister for Aboriginal Affairs and the minister for the environment for their hard work and the hard work of their departments in the development of this bill.

The Traditional Owner Settlement Bill is another important act of recognition. It is a very positive step forward for our state and another step along the path to true and lasting reconciliation.

I commend this bill to the house.

Debate adjourned on motion of Mr RICH-PHILLIPS (South Eastern Metropolitan).

Debate adjourned until Thursday, 19 August.

PERSONAL PROPERTY SECURITIES (STATUTE LAW REVISION AND IMPLEMENTATION) BILL

Second reading

Debate resumed from 29 July; motion of Mr JENNINGS (Minister for Environment and Climate Change).

Mr RICH-PHILLIPS (South Eastern Metropolitan) — I am pleased to make some brief remarks on the personal property security bill before the house this evening. This is the second time that the Parliament has been asked to pass legislation with respect to personal property securities in connection with the referral of those provisions to the commonwealth. The purpose of this bill is to make consequential and other amendments in relation to the commencement of new commonwealth legislation to establish a national personal property security scheme. The provisions of the bill are to repeal various parts of Victorian legislation being superseded by the commonwealth scheme.

The bill closes various registers currently kept under state law. It allows information kept on registers under state law to be transferred to the commonwealth scheme. The bill excludes various rights under state law from the definition of personal property and thus from the commonwealth scheme — for example, casino and gambling licences, racing licences, electricity and gas industry licences, fishing industry licences, exploration mining and petroleum licences — and the bill provides for the determination of priorities for collateral under various state acts and the commonwealth act.

Last year when the Parliament was asked to deal with the principal referral to the commonwealth the coalition parties took the position that we were supportive of the move to a national uniform scheme for personal property securities. Indeed it was a scheme that had been initiated by the previous federal government under Philip Ruddock as commonwealth Attorney-General, and the coalition parties are supportive of putting in place a consistent commonwealth framework for the protection of the registering of personal property securities.

We did, however, at that time have a number of concerns with respect to how the referral to the commonwealth was going to operate. Most notably we were concerned about differences in definitions between the Victorian legislation and the legislation that was then before the commonwealth Parliament — the Senate — at the time. There were substantial differences between definitions in the two bills at the state and commonwealth level. We also had concerns with respect to how the federal legislation was to be finalised — as I said, it was at that stage in the Senate, or about to reach the Senate — given that the relevant Senate standing committee had made a number of comments on the commonwealth bill which had the potential to affect the outcome of that legislation.

The other area we had concerns with in relation to the referral last year was the potential overlap between existing common-law and statutory entitlements for personal property securities and the impact of the commonwealth referral, and where those existing statutory and common-law provisions would continue to operate in Victoria. We had some explanation provided by the minister at the table at the time with respect to those matters, but to date, with the regime obviously yet to come into effect, we are yet to see that those matters have been adequately addressed in the final implementation.

That said, we are of the view that the shift to a commonwealth-based personal properties regime is an important move and one that we should be supporting, notwithstanding our ongoing concerns about the technical structures of the referral from the state to the commonwealth and the need to ensure that the transitional arrangements and the residual arrangements in Victoria are adequately accommodated in the structure and substance of the referral. With those few

words, I record that the coalition will not oppose this bill.

Ms PENNICUIK (Southern Metropolitan) — In October last year the Parliament passed the Personal Property Securities (Commonwealth Powers) Bill, which referred legislative power to the Australian Parliament to enact a personal property securities act and establish a scheme which is designed to provide a single registration scheme for security interests over personal property which is not land or buildings to replace the state-based schemes. It seems that since then New South Wales, South Australia and Queensland have also referred their powers, and it is anticipated that the other jurisdictions will do so this year. This is the second tranche of amendments required in order to complete that process of transferring the scheme from a state-based to a national one. I have had a look through the bill, and we do not have any concerns with it and are pleased to support it.

Mr TEE (Eastern Metropolitan) — I will speak briefly on the Personal Property Securities (Statute Law Revision and Implementation) Bill. The purpose of this bill is to provide a framework for Victoria to make way for a new commonwealth-administered system around personal property securities. The bill will facilitate the introduction of the new national register, which is an important reform. The bill is about ensuring that there is a smooth transition to that new commonwealth-administered framework. The transition will be achieved through this bill by allowing the transfer of information on some of Victoria's property registers to the national register. The bill facilitates the transfer of that information, but it does so in a way which will protect the existing rights attached to security interests. The bill also ensures that none of those rights is lost during the changeover period.

This bill is an important part of national reform and will ensure that we simplify the regulatory system. The legislation will benefit Victorians by saving time and money. It is about cutting the unnecessary administrative burden for business across the state, and it will ensure that the legal and administrative maze that is faced by consumers and small businesses in particular is minimised. We welcome the bill and the achievements that are included therein.

Motion agreed to.

Read second time.

Third reading

Mr JENNINGS (Minister for Environment and Climate Change) — By leave, I move:

That the bill be now read a third time.

I am almost flabbergasted by the speed at which we have considered this matter. I thank members for their expeditious treatment of this bill.

Motion agreed to.

Read third time.

ENERGY AND RESOURCES LEGISLATION AMENDMENT BILL

Second reading

Debate resumed from 29 July; motion of Mr JENNINGS (Minister for Environment and Climate Change).

Mr HALL (Eastern Victoria) — I am happy to have the opportunity to present the Liberal-Nationals coalition response to the Energy and Resources Legislation Amendment Bill. At the outset I can indicate that we are not opposing this legislation. We have had some discussions with the government in respect of the amendments that it would like to put forward, and also an amendment which the Liberal-Nationals coalition would like to put forward. I am pleased to say there appears to be agreement between both parties to support the transmission of both those sets of amendments, which is a good outcome.

This is a significant piece of legislation, which amends a multitude of acts, including the Electricity Industry Act 2000, the Electricity Safety Act 1998, the National Electricity (Victoria) Act 2005, the Energy Safe Victoria Act 2005 and the Gas Industry Act 2001 — a range of energy-related legislation. The bill amends a number of acts relating to resources — for example, the Mineral Resources (Sustainable Development) Act 1990 and the Petroleum Act 1998. The bill also repeals the Mines Act 1958, as well as making a number of other amendments, not the least of which is an amendment to the Aboriginal Heritage Act 2006. It amends a range of other acts, including the Victorian Renewable Energy Act 2006 and others — and the list goes on.

I am not going to take the house through every single one of those amendments relating to each of those acts, because we would be here all night. I do not need to repeat much of the arguments for and explanations of

some of those amendments, given that I know the Assembly has had a fairly extensive debate on much that is in the bill. The minister and the shadow minister in the other place have been involved in debate and discussions on particular matters contained in this bill.

However, it is important to talk about the catalysts for some of the amendments to these acts. The 2009 Victorian Bushfires Royal Commission has been the catalyst for a number of amendments relating to bushfire mitigation and to the Electricity Safety Act and the role undertaken by Energy Safe Victoria. It was as a result of the experience of the bushfires and ultimately some recommendations made by the royal commission into the 2009 Victorian bushfires that led in large part to a number of the amendments contained within this bill.

Firstly, I would like to mention the principles behind some of the more substantial amendments, particularly those that affect the energy acts. In relation to bushfire mitigation, there is going to be an expanded role for Energy Safe Victoria to take measures to bring about greater safety and mitigation of bushfires here in Victoria. The bill will do that by giving Energy Safe Victoria some oversight of the organisations which have input into the preparation for bushfire events, in particular the electricity companies. It has been noted that five of the January 2009 bushfires were attributed to electrical causes.

Mr Tee interjected.

Mr HALL — Another member of the chamber has indicated that government members would like to see the amendments which the opposition is proposing to circulate. I am more than happy to do that, and I presume the government will also circulate its amendments so we can all give some consideration to our amendments during the course of my contribution to the debate. I am more than happy at this time to have the amendments standing in my name circulated to the chamber.

Opposition amendments circulated by Mr HALL (Eastern Victoria) pursuant to standing orders.

Mr HALL — As I was saying, Energy Safe Victoria will play a significant role in the area of bushfire mitigation. One of the provisions within the bill requires electricity distributors to have bushfire mitigation plans. That plan needs to be provided by a distributor and approved by Energy Safe Victoria. If the distributor fails to provide a plan, then Energy Safe Victoria can direct that a plan be provided to a distributor. If disputes arise about that particular process, then those sorts of matters can be taken to the Victorian Civil and Administrative Tribunal by either party. Given the severity of bushfires in Victoria in 2009 and in other years when there have been significant bushfires and the contribution to fire risk that electricity power distribution networks pose, particularly on very windy, hot days, it seems appropriate that bushfire mitigation plans be in place, so that will occur.

There is also a role for Energy Safe Victoria to have oversight of the need to ensure that electricity distribution networks are free from interference from vegetation. The bill provides that in the area of tree growth, for example, Energy Safe Victoria is able to direct a specified person or persons to clear specified trees in areas around electrical lines if it is considered necessary to prevent future unsafe electrical situations. It is not clear what happens when there is some sort of difference or dispute and who takes precedence in respect of vegetation clearing — for example, a local government authority that has some controls which prevent vegetation clearing. The legislation does not make it clear who would have ultimate authority if Energy Safe Victoria insisted that vegetation be cleared as part of a bushfire mitigation plan.

I note that the government has circulated some amendments to this bill which I understand are the outcome of some decisions and recommendations made by the royal commission. I will leave the responsible minister to explain the government's own amendments with respect to that. In general I have to say from the coalition's point of view that we welcome that because when this piece of legislation was debated in the Legislative Assembly it was four days prior to the handing down of the royal commission's report into the bushfires. We said at that particular time that while we were prepared to support the bill during the Assembly debate, we needed to reassess that position in light of any recommendations that may have arisen from the royal commission.

I am pleased that the government has adopted the same view — that is, it has looked at the bushfires royal commission's recommendations and in light of some of them is now looking to make changes to its legislation to better reflect at least some of those recommendations. We welcome that view. The amendments I am proposing on behalf of the coalition are also as a result of some of the recommendations in the royal commission's report. I am pleased that both sides have been prepared to take into account some of the recommendations and move at the earliest opportunity to implement those in this piece of legislation.

The bill also makes some changes to the regulatory framework around smart meters, which are becoming a bit of a dirty word around Victoria at the moment because of the cost being incurred by all of us as electricity users in this state. As yet, no-one is getting any benefit whatsoever from our smart meters for that increased cost and that is certainly raising some ire within our communities. I say to the government that this is an area in which it has a lot of work to do because people are quite upset that they are being faced with the extra cost of meterage on every bill. In many cases people do not even have the smart meters yet. Smart meters are inoperable to the extent that there is no advantage whatsoever for anyone in Victoria now or in the foreseeable future. We do not know when they are going to save any of us any money. The potential time-of-use advantages of the smart meters have been delayed for some time and, as I said, I do not think anybody can tell us when in the foreseeable future there is going to be any economic or environmental advantage to be gained from the use of smart meters. I think it is a thorn in the government's side, and it will need to do more in this regard and assure Victorians that the costs they are currently incurring for smart meters will at least pay some dividends in the future.

There are a couple of amendments relating to various acts concerning resources, and some of those are the result of the outcome of the collapse of the Yallourn mine batter some years ago now. We have already had some legislation to address some of the provisions made as a result of the inquiry after that collapse, and here we see further provisions, being some changes to the Mineral Resources (Sustainable Development) Act and others, which are an outcome of the inquiry that followed the collapse of one of the walls in the Yallourn mine. I have spoken about that before in this chamber.

I suppose that is a really quick overview of some of the main provisions in the legislation before us this evening. I do not wish to dwell on other matters, given that the Minister for Energy and Resources and the shadow minister and others in the Assembly have already had a fair debate on many of the detailed issues contained within this legislation.

There are a couple of issues which we look forward to discussing in the committee stage, where the government amendments can perhaps be better explained to those of us who have not had a chance to fully examine them; we welcome that opportunity. In the committee stage I will also welcome the opportunity to put forward the coalition's amendments.

Mr BARBER (Northern Metropolitan) — I came here prepared to debate this bill which, as Mr Hall points out, was making its way through the Legislative Assembly prior to the release of the 2009 Victorian Bushfires Royal Commission final report, with the bill itself aiming to make good on some recommendations made in the commission's interim report. Yesterday, and just a couple of hours ago, there has been a bit of a flurry of activity around here with new amendments and new versions of amendments to amendments being drafted, purportedly to address some aspects of the final report. Since it is my understanding that the Assembly is close to rising, any house amendments we make up here will not be able to be put into law this week. It would be the next sitting week before the lower house could deal with any amendments we make tonight. I am a bit confused and concerned that last-minute changes are being thrown together on bits and pieces of scrap paper around the place.

This is a most serious matter that we are dealing with; it is one of the most serious aspects of the bushfires royal commission. The commission heard that 5 of the 11 major fires that began on 7 February 2009 were caused by failed electricity assets. One of those fires was the Kilmore East fire, which resulted in the death of 119 people, including my friends John and Jenny. That fire was caused by the breaking of a conductor that was over 40 years old.

Until yesterday, the bill that was presented was aiming to implement the government's response to the submissions of counsel assisting the royal commission — that is, the interim material that we saw before the final report. Insofar as those submissions related to the bill at hand, they appeared to have been largely adopted by the commission in that interim report. The bill addresses some of the submissions, but certainly not the most major and important one that members have been extensively debating here this week over two sitting days — the major and significant changes to distribution infrastructure. The parts of the bill here, though, that deal with bushfire ignition from electricity sources are concerned with three main areas: bolstering the powers of Energy Safe Victoria (ESV) to act to make Victoria safer with regard to distributors by means of bushfire mitigation schemes and clearance plans, energy safety management schemes and so forth; strengthening compliance; and also modifying the pricing scheme that regulates how much distributors can spend on infrastructure upgrades to ensure that they take into account upgrades which will minimise the risk if a fire starts. Those matters include, of course, the inspection of ageing wires, the health of existing infrastructure such as conductors, insulators, poles and tie-wires, maintenance practices, inspection regimes

and so forth, because as we know the evidence before the commission indicated that the age of the infrastructure contributed to three of the fires.

The bushfires royal commission was scathing of ESV — that is another way to put it — and endorsed the view that ESV appeared to be doing nothing more than engaging in 'compliance ritualism', in the words of the commission, or just ticking the boxes rather than considering substantive matters. The commission found that ESV seemed to lack influence over businesses. With regard to the role of ESV, the commission heard evidence that ESV was reluctant to make substantive demands of distribution companies and instead just focused on their processes and management systems. What I would like to know is how long that has been going on. Will any member tonight address that particular question?

A lot of words have been said about bushfires and the bushfires royal commission in the first two sitting days this week, and now it seems we are just going to tick the boxes on this bill. I could take a guess at how long it has been going on, given that the act that we are amending is the Electricity Safety Act 1998. Let us take a guess that this has been going on in something like this form since 1998. If there is any other member who would like to step forward and reflect on that statement, they should feel free to do so.

What I am now seeing is some members in the corridors scribbling a few more words on bits of paper and rapidly turning them into an amendment to the level of the objectives and the functions of the act, but will changing a couple of words establish any further architecture that is needed or does it provide anymore confidence and certainty than we had prior to this tragedy? There is some architecture that is being put in place here. When we go into the committee stage of the bill we might spend some time just asking a few questions about how this new approach is meant to work. The royal commission laid the groundwork for us. I do not believe much time was spent on this in the lower house. We should probably take some time and ask the minister a few more questions about how this new proposal is intended to work.

The bushfires royal commission's recommendation 34 said that the state should amend the regulatory framework for electricity safety to strengthen Energy Safe Victoria's mandate in relation to the prevention and litigation of electricity-caused bushfires and to require it to fulfil that mandate, which the government said it supports in principle. As a result of the intervention of Mr O'Brien in the lower house, I have heard there is some sort of proposal going on between Labor and the coalition parties to amend the amending bill, to include that provision for both prevention and mitigation of bushfires, but we still have a very large question mark over exactly how that will be done and who is going to pay. According to the bushfires royal commission, in the past ESV has not had any real impact at all on the spending plans of the relevant businesses. Notwithstanding the fact that we are now going to pass a bill that makes more requirements around the plans and the auditing of those plans, we do not really know from this whether anything will change, except in terms of the paperwork.

Counsel has advised the commission that the existing regulatory system — the one that I can presume was set up by the Kennett government some time during or after the privatisation of the electricity supply — was exceedingly weak. Not only do distribution businesses control the content of their bushfire mitigation plan, but compliance with an approved plan is, in effect, voluntary, and that was the submission of counsel assisting on systemic issues regarding electricity.

Compliance is in effect voluntary. Now we know how we got to where we are. The commission recommends that the Electricity Safety Act 1998 be amended to introduce penalties for failure to have an approved bushfire mitigation plan by 1 November each year, to introduce penalties for breaching an approved bushfire mitigation plan and to give ESV an explicit mandate in relation to bushfire prevention and mitigation. There is no question that this bill observes the spirit of that recommendation.

The commission observed that electricity safety management schemes are probably the strongest regulatory management tool. Its report says that since December 2009 it has been compulsory for major electricity companies to design, construct, operate, maintain and decommission their supply networks to minimise as far as practicable hazards and risks to the safety of any person arising from the supply network and hazards and risks of damage to the property of any person arising from the supply network. Distribution companies are thus required to strike a balance between these considerations and other objectives such as securing the reliability of electricity supply, which, along with low price, seems to have been one of the major drivers that our privatised, half-regulated, deregulated, half-pregnant electricity supply system seems to have operated on since privatisation.

There is also some material here around vegetation clearance zones. I might ask more questions about that at the committee stage. There is also the F-factor (fire factor) determinations. Clause 17 substitutes some

sections around electricity assets and how they might operate during the bushfire season. There are general duties and heads of power relating to this area, working up to the federal level — that is, the Australian Energy Regulator.

Certainly not covered in the bill, however, is the big question about the proposal for single wire earth return system lines, which were introduced in the 1950s as a means of distributing electricity to rural areas with low population densities and where small electrical loads needed to be widely dispersed. They will not be determined as a result of this legislation. I will stop now and save some of my comments and questions until the committee stage of the bill.

Ms BROAD (Northern Victoria) — I rise to support the Energy and Resources Legislation Amendment Bill 2010. This bill has been brought forward by the Brumby government because the government is committed to ensuring a safe, efficient and secure energy system, to reliable delivery of energy services and to improving public safety, safety of infrastructure and protection of the environment in relation to mining and quarrying operations. This bill will further those commitments, and it will amend a number of acts and contain some significant reforms, together with changes of a technical or statute law-revision nature.

The overall objectives of the bill are to amend legislation within the energy and resources portfolio, to implement the legislative changes foreshadowed by the Victorian government in its response to the written submissions of counsel assisting the 2009 Victorian Bushfires Royal Commission with respect to the electricity sector, to encourage the efficient expansion of the electricity distribution network, to support the development of new distribution-scale generation facilities by permitting the costs and benefits of suitably sized and designed network augmentations to be shared, to mitigate the risk that the Essential Services Commission may revoke a retail distribution or generation licence during an electricity or gas supply emergency and to empower the Governor in Council to make orders to facilitate the orderly transition of Victorian customers to time-use tariffs enabled by advanced metering infrastructure and provide appropriate consumer protections.

The objectives are also to promote regulatory and investment certainty for electricity distribution businesses engaged in the Victorian advanced metering infrastructure rollout by misapplying the national provisions; to ensure that adequate incentives are available to support the uptake of low-cost abatement activities under the Victorian energy efficiency target, otherwise known as VEET, by allowing the amount of avoided carbon dioxide emissions to be rounded up for the purpose of calculating the number of tradable energy certificates that can be created; to remove redundant occupational health and safety provisions in the energy and resources portfolio legislation and support the process of reforming Victoria's occupational health and safety framework; and to make minor and technical amendments to other acts within the energy and resources portfolio, repeal redundant provisions, improve regulatory certainty, streamline the operation of those acts and support administrative efficiency and consistency across legislation within the portfolio.

To provide some context for the bill, I note that it is closely aligned with the Victorian government's response to the Victorian bushfires royal commission, as it implements legislative amendments announced by the Brumby government in its response to the written submissions of counsel assisting with respect to the electricity sector. The bill also implements a range of additional measures that will strengthen the electricity safety regime with particular emphasis on mitigating bushfire risks.

Since the bill before the house was drafted, as members will be aware, the bushfires royal commission has delivered its final report.

I wish to foreshadow house amendments, which I understand can now be circulated.

Government amendments circulated by Ms BROAD (Northern Victoria) pursuant to standing orders.

Ms BROAD — These amendments will be formally moved by the responsible minister at the appropriate time, and I understand that they have already been provided to the opposition and other parties.

These foreshadowed amendments build on the provisions already contained in the bill before the house to strengthen the electricity safety regime, where this is necessary, to give effect to the bushfires royal commission recommendations regarding electricity-caused fires. For the information of members, these are the recommendations contained in the final report which are numbered 27 to 34. In addition to those amendments to be moved at the appropriate time, Mr Hall has already circulated his amendment, and I understand that that amendment is being supported by the government.

To provide some further context for the bill before the house, the amendments made by the bill in support of

distribution scale generation through economically efficient network augmentations and rounding under the Victorian energy efficient target scheme are consistent with the government's commitment to a sustainable energy future.

The provisions of the bill concerning advanced metering infrastructure are consistent with the government's position that the advanced metering infrastructure rollout will deliver a net benefit to Victorian electricity consumers, and the amendments that repeal redundant occupational health and safety provisions in the energy and resources portfolio legislation support Victoria's commitment to reform the state's occupational health and safety framework.

I will turn to some of the provisions in the bill before the house in a little more detail, because there are some very important provisions in this bill which the house's attention has already been drawn to in the time spent in this house earlier in the week discussing the bushfires royal commission recommendations. The bill will amend the Electricity Safety Act to focus on the obligation on electricity distribution and transmission businesses and entities operating electric lines in bushfire risk areas to submit bushfire mitigation plans to Energy Safe Victoria for acceptance.

The bill increases the penalties for failing to submit a bushfire mitigation plan to make them commensurate with penalties for similar obligations under the Energy Safety Act. The bill makes it an offence for electricity distribution and transmission businesses and operators of electric lines in bushfire risk areas to fail to comply with the bushfire mitigation plan accepted by Energy Safe Victoria. The bill also imposes an explicit obligation on electricity distribution and transmission businesses and operators of electric lines in bushfire risk areas to minimise the bushfire danger associated with management of their electrical assets. Failing to comply with this obligation exposes those businesses to a penalty.

The bill also makes it an offence for an electricity distribution or transmission business or an operator of electric lines in hazardous bushfire risk areas to fail to have an approved bushfire mitigation plan by 1 November each year without a reasonable excuse, and to promote transparency the bill also requires electricity distribution and transmission businesses to publish their accepted bushfire mitigation plan on their website.

In addition to these compliance provisions the bill makes amendments to improve Energy Safe Victoria's powers to monitor and enforce compliance with the bushfire mitigation provisions and electric line clearance provisions under the Electricity Safety Act.

The bill empowers Energy Safe Victoria to undertake an audit or to require an audit to be undertaken to verify compliance with an accepted bushfire mitigation plan. The bill also gives Energy Safe Victoria powers to gather information for the purpose of preparing an annual report comparing electricity businesses' compliance with obligations under the act.

These are matters which were the subject of a good deal of discussion at the consultations which I and other MPs attended in communities affected by the bushfires that were the subject of the royal commission's report, and I believe that these provisions in the bill certainly go to many of the observations that were made in those consultations by members of the community who were calling for increased compliance activities in relation to making their communities safer by reducing the risk of fires from electricity assets.

In addition to those provisions in the bill, presently regulations targeting bushfire mitigation are made under a general regulation-making head of power. As a result of the provisions in the bill before the house to provide Energy Safe Victoria with a clear mandate to focus on bushfire prevention and mitigation, the bill creates a specific head of power to enable regulations to be made in respect of bushfire mitigation and to support the strengthened role Energy Safe Victoria is to play in mitigating bushfire risks. The bill amends the Electricity Safety Act to explicitly recognise that one of Energy Safe Victoria's objectives under that act is to promote the mitigation of bushfire danger.

A further provision of the bill which I draw the house's attention to is the provision in the bill that amends the National Electricity (Victoria) Act to establish an economic incentive scheme to encourage electricity distribution businesses to reduce the number of fires started by electrical assets through improved asset management, and this is referred to as the fire start incentive scheme. The bill confers functions and powers on the Australian Energy Regulator to establish and administer the scheme in accordance with the terms of orders made by the Governor in Council, and the amendments authorise the Australian Energy Regulator to request information relevant to the fire start factor scheme from Energy Safe Victoria, the Department of Sustainability and Environment, the Metropolitan Fire Brigade and the Country Fire Authority.

There is another set of provisions in the bill which supports economically efficient distribution network augmentations, and the Electricity Industry Act

currently contains provisions that allow the costs and benefits of suitably sized and designed network augmentations to be spread among a number of generators or proposed generators in a particular locality. However, presently these provisions can only be accessed by wind generation projects. The bill amends the pioneer provisions to remove the limitation that a generation facility must be wind generation in order to access the cost-sharing mechanism.

For the benefit of members who do not represent rural and regional areas, these provisions are of great significance to Victorians living in regional and rural areas, because they provide for a more economically efficient distribution network in rural and regional areas.

I believe those are the main provisions in the bill. With those comments, I commend the bill to the house.

Motion agreed to.

Read second time.

Committed.

Committee

Clause 1 agreed to.

Clause 2

The DEPUTY PRESIDENT — Order! The minister will move the government's amendment 1, which is a direct test for its amendment 2. The reference to section 85 in Minister Pakula's amendment is also a test for the minister's amendments 5 and 6 proposing new clauses.

Hon. M. P. PAKULA (Minister for Public Transport) — I move:

1. Clause 2, line 3, omit "section 83" and insert "sections 36 and 85".

The comments I make, as the Chair has indicated, apply to both amendments 1 and 2. Amendments 1 and 2 amend clause 2 of the bill. Clause 2 contains the commencement provisions for the bill. The effect of amendments 1 and 2 is that new section 151A to be inserted by clause 34 of the bill will come into operation on the day after the day on which the act receives royal assent. Commencing the operation of new section 151A on this day will maximise the time available to make regulations under the new heads of power. Regulations made under this head of power will prescribe the details necessary to give full effect to recommendations 28 and 29.

Mr BARBER (Northern Metropolitan) — I ask for the Chair's assistance. I have questions for the minister about his amendment 5. If this is a test, including a test for amendment 5, I want to ask questions about that amendment, which concerns a new clause following clause 18.

The DEPUTY PRESIDENT — Order! Amendment 5 will have to be put formally at the time the committee considers it. Are Mr Barber's questions about matters of detail in terms of the operation or implications of that amendment, or are they pertinent to the whole suite of amendments, in which case we will take the questions now?

Mr BARBER (Northern Metropolitan) — I want to ask questions about how amendment 5 is intended to operate.

The DEPUTY PRESIDENT — Order! We will take that question at the time amendment 5 is formally considered.

Amendment agreed to.

Hon. M. P. PAKULA (Minister for Public Transport) — I move:

2. Clause 2, line 5, omit "Section 83 comes" and insert "Sections 36 and 85 come".

Amendment agreed to; amended clause agreed to; clauses 3 to 13 agreed to.

Clause 14

The DEPUTY PRESIDENT — Order! Mr Hall has circulated amendments in respect of clause 14. I regard Mr Hall's amendment 1 as a test for his further amendments 2 to 4.

Mr HALL (Eastern Victoria) — I move:

1. Clause 14, line 23, after "**Objectives**" insert "**and functions**".

I agree with the interpretation by the Chair that this amendment is a test for my amendments 2, 3 and 4. If members look at clause 14, they will see it amends the objectives of Energy Safe Victoria contained in section 6(c) of the Electricity Safety Act 1998. The functions for Energy Safe Victoria are contained in section 7 of that act.

So while clause 14 contains an amendment to the objectives in section 6 of the act, we also wish, by way of this amendment, to amend the functions in section 7. That is why the new heading for clause 14 of the amendment bill will become 'Objectives and functions

of Energy Safe Victoria', and will therefore, by my amendment 4, include an amendment to section 7(f), being an additional function for Energy Safe Victoria. That is why I say these four amendments are all linked.

The substantial issue is that contained in my amendment 4, and that is an additional function for Energy Safe Victoria. Section 7 of the Electricity Safety Act says, in part:

> The functions of Energy Safe Victoria under this Act are —
>
> (a) to determine minimum safety standards for electrical equipment, electrical installations and electrical work;
>
> ...
>
> (f) to investigate events or incidents which have implications for electricity safety ...

After subsection (f) we seek to insert a new subsection (fa), which says:

> to regulate, monitor and enforce the prevention and mitigation of bushfires that arise out of incidents involving electric lines or electrical installations.

That we are proposing this is as an outcome of recommendation 34 in the *2009 Victorian Bushfires Royal Commission*. Recommendation 34 is that:

> The state amend the regulatory framework for electricity safety to strengthen Energy Safe Victoria's mandate in relation to the prevention and mitigation of electricity-caused bushfires and to require it to fulfil that mandate.

We looked at that recommendation and thought: how can we enact that principle of the recommendation made by the royal commission? We looked in the first instance at just requiring it to 'prevent' and 'mitigate', using the words of the royal commission, but in fact Energy Safe Victoria does not have resources that actually prevent bushfires. It does not have brigades, for example. It does not employ staff to go out and clear land, for example. It does not physically have the resources to put in place preventive mechanisms. Electricity Safe Victoria is a body that can enforce the duty on others who have the necessary ability to do the mitigation measures, and that is why we have chosen the terms to 'regulate' to 'monitor' and to 'enforce' the prevention and mitigation of bushfires et cetera.

We believe this amendment fairly reflects the intention of the royal commission's recommendation 34, and that is why we put it forward to the committee this evening.

The DEPUTY PRESIDENT — Order! Mr Barber did me the courtesy of telling me that he wished to speak on clause 13, which goes to a number of definitions, and I inadvertently missed that when I put the clause to the test. I dare say Mr Barber is only seeking some clarification of those definitions, so the actual testing of the clause is not a problem, but I would need the committee's agreement to allow him to pursue that.

What I would propose, though, is that unless the definitions that Mr Barber wishes to pursue by way of question are relevant now to this clause, we should deal with the amendment and then come back to Mr Barber's questions and clause 13, with leave of the committee.

Mr Barber — Yes.

The DEPUTY PRESIDENT — Order! Is there further discussion of the amendment proposed by Mr Hall?

Hon. M. P. PAKULA (Minister for Public Transport) — The amendments are acceptable to the government.

Amendment agreed to.

The DEPUTY PRESIDENT — Order! I have indicated that I believe Mr Hall's amendments 2 to 4 have been tested by amendment 1, and I take it from the minister's comments just then that the government is agreeable to all of those amendments. I therefore ask Mr Hall to formally move amendments 2, 3 and 4 as a package.

Mr HALL (Eastern Victoria) — I move:

2. Clause 14, line 24, before "After" insert "(1)".

3. Clause 14, line 26, after "the" insert "prevention and".

4. Clause 14, after line 27 insert —

> '(2) After section 7(f) of the **Electricity Safety Act 1998 insert** —
>
> "(fa) to regulate, monitor and enforce the prevention and mitigation of bushfires that arise out of incidents involving electric lines or electrical installations;".'.

Amendments agreed to.

The DEPUTY PRESIDENT — Order! Before I proceed with the clause, I ask Mr Barber to ask his questions with regard to the definitions in clause 13.

Clause 13

Mr BARBER (Northern Metropolitan) — In clause 13 of the bill we have the definition of

'hazardous bushfire risk area', being an area which has been assigned a fire hazard rating of 'high' under section 80 of the Electricity Safety Act. Section 80 itself says:

> A fire control authority —
>
> (a) may assign a fire hazard rating of "low" or "high" to any area of land for the purposes of this Act or the regulations; and
>
> (b) must give notice in writing of that rating to the Minister and every person responsible for the management of public land in any part of the area…

Could the minister enlighten me a little about this process of creating low and high ratings for areas of land? Is that something that has been done across the whole state? Is it something that is done on an ad hoc or as-needs basis? If so, when we notify those responsible for the management of public land, does that include not just Crown land but municipalities and so forth?

Hon. M. P. PAKULA (Minister for Public Transport) — I am advised that the reference to section 80 of the principal act is a reference to an existing system which has been in operation for some considerable period of time. I am unable to enlighten Mr Barber any further than that at this stage.

Mr BARBER (Northern Metropolitan) — Is there a map that shows this for the state of Victoria, indicating what is high and what is low hazard? I do not mean a publicly available map; I am just asking whether there is such a map.

The DEPUTY PRESIDENT — Order! We are seeking some information. With the committee's agreement I propose to continue with the other clauses and we will come back to that question and respond to it.

Clause 14

The DEPUTY PRESIDENT — Order! Before Mr Barber sought that clarification we were dealing with clause 14. I have dealt with the amendments, so I will now test the clause.

Amended clause agreed to; clauses 15 to 17 agreed to.

Clause 18

Mr BARBER (Northern Metropolitan) — When added to the principal act new section 86A will obviously follow existing section 86, which seems to already provide some reasonably extensive powers for Energy Safe Victoria to notify a third party as to how they are to maintain their wires. Energy Safe Victoria still needs to obtain permits under the Planning and Environment Act, and there are references to a range of other sections. Can the minister tell me in précis what it is that new section 86A is meant to do in the way of providing powers that Energy Safe Victoria does not already have provided by the preceding section 86?

Hon. M. P. PAKULA (Minister for Public Transport) — I understand Mr Barber's question to be, if I can summarise it, 'What does new section 86A provide that existing section 86 does not already provide?'. I am advised that the nub of it is found in new section 86A(1)(c), which provides the power to do anything to minimise or prevent the growth of specified trees in the immediate area around an electric line. As I am advised, that is the principal addition to the powers previously held as a result of section 86.

Mr BARBER (Northern Metropolitan) — Just on one other aspect of this proposed section, section 86A(3) says that 'specified person' means:

> … the owner or occupier of land in the area of an electric line or the relevant distribution company or relevant transmission company that owns or operates the electric line.

So it can be the owner of the land or the owner of the wire, and new section 86A(4) says that they must comply with a direction under this section that applies to the specified person.

Could it really be the case that if an electricity company has run its wires across or above my land, possibly for some considerable distance, Energy Safe Victoria has the option to tell me I have to do the clearing, as opposed to, or as an alternative which is ESV's choice, telling the electricity company that it needs to do the clearing? Because if we are talking about a long section of line going over my property there could be considerable effort involved for Mrs McGillicutty who is living on that block of land to go out and pay for removing those trees. Is it the case in this provision that ESV can choose to tell either the owner of the wire or the owner of the land to clear the trees, and is that new and additional to the existing powers?

Hon. M. P. PAKULA (Minister for Public Transport) — Mr Barber has asked a good question. I am advised on two points. Firstly, under proposed section 86A(2) it says that a direction under section 86A(1) must be reasonable. To emphasise that, the point of the provision is that if the relevant line is a distribution business-owned line, then Energy Safe Victoria would be making the direction to the distribution business, and if it was a privately owned

line, the direction would be to the private owner of the line.

Mr BARBER (Northern Metropolitan) — But the bill does not provide that. It combines those two circumstances that you describe. New section 86A(3) says the 'specified person' means:

> … the owner or occupier of land in the area of an electric line or the relevant distribution company or relevant transmission company that owns or operates the electric line.

The minister is suggesting that if it is private, we will tell the private guy, and if it is a company, we will tell the company, but in fact there is no such division in this proposed section. That was my query: is it really ESV that gets to choose who it puts the cost onto?

Hon. M. P. PAKULA (Minister for Public Transport) — I understand Mr Barber's point. The purpose of this section is to capture all possible eventualities. The possible eventualities include that in some circumstances it will be the owner of the land who owns the line as well and that in some circumstances it will be the distribution business that is responsible. However, I am advised the way this will work in practice is that if the owner of the line is the distribution business, then that will be the party that ESV goes to, and if the owner of the line is a private individual, then ESV will go to them.

Mr BARBER (Northern Metropolitan) — Hopefully I have just got a little bit confused and there are some other provisions somewhere in this amending bill or in the act that clarify this. But it would seem to me that one of the arguments that we have been having over the last couple of days is all about cost and who is going to pay. The companies, we might hypothesise, will be resistant, and we know ESV's history is that it has not been too strong with the companies.

It concerns me that if a distribution or transmission line ran over the corner of my block and there were half a dozen 50-foot-tall trees which ESV determined are hazards to the line, then ESV, just because it is easier for it, could serve me with a notice to clear the trees. That is an enormous expense for an individual. It is also an enormous expense for a company that it may be seeking to minimise. I am not going to raise any further questions or comments; the minister is free to tell me if he has some further information to point out where I am wrong.

Hon. M. P. PAKULA (Minister for Public Transport) — I am not going to tell Mr Barber he is wrong. I am simply going to make the point that I am advised that the circumstance he alludes to is exactly why subsection (2) exists, which is, that any direction given under subsection (1) has to be a reasonable one, and the circumstances he proposes may well be the kind of direction that would be considered to be other than reasonable.

Mr BARBER (Northern Metropolitan) — If all we needed to rely on was people being reasonable, I think there would be a fair chance we would not be here debating this piece of legislation. That is all I have until we get to the new clause that is intended to follow clause 18.

Clause agreed to.

Clause 13

The DEPUTY PRESIDENT — Order! Is the minister in a position to respond to the query on the definition in clause 13?

Hon. M. P. PAKULA (Minister for Public Transport) — I am advised that the Country Fire Authority conducts a survey, and it supplies the data electronically to Energy Safe Victoria and to the distribution companies.

Mr BARBER (Northern Metropolitan) — That is a reasonable answer to the question I asked. It is of interest to me that we have a definition here of high and low bushfire risk for the purposes of this bill. Clearly it is a question that has been completely revisited as to what is high and low-risk bushfire terrain, vegetation, conditions or what have you. I was trying to find out if it is a systematic exercise. It may be something I will have to pursue for my own interest. We can see immediately the possible contradictions and problems if this kind of exercise is not systematic and related to other questions of bushfire hazard that relate to municipal emergency management plans and to the Planning and Environment Act and so on and so forth.

Clauses 19 to 33 agreed to.

Clause 34

The DEPUTY PRESIDENT — Order! Mr Pakula has circulated a further amendment, which is amendment 3. I regard it as a test for amendment 4.

Hon. M. P. PAKULA (Minister for Public Transport) — I move:

> 3. Clause 34, line 13, omit 'bushfires.".' and insert "bushfires;".

In making comments in regard to this amendment, which is only a technical amendment that is

consequential to amendment 4, I will speak on amendment 4. Amendment 4 is the substantive amendment that implements the state's response to recommendations 28 and 29 of the royal commission. Amendment 4 amends clause 34, which provides that new section 151A be inserted into the Electricity Safety Act 1998. It inserts into section 151A three new regulation-making heads of power for bushfire mitigation. These new heads of power will allow regulations to be made for or with respect to the inspection of electric lines or electrical installations for the purpose of the prevention of bushfires arising from such lines or installations; the training of persons conducting inspections of this kind; and the auditing of the training and performance of persons conducting inspections of this kind.

Amendments 1 to 4 remove any doubt that regulations can be made under new section 151A to implement the state's response to recommendations 28 and 29. Regulations made under new section 151A will prescribe the details necessary to give effect to recommendations 28 and 29.

Amendment agreed to.

The DEPUTY PRESIDENT — Order! I have indicated that I believe Mr Pakula's amendment 4 was also tested by way of that vote, but I ask the minister to move it formally.

Hon. M. P. PAKULA (Minister for Public Transport) — I move:

4. Clause 34, after line 13 insert —

'(c) the inspection of electric lines or electrical installations for the purpose of the prevention of bushfires arising from such lines or installations;

(d) the training of persons conducting inspections of the kind referred to in paragraph (c);

(e) the auditing of the training and performance of persons conducting inspections of the kind referred to in paragraph (c).".'.

Amendment agreed to; amended clause agreed to; clauses 35 to 88 agreed to.

New clauses

The DEPUTY PRESIDENT — Order! By way of amendments 1 and 2 the minister has established a basis upon which his amendment 5 would proceed. It proposes to insert a new clause to follow clause 18.

Hon. M. P. PAKULA (Minister for Public Transport) — I move:

5. Insert the following New Clause to follow clause 18 —

'AA New Division 2A of Part 8 inserted

After Division 2 of Part 8 of the **Electricity Safety Act 1998 insert** —

"Division 2A — Electric lines and municipal fire prevention plans

86B Municipal fire prevention plans must specify procedures for the identification of trees that are hazardous to electric lines

Without limiting section 55A of the **Country Fire Authority Act 1958**, a municipal council must, in a municipal fire prevention plan required to be prepared and maintained under that section, specify —

(a) procedures and criteria for the identification of trees that are likely to fall onto, or come into contact with, an electric line (***hazard trees***); and

(b) procedures for the notification of responsible persons of trees that are hazard trees in relation to electric lines for which they are responsible.".'.

Amendment 5 implements the state's response to recommendation 31 of the royal commission. It is a recommendation which states that municipal councils include in their municipal fire prevention plans for areas of high bushfire risk, provision for the identification of hazard trees and for notifying the responsible entities with a view to having the situation redressed. The amendment inserts a new clause into the legislation. It will insert a new section 86B into the Electricity Safety Act. New section 86B does exactly what recommendation 31 asks the state to do. It requires a municipal council in its fire prevention plan to specify procedures and criteria for identifying hazard trees being trees that are likely to fall onto or come into contact with an electric line, and to specify procedures for the notification of persons responsible for electric lines affected by hazard trees.

The commission made some observations that explain the context for recommendation 31. Given the time I am reluctant to read them into *Hansard*, but I think — —

The DEPUTY PRESIDENT — Order! Read them.

Hon. M. P. PAKULA — I will accept the guidance of the Chair on that. I will read the relevant extract, which is found at page 166 of volume II of the *2009 Victorian Bushfires Royal Commission — Final Report — Fire Preparation, Response and Recovery*. It states:

> Public authorities — councils and VicRoads — have a broad obligation under s. 43 of the Country Fire Authority Act 1958 to take all practicable steps to prevent and minimise fires, or the spread of fires, on land or roads under their control or management. Yet, despite this obligation and the risks posed by hazard trees, it is apparent from the evidence about roadside clearing (discussed in chapter 7) that road managers do not systematically check for, nor do they limit the risk of, hazard trees. This is important: many powerlines run alongside roads. By virtue of their work, road managers are presented with an opportunity to at least identify potential hazard trees. Information about the trees could then be relayed to the distribution businesses, to help them in their risk-reduction work.
>
> Because of their role in developing municipal fire prevention plans in consultation with their municipal fire prevention committees — which are made up of representatives of local CFA brigades, municipal councils (including the municipal fire prevention officer), DSE, Parks Victoria and VicRoads — councils are in a good position to highlight the need for considering the risks posed by hazard trees.

The commission goes on, but crucially it notes that municipal councils currently prepare fire prevention plans. These plans are prepared in accordance with section 55A of the Country Fire Authority Act 1958. New section 86B of the Electricity Safety Act 1998 will complement section 55A. New section 86B will not shift responsibility for identifying and managing hazard trees from distribution businesses and other persons responsible for electric lines. The state noted in its submissions to the royal commission on proposed electric line clearance and hazardous tree recommendations that it would not support any proposal that shifted liability in this way. Electricity distribution businesses and other responsible persons will continue to be required to comply with their obligations under the Electricity Safety Act 1998 in relation to hazard trees in accordance with the electricity safety management framework.

Mr BARBER (Northern Metropolitan) — I appreciate that explanation from the minister because I was going to ask about that by way of introduction. However, I am somewhat confused by this amendment to the Electricity Safety Act. I understand fully that the royal commission recommended that:

> Municipal councils include in their municipal fire prevention plans for areas of high bushfire risk provision for the identification of hazard trees and for notifying the responsible entities with a view to having the situation redressed.

However, the royal commission did not say we should legislate for that. It simply recommends that municipal councils do it. I have a question for the minister on this definition of 'hazard trees' in proposed section 86B. Can the minister refer me — because I have too many bits of paper in front of me — to where that definition of hazard trees appears in the Electricity Safety Act?

Hon. M. P. PAKULA (Minister for Public Transport) — I am advised that the definition of hazard trees exists in the regulations attached to the Electricity Safety Act.

Mr BARBER (Northern Metropolitan) — I was a bit confused because the words 'hazard trees' were bolded and italicised, which generally indicates a word that is elsewhere defined. It seems that the government will use regulations to define hazard trees. However, I reiterate my view that the royal commission was not necessarily recommending amendments to legislation to require municipal councils to do this. This is an amendment that the government zipped up during the sitting week. I was told yesterday that more house amendments were coming in light of the royal commission's recommendations.

As the minister said, section 55A of the Country Fire Authority Act requires municipal councils to do municipal fire prevention plans. It is, as the minister said, a general responsibility, so it involves identifying areas, buildings and land use in the municipal district which are at particular risk in case of fire; specifying how each identified risk is to be treated; specifying who is to be responsible for treating those risks; identifying all designated neighbourhood safer places in a municipal district — as a result of amendments we ourselves did; and designating fire refuges or any other matter prescribed for inclusion in the plan. It requires municipalities to create a generalised fire prevention plan, I guess in the format of a sort of risk management plan.

However, now we are requiring something very specific and detailed from the council, which is that it must in a municipal fire prevention plan specify procedures and criteria for the identification of trees that are likely to fall onto or come into contact with an electric line, and procedures for the notification of responsible persons about trees that are hazard trees. This clearly indicates that councils will be doing inspections, if you like, because it says, 'their procedures and criteria for the identification of trees that are likely to fall on to or come into contact'. It is setting up a council inspection regime, if you like. That may be a bit strong, but it is certainly saying that there will be specified procedures and criteria for this, which seems to double up, at best, the role of these distribution businesses.

We have just now created, through the other parts of this bill, an entire architecture where new sorts of plans will be written; plans will be audited. We have implemented the previous recommendation of the royal commission, no. 30. We have said that trees that are

outside the clearing zone that might be a hazard are now in play, and yet suddenly we just say, 'By the way, we want councils to do all that as well'; and we want them to notify the distribution businesses. I really do not understand why we are doing that. I appreciate the minister's explanation of what the royal commission said, but in recommendation 31 it did not say that state Parliament should immediately legislate for it. It simply said, more generally:

> Municipal councils include in their municipal fire prevention plans for areas of high bushfire risk provision for the identification of hazard trees and for notifying the responsible entities with a view to having the situation redressed.

It simply says that they should include that in their plans, not that they should create procedures and criteria.

I am suspicious that what has happened here is the government has simply taken that piece of text from the royal commission report in the rush of the last week or so and prepared amendments which were supplied to us, I think, yesterday, and almost slavishly, word for word, copied that into the Electricity Supply Act without necessarily giving that some thought.

The government, as I understand, has accepted a number of these recommendations in principle and is consulting on others. It is easy enough for the government to accept in principle something that requires someone else to do something as opposed to doing something itself. I would like to know from the minister specifically whether this amendment and the proposal to turn that recommendation of 10 days ago into an amendment has been discussed with the Municipal Association of Victoria.

Hon. M. P. PAKULA (Minister for Public Transport) — I will make a couple of points. The recommendation is that municipal councils do certain things — that they include in their fire prevention plans provision for the identification of hazard trees and for notifying the responsible entity. I am a bit bemused by Mr Barber's confusion over the amendment. What the amendment seeks to do is simply to give force to the royal commission's recommendation. Recommendation 31 is a recommendation that has been accepted by the government. It is the government that needs to legislate if an obligation is going to be imposed on municipal councils, so whilst I understand Mr Barber's comment about accepting a recommendation that somebody else has to implement, that is the nature of the recommendation. It is a recommendation directed at municipal councils, the government has accepted it and the amendment that is before the house at this moment is an amendment that will ensure that that recommendation is implemented by local governments, because it will make it a legal requirement for them to do so. In response to the second part of Mr Barber's question I am advised that the Municipal Association of Victoria has indeed been spoken to by the relevant government department.

Mr BARBER (Northern Metropolitan) — I disagree with what the minister just said. He said this is a recommendation that the state must implement — —

Hon. M. P. Pakula — No, I didn't say that.

Mr BARBER — The government, having accepted that it will implement this recommendation, is now doing that by legislating. But recommendation 27 is that:

> The state amend the regulations …

Recommendation 28 is that:

> The state (through Energy Safe Victoria) require distribution businesses …

Recommendation 29 is that:

> The state (through Energy Safe Victoria) require distribution businesses …

Recommendation 30 is that:

> The state amend the regulatory framework for electricity safety …

Recommendation 31 is that municipal councils should do this. In my view it is a guideline to municipal councils in the preparation of their municipal fire prevention plans.

Recommendation 32 is that:

> The state (through Energy Safe Victoria) require distribution businesses —

to do certain things.

There is an assumption I think in this discussion that the minister and I are having that recommendation 31 was something that the royal commission intended the state to legislate. The minister did do me the courtesy of earlier reading the context, if you like, the part of the detailed royal commission report, from which he says recommendation 31 arose. If the minister can point out to me a section of the broader commentary where the royal commission uses the word 'legislate' and directs the state to legislate for this to occur, then I will happily withdraw the argument I have been making.

Hon. M. P. PAKULA (Minister for Public Transport) — To put it simply, the logical conclusion of Mr Barber's proposal is that each municipal council would be at liberty to choose whether or not to implement this regulation. If we were to do what Mr Barber suggested, that would be exactly the situation we would find ourselves in: each individual municipal council would choose either to implement this recommendation or not to implement the recommendation. What the amendment does is make it a requirement that each municipal council implement the recommendation.

Mr HALL (Eastern Victoria) — I have listened to this conversation with much interest, and I just want to make a couple of comments with respect to it. I understand the point Mr Barber is making. He is basically questioning why the government has chosen to implement this recommendation by way of legislation. I agree with that part of the argument that says that perhaps there are other ways in which this recommendation could be implemented. For example, it might be by ministerial direction to local councils that they include such provisions in their bushfire mitigation plans. I think the mechanism by which this recommendation of the royal commission might be implemented is debatable. The government has chosen to implement it by way of legislation; that is the decision the government has taken. If there is a negative impact from that, the government will wear it, but it seems to me that the government has choices in the way in which it implements this recommendation, and it has chosen to do it by way of legislation.

The other point I want to make in respect of this is that it seems to me from reading this particular amendment that it is requiring all municipalities right across Victoria to identify the way in which they are going to carry out certain procedures. I would hope that we are not asking every single one of our councils across Victoria to reinvent the wheel, so to speak, and that there are indeed some guidelines as to how they might actually go about this task. I think the most practical approach is to provide assistance to councils on the way they might go about identifying hazardous trees. Indeed I think there is some onus on the state government to provide clear advice to all councils so that we do not get the 88 different councils all trying to invent the same way of complying with this new piece of legislation. I hope that assistance will be forthcoming from the government.

Mrs PEULICH (South Eastern Metropolitan) — I certainly concur with the comments made by Mr Hall. In fact I raised a matter that was not too dissimilar last night on the adjournment debate. I would like to be reassured that funding is going to follow the legislation of the responsibility of local government to undertake that work, because quite clearly some of those councils, especially rural shires that can least afford it, will find that a burden. We want to make sure that in responding to the royal commission we put in place plans that can be executed and can be executed effectively. Can the minister comment on the cost impost on local government of this particular regime as legislated by this particular amendment?

Mr BARBER (Northern Metropolitan) — As the minister and Mr Hall have said, it is possible that the royal commission intended that this aspect of municipal fire prevention plans was to be specifically legislated for to be done in a specific way. If that is the case, the royal commission was allowing that every other aspect of a municipal fire prevention plan could be done however the council wants it to be done. Every other aspect of risk identification and every other source of risk would be left completely to the open scheme that is provided for in the Country Fire Authority Act; it is possible.

However, what is very hard to argue against is that this sets up a duplicative process where we hope there are strong controls over distribution businesses and how they write the plans, how they identify the trees, what they do about them, and the council now having a legislative requirement to specifically check for these trees under certain procedures, and to notify back to the distribution business. It is very hard to argue that that is not the effect of what we are legislating for here.

Hon. M. P. PAKULA (Minister for Public Transport) — Partly in response to both Mr Barber and Mrs Peulich let me read another extract from the royal commission's report. Volume II of *2009 Victorian Bushfires Royal Commission — Final Report — Fire Preparation, Response and Recovery* says on page 166:

> Councils already identify bushfire risks and take steps to reduce those risks, the risks being documented in their municipal fire prevention plans (or municipal fire management plans, where implemented).

I think that goes partly to the point Mrs Peulich talked about in regard to resources. A great deal of this work is already being done by councils. However, the royal commission's report immediately goes on to say:

> But hazard trees do not appear to feature in these plans. Such trees are obviously a bushfire risk and should be identified and assessed through the same framework. This does not increase councils' responsibility for bushfire risk management: councils should be aware of the fire risks posed by hazard trees and should take all practicable steps to help mitigate those risks through their municipal fire prevention committees.

The committees exist and the plans exist. This just adds a layer in regard to hazard trees and council's responsibility to have a process to identify them.

Mr Barber — The commission didn't — —

The DEPUTY PRESIDENT — Order! I think Mr Barber will have to hold that thought. In accordance with standing orders I have to interrupt the business of the committee. We will proceed to the adjournment debate. Mr Barber may sleep on that thought tonight, and we will welcome it first thing tomorrow morning.

Business interrupted pursuant to standing orders.

ADJOURNMENT

The DEPUTY PRESIDENT — Order! The question is:

That the house do now adjourn.

Lake Charm Primary School: building program

Ms LOVELL (Northern Victoria) — I raise a matter for the attention of the Minister for Education regarding the refurbishment of Lake Charm Primary School. This bungled, drawn-out process has left teaching staff, school councillors and community members disheartened and angered. My request is that the minister immediately investigate the refurbishment of Lake Charm Primary School, which is part of the Building the Education Revolution (BER) debacle, and ensure that any outstanding or inferior works are completed as a matter of urgency and to the highest possible standard.

Lake Charm Primary School has been so disheartened by its experience that it has lodged a submission as part of the Senate inquiry into the rollout of the BER. In its submission the school cites a lack of information and communication surrounding the project as well as poor planning and administering of the building projects, and questions the constantly changing priorities and time lines and the excessive length of time it has taken to complete a small amount of building works. At first the Department of Education and Early Childhood Development (DEECD) tried to secretly convince the school to demolish its historic school building and replace it with a demountable building — a plan that may have been hatched by Labor with a view to closing the school down in the future. The plan was fiercely rejected by the school council and the Lake Charm community. This left the school with a smaller pool of funds for minor refurbishment works. At one stage the school was told its refurbishment was $70 000 over budget, causing the school council to question how the installation of four new air conditioning units and removing the existing heating and cooling facilities and four tanks could possibly cost $70 000. The school demanded costing information on numerous occasions, but was told by Incoll, the project management company, that it had an agreement with the DEECD that no costings from the BER projects were to be disclosed to the public.

The worst atrocity was the lack of communication between the contractors and the school that led to a delay to the start of the school year. The teachers returned from the Christmas break to discover bare walls and floors in both classrooms, valuable resources randomly thrown into the school office, corridor and art shed or stacked on top of computers that had been moved without any thought or consideration. Nails protruded from the floor and there were thick layers of dust on every surface. This situation was an incredible impost on teaching staff, who missed out on their three days of professional development, and school council members, who were forced to clean up the mess.

The minor refurbishment, which included a kitchen extension and works to the school's art room, has dragged on for a further five months and has still not been completed to the standard the school expects. The kitchen extension is not structurally sound and will require steel to be added to the exterior to secure the structure. The art room, which has been repainted, recarpeted and had new doors installed recently became flooded after rains, suggesting further work is required to prevent this from happening again.

Weeds: control

Mr KAVANAGH (Western Victoria) — I raise a matter for the attention of the Minister for Agriculture, Mr Helper. It relates to weed control in the Tea Tree Creek area, which is also known as Stoney Creek, in the vicinity of the Moorabool catchment area. I have recently questioned the Minister for Environment and Climate Change, Mr Jennings, about the government requiring adjoining landowners to remove gorse from land that it has been claiming belongs to the government. Mr Jennings has confirmed that there is no legal power to force people to remove weeds from land that they do not own. However, it seems that landowners have been mistakenly forced to clear gorse from publicly owned land.

The Department of Sustainability and Environment has recently claimed that it is not responsible for clearing such land. The affected landowners may well have a

very good legal case. I ask the minister to enter into genuine negotiations in good faith with affected landowners who have been affected in this way to avoid litigation while making satisfactory amends to them for the effort and cost that they were forced to expend in clearing land of gorse — land which does not belong to them.

Electricity: western Victoria

Mr KOCH (Western Victoria) — I raise a matter for the attention of the Minister for Energy and Resources. It relates to the provision of basic energy services to communities in western Victoria. In an era when there is demand for a technology-savvy debate on the future of internet speeds and digital television reception, residents who live a little over an hour from Melbourne have the right to expect a reliable electricity service to their homes. Residents of Lethbridge, Meredith and parts of Bannockburn remain frustrated by the regular loss of power to their homes. Most of these residents rely on electricity for essential household services, including lighting, water, cooking, heating and, increasingly, security. Outages recorded over the last 12 months included 60 instances of power failure lasting a combined total of over 200 hours. This is totally unacceptable.

The single wire earth return electricity lines were laid after World War II to provide power to soldier settlements, and they were never designed to service the growth in this area that has been seen over the last 60 years. It remains the only electricity line servicing the Moorabool Valley between Geelong and Ballarat. There is no doubt the existing line is too small and too old and the maintenance required to keep it operational has been forgotten. Residents have lodged numerous complaints with the service provider, Powercor, which informed residents the problem is too expensive to correct. Instead the electricity provider prefers to wait until there is a problem and then undertake repairs. Meanwhile these country Victorians are left to suffer with a substandard level of essential services.

This is an insult to residents of Lethbridge, Meredith and Bannockburn, many of whom have young families. Inadequate infrastructure replacement has become a legacy of the Brumby government's contracts with power distributors, particularly in western Victoria. Corners have been cut for far too long, and it is time the government stood up and provided good government and strong leadership to communities that have been left by the wayside due to its Melbourne-centric push. The only long-term solution to the current situation is to replace the electricity line between Geelong and Ballarat and to simultaneously lay a second line. This would raise the electricity service levels of the area to a standard comparable to that in metropolitan Melbourne. The last thing we need over the summer is a tragedy reminiscent of Black Saturday in 2009.

My request is for the Minister for Energy and Resources to acknowledge the inadequate provision of electricity to Lethbridge, Meredith and Bannockburn and to inform residents how the government proposes to amend current contracts with power distributors to ensure that a long-term secure and reliable power supply is put in place for all western Victorians, but more especially those in the above locations.

Hurstbridge High School site: future

Mr MURPHY (Northern Metropolitan) — I wish to raise a matter for the attention of the Minister for Education, and the action I seek is for her to provide factual information to the Hurstbridge community to reassure them of the Brumby government's commitment to educational facilities in that township.

The Liberal Party hit a new low in its desperation to hold onto the federal seat of McEwen with the distribution this week of a blatantly incorrect letter making false claims that the Brumby government intends to sell off a former school site without community consultation. I ask: how rich is this coming from the Liberal Party? When Ted Baillieu, the Leader of the Opposition in the Assembly, was the president of the Liberal Party during the reign of the Kennett government the coalition closed more than 300 schools without any consultation with the community whatsoever. The only consultation that occurred during the Liberal Party's reign was with the real estate agents who sold these schools — Baillieu Knight Frank!

This scaremongering letter from the Liberal Party to the Hurstbridge community shows just how little the Liberal Party knows about Hurstbridge as it did not even get the name of the school right. The letter described the site as the 'Hurstbridge secondary college' when anyone who knows Hurstbridge would know that the school was always known as Hurstbridge High School before the Kennett government forced it to amalgamate with the Diamond Creek Technical School and then closed Hurstbridge High School forever. The letter also talked down the great Hurstbridge Primary School, which is doing a great job of rebuilding its reputation after a difficult period by putting the education of the students first. I commend the work of Phillip Banks, the principal, the hardworking staff and the parents for their great efforts.

As to the former Hurstbridge High School site, the claims made by the Liberal Party could not be further from the truth. It is my understanding that the site has in fact been earmarked by government to be part of a process in which the Department of Planning and Community Development works across all government departments, with local council and the community, to work collaboratively to devise the best community use for sites like Hurstbridge. The Hurstbridge community is a caring, compassionate and environmentally aware one. I am sure that it will not fall for the baseless scaremongering by the Liberal Party, but will instead engage itself in the best use for this great site to the benefit of the community. The Liberal Party, like a leopard, has not changed its spots. It closed 300 schools when it was last in government in the face of huge community opposition. The community knows that it would do exactly the same thing again. I urge the minister to do all in her power to reassure the Hurstbridge community and to correct the untruths peddled by the Liberal Party.

Women: sports leadership

Mrs COOTE (Southern Metropolitan) — My adjournment matter this evening is for the Minister for Sport, Recreation and Youth Affairs. It is to do with Australian women and sport. There is an excellent organisation called the Australian Womensport and Recreation Association, which has put in an excellent submission for consideration during this federal election campaign. The organisation has produced a 10-point game plan — 10 things to do for women in sport.

I would have to say that there are some lessons to be learnt for us in this state from the recommendations that the organisation makes. I think it is important that these are looked at and in fact developed going into our state election. I believe it is important for Minister Merlino to address these. One of the interesting things the 10-point plan does say is:

> That appropriate organisations with an interest in women in sport and recreation be funded … to provide skills training in the areas of leadership, communication and media skills and successful team building.

Although the organisation speaks of this issue being national, I think there is a great opportunity for us to encourage that type of leadership in sport in Victoria.

The plan goes on to say that it is an indictment of all organisations that only 40 per cent of women are represented on the boards of Australian Securities Exchange publicly listed companies. This is not good enough. But surprisingly there are not sufficient women on boards in sporting organisations and the plan suggests that 'details of gender representation on sporting organisation boards should be reported annually'. I ask the minister, as a matter of urgency, to have a look at these issues that are raised and to adapt them for the Victorian situation to enhance sport for women in this state.

Rail: western suburbs car parks

Ms HARTLAND (Western Metropolitan) — My adjournment matter is for the Minister for Public Transport. As I mentioned yesterday, I have recently held nine community meetings throughout the western suburbs to discuss transport problems and solutions. The most recent meeting was in St Albans. Many barriers to public transport use were identified by members of the community at these meetings. One was the insufficient car parking space available at train stations in the area, including St Albans, Ginifer and Albion railway stations. In an efficient public transport system people would have no need to drive to the station. They would be able to walk, ride a bike or catch a bus or tram to the train station.

Hon. M. P. Pakula — Some people might like to drive their car to the train station.

Ms HARTLAND — I know, but there may not be enough car parking. Conversely if we do not take our car to the station, the benefits are great. However, the public transport system is currently so poor that this is not an option for most people in the outer west. They are forced to drive to the station, but when they arrive there is inadequate parking so they cannot park and they are forced to keep driving to the CBD.

Limited car parking puts a limit on the number of passengers able to use the train system. I have experienced this at Albion station especially, which has a very large car park, but unless you are there by about 7.10 a.m. you are not going to be able to park. The medium-term priority obviously should be providing facilities to enable people to leave their cars at home. This would reduce the demand for the car parks, which are expensive and consume a lot of land. Land surrounding stations is valuable and could be used to create community hubs around train stations.

Fixing the outer west public transport system will take some time. Commuters today need car parks at these train stations. This will immediately encourage and enable more people to catch trains, but unfortunately sometimes there are not any trains to catch. The action I ask of the minister is to fix the transport system, and in the short term just fix up the car parking facilities in the

outer west, namely at St Albans, Ginifer and Albion stations.

Shire of Corangamite: storm damage

Mr VOGELS (Western Victoria) — I raise an issue for the Premier. It concerns the enormous damage that occurred yesterday to infrastructure in the Corangamite shire — and no doubt in Colac Otway and Moyne shires as well — due to flooding and wind. Councils will need financial assistance to cope with the cost of fixing roads and restoring bridges and other community assets following the storms. I think we would all have seen reports about the Cobden swimming pool on Channel 9 and Channel 7 news over the last couple of nights: the swimming pool was completely under water, and I doubt if there will be much of the pool left by the time the water disappears.

There is absolutely no doubt that flood response and storm damage are imposing a very significant additional clean-up cost on south-west Victorian councils. Funding will be needed immediately and in the days and weeks ahead to repair the damage. I would like to read an excerpt from a media release from the Corangamite shire, which says:

> Floodwaters are rising to the south-east of our shire as areas in the Colac Otway shire that also experienced heavy rainfall are now releasing water downstream. This is causing additional road closures down towards Lavers Hill.
>
> We now have 16 roads that are impassable and have been closed to through traffic.

Tree clearing is also an ongoing cost at this point. When the water finally disappears, these roads that have been closed will have to be assessed in terms of how much bridge damage and so on has occurred to this infrastructure.

The action I seek from the Premier is that he urgently make funds available for badly affected councils under the state's natural disaster provisions to allow shires to get on with the job of rebuilding community infrastructure and fixing roads.

Rail: Frankston line

Mrs PEULICH (South Eastern Metropolitan) — I also wish to raise a matter for the attention of the Minister for Public Transport, and it is on the same theme as that of the issues raised by Ms Hartland. Basically it is about improving services on the Frankston line, and specifically it refers to matters raised by a Ms Louise Toohey in an email to me and others. She said:

> I am … daily commuter on the Frankston line, parking my car every day at Chelsea station … The car park has been pitch black with literally no lights for approximately the last three weeks … as it is quite dangerous at night I am requesting that this issue is given priority.

Ms Toohey said she is also:

> ... disappointed at the new timetable, reliability and punctuality of the Frankston line. With regards to the new timetable, I am more than disappointed at the fact that every other line has retained express services via the city loop apart from Frankston, and the complete lack of consultation.

She goes on to say 10 minutes has been added to her journey:

> ... as there are no more express services via the city loop. I am now forced to change at Richmond. I now choose between waiting 10 minutes at Richmond for the express service in the cold, or staying on the stopping-all-stations services, which adds 10 minutes to my journey anyway.

In relation to cost she said:

> The cost of tickets is continually going up, yet the service does not reflect the cost.

She said the service is unreliable and that she is 'continually late for work due to the trains'. On safety she added:

> I cannot remember the last time I saw the police in the train carriages, train facilities (e.g. PA —

that is, public address —

> system yesterday was not working on the Frankston line, so the train driver was forced to stick his head out the train driver window every stop to let passengers know the train was altered not to go via the city loop).

She goes on to talk about the frustrations with the timetable.

All in all, obviously, services on the Frankston line have been below par. There are some things that clearly can be remedied fairly quickly, such as the lighting at the Chelsea railway station car park. If it is not safe to be used, in particular by women, it will not be used. There are concerns about the level of violence. Some of that has been recently reported in the papers. In railway station car parks lighting is fairly basic, and improved lighting can be quite significant in reducing that level of risk.

I ask the minister to take on board the general feedback but more specifically to address the issue of lighting in the Chelsea railway station car park.

Autism: western suburbs schools

Mr FINN (Western Metropolitan) — I wish to raise a matter for the attention of the Minister for Education and it concerns the ongoing battle for justice for children with autism in the western suburbs and their parents and in particular the battle for a P–12 autism-specific school in the western suburbs.

Recently there was a meeting between a group of parents and the western metropolitan region of DEECD (Department of Education and Early Childhood Development). This meeting was, to say the least, less than successful. I have received from one parent who was at that meeting some points detailing some of the matters that were raised. She tells me, with some distress, I have to say:

> We were told there was no committee for the western region autism plan, rather just a group of public servants from the DEECD … they consulted with principals from mainstream schools. When we asked, it was admitted there had been no consultation with special school principals despite them having large numbers of autistic students at their schools. Parents were to have no input and were not to be informed of what is on the regional autism state plan.
>
> There were plans for autism inclusion units at mainstream schools. They didn't know which schools, they didn't know how many units … and they didn't know … how many students it would cater for. These would be pilot programs. They didn't know how long before any more units would be created. They didn't even seem very sure what the units would be like.
>
> Basically it was implied that we had a choice whether to put our children in special schools or mainstream schools. This is very cruel and insensitive. My daughter would be considered 'classic autistic' and runs away, self-harms when distressed, struggles to communicate, at nearly 9 appears not to read, can't cope with being around very many people. We have no choice … as do many other parents of children like ours.

It is outrageous that children with autism and their families are being put through this agony when we consider there are autism-specific P–12 schools in the northern suburbs, certainly in the eastern suburbs and the southern suburbs, with a new one announced in the recent state budget. However, the western suburbs have been told, 'It's just not planned. It's not going to happen and we don't even really want to talk to you about it.'

It is not good enough. It is insulting; it is insensitive. It is an outrage that in the western suburbs children with autism and their parents are being treated in this way. I ask the minister, as soon as is humanly possible, to set up a time to make herself available for a meeting with me and with parents of children with autism living in the west. We need to get this matter up and running and to get it resolved so that there is justice for these children.

The DEPUTY PRESIDENT — Order! Mr Finn mentioned that he had raised this matter about an autism school previously, and that was also my recollection. As I understand it, it would have been within the past six months; is that correct?

Mr FINN — Yes.

The DEPUTY PRESIDENT — Order! Can he advise me what was the action he sought on the previous occasion?

Mr FINN — I thought that you, or whoever was in the chair, would ask that very question, so I checked before I came in. What I asked the minister for was that a school be built immediately. What I am asking for tonight is a meeting between the parents, the minister and me.

Frankston Reservoir: future

Mr RICH-PHILLIPS (South Eastern Metropolitan) — I wish to raise a matter for the attention of the Minister for Environment and Climate Change. It relates to the proposed Frankston Reservoir park.

Prior to the election in 2006 the government decommissioned the old Frankston Reservoir and announced that it would become a public park for the people of Frankston. Since then, in the ensuing four to four and a half years, nothing has happened. We have had the proposal pushed between the Department of Sustainability and Environment and the city of Frankston, and at one stage a proposal was put together for a local Aboriginal group to manage the site so it could access commonwealth funding. I understand the proposal is now back with DSE, but still, four years after it was announced, that site is not open as a public park. It beggars belief that this government is not capable of opening a small area of public bushland. It is a site of roughly 100 hectares, or a bit under 100 hectares. In four years this government has not been able to open it as a public park.

Not surprisingly, in the lead-up to the election, given that this was a commitment prior to the previous election, the minister has announced that there will be public open days in what is to be the Frankston Reservoir park, but because the department has not completed the works that are required on the site, the open days will only be available to people under escort, so people will have to be escorted by DSE rangers

around what is going to be a public park, which is an absolute farce.

What I call on the minister to do is stop the buck-passing between the agencies he is responsible for and open this park for the people of Frankston prior to the November election.

Gippsland Plains rail trail: funding

Mr P. DAVIS (Eastern Victoria) — I raise an issue for the Minister for Environment and Climate Change concerning government support for the full development of the Gippsland Plains rail trail. The trail runs along an abandoned rail line for 67 kilometres east from Traralgon and takes in seven townships in the heart of the region — Glengarry, Toongabbie, Cowwarr, Heyfield, Tinamba, Maffra and Stratford at its terminus.

A Gippsland community-based committee of management took over the trail in 1999. Some 200 committee members and local community supporters have contributed more than 7000 hours of volunteer work to construct and maintain sections of the trail over the past 11 years. However, only the 10-kilometre section from Stratford to Maffra at the eastern end is of a standard suitable for all types of bikes as well as walkers. Traralgon, the main regional centre at the western end, is isolated from the trail, and the trail is disconnected between Traralgon and Tinamba.

A 2009 assessment by the Department of Sustainability and Environment put the cost of completing it at a total of $2.163 million. Government support for development of the trail to date has been largely disaster-driven — that is, following major bushfires in 2000–07 and floods in 2007. The natural disasters have had a devastating and lasting effect on the infrastructure and fragile economies of all communities along the rail trail. They are located on an ecotourism work-in-progress that is potentially one of the main attractions for visitors to Gippsland. Its convenience alone is significant in that users travel by train from Melbourne to either Traralgon or Stratford, ride or walk the Gippsland Plains trail and catch a return train to Melbourne.

The committee of management and local communities regard this unfinished project as a missing link in their economic growth and security, in ecotourism in Gippsland and in their own lifestyles and recreation. I draw attention to the fact that sustainable living and environmental concepts are being put into effect in association with work on the trail, such as the development of wetlands and reserves, the Heyfield Sustainable Smart Town program, and sustainable planning for new housing subdivisions at Glengarry.

For all those reasons, I submit to the minister that he act to incorporate the Gippsland Plains rail trail in the state's ecotourism strategy with a commitment to facilitate in stages its completion.

Roads: rural maintenance contracts

Mr DRUM (Northern Victoria) — My adjournment matter this evening is for the Minister for Roads and Ports, Mr Pallas. It has to do with constituents of mine who run a road maintenance company specialising in road shouldering and reconstruction and sealing. According to Harry and Hazel Shaw, over the last 12 to 18 months it seems as though the contracts for these types of maintenance contracts have totally dried up. They obviously keep a very keen eye out every Wednesday in the major papers where these tenders go public, but over the last 12 to 18 months the tenders have dried up. Of the few tenders that have been let, a large portion of them have been picked up by a company by the name of CityWide, which has been winning contracts in regional Victoria and has in effect been advertising for workers to come and work for it.

My constituents have done a search on CityWide and discovered it is wholly owned by the City of Melbourne, so we now have a situation where a company that is wholly owned by the City of Melbourne is winning contracts in regional Victoria at the expense of local companies and then advertising for people who were working for these regionally-based companies to come across and work for it.

I ask the minister if he understands this is going on. Is it state government policy that VicRoads contracts for maintenance of country roads be let to a company that is wholly owned and operated by the Melbourne City Council, and does the minister understand the impact that that is having on regionally based companies when CityWide obviously has the ability to undercut a private regionally based company in times when these contracts are getting quiet? If they are quiet in the city, obviously they are going to be able to lower their prices to pick up these types of contracts in regional Victoria.

It seems to be a false economy. It seems to be hypocritical of a government that talks about regional development when, by its own policies, it is in effect fostering a company owned by the City of Melbourne at the expense of a range of companies that are wholly privately owned and operated in regional Victoria.

The DEPUTY PRESIDENT — Order! It is a good press release, but it is not an action for the adjournment. The member reeled off a number of questions that the minister ought to ask himself, but there was no action in what he proposed.

Mr DRUM — Of course there was.

The DEPUTY PRESIDENT — Order! What was the action?

Mr DRUM — Can the minister inform me if this is state government policy? That is an action.

Hon. M. P. Pakula — On a point of order, Deputy President, I am seeking clarification from Mr Drum, because obviously I want to provide the minister with an appropriate request from Mr Drum. Is the action Mr Drum seeks for the minister to advise him what the state government policy is?

Mr DRUM — That regional contracts are going to be won by city-based companies that are wholly owned and operated by the City of Melbourne.

Health: federal government plan

Mr D. DAVIS (Southern Metropolitan) — My matter for the adjournment is for the attention of the Minister for Health, and it concerns the email that was obtained by the opposition yesterday released by Mr Peter Broadhead from the Department of Health and Ageing in Canberra and dated 26 July at 1.29 p.m.

This email reflects on meetings held by Fran Thorn, Secretary of the Department of Health, other Victorian senior executives and also a number of federal bureaucrats as they discussed the new Rudd-Gillard-Brumby health deal. The deal is a very specific deal that was signed a little while ago, and it has a number of loose ends that have not been sorted through. The Victorian bureaucrats were heavily concerned about those matters.

The commonwealth bureaucrat's email, which lays out the contribution by the Victorian bureaucrats, refers to two sets of Victorian documents. The first of those is described as 'E&Y presentation', and it is a PowerPoint presentation dated 21 July. The email states:

> I also attach the presentation they —

'they' being the Victorian bureaucrats led by Fran Thorn —

> used.

There is reference to this specific document in the leaked email. The leaked email also states:

> Victoria noted that informal maps of —

Medicare Locals —

> boundaries developed by Victoria had been passed to senior exec. of commonwealth department.

These are boundaries for the Medicare Locals boundaries that are not yet public; there is only the Australian general practice network putative boundaries which have no official status. Victoria has obviously been working very hard to develop boundaries, but they have not been released to or shared with the Victorian community.

What I seek from the Minister for Health is that both of these documents be made public and be made public now. This is quite an important time because we have a federal election in just over a week, and it is very clear that these are matters of pertinence to the Victorian community and the Victorian health sector. I seek the release of those documents so that the public can see the concerns of the Victorian health bureaucrats and health minister about the implementation of the deal signed on behalf of Victorians.

Responses

Hon. M. P. PAKULA (Minister for Public Transport) — Numerous matters were raised during the adjournment debate tonight.

Ms Lovell raised a matter for the Minister for Education asking that she investigate the refurbishment of Lake Charm Primary School, and I will convey that to the Minister for Education.

Mr Kavanagh raised a matter for the Minister for Agriculture in regard to land-holders in the Stony Creek area in relation to clearing gorse from the land and asking the minister to enter into discussions with those land-holders, particularly in regard to the cost of that clearing. I will convey that to the Minister for Agriculture.

Mr Koch raised a matter for the Minister for Energy and Resources in regard to electricity services in western Victoria, particularly in the towns of Lethbridge, Meredith and Bannockburn, and asked that the minister inform residents about how he intends to effectively upgrade the security of energy supply in that part of the state. I will convey that to the Minister for Energy and Resources.

Mr Murphy raised a matter for the Minister for Education asking that the minister provide the community with information to give it reassurance about the future of the former Hurstbridge High School site. I will convey that to the Minister for Education.

Mrs Coote raised a matter for the Minister for Sport, Recreation and Youth Affairs and asked that he look at various issues, including the representation of women on boards of sporting organisations in the Victorian context. I will convey that to the minister.

Mr Vogels raised a matter for the Premier as a consequence of the heavy wind and rain yesterday in a number of Western District shires, including Corangamite, and asked that he provide funds for infrastructure repair and replacement as a consequence of the flooding and wind damage. I will convey that to the Premier.

Ms Hartland raised a matter for me in regard to the provision of car parking at the St Albans, Ginifer and Albion stations. It was an interesting contribution. Ms Hartland was torn between her view that people should not drive their cars to the station and her desire to raise a matter on the adjournment seeking more parking places. I make the point that on numerous occasions I have mentioned in this place efforts the government is making to improve parking at various stations. I recall having informed the house of additional parking spaces at places as diverse as Berwick, Laverton and Marshall, and we have a very successful park-and-ride program which has upgraded car parks at many stations. But I will undertake, for Ms Hartland's benefit, to provide her with any information that I can with regard to any plans that might be on foot for St Albans, Ginifer and Albion.

Mrs Peulich raised a number of matters in regard to the Frankston line which I could respond to in quite some detail. I suggest to Mrs Peulich that if Ms Toohey would like to write to me, I will give her a fulsome response to many of the matters raised by Mrs Peulich on the adjournment tonight. But for the sake of brevity, Mrs Peulich raised a particular matter in regard to the situation in relation to lighting at Chelsea station; I will look into that matter and provide Mrs Peulich with a response.

Mr Finn raised a matter for the Minister for Education asking that she make herself available to meet with him and parents of autistic children in the western suburbs, particularly in regard to the provision of an autism-specific school in the western suburbs. I will convey that to the Minister for Education.

Mr Rich-Phillips raised a matter for the Minister for Environment and Climate Change asking that he open the Frankston Reservoir park prior to the state election. I will convey that to the Minister for Environment and Climate Change.

Mr Philip Davis raised a matter also for the Minister for Environment and Climate Change asking that he incorporate into the state's ecotourism strategy the Gippsland Plains rail trail. He asked that the minister do that in order to help facilitate the completion of that trail, and I will convey that to the Minister for Environment and Climate Change.

Mr Drum raised a matter for the Minister for Roads and Ports asking that he advise him as to whether it is state government policy to issue contracts to companies owned by the City of Melbourne for work in regional Victoria. I think I can dispose of this matter tonight by giving Mr Drum the answer. The answer is no. The answer, as I would have thought Mr Drum would have known, is that the government enters into a competitive tender process for those works and then awards those tenders in accordance with the guidelines set down in whatever the relevant tender might be. So if his question is: is it state government policy? The answer is no, and I consider the matter disposed of.

Mr David Davis raised a matter for the Minister for Health asking that he make public certain documents raised in discussions between Victorian health bureaucrats and commonwealth health bureaucrats, and I will convey that to the Minister for Health.

I also have written responses to the adjournment debate matters raised by Mr O'Donohue on 25 May 2010 and Mr Koch on 22 May 2010.

The DEPUTY PRESIDENT — Order! The house is now adjourned.

House adjourned 10.41 p.m.