PARLIAMENT OF VICTORIA

PARLIAMENTARY DEBATES (HANSARD)

LEGISLATIVE COUNCIL

FIFTY-SIXTH PARLIAMENT

FIRST SESSION

Thursday, 16 September 2010

(Extract from book 14)

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

By authority of the Victorian Government Printer

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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.

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

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

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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.

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Parliamentary Services — Secretary: Mr P. Lochert

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FIFTY-SIXTH PARLIAMENT — FIRST SESSION

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Leader of The Nationals:
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Dalla-Riva, Mr Richard Alex Gordon	Eastern Metropolitan	LP	Murphy, Mr Nathan[2]	Northern Metropolitan	ALP
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Davis, Mr David McLean	Southern Metropolitan	LP	Pakula, Hon. Martin Philip	Western Metropolitan	ALP
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Drum, Mr Damian Kevin	Northern Victoria	Nats	Petrovich, Mrs Donna-Lee	Northern Victoria	LP
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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
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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

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Thursday, 16 September 2010

The PRESIDENT (Hon. R. F. Smith) took the chair at 9.34 a.m. and read the prayer.

GOVERNMENT (POLITICAL) ADVERTISING BILL

Assembly's rejection

Message from Assembly read rejecting bill.

Ordered to be considered forthwith.

Mr D. DAVIS (Southern Metropolitan) — I move:

That the Council take note of the Assembly's message.

This is an extraordinary development. A bill on political advertising passed through the upper house yesterday, I note without a division, and was rejected in the Assembly by Premier John Brumby and his cohorts without consideration. They would not let it be first read. This is the Premier who, in 1995, said he would introduce a bill to ban party political advertising. This bill was modelled on the principles spoken about by John Brumby at the time. He never introduced a bill. We introduced the bill, passed the bill and sent it to the Assembly, and in an antidemocratic act John Brumby and his cohorts in the lower house cut it dead. This is democracy in Victoria. Not a single bill from a non-government party has been debated by the Assembly in this period.

It is disgraceful that the Premier of this state and the Labor Party are too afraid to allow a bill to sit on the notice paper in the lower house and be brought forward for debate. If the government had a different view, it could vote against it at that point. If it wanted to modify the bill, it could do it at that point. In this chamber the Labor Party did not take the chance to modify the bill. I have to say this is one of the most disgraceful and despicable examples — —

Honourable members interjecting.

The PRESIDENT — Order! I remind the chamber that whilst during question time we have a little more leniency with regard to interjections, this is not question time. I expect the house to remain in order, and I remind members that interjections are disorderly. Mr Davis to continue.

Mr Drum interjected.

The PRESIDENT — Order! If Mr Drum would like an early exit from here, he will get it. I do not expect him to be interjecting.

Mr D. DAVIS — There is an avalanche of partisan, party-political advertising in this state under John Brumby.

Mrs Peulich interjected.

Debate interrupted.

SUSPENSION OF MEMBERS

Mrs Peulich

The PRESIDENT — Order! Quite clearly Mrs Peulich does not want to accept my earlier ruling. Given that her interjection, in my view, is creating disharmony in the house and disrupting the proceedings of the chamber, I will use standing orders to remove her for 15 minutes.

Mrs Peulich withdrew from chamber.

Mr Jennings interjected.

Mr Jennings

The PRESIDENT — Order! Minister Jennings will also withdraw for 15 minutes.

Mr Jennings withdrew from chamber.

GOVERNMENT (POLITICAL) ADVERTISING BILL

Assembly's rejection

Debate resumed.

Mr D. DAVIS (Southern Metropolitan) — There is an avalanche of partisan, party-political advertising in this state under Premier Brumby. He has hypocritically allowed this avalanche to occur, and it is clearly designed to soften up the community ahead of the state election. It is a waste of money. Money is being squandered. In the last few days I have visited the Heart Foundation, which is seeking to run a campaign advising the community about the signs and symptoms of heart attacks, to warn people and to allow them to understand when they need to get an ambulance and when they need to go to hospital. The Brumby government will not fund those advertisements, but it will fund advertisements like the

Working Victoria ads, which are purely partisan party-political advertising.

Likewise, the Shine advertisements that everyone sees on their television screens are warm, nice-feeling ads about schoolchildren and the importance of our children's education, but they do nothing to further that education. They are about promoting the Premier and his shameful, tired, 11-year-old government. They are about propping up this government with party political advertising.

In an outrageous decision in the lower house last night Labor cut dead democracy in this state. It cut dead the opportunity for private members to introduce bills and put things on the agenda. We saw it with Mr Drum's bill on smoking a year or two ago. He put forward an important public health bill and it was cut dead in the lower house. This bill, an important bill, modelled on John Brumby's own principles from his time in opposition, would have allowed a panel to be established to regulate and prevent partisan and party political government advertising. This is John Brumby and Labor at their antidemocratic worst, cutting down democracy, using public money — squandering public money — for partisan political advantage.

Mr Kavanagh made a number of important points in this chamber yesterday, including that these advertisements and so forth are corrosive of democracy. They are corrosive because they mislead people. They try to leave impressions that are untrue. They weaken our democracy, and they provide partisan political advantage to a crooked, tired, old government that is interested in its re-election and not interested in the people of Victoria. I say, 'Shame, John Brumby. You should hang your head in shame. You should leave now, and you should stop your partisan political advertising'.

Mr VINEY (Eastern Victoria) — What hypocrisy! What absolute hypocrisy from Mr Davis and the opposition who two weeks ago, in coalition with their mates from the Greens political party, shut down debate. They shut down debate in this house on this very bill. We proposed to debate the bill forthwith — immediately — and started the debate. At the first opportunity they shut it down. They did so because the whole thing is a political stunt, and that was exposed yesterday. It is a political stunt. They shut it down two weeks ago because they did not want it brought on in this chamber until this week and next week in the lower house, in the lead-up to the election.

The sham of the piece of legislation that Mr Davis brought into this place was exposed when the government took Mr Davis into a committee stage on the bill and he showed he barely understood his own piece of legislation. He had to be rescued on about five occasions by the Deputy President, who was chairing the committee stage, because he did not have the answers to the questions. In that committee stage Mr Davis effectively admitted that the whole thing was a sham. He admitted that the minister of the day, in this case the Premier, could exempt any government advertising campaign and the panel he was planning to set up could not override that ministerial exemption. The whole thing is a farce. He has absolutely no intention of doing anything about government advertising if in government.

Mr Davis also failed to demonstrate any understanding of the importance of a whole range of campaigns like road safety campaigns, the WorkSafe campaigns and the schools campaigns that are promoting good education in Victoria, because this government believes in good public education. This is the government that has been delivering on those things. When the opposition was last in government it cut into those things. It cut into schools; it closed 350 schools. It sacked teachers and nurses, and it left a hospital system that was basically bankrupt. In all those things the opposition demonstrated it had no commitment to good service delivery in this state.

Now we have a proposal from Mr Davis, who cries crocodile tears for one reason only — that is, there is a camera up there in the gallery. That is the only reason Mr Davis has brought this on. Two weeks ago he shut down the debate on this bill.

The government started the debate, wanted to continue it, wanted to go into the committee stage — —

Honourable members interjecting.

The PRESIDENT — Order! We are starting to lose it a little bit in the chamber. I remind members that we need to ratchet it down. This debate is creating a bit of emotion, particularly in the Leader of the Opposition. I remind him and all members of the house that I have already ejected two people for disrupting the proceedings, and I will continue to do so if I need to.

Mr VINEY — This is a completely insincere proposition by Mr Davis to express some concern about this matter. There are two reasons for that. Firstly, two weeks ago Mr Davis completely shut down the debate on this bill in this chamber, in coalition with the Greens, demonstrating that he had

no interest in this matter being properly and fully debated. Secondly, he demonstrated yesterday in the committee stage that not only was he not across his own piece of legislation but that the whole thing is a sham and a stunt. If the opposition were in government, it would have no intention whatsoever of doing anything about government advertising.

Mr KAVANAGH (Western Victoria) — I would like to make a comment on what has happened this morning. I note the government's response has been to vilify David Davis, but there has been very little said by the government about the content of the bill that it rejected last night. The bill was intended to prevent the waste of taxpayers money on political advertising. I want to make two points about this.

The first point is that government expenditure should not be wasted. As I said yesterday, it is taken off people who earn it through their labour and it is not to be frittered away on giving one party an advantage; it is to be spent wisely, and the best value should be obtained from that expenditure.

The second point is that this is a blight on our democracy. It tilts the playing field in favour of one side and degrades our democracy. I think both of those points are of overwhelming importance, but neither was addressed by the government. Both of those arguments seem to me to be unassailable, and the government's response only goes to prove that.

Mr HALL (Eastern Victoria) — I have a few remarks to make, President, and I thank you for the opportunity to do so. It was a disgraceful decision of the Brumby government to shut down debate in the Assembly yesterday.

I want to take up two points that Mr Viney made in his contribution. He criticised Mr David Davis and the coalition parties for shutting down debate in this chamber two weeks ago when the bill was first introduced. Nothing could be further from the truth. Debate on this bill was adjourned for two weeks so as to bring it to the attention of the Victorian public and give people the opportunity to have a look at the content of the bill. It is not until a bill is introduced in a second-reading form that its provisions are made public and the people of Victoria, including members of this chamber, have an opportunity to scrutinise it.

The actions of the government two weeks ago in this chamber were again an attempt to deny knowledge to the people of Victoria and to shut down the debate as quickly as possible. There was no hypocrisy in deferring debate for one week when the second reading was moved in this chamber two weeks ago; the exact opposite is the truth.

The second point Mr Viney made was to suggest Mr Davis knew nothing about the bill when it was in committee. I sat through that committee stage, and I say that government members did not lay a glove on Mr Davis. They were all lined up with their questions but could not lay a glove on him — every question was answered. If you want to draw a contrast, have a look at the next bill that was sent through a committee stage yesterday when Minister Madden was at the table. He sat mute right throughout the committee debate and relied on one of his colleagues, Mr Tee, to answer every question. Talk about the pot calling the kettle black! Mr Davis performed excellently in the committee stage compared with some of the government's ministers.

The essential point is this: what we know from the actions of the Brumby government in the Assembly yesterday is that it simply will not tolerate any other member introducing legislation into the Parliament of Victoria. At the first opportunity the government will simply choose to gag debate. A private members bill is simply not heard by this government. It claims to be open, accountable and democratic, it claims to govern for all of Victoria, but the exact opposite is the truth. Government members govern for themselves and only for themselves. They will not let opposition members or other people be heard. Yesterday was a classic example of the arrogance of this tired, worn-out Brumby government. It stands condemned for not even giving the Assembly an opportunity to debate this bill yesterday.

Mr BARBER (Northern Metropolitan) — We usually try not to reflect on debates that have happened in the Legislative Assembly. In fact until fairly recently we did not even mention them by name in this place but just referred euphemistically to 'other debates', so it is not necessarily my intention to tell the Assembly how to do its business down there. However, I point out that when a government bill, or any bill, comes to this place from the lower house we always debate it. I think it is not bad practice for a Parliament, or for that matter for us to earn our money, to debate a bill before we vote on it. Ms Hartland's bill for container deposit legislation had a similar fate in the Assembly some months ago.

I suppose it would be possible for the Legislative Council to simply let the lower house debate bills, to form our view on those bills before they ever come here and then on first reading vote right there and then as to whether we are for or against them. For that

matter, the government seems to have taken to introducing some bills in the upper house. There is nothing wrong with that; other parliaments initiate bills in the upper house rather than the lower house. It would be wrong of us, if a government bill were introduced for the first time in the upper house, to vote it down. Other members have brought private members bills into this place at various times, and I can think of another parliament where the content of such a bill was quite offensive to my particular brand of politics. But still the idea of voting down a bill at the first reading — to simply say that as a matter of principle, 'We do not even want to debate the subject matter of this bill' — is too strong and antidemocratic.

In the federal Parliament we have seen that there is now a balance of power held in both houses — in the Senate and in the House of Representatives. One of the initiatives pushed through by the five crossbench senators, including the federal member for Melbourne, Adam Bandt from the Greens, and other Independents, is to create some time to debate private members bills in the House of Representatives. The Prime Minister, Julia Gillard, and the rest of the members are embracing this new paradigm; they think it is a wonderful thing to do. The Prime Minister probably had to stick a coathanger in her mouth sideways to keep that smile when she signed on to it, but it is quite clear that in doing it they are now learning it is a good thing to do.

I think if this government was enlightened, it could adopt that practice, or in this case this very simple matter. When a bill passes through the upper house and goes to the lower house the government could adopt that practice simply because it was a progressive government and not because some crossbench members of Parliament hung other members out of the window by their feet and forced them into it.

Ms MIKAKOS (Northern Metropolitan) — I want to remind members opposite of a few occasions when they have sought to curtail debate on government bills by introducing reasoned amendments to put off debate and consideration of legislation into the never-never. Two weeks ago the opposition parties joined together to shut down debate on their own bill, which is the bill we are referring to now. It is a bill that I remind them has been on the notice paper since February, so they have had ample opportunity — many months — to bring it to the attention of the Victorian public, as they say. Yet they failed to do so and decided to bring it on at the 11th hour purely as a political exercise in the lead-up to an election, and that is clearly evident.

In relation to what occurred last night, I did participate in the committee stage, as did Ms Huppert, Ms Broad and other members of the government.

Mr Hall interjected.

Ms MIKAKOS — I asked a number of questions, Mr Hall, and I remember that you came to Mr Davis's rescue a number of times as well, so it is not appropriate for you to be saying that government members have come to the rescue of ministers when — —

The PRESIDENT — Order! Ms Mikakos, through the Chair!

Ms MIKAKOS — I recall Mr Hall coming to the rescue of Mr Davis on a number of occasions — —

The PRESIDENT — Order! Through the Chair means Ms Mikakos will also look here and not at Mr Hall, possibly provoking him.

Ms MIKAKOS — I am always happy to look at you, President.

I recall that during the committee stage we were working to an agreement to try to finish general business by the dinner break, and that curtailed consideration of this bill in the committee stage. I can say to Mr Davis that we did in fact go very easy on him because we wanted to finish off all the general business items by the dinner break in order to get to government legislation.

Mr Davis on a number of occasions struggled to answer questions put to him. He was not able to provide details in relation to the selection criteria for panel members who would be appointed under this bill. As Mr Viney already pointed out clearly he was not able to explain the rationale for allowing the minister responsible under this bill, who would be, as he explained, the Premier of the day, to be able to override the panel through an exemption certificate. We would see a sham process that would allow the Premier of the day to exempt any government advertising and in effect get around whatever the intent of the legislation was.

We clearly had a bill that did not achieve the outcomes that Mr Davis sought to achieve. It would not have enabled any independent body, or panel, to make the ultimate decision when it came to what type of advertising would be allowed as part of the government advertising program. It would in fact allow any Premier of the day to override that body and make the final decision.

We also had a number of examples put to Mr Davis about advertising that is currently being undertaken in relation to a whole range of subjects — personal safety, education, health — and Mr Davis gave us an example of a campaign that is perhaps worthy of being supported through government advertising. But I remind Mr Davis that there are many other ads in relation to health issues currently running through the government advertising program: in relation to cervical cancer screening and many other issues. He was not able to explain what would happen in a definitive way in relation to all the examples that were put to him. He claimed that these decisions have to be put off until the panel is established. It would make the decisions. Mr Davis was not able to explain further.

The vast majority of government advertising — I would suggest probably all government advertising — would not be affected in any way by this legislation, because it addresses fundamental issues, communicating to the Victorian public important messages around education, health, public safety and a range of other issues. These are all important issues that the Victorian public should be aware of, and it is important that any government of the day is able to communicate legislative and other types of changes relating to government policy so that the people of Victoria know what those policies are and what their obligations are under legislation.

Once again we have seen a purely political exercise with the opposition parties joining together to bring on a debate at the eleventh hour before the election to try to confuse the Victorian people about this issue. If this legislation were passed, we would see probably no change to what is in fact the case at the moment.

We reject the comments that have been made by the opposition. We had a full and thorough debate yesterday around these issues, we had a committee stage around these issues, and as became clear by the end of that process, this is a flawed bill.

Ms PULFORD (Western Victoria) — I would also like to say a few words about this bill. There are 72 days until the election, and that is really the elephant in the chamber this week. Yesterday we debated whether the Leader of the Government ought to be thrown out of the house. In the last sitting week we had the opposition gag debate on the bill around government advertising, which we are talking about today.

The Legislative Assembly was sent a message by this place yesterday. As of today the Legislative Assembly has only four more sitting days in the life of this Parliament. The Leader of the Opposition first read and therefore declared his intention to bring a bill around government advertising into this place many months ago, so if the Leader of the Opposition was keen to establish his bona fides on this issue, he might have brought this debate into this place a little bit earlier. But I think a combination of the document strategy end game, which was clear for all to see yesterday, and the fact that members of the opposition did not even want to debate this when we first had the opportunity to do so demonstrates absolutely that this is so much more about where we are in the electoral cycle and where we are in the calendar.

On government advertising, I was in the chamber for part but not all of the committee discussion around Mr Davis's bill yesterday. I gather from the *Hansard* that there was a thorough discussion of the issues, but one part of the debate that I did hear was Mr Davis's endeavours to explain the need for deliberately broadly ranging guidelines because of the nature of the things to which government advertising relates. To put this into perspective, these are campaigns around recruiting additional front-line police, promoting workplace safety, which is incredibly important, promoting transport safety and road safety, and the opposition continues to whisper, whisper, whisper about speeding fines and — —

Honourable members interjecting.

The PRESIDENT — Order! If members across the chamber want to have conversations, they are free to do so outside.

Ms PULFORD — The opposition continues to send a mixed message to the community about where it stands on the important issue of road safety — something that affects all of us every time we get into our cars or cross the road. These are campaigns that provide information to people about opportunities to invest in regional Victoria, which is essential to our regional Victorian economies.

I was struck by the madness of the opposition's proposition that it did not want to debate this government advertising bill in the last sitting week when on the way home after the last sitting week I made a pit stop and on the back of the toilet door there was an ad with one of those little Victorian government logos, which I think probably indicates it is that dreaded government advertising. It was information about advice and support — —

Mrs Coote interjected.

Ms PULFORD — Not about safe sex in this instance, but I have seen those notices on the back of the loo door too, Mrs Coote. This one was about where people can go for advice on domestic violence. I thought, here we were having the debate that never took place on government advertising and there it was — the evils of government advertising on the back of a loo door at my pit stop on the way home from the last sitting week.

Mrs Peulich interjected.

Ms PULFORD — Mrs Peulich talks about TV advertising, but we all know people receive their information in a variety of ways. Anybody communicating any kind of message about anything uses a range of mediums such as television, radio, print media and the like to do so. If the opposition were serious about this — and I imagine the Leader of the Opposition, Mr Davis, of all members on the other side of the chamber, probably has a greater capacity than anybody else to determine the order of debate for government business items — it might have thought to have brought the debate on a little earlier so that it was not being presented to the Legislative Assembly four sitting days before the election.

Mr LENDERS (Treasurer) — I rise to join this debate and to clarify a few things. Firstly, on the great excitement from those opposite, I remind the house of something interesting. In the last Parliament this house considered the National Parks (Alpine National Park Grazing) Bill. There was a vote on the first reading and guess who voted against it? They were Mr Atkinson; Mrs Coote; Mr Dalla-Riva; Mr David Davis, who I thought was quite outraged at this; Mr Philip Davis; Mr Drum; Mr Hall, who also was quite outraged at this; Mr Koch; Ms Lovell; Mr Rich-Phillips, who was a teller as well; and Mr Vogels.

Before we start getting too excited about the outrage of a house voting against a first reading we should consider what happened then. To give Mr Barber credit, he discussed what might happen. Mr Barber was not a hypocrite; he has never done what those opposite did. But all these honourable members who had 'Hon.' before their names were quite excited. I think Mr Hall was uncharacteristically excited. I take that as what Mr David Davis does normally.

It is interesting to note that when it came to the National Parks (Alpine National Park Grazing) Bill all those people thought we should vote against it being read a first time without even having heard the debate. That goes to the point that Mr Viney made, that there is just a slight touch of hypocrisy here. I can quite proudly say that everyone on this side of the house — I am not talking about our colleagues down there, but those on this side of the house — has never done what those on the other side are getting quite agitated about.

While we are talking about what is happening in this debate, let us not hide from the fact that this was a bill introduced in February with a media release drawing people back to the same text of a bill of 15 years ago. On Mr Hall's point that no-one knew what it was, if people read the opposition's media release they will see the bill.

Then we have had this running commentary since February about this important bill that was going to be put forward. When it came forward, Ms Broad sought to debate it. Members of the Greens, the Democratic Labor Party, The Nationals and the Liberal Party said they wanted more time, and that is a legitimate argument. The house legitimately said it wanted more time. I do not have an issue with that. But it is a tad hypocritical when there is a TV camera here and people say, 'We needed more time' and suddenly that becomes a crime — that is, when those who voted to gag a debate then carry on about another chamber that did not have the debate.

It is interesting to see the excitement about the TV camera that was here today. As a party allegedly gagging a debate, we gave leave for this debate to take place today. Part of the reason we are having this debate today is that yesterday, in a spirit of cooperation to get through business, we curtailed the contributions of our members to the debate. Given that Mr David Davis wants a stunt today, he clearly wants to be here on Friday. We will match this side of the house to the other side, one for one, until the debate is concluded because we curtailed the debate yesterday as part of an agreement. To have this argument that somehow or other our members were not able, willing or capable of having this debate is incorrect. We will have this debate today because it is more important to Mr David Davis than getting through the program, which was so important to the other side yesterday.

I will make another couple of comments about the sanctity of the Parliament. Again, the Greens and the Democratic Labor Party are not part of this debate because they were not in the last Parliament. They are part of the debate, but I am not having a go at them because they were not here in the last Parliament. It was fascinating to hear Mr Hall go on about the Assembly not considering a private members bill. He was a member of this house during the Kennett years when it rejected 700 opposition amendments to try to

improve legislation, and during the seven years of coalition majority in this house not one non-government amendment was agreed to or considered. Mr Hall should not get too excited when talking about houses of review.

I am quite happy to have this debate as an analytical debate without preaching to a television camera. In fact I waited until the camera was gone before contributing to the debate, because this is a debate about the upper house, not about preaching to a camera, which Mr David Davis was very excited about.

What we have is a debate that has gone on and on. Mr Hall says, 'Is it not outrageous that we are not considering things?'. For seven years he voted against every single effort to improve legislation. Mr Davis, to his credit, only did that for three and a half years, because he was only in the house for three and a half years of the Kennett government.

Let us have the media stunt. If members of the opposition want to put up a bill, good on them! They are entitled to do that. If they want to debate it, good on them! They are entitled to that. But let us not have the hyperbole and the outrage.

I would invite anyone to look at the shameful 19 members who in this house voted not to debate a bill without even having a debate. That is their prerogative, but I ask them not to come in here four years later and preach at people. They should do their dirty deed but not preach about it. We are not that stupid. We on this side of the house have memories.

The final thing I will say in this debate, which we are simply noting, is that what we have seen here is a debate about where we go and how to go forward. But the ultimate and final touch of hypocrisy here is that the opposition is preaching about advertising. This is a party whose leader has, since the 2006 election, called for not 1, not 2 but 26 advertising campaigns, including one on how drivers can safely drive four-wheel drive vehicles. If advertising is so bad for road safety and all these other things, let us not have 26 new campaigns going out to each little community saying, 'Government should do something', and then come back and say, 'Advertising is all political stunts'.

We are noting the motion. I will not recommend voting against noting the motion because noting is fine. But I would ask anybody opposite who was a member of the 55th Parliament to please read the record and note the hypocrisy before they open their mouths again.

Ms HARTLAND (Western Metropolitan) — I want to make a very brief contribution to this debate and speak about the issue of amendments. In the three and a half years the Greens have been in this Parliament I believe that the government has accepted about four amendments from us on very serious matters on a number of extremely serious bills, right down to drafting errors in bills that the government would not accept. I think the government has to cop it as well as the opposition.

Ms HUPPERT (Southern Metropolitan) — I want to make a few brief comments in relation to this motion to note the actions of the Assembly and set the record straight. Some members opposite have made some outlandish comments about the failure to give people a chance to consider the Government (Political) Advertising Bill.

As we have heard, this bill has been on the notice paper in this chamber since February. Since February the opposition has had six months in which to discuss this bill and take it to the public to give people a chance to make comments about it. The opposition gave the Greens and the Democratic Labor Party the same length of time to consider the proposals that are contained within the bill and to make comments about it. For the opposition to then gag debate two weeks ago when the government tried to bring on the debate about this bill is the first example of hypocrisy.

We have already heard the second example; we have heard the opposition criticising the government for defeating a bill on the first reading in the Assembly when clearly that is not the first time this has happened. There have been a number of occasions on which the opposition itself has voted against the first reading of bills.

In relation to the actual contents of the bill, during the questioning yesterday in the committee stage when two of my colleagues and I asked questions it was quite clear Mr Davis was not able to give any example of government advertising which would not be subject to an exemption certificate under the section of the bill which allowed the minister, in this case the Premier, to issue exemption certificates. He was not able to give any guidance to the purported panel as to the meaning of the words in the bill that the panel was supposed to be interpreting while making decisions about government advertising. He was asked and invited on a number of occasions to expand on the meaning of the wording of the bill and was unable to do so.

It is therefore quite clear that the bill was not workable, that it would not have had any effect on

government advertising in this state and that it was just a stunt brought on two sitting weeks before the election with the intention that it would be debated in the Assembly on the last sitting week before the election. We had a number of stunts in this house yesterday, and this was the last in the series.

Motion agreed to.

COUNTY COURT OF VICTORIA

Report 2008–09

For Hon. J. M. MADDEN (Minister for Planning), Mr Lenders presented report by command of the Governor.

Laid on table.

DEPARTMENT OF HUMAN SERVICES

State concessions and hardship programs 2008–09 and 2009–10

For Mr JENNINGS (Minister for Environment and Climate Change), Mr Lenders, by leave, presented report.

Laid on table.

OFFICE OF THE PUBLIC ADVOCATE

Report 2009–10

For Hon. J. M. MADDEN (Minister for Planning), Mr Lenders, by leave, presented report.

Laid on table.

PUBLIC ACCOUNTS AND ESTIMATES COMMITTEE

Budget estimates 2010–11 (part 3)

Ms HUPPERT (Southern Metropolitan) presented report, including appendices, together with transcripts of evidence.

Laid on table.

Ordered that report be printed.

Ms HUPPERT (Southern Metropolitan) — I move:

> That the Council take note of the report.

In doing so I point out that, as mentioned, this is part 3 of the committee's inquiry into the budget estimates for 2010–11. During the inquiry the committee held 42 public hearings and also considered answers to questionnaires and surveys that were submitted to ministers and their departments. The relevant part of the report contains an analysis of key themes that were dealt with during the estimates hearings. This year one of the questions asked in the questionnaire sent to all departments was an important question relating to strategic planning for the budget estimates this year and moving forward. This is a very important aspect of the inquiry into the budget estimates, and the chapter on strategic planning contains some important and useful information about the strategies developed by the various departments for their planning for the years ahead.

This information, together with the other information contained in the report, should be very useful for members of the Parliament in their consideration of the appropriations for this year. The report also sets out 51 recommendations made by the committee which are designed to improve management and enhance the transparency and accountability of government.

I express my thanks for the work of the secretariat in producing all three volumes of the *Report on the 2010–11 Budget Estimates*. The reports are substantial pieces of work, taking many hours of the secretariat's time. I express my appreciation to the executive officer, Valerie Cheong; senior research officers Christopher Gribbin, Leah Brohm and Vicky Delgos; research officers Ian Claessen and Rocco Rottura; special adviser Joe Manders; consultant Peter Rorke; business support officer Melanie Hondros; and desktop publishers Justin Ong and Mitch Marks.

I also express my appreciation for the work of the chair of the Public Accounts and Estimates Committee, Bob Stensholt, the member for Burwood in the other place, who has spent many hours working with both committee members and the secretariat in endeavouring to coordinate the estimates hearings process, the inquiry into the estimates and the production of these three reports, and also the many hours of work put in by my colleagues on the committee.

As I mentioned before, this is an important body of work which provides some very useful information for members of the Parliament and also members of the public who might have queries about the estimates process in Victoria. I commend the report to the house.

Mr DALLA-RIVA (Eastern Metropolitan) — I am also pleased to join with my parliamentary colleagues in the presentation to the chamber of part 3 of *Report on the 2010–11 Budget Estimates*. However, it is fair to say at the outset that, whilst Ms Huppert expresses much support for Mr Stensholt, the member for Burwood in the other place and the chair of the Public Accounts and Estimates Committee, over the past four years we have seen a gradual breakdown of the goodwill that had initially been formed through PAEC to the point now where coalition committee members did not support or adopt this report.

We consider that the document has now become a mere mouthpiece for the government. Whilst the chair said in his foreword that this report is about an analysis of the budget, it is really a mishmash of pro-Labor government spin with a bit of rhetoric and some adjectives thrown in to say what a wonderful and marvellous job it is doing. In particular the contents of chapter 13, 'Caring communities' and chapter 14, 'Vibrant democracy', which Ms Pennicuik may talk specifically about, have no reference to the headings. If one were to go through the report, one would see that there are some issues in 'Vibrant democracy' which are on totally different tangents from what people would think of as democracy, but I will not steal Ms Pennicuik's thunder.

The reality is that the staff of the secretariat do a fantastic job. I have always commended their work, in particular Valerie, but I also commend the whole range of people there, including the effervescent business support officer, Melanie Hondros, who does a wonderful job of dealing with the members and coordination. Of course everyone does a wonderful job, but we do have a light-hearted joke, and she is very good at shredding the papers for me after the meetings, which is very helpful.

Having said that, coalition members would have liked to support the report and the motion to take note of it, but if you look at the notes, we could not do that. We considered that this has gone beyond what was normally done in previous years. There is no analysis of any substance. Anyone who subscribes to the notion put forward by Ms Huppert — who put in an appearance and has now left the chamber — that people will look at this document as a reference for the budget would have to be kidding themselves. If anything, this report will be used to hold up the leg of a table. I say that with no disrespect to the staff of the secretariat who do the work. The bottom line is that it is reflective of the chair and his direction. He has become totally partisan in the way he has dealt with this committee. We have seen recent examples of that in the debate in this chamber about his approach to the inquiry into the Public Finance and Accountability Bill and the interference that has occurred.

Whilst I would like to say I share in supporting this document, it really has no reference to what should be a true analysis from a committee with the standing of PAEC. It is a disgraceful approach by the chair to railroad pro-Labor government policy positions into a document that should be balanced and a reference of where the budget has been and is going. On that note, I look forward to Ms Pennicuik's contribution, in particular on the 'Vibrant democracy' that falls in chapter 14.

Ms PENNICUIK (Southern Metropolitan) — I am happy to speak briefly on part 3 of *Report on the 2010–11 Budget Estimates*, which is a voluminous document, as are parts 1 and 2 of the report on the budget estimates. I will start by echoing what I have said before — that is, that the budget estimates process provides quite a lot of information to the people of Victoria. I also echo what Mr Dalla-Riva has said: that it is not necessarily, particularly as reflected in these documents, a critique or an analysis of the budget. The report is more a description of what is in the budget, with quite a lot of detail on what has been put forward appearing under the government's *Growing Victoria Together* chapter headings.

In some ways the report can be seen as a propaganda document, and that is not a reflection on the committee secretariat who pull the information together and present it. I am sure the chairperson who oversees that process had a lot to do with the insertion of adjectives, which I often attempt to have taken out when committee members are going through the document. I must say I gave up a little bit on part 3. I was much more diligent with parts 1 and 2 in that respect.

Ms Huppert mentioned that there are 51 recommendations on how transparency and accountability can be improved. It is a good thing that there are 51 recommendations, but it can also be said that the need for 51 recommendations on how transparency and accountability can be improved just

goes to show that it needs to be improved, because the way that budget papers are prepared and delivered to the people of Victoria and to the Parliament does not make them easy to understand, particularly the way ministerial portfolios cross over departments — one department will be responsible for half of a project and another department will be responsible for the other half and then projects will cross over different ministerial portfolios. That makes it very difficult for parliamentarians, members of the committee and particularly members of the public to follow exactly what is going on. It makes it particularly difficult to follow projects from year to year.

The first 18 amendments refer to recommendations for the Department of Treasury and Finance to develop more of a standard approach for the departments to follow so that, as I have been saying, it is easier for people to ascertain what is actually going on in the budget papers.

Mr Dalla-Riva foreshadowed that I might speak about chapter 14, which is headed 'Vibrant democracy'. I mention it because it is the only chapter that I did not support when we adopted the chapters of the report. This was not necessarily because I disagreed with the actual content of the chapter, but just that I do object to the naming of the chapters under the *Growing Victoria Together* document in words that are like propaganda. This particular chapter, which is called 'Vibrant democracy', talks about maintaining Victoria's AAA credit rating, budget strategies to maintain that credit rating, the commonwealth guarantee of state borrowings, progress in meeting regulatory burden, reduction target, reducing state taxes — none of these have anything to do with a vibrant democracy.

My reason for not supporting this chapter was that it should be called 'State finances', because that is what it is about. It is about state finances and I do not have a problem with that, but calling it 'Vibrant democracy' and then never speaking in it about anything to do with democracy or how the budget contributes to democracy is misleading. That is the reason I was not able to support it.

My decision not to support this chapter might seem symbolic, but it is important that the documents laid before Parliament are accurate and, particularly in terms of the budget, factual documents and not just documents supporting the government's program. The Public Accounts and Estimates Committee is a committee of Parliament, not a committee of the government, even though it is of course a majority government committee and has a government chair. We had a long discussion yesterday about the problems with the structure of that particular committee, which I will not repeat except to say that this is something that needs to be remedied because it is not the case in other parliaments.

Having said that, if people are interested, there is a lot of information in this report about what goes on in the different departments under the heading of 'Growing Victoria Together'. I hope the recommendations are taken up, particularly by the Department of Treasury and Finance, to improve the reporting of departments under this Growing Victoria Together umbrella.

Once again I extend my thanks and appreciation to the secretariat of the Public Accounts and Estimates Committee, who have dealt with an incredible workload in the last 12 months not only with these reports but the reviews of the Auditor-General's reports and the review of the Audit Act. The workload is phenomenal, and I note that in tabling the review of the Auditor-General's reports in the Assembly earlier this month the chair mentioned that the remuneration of the staff of this particular committee should be reviewed because it really is a very hardworking and relentless committee. I thank them for their efforts.

Motion agreed to.

ECONOMIC DEVELOPMENT AND INFRASTRUCTURE COMMITTEE

State government taxation and debt

Mr D. DAVIS (Southern Metropolitan Region) presented report, including appendices, together with transcripts of evidence.

Laid on table.

Ordered that report be printed.

Mr D. DAVIS (Southern Metropolitan) — I move:

> That the Council take note of the report.

Firstly, I want to thank Dr Vaughn Koops, Joshua Saunders and Shanthi Wickramasurya, the staff of the committee. This committee had two concurrent references. One was on the manufacturing industry and that report has been tabled in this place. I have made comments about the importance of that inquiry and its recommendations. This inquiry is quite different to that. It came from a reference from this chamber. I make the point, though, that the committee has not, frankly, been able to examine the terms of

reference adequately and has been overtaken by time and events.

I do not cast any aspersions on that process other than to say that the interaction between state and commonwealth matters in terms of debt and in particular taxation is significant. The Henry review has cast a shadow through much of the period of this inquiry. The Henry review obviously played a part in the production of this report. At the completion of the review the former federal Labor government did not put the report out to public debate or consultation for a very long period. This committee was in a position where that interaction between state and federal taxation matters was not able to be adequately addressed. I think Mr Atkinson would probably agree with me in saying it is not an adequate review of the matters set out in its terms of reference due to the sequence of events that occurred. The state government would have been prepared to assist more if the Henry review had been released earlier and enabled those federal matters to be dealt with.

There is some useful material in the report, but I would not place much weight on it simply because of the sequence of events that surrounded it. The federal government failed to release the Henry review, and there was a significant lack of cooperation from the federal bureaucracy. We were not able to get the briefings, materials and information. Later we ran into the caretaker period, when we were unable to get any sensible communications out of federal ministers or bureaucrats, and that stymied any attempt to get matching support from the state bureaucrats.

I am not pointing to any malfeasance, as it were, I am just pointing to a series of events during which we were unable to get access to the Henry review in time to have the briefings that would have been required from the federal departments and that could have assisted us with this inquiry.

Mr ATKINSON (Eastern Metropolitan) — I will make a couple of brief remarks on the Economic Development and Infrastructure Committee's report. At the outset I particularly thank the staff for their work because it was a fairly difficult reference given the circumstances that prevailed after the reference was given to the committee. The reference deals with a particularly important area and members should become more conversant with it.

Obviously the landmark piece of legislation that goes through this house every year is the budget, which is a document that is a creature of itself in some respects, but really it is the mechanism by which a government delivers its policies and programs. The budget needs to respond to a number of challenges, particularly in the context of the changes in the environment in which we operate both globally and nationally, as well as those matters that perhaps are easier for us to control in the context of our state economic environment.

Our tax system needs to be under a measure of constant scrutiny by people who are involved in public policy and by us as legislators to ensure that it is an efficient and effective system; more importantly that it is a fair system, that it is a system that encourages economic development which provides for increasing investment and jobs in this state, but which also provides the wherewithal to government to deliver a range of programs and services across all government portfolios, and especially important services in health, education, transport, community services and so forth.

This report was the subject of a reference from this house. Whilst members of the government might have felt it was not a reference that would be of their preference, it was important. It is disappointing that the committee was unable to deliver a more robust and comprehensive report back to the house on this occasion. One of the recommendations the committee added as late as this week was that the next government should consider giving a similar reference to a parliamentary committee in the next Parliament to allow that committee to consider the relationship of taxation from a federal and state perspective.

Under this reference we were not only examining the existing taxation base of Victoria — and to some extent this report is quite useful and constructive in describing the current tax collection base for Victoria — but we were also considering taxation in the context of a significant and comprehensive review by the federal government, that being the Henry review. As members would know, 3 or perhaps 2½ of more than 300 recommendations were taken up by the previous government as policy initiatives, and they played out in the context of the recent federal election campaign. But that leaves some 300 recommendations from the Henry review on the table, and some of those recommendations do have ramifications for the states.

If we change the tax base at a federal level, and if we change the relationship between the federal and state government, then there are significant implications for us as a state. These are not party-political implications; these are implications concerning government and public policy and the delivery of services at the state level. Given that the Henry review recommendations are likely to be the subject of some ongoing discussion

in the year ahead, and particularly again in the context of the Prime Minister indicating she will convene a tax summit, we believe it is important that the Victorian Parliament, by way of one of its committees, examines those developments and the possible implications for state finances going forward of any change in federal taxation measures or policy.

Another area discussed in the context of this report was the fire services levy. I note the government has taken some initiative in that area, following an initiative from the opposition which was taken prior to that, but that was an area that we comprehensively looked at because it has been a matter of some conjecture and concern in the community over an extended period of time.

This was an important report. I place on record, too, the committee's appreciation of some information provided by the Treasurer in the last week at short notice to ensure that the report reflected the latest position in respect of the Henry tax review. He also provided some comment, albeit I think insufficient — again, given the circumstances and the lack of detail surrounding the agreements in place — on the so-called health reform package advanced by the former Prime Minister, Mr Rudd, which involved the surrender of around one-third of the states' GST revenues as an offset for the federal government increasing its funding responsibilities in respect of public hospitals.

That is a matter that also might well be considered further in the next Parliament as part of this tax basket, because as public policy-makers and legislators we need to clearly understand the ongoing implications of that sort of change and we need to be mindful of whether or not that surrender of GST revenues, which was a guaranteed revenue stream and a growth tax for the states, has in fact created precedents that might well affect other relationships between the federal and state governments.

Mr TEE (Eastern Metropolitan) — I welcome the opportunity to make a brief contribution to debate on this report, which covers what is a complex but important area. It is also a very fluid area in the sense that, rightly, the policy parameters are always and should always be reviewed and we should always be vigilant to make sure that we have a regime that is effective, fair and promotes growth.

There is much common ground between all sides around the committee table in relation to some of these issues, and that is certainly reflected in the content of the report. Unlike Mr David Davis I will probably take more of a cup-half-full approach to the issues around timing and particularly the issues around the release of the Henry review. The report really sets a good basis and starting point for the dialogue and interaction that will occur between the state and federal governments as we continue to unpack the applications and ideas of the Henry review in the days, weeks and years ahead. The timing is quite complementary. The commonwealth and the state are now in an effective position to continue to work together to ensure that we get better outcomes for the community.

I welcome the report. The timing works well. I want to thank the staff and the parliamentary officers who were involved in what is a very fluid situation and therefore very difficult to encapsulate as effectively as they have.

Motion agreed to.

PAPERS

Laid on table by Clerk:

Accident Compensation Conciliation Service — Report, 2009–10.

Adult Parole Board of Victoria — Report, 2009–10.

Alexandra District Hospital — Report, 2009–10.

Alfred Health — Report, 2009–10.

Alpine Health — Report, 2009–10.

Anderson's Creek Cemetery Trust — Minister's report of receipt of report for the period ending 28 February 2010.

Austin Health — Report, 2009–10.

Australian Centre for the Moving Image — Report, 2009–10.

Australian Grand Prix Corporation — Report, 2009–10.

Bairnsdale Regional Health Service — Report, 2009–10.

Ballarat General Cemeteries Trust — Minister's report of receipt of 2009–10 report.

Ballarat Health Services — Report, 2009–10.

Barwon Health — Report, 2009–10.

Barwon Region Water Corporation — Report, 2009–10.

Bass Coast Regional Health — Report, 2009–10.

Beaufort and Skipton Health Service — Report, 2009–10.

Beechworth Health Service — Report, 2009–10.

Benalla and District Memorial Hospital — Report, 2009–10 (two papers).

Bendigo Cemeteries Trust — Minister's report of receipt of 2009–10 report.

Bendigo Health Care Group — Report, 2009–10 (two papers).

Boort District Health — Report, 2009–10.

Building Commission — Report, 2009–10.

Calvary Health Care Bethlehem Limited — Report, 2009–10 (two papers).

Casterton Memorial Hospital — Report, 2009–10.

Castlemaine Health — Report, 2009–10.

Central Gippsland Health Service — Report, 2009–10.

Central Gippsland Region Water Corporation — Report, 2009–10.

Central Highlands Region Water Corporation — Report, 2009–10.

Cheltenham and Regional Cemeteries Trust — Report for the period ended 28 February 2010.

Child Safety Commissioner — Report, 2009–10.

Chinese Medicine Registration Board of Victoria — Minister’s report of receipt of 2009–10 report.

Chiropractors Registration Board of Victoria — Minister’s report of receipt of 2009–10 report.

City West Water Limited — Report, 2009–10.

Cobram District Hospital — Report, 2009–10.

Cohuna District Hospital — Report, 2009–10.

Colac Area Health — Report, 2009–10.

Coliban Region Water Corporation — Report, 2009–10.

Commissioner for Law Enforcement Data Security — Report, 2009–10.

Community Visitors — Report, 2009–10.

Confiscation Act 1997 — Asset Confiscation Operations, Report to the Attorney–General, 2009–10.

Consumer Affairs Victoria — Report, 2009–10.

Coronial Council of Victoria — Report, 2009–10.

Coroners Court of Victoria — Report, 2009–10.

Country Fire Authority — Report, 2009–10.

Dental Health Services Victoria — Report, 2009–10.

Dental Practice Board of Victoria — Minister’s report of receipt of 2009–10 report.

Disability Services Commissioner — Report, 2009–10.

Djerriwarrh Health Services — Report, 2009–10.

Dunmunkle Health Services — Report, 2009–10.

East Gippsland Region Water Corporation — Report, 2009–10.

East Grampians Health Service — Report, 2009–10.

East Wimmera Health Service — Report, 2009–10.

Eastern Health — Report, 2009–10.

Echuca Regional Health — Report, 2009–10.

Edenhope and District Memorial Hospital — Report, 2009–10.

Education and Early Childhood Development Department — Report, 2009–10.

Emerald Tourist Railway Board — Report, 2009–10.

Emergency Services Telecommunications Authority — Report, 2009–10.

Environment Protection Authority — Report, 2009–10.

Essential Services Commission — Report, 2009–10.

Fawkner Crematorium and Memorial Park — Report for the period ended 28 February 2010.

Fed Square Pty Ltd — Report, 2009–10.

Food Safety Council — Report, 2009–10.

Forensic Leave Panel — Report, 2009–10.

Freedom of Information Act 1982 — Report of Attorney-General on the operation of the Act, 2009–10.

Geelong Cemeteries Trust — Report, 2009–10.

Geelong Performing Arts Centre Trust — Report, 2009–10.

Gippsland and Southern Rural Water Corporation — Report, 2009–10.

Gippsland Southern Health Service — Report, 2009–10.

Goulburn Valley Health — Report, 2009–10.

Goulburn Valley Region Water Corporation — Report, 2009–10.

Goulburn-Murray Rural Water Corporation — Report, 2009–10.

Grampians Wimmera Mallee Water Corporation — Report, 2009–10.

Greyhound Racing Victoria — Report, 2009–10.

Growth Areas Authority — Report, 2009–10.

Harness Racing Victoria — Report, 2009–10.

Health Department — Report, 2009–10.

Health Purchasing Victoria — Minister’s report of receipt of 2009–10 report.

Health Services Commissioner — Report, 2009–10.

Heathcote Health — Report, 2009–10.

Hepburn Health Service — Report, 2009–10.

Hesse Rural Health Service — Report, 2009–10.

Heywood Rural Health — Report, 2009–10.

Housing Agencies Registrar — Minister’s report of receipt of 2009–10 report.

Human Services Department — Report, 2009–10.

Inglewood and Districts Health Service — Report, 2009–10.

Innovation, Industry and Regional Development Department — Report, 2009–10.

Judicial College of Victoria — Report, 2009–10.

Keilor Cemetery Trust — Minister’s report of receipt of report for the period ended 28 February 2010.

Kerang District Health — Report, 2009–10.

Kilmore and District Hospital — Report, 2009–10.

Kooweerup Regional Health Service — Report, 2009–10 (two papers).

Kyabram and District Health Service — Report, 2009–10 (two papers).

Kyneton District Health Service — Report, 2009–10 (two papers).

Latrobe Regional Hospital — Report, 2009–10.

Legal Practitioners Liability Committee — Report, 2009–10.

Legal Services Board — Report, 2009–10.

Legal Services Commissioner — Report, 2009–10.

Library Board of Victoria — Report, 2009–10.

Lilydale Cemeteries Trust — Minister’s report of receipt of report for the period ended 28 February 2010.

Lorne Community Hospital — Report, 2009–10.

Lower Murray Urban and Rural Water Corporation — Report, 2009–10.

Maldon Hospital — Minister’s report of receipt of 2009–10 report.

Mallee Track Health and Community Service — Report, 2009–10.

Mansfield District Hospital — Report, 2009–10.

Maryborough District Health Service — Report, 2009–10 (two papers).

Medical Practitioners Board of Victoria — Report, 2009–10.

Medical Radiation Practitioners Board of Victoria — Minister's report of receipt of 2009–10 report.

Melbourne Convention and Exhibition Trust — Report, 2009–10.

Melbourne Health — Report, 2009–10.

Melbourne Water Corporation — Report, 2009–10.

Members of Parliament (Register of Interests) Act 1978 — Summary of Returns — June 2010 and Summary of Variations notified between 24 June 2010 and 14 September 2010.

Mental Health Review Board (incorporating the Psychosurgery Review Board of Victoria) — Report 2009–10.

Mercy Public Hospitals Incorporated — Report, 2009–10 (two papers).

Metropolitan Fire and Emergency Services Board — Report, 2009–10.

Metropolitan Waste Management Group — Report, 2009–10.

Mildura Cemetery Trust — Minister's report of receipt of 2009–10 report.

Moyne Health Services — Report, 2009–10.

Museums Board of Victoria — Report, 2009–10.

Nathalia District Hospital — Report, 2009–10.

National Gallery of Victoria Trustees — Report, 2009–10.

Necropolis Springvale Trustees — Report for the period ended 28 February 2010.

North East Region Water Corporation — Report, 2009–10.

Northeast Health Wangaratta — Report, 2009–10.

Northern Health — Report, 2009–10.

Numurkah District Health Service — Report, 2009–10.

Nurses Board of Victoria — Report, 2009–10.

Office of Police Integrity — Report, 2009–10.

Omeo District Health — Report, 2009–10.

Optometrists Registration Board of Victoria — Minister's report of receipt of 2009–10 report.

Orbost Regional Health — Report, 2009–10.

Osteopaths Registration Board of Victoria — Minister's report of receipt of 2009–10 report.

Otway Health and Community Services — Report, 2009–10.

Parks Victoria — Report, 2009–10.

Peninsula Health — Report, 2009–10.

Peter MacCallum Cancer Centre — Report, 2009–10.

Pharmacy Board of Victoria — Minister's report of receipt of 2009–10 report.

Physiotherapists Registration Board of Victoria — Minister's report of receipt of 2009–10 report.

Planning and Community Development Department — Report, 2009–10.

Plumbing Industry Commission — Report, 2009–10.

Podiatrists Registration Board of Victoria — Minister's report of receipt of 2009–10 report.

Police Appeals Board — Report, 2009–10.

Port of Hastings Corporation — Report, 2009–10.

Port of Melbourne Corporation — Report, 2009–10.

Portland District Health — Report, 2009–10.

Preston Cemetery Trust — Minister's report of receipt of report for the period ending 28 February 2010.

Professional Standards Council — Report, 2009–10.

Psychologists Registration Board of Victoria — Minister's report of receipt of 2009–10 report.

Public Prosecutions Office — Report, 2009–10.

Queen Elizabeth Centre — Report, 2009–10.

Queen Victoria Women's Centre — Minister's report of receipt of 2009–10 report.

Racing Integrity Commissioners Office — Report 2009–10.

Radiation Advisory Committee — Report, 2009–10.

Regional Development Victoria — Report, 2009–10.

Roads Corporation (VicRoads) — Report, 2009–10.

Robinvale District Health Services — Report, 2009–10.

Rochester and Elmore District Health Service — Report, 2009–10.

Royal Children's Hospital — Report, 2009–10.

Royal Victorian Eye and Ear Hospital — Report, 2009–10.

Royal Women's Hospital — Report, 2009–10.

Rural Finance Corporation of Victoria — Report, 2009–10.

Rural Northwest Health — Report, 2009–10.

Sentencing Advisory Council — Report, 2009–10.

Seymour District Memorial Hospital — Report, 2009–10.

Shrine of Remembrance Trustees — Minister's report of receipt of 2009–10 report.

Small Business Commissioner's Office — Report, 2009–10.

South East Water Limited — Report, 2009–10.

South Gippsland Hospital — Report, 2009–10.

South Gippsland Region Water Corporation — Report, 2009–10.

South West Healthcare — Report, 2009–10.

Southern and Eastern Integrated Transport Authority — Report, 2009–10.

Southern Health — Report, 2009–10.

Special Investigations Monitor's Office — Report, 2009–10.

St. Vincent's Hospital (Melbourne) Limited — Report, 2009–10.

State Electricity Commission of Victoria — Report, 2009–10.

State Owned Enterprise for Irrigation Modernisation in Northern Victoria — Report, 2009–10.

State Services Authority — Report, 2009–10.

State Trustees Limited — Report, 2009–10.

Statutory Rules under the following Acts of Parliament:

Electoral Act 2002 — No. 87.

Health Services Act 1988 — No. 88.

Libraries Act 1988 — No. 89.

Transport (Compliance and Miscellaneous) Act 1983 — No. 90.

Stawell Regional Health — Report, 2009–10.

Subordinate Legislation Act 1994 — Ministers' exemption certificates under section 9(6) in respect of Statutory Rule Nos. 87, 88, 89 and 90.

Sustainability and Environment Department — Report, 2009–10.

Sustainability Victoria — Report, 2009–10.

Swan Hill District Health — Report, 2009–10.

Tallangatta Health Service — Report, 2009–10.

Templestowe Cemetery Trust — Minister's report of receipt of report for the period ending 28 February 2010.

Terang and Mortlake Health Service — Report, 2009–10.

Timboon and District Healthcare Service — Report, 2009–10.

Tourism Victoria — Report, 2009–10.

Transport Accident Commission — Report, 2009–10.

Transport Department — Report, 2009–10.

Treasury and Finance Department — Report, 2009–10.

Treasury Corporation of Victoria — Report, 2009–10.

Transport Ticketing Authority — Report, 2009–10.

Tweddle Child and Family Health Service — Minister's report of receipt of 2009–10 report.

Upper Murray Health and Community Services — Report, 2009–10.

V/Line Passenger Corporation — Report, 2009–10.

V/Line Passenger Pty Ltd — Report, 2009–10.

Victoria Legal Aid — Report, 2009–10.

Victoria Law Foundation — Report, 2009–10.

Victoria Police — Report, 2009–10.

Victoria State Emergency Service Authority — Report, 2009–10.

Victorian Arts Centre Trust — Report, 2009–10.

Victorian Assisted Reproduction Treatment Authority — Minister's report of receipt of 2009–10 report.

Victorian Civil and Administrative Tribunal — Report, 2009–10.

Victorian Competition and Efficiency Commission — Report 2009–10.

Victorian Electoral Commission — Report, 2009–10.

Victorian Equal Opportunity and Human Rights Commission — Report, 2009–10.

Victorian Funds Management Corporation — Report, 2009–10.

Victorian Government Purchasing Board — Report, 2009–10.

Victorian Health Promotion Foundation — Report, 2009–10.

Victorian Industry Participation Policy — Report, 2009–10.

Victorian Institute of Forensic Medicine — Report, 2009–10.

Victorian Institute of Forensic Mental Health — Report, 2009–10.

Victorian Managed Insurance Authority — Report, 2009–10.

Victorian Multicultural Commission — Report, 2009–10.

Victorian Privacy Commissioner's Office — Report, 2009–10.

Victorian Regional Channels Authority — Report, 2009–10.

Victorian Urban Development Authority — Report, 2009–10.

Victorian WorkCover Authority — Report, 2009–10.

Wannon Region Water Corporation — Report, 2009–10.

Water Industry Act 1994 — Report on major water users, 2009–10, for City West Water Limited, South East Water Limited and Yarra Valley Water Limited, pursuant to section 77A of the Act.

West Gippsland Healthcare Group — Report, 2009–10.

West Wimmera Health Service — Report, 2009–10.

Western District Health Service — Report, 2009–10.

Western Health — Report, 2009–10.

Western Region Water Corporation — Report, 2009–10.

Westernport Region Water Corporation — Report, 2009–10.

Wimmera Health Care Group — Report, 2009–10.

Wyndham Cemeteries Trust — Minister's report of receipt of report for the period ending 28 February 2010.

Yarra Valley Water Limited — Report, 2009–10.

Yarram and District Health Service — Report, 2009–10.

Yarrawonga District Health Service — Report, 2009–10.

Yea and District Memorial Hospital — Report, 2009–10.

Young Farmers' Finance Council — Report, 2009–10.

Youth Parole and Youth Residential Boards — Report, 2009–10.

Zoological Parks and Gardens Board — Report, 2009–10 (two papers).

NOTICES OF MOTION

Notices of motion given.

Mr Viney — On a point of order, Acting President, in relation to the notice of motion given by Mrs Petrovich. I believe that at the conclusion of her notice of motion she made some commentary. When I asked to see a copy of the notice of motion she had delivered she added some handwritten words to the notion of motion that she gave. My request is that the tape be listened to to check whether the notice of motion that has been presented to the house is an accurate reflection of the words Mrs Petrovich used in the house. If it is not, I ask that the notice of motion be ruled out of order.

The ACTING PRESIDENT (**Mr Elasmar**) — Order! Would Mrs Petrovich like to respond to that?

Mrs Petrovich — I am more than happy for the tape to be referred to.

Mr D. Davis — On the point of order, as the Clerk is suggesting, this is a matter for the President. Mr Viney does not have the capacity to vet opposition notices of motion, no matter how sensitive he might be.

Mr Viney — I am not attempting to vet it. What I have asked for is that the tape be listened to to check whether the notice of motion presented to the house accurately reflects the words that the member uttered. I do not believe that it does, and I am asking for that to be considered and ruled upon. I am not seeking to vet anything.

The ACTING PRESIDENT (**Mr Elasmar**) — Order! We have heard enough about this. I will refer the matter to the President.

Further notice of motion given.

MEMBERS STATEMENTS

John Madigan

Mr KAVANAGH (Western Victoria) — Approximately 1 hour ago the Australian Electoral Commission announced the six winners of Senate positions for Victoria. One of the winners of those positions was John Madigan, the lead Democratic Labor Party candidate. John Madigan is a friend of mine, I am proud to say. He is an intelligent man without being an intellectual, he is a person who is interested in big ideas without being an academic. He is a man whose every instinct is to defend the defenceless and to protect the vulnerable. I am sure he will use his adequate reserves of courage, which he will need in the Senate, to do both of those things.

Perhaps the real test of character of any of us in this world is how much we love; perhaps it is as simple as that. John is a man who demonstrates profound love for his family. He loves his friends, he loves his community, he loves Australia, he loves people, and he has the gift of loving God as well.

I have already heard negative comments about John being a blacksmith. On the weekend a newspaper referred to John bearing the black of his trade on his hands. Indeed as the inheritor of Australia's Labor political tradition, as a senator for the Democratic Labor Party, he will wear that mark on his hands as a badge of honour. He will not betray or let down those tens of thousands of Victorians who put out to the deep — —

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

Bairnsdale Regional Health Service: consulting suites

Mr HALL (Eastern Victoria) — On 11 August in this parliamentary building the member for Gippsland East organised a meeting with the Minister for Health, Daniel Andrews, and certain people from Bairnsdale. The meeting was in relation to the medical specialists facility fees at Bairnsdale regional hospital that the hospital is now charging visiting medical specialists.

My constituent Dr David McConachy is one of those visiting medical specialists, and he made a request to be part of that delegation to meet with the minister. It seemed a fair and reasonable request seeing as Dr McConachy had had several conversations with the member for Gippsland East, and I believe he would have had important input at that meeting. He was not allowed to attend, so to his credit Dr McConachy wrote a separate letter to the minister on 10 August, the day preceding the meeting, requesting that he also have the opportunity to meet with the minister to discuss this very important matter.

Having met Dr McConachy again last week in Bairnsdale, my concern is that he has not had a response from the minister, nor has he had any acknowledgement from him of receipt of his request. I do not think that is good enough, so by way of statement today I call upon Minister Andrews to at least have the courtesy to respond to Dr McConachy's request to meet.

La Trobe University: nature conservation reserve

Mr MURPHY (Northern Metropolitan) — Recently I was briefed by La Trobe University on its plans for upgrading the Gresswell nature conservation reserve, which would allow a significant environment education program to be developed in the northern metropolitan region of Melbourne. The La Trobe wildlife sanctuary would provide the basis for a green sustainability education program for primary and secondary schools in the area, consolidate the conservation and preservation activities of the university and provide an interactive interface for the public.

This innovative development by La Trobe University would include an interpretative centre for the wildlife sanctuary to encourage community access and involvement and the development of the sanctuary as

a green sustainability classroom for primary and secondary schools in the area. The environmental sustainability education project would develop a green belt across the top of the university and an interpretative environment centre to host educational facilities for both school and community groups.

The opportunities this would provide to local school children in the northern metropolitan area is a great initiative, and I encourage governments at all levels to get behind this project to ensure that working families in the north have the opportunity to participate in this innovative program.

Economy: performance

Mr O'DONOHUE (Eastern Victoria) — The ageing of the population presents a challenge to all western countries including Australia, as well as to the state of Victoria, in the delivery of services and how to pay for them. The library has kindly collated for me some revealing statistics on the Victorian population. The number of persons aged 65 and over in 1966 in Victoria was 276 000; in 2009, it was 739 000; and by 2030 it is projected to reach nearly 1.4 million. The number of people aged between 55 and 64 in 1966 was 273 000; in 2009 it was approximately 600 000; and it is projected to be approximately 800 000 by 2030.

It is concerning in that context that yesterday's release of the 2009–10 financial budget report for Victoria shows that total public sector net debt increased from $14.8 billion, up from $10.7 billion, or by $4.1 billion or 38 per cent in one year, and that total public sector net debt as a proportion of gross state product increased by one full percentage point. The reality is that Labor is growing Victoria's debt at a time when the demographic challenges are just starting to be felt. Labor's debt will have to be repaid at a time when the Victorian budget is being stretched to cover the growing demands of health, aged care and other services. That is extremely reckless.

Rail: Sandringham line

Ms PENNICUIK (Southern Metropolitan) — This morning it took me 80 minutes to get from home to Parliament by train, which is more than twice as long as it usually takes. As I stood on platform 1 at Elsternwick station waiting for a train to the city, four trains arrived and departed from platform 2 bound for Sandringham. By the time a train to the city arrived 25 minutes had passed and there were hundreds of people on the platform obviously frustrated at seeing trains going the other way but none coming to take them to the city.

Whatever the government says it is doing with the train services, this is not the first time this has happened. It is a regular, although not everyday, occurrence on the Sandringham line. It is particularly disruptive at morning peak hour. There was not even an announcement to apologise for the inconvenience. Needless to say passengers from Ripponlea to South Yarra were unable to board the train, and the driver was saying at every station, 'If you can't safely board the train, please stay on the platform because another train is following'. I think some people were doubting that was going to happen since they had waited 25 minutes for a train at Elsternwick station. Hundreds of people were left stranded at all the stations between Ripponlea and South Yarra. The driver was saying, 'The doors are closing. If you don't move away, somebody will be hurt', and doing the countdown, 'Five, four, three, two, one', before the doors would be closed. As usual I was left stranded in the middle of the carriage unable to hang onto anything. That is also a safety issue and a discomfort for passengers, and it needs to be fixed by the minister.

Floods: northern Victoria

Ms BROAD (Northern Victoria) — Last week I visited areas of northern Victoria in my electorate affected by recent flooding and met with affected councils and organisations. I wish to acknowledge and record my thanks to all the staff and volunteers from local councils, the Country Fire Authority, State Emergency Service and community organisations who did such a great job providing information, warnings and assistance to individuals and businesses affected by flooding. The feedback I received from members of the community was that they were very appreciative and that there is recognition that there have been significant improvements to communications and flood warnings since the 1993 floods.

Members of the community were also appreciative of the role of Victoria Police, including doorknocking to ensure that residents under threat of flooding were informed, and the role played by members of the Australian defence forces.

As the Brumby government and the Victorian community respond to the damage resulting from recent flooding, I urge all Victorians to consider the impact of recent flooding in Pakistan where more than 20 million people have been affected and are without shelter, clean water or sanitation. I urge Victorians to

consider what they may be able to contribute to provide assistance.

Blue Ribbon Day

Mr FINN (Western Metropolitan) — On 29 September Blue Ribbon Day comes our way. On Blue Ribbon Day we remember 151 police officers who were killed on duty in this state. We remember Sergeant Kennedy and constables Scanlon and Lonigan who were murdered by Ned Kelly and his gang in the 1800s, and we are reminded that Ned Kelly was not a hero; he was a police killer.

Seared into our more recent memory is 21-year-old Constable Angela Taylor who was killed by a bomb outside the then Russell Street police headquarters in 1986. We remember constables Steven Tynan and Damian Eyre, two young men ambushed and brutally murdered in Walsh Street, South Yarra, in 1988. We remember Sergeant Gary Silk and Senior Constable Rodney Miller who were murdered in cold blood in Moorabbin in 1998. I will never forget, as someone who was at Rodney Miller's funeral, the heartbreaking sight of his widow carrying their young child, walking behind the coffin as it left the chapel.

The men and women of Victoria Police have my profound respect and admiration. Blue Ribbon Day, on 29 September, allows Victorians the opportunity to remember those who gave their lives in the service of our community. It allows us to show our gratitude and support for our police. What a dreadful mess we would all be in without them. I often wear my blue ribbon. On 29 September I will be wearing it again with special purpose.

Victorian Civil and Administrative Tribunal: Berwick office

Mr SOMYUREK (South Eastern Metropolitan) — I rise to congratulate Attorney-General, Rob Hulls, for setting up a new office of the Victorian Civil and Administrative Tribunal in Berwick as part of a three-year plan to increase access to justice for all Victorians. VCAT's presence outside the CBD is designed to benefit Victorians living in outer metropolitan and regional areas. The VCAT Berwick office will function as a hub to service the growth region of Casey. Staff located at the region's courthouses will have increased direct access to VCAT, which means that forms can be lodged locally instead of in Melbourne. On-the-ground mediation services and liaison with community legal centres and Consumer Affairs Victoria will also be provided.

Patterson River: boating facility

Mr SOMYUREK — I also rise to commend the Minister for Roads and Ports, Tim Pallas, for the $1.3 million upgrade to the Patterson River boating facility. Some of the work performed includes the asphalting of the car park, improved access to boat ramps, the installation of 150 metres of a new retaining wall and a safe-berthing floating pontoon. I once resided very close to this facility and can vouch for how popular it is. In fact I have statistics that suggest the facility hosts 52 000 boat launches and retrievals each year. The latest works are in addition to $3.36 million already invested by the Victorian government to improve the Patterson River boating facility.

Schools: speed zones

Mrs PEULICH (South Eastern Metropolitan) — I raise a matter which has been drawn to my attention by two parts of my community relating to safety around schools. Dingley Primary School in particular needs an electronic 40-kilometre sign during peak drop-off and pick-up times. I understand the funding VicRoads has made available to schools has run out. I ask the government and the minister responsible to review the allocation of funds for those important safety measures that should not be constrained by meagre, inadequate funding allocations.

Mr Allan Boss has been campaigning for a long time for safety improvements around Kananook Primary School. He was instrumental in instigating the installation of a 40-kilometre flashing sign during peak hour. Unfortunately that has been inadequate. According to the latest information made available, many vehicles are still speeding excessively along Wells Road. The hand-held radar used by the local police has been inadequate because there is so much traffic movement in that area. Mr Allan Boss has sought assistance from the Minister for Police and Emergency Services for the erection of permanent radar equipment. Unfortunately this was not well received. In fact, he was fobbed off. I ask for that decision to be revisited, because we are talking about the safety of schoolchildren and their parents.

Pakenham Racing Club: redevelopment

Ms MIKAKOS (Northern Metropolitan) — On Tuesday I was pleased to represent the Minister for Planning, the Honourable Justin Madden, at the announcement of the Pakenham Racing Club redevelopment, together with the Deputy Premier and the Minister for Racing, the Honourable Rob Hulls.

The redevelopment of the existing racecourse will include medium-density residential, retail, commercial and community facilities, as well as the construction of a new state-of-the-art racecourse and training facility at Tynong. Pakenham racecourse comprises approximately 27 hectares of land and is located near the Pakenham town centre. Its redevelopment supports the Melbourne 2030 and Melbourne @ 5 Million strategies by actively managing Melbourne's growth within established activity centres.

The new facility at Tynong will cover 235 hectares of land, include a racecourse comprising of turf and synthetic racetracks, a grandstand, car and float parking, horse stables and training lots, industry education and equine centre, single dwellings for trainers and the potential for future exhibition and event facilities. It is a very exciting proposition and I commend the Pakenham Racing Club and the local Cardinia Shire Council for working together with the Brumby government to improve the amenity and boost economic activity in the region for the benefit of the local community.

Schools: cyberbullying

Ms MIKAKOS — On another matter I congratulate the Premier and the Minister for the Respect Agenda, Justin Madden, for working in partnership with the Alannah and Madeline foundation to help protect school students against cyberbullying. The new $10.6 million initiative eSmart will provide a $2000 grant for all Victorian government schools and 300 non-government schools to implement the program and train staff in dealing with cyberbullying. Tackling disrespectful behaviours such as cyberbullying is a key priority for this government.

Public transport: Doncaster

Mrs KRONBERG (Eastern Metropolitan) — I rise in a state of great frustration because as a resident of Doncaster I received a missive from the Minister for Public Transport extolling the value of the Doncaster Area Rapid Transit (DART) SmartBus routes from the Doncaster area into the city.

First and foremost I strongly make the point that I take particular exception to the misleading terminology that this government has always drawn upon to describe the public transport system from Doncaster into the Melbourne central business district. The people of San Francisco would also be offended that this government has poached from them the Doncaster Area Rapid Transit name. It is a pale imitation of San Francisco's Bay Area Rapid Transit (BART) system, but the name clearly has been stolen from them. However, the DART system in no way resembles the BART system.

For far too long this government has failed to make a commitment to rail infrastructure in the Doncaster area. I remember how the Cain government sold the land reserved along King Street to Blackburn Road, and it still failed to bring 21st century systems — —

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

Polonez Song and Dance Ensemble

Mr EIDEH (Western Metropolitan) — On Sunday, 12 September, I had the pleasure of representing the Minister Assisting the Premier on Multicultural Affairs, the Honourable James Merlino, at the Polonez Song and Dance Ensemble's 45th anniversary concert at the Clocktower Centre in Moonee Ponds. Among the many guests were: the Consul-General of the Republic of Poland, who is based in Sydney; Mr Daniel Gromann; the Polish Honorary Consul, Mr George Luk-Kozika; and the president of the Polish Community Council of Victoria, Mr Christopher Lancucki.

The Polonez Song and Dance Ensemble was formed in Melbourne in 1965 to perform and promote Polish folk and national dance. The group has performed throughout Australia as well as in Poland and Lithuania, and it has successfully showcased Polish culture through folk song and dance. Victoria has benefited greatly from the contribution made by our culturally diverse communities. The Polish community continues to have a positive influence in our community, and I am pleased to say the community is well established in Victoria, with more than 52 000 people identified at the last census as having Polish ancestry. The Victorian government is committed to and encourages cultural diversity to keep our communities connected, and I am proud to be part of a government which supports those values.

I take this opportunity to congratulate the Polonez Song and Dance Ensemble for its hard work over the past 45 years to promote and help create an understanding of Polish culture, both within the Polish community and the broader Australian community.

Parliament: tabling of reports

Mr D. DAVIS (Southern Metropolitan) — Today we have seen a flurry of annual reports tabled in this Parliament — a huge number that could have been

tabled in a more sensible way over a longer period. Many of these reports have been available for some time. We know from the Auditor-General's report tabled in the last sitting week that he saw these annual reports earlier, and there is no question that this avalanche of reports that is dumped each year is simply an attempt by the government to cover up as much of its tawdry administration as is possible.

Northern Hospital: performance

Mr D. DAVIS (Southern Metropolitan) — On another matter, I also want to put on record some of the failures that have occurred at the Northern Hospital. The Northern Hospital failed five of its nine benchmarks in the government's recent health report. Some 26 per cent of category 3 patients were not treated in the appropriate 30-minute target time. In the emergency department 37 per cent of patients were not admitted to a bed in the 8-hour target time; 32 per cent of patients were not treated within the 4-hour target time; and 43 per cent of category 2 — that is, semi-urgent patients — were not admitted within the required 90 days. These are sick patients who need urgent care, and they are not getting it under John Brumby. After 11 years in government and after promises to fix the health system, he has not fixed the problems at Northern Health — with five out of nine measures, it is a fail.

STATEMENTS ON REPORTS AND PAPERS

Auditor-General: *Personal Safety and Security on the Metropolitan Train System*

Mrs KRONBERG (Eastern Metropolitan) — I have already commented on the Auditor-General's report *Personal Safety and Security on the Metropolitan Train System*, which was tabled in June. It is such a big story, and the time allowed to me the first time was not enough.

It is important to make a few strong points of a statistical nature. Of all criminal offences on the metropolitan train system, 17 per cent were crimes against the person, such as assault or robbery; 62 per cent were crimes against property, such as theft from a motor vehicle or property damage; 5 per cent were drug-related crimes, including possession, use and trafficking thereof; and 16 per cent were other crimes, such as possession of an illegal weapon or inappropriate public behaviour. Surprise, surprise! The Victorian Auditor-General reveals to us in his report that passenger satisfaction with personal safety is much lower on Melbourne's trains than on buses or trams. What a revelation! Is this not extraordinary?

It is important that I incorporate some statistics to give a sharper focus on the criminality and conduct of people on our stations. Of course the compilation of the statistics is fundamentally stymied and flawed from the beginning, because — and this is not rocket science — crimes against the person or property on unmanned stations go unreported. Again we have smoke and mirrors tactics used by this government. It is a completely misleading compilation of information, because the figures are skewed and are based only on the records of railway stations.

According to statistics I have from Victoria Police for the category of crimes against the person on public transport for the period 2008–09, there have been 15 rapes, 212 sexual attacks, 349 incidents of robbery, 1152 assaults and, extraordinarily, 8 kidnaps or abductions. In the same period crimes against property included 19 incidents of arson, 1418 incidents of property damage, 40 incidents of burglary regarded as 'other' — that is, other than 'residential' or 'aggravated' burglary, 227 incidents involving deception, 139 incidents of handling stolen goods, 1497 incidents of theft from motor vehicles, 6 incidents of shop stealing and 956 incidents of theft of a motor vehicle. Do not park your car at a railway station. People riding bicycles to railway stations to reduce carbon emissions will be interested to know that there is a high probability they may be adding to the 299 bicycles that have already been stolen in the previous year. The figure for 'other forms of theft' totals 1372.

I turn to the figures for drug offences. There have been 24 incidents involving the cultivation, manufacture and trafficking of drugs on public transport. On Melbourne's public transport system there have been 331 incidents of possessing or using drugs. The category 'other crime' includes: going equipped to steal, 15 incidents; going against public order, 114; possessing weapons or explosives, 307; harassment, 21; and outrageous behaviour in public, 313.

This government continues to mislead the Victorian public when it says the violence and the reign of terror that prevails, particularly on railway stations, is being turned around or ameliorated in some form. This is nonsense, and the police statistics reveal as much. I am concerned about the people in Eastern Metropolitan Region who use the public transport system and who almost risk everything on the Belgrave and Lilydale lines.

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

Budget sector: financial report 2009–10

Mr HALL (Eastern Victoria) — I want to make some comments on the budget sector financial report 2009–10, incorporating quarterly financial report for the period ended 30 June 2010, which was tabled in this chamber yesterday. It is a document I have a particular interest in, given some of the debate that occurred on 24 June in this chamber. It was during the committee stages of debate on the appropriation bill that I asked the Treasurer — he was at the table at that time during the committee stages — exactly how the $316 million in the document *Securing Jobs For Your Future — Skills for Victoria* was allocated, because there was no specific mention of it in the appropriation papers themselves.

The Treasurer took my question on notice and provided me with an answer a week or so later. He said in his reply:

> The details of the $316 million appropriation provided for this initiative are contained in 2009–10 budget paper 3, page 287, 304, 305 and 306 and the actuals will be in the 2009–10 annual financial report.

That is the report tabled in this chamber yesterday. I searched in vain through the 200-odd pages of this financial report yesterday and failed to find any actuals in it at all. There was mention of the program itself but no actuals. Would the Treasurer be so kind as to identify where these actuals are contained in the 220-odd pages of this report? It may be my oversight that I have not seen them, but I do not think so.

In the report I noticed under the heading 'Innovation, industry, and regional development', in a section about funds that have been allocated from the Treasurer's advance, that $2.187 million is being spent on the international education strategy. I have that strategy document in my hand — I was about to refer to it in the debate on the legislation before the house last night, but I failed to get to it before the 10.00 p.m. adjournment. This document is called *Thinking Global — Victoria's Action Plan for International Education*. It is dated September 2009. The document refers to an allocation of $14 million to do various things to assist with international education in this state. I have no objections to that — I think a $14 million strategy was probably warranted — but I find, in reading this *2009–10 Financial Report*, that just over $2 million of that $14 million has been expended. The *2009–10 Financial Report* does not break down the areas in which that $2 million has been spent, though if you read the *Thinking Global* report you see a large number of areas have been promised allocations.

All of this poses the question of accountability. My claim is that if I as a taxpayer in this state want to find out how that $316 million skills reform money is being spent, under the accounting processes employed by this government I have no hope at all.

In terms of the $14 million allocated to the Thinking Global program, again the government is in no way providing any information to make itself accountable for it. Government members would do themselves a big favour if, for example, every time they mention programs such as this $316 million Securing Jobs For Your Future — Skills For Victoria program or the Thinking Global program there should be separate, easily identifiable information to account for those government-introduced programs. These are but two examples.

The current arrangements, despite what the Treasurer told me on 24 June and in his subsequent letter, provide me with no additional information whatsoever. I think there should be some follow-up to these grand announcements, otherwise we will never know how much, for example, of that $316 million is actually spent and if some of it is spent, in what areas it has been spent. If this government is all about being open, honest, transparent and accountable, it needs to do far more in terms of providing the Victorian public with clear and concise information about the expenditure of dollars promised for a number of programs of which I have highlighted but two this morning.

Auditor-General: *Personal Safety and Security on the Metropolitan Train System*

Mr ELASMAR (Northern Metropolitan) — I rise to speak to the report entitled *Personal Safety and Security on the Metropolitan Train System*, submitted to the Victorian Parliament in June 2010 by the Victorian Auditor-General. Before I continue I would like to express my personal thanks to the Auditor-General's office for its articulate and accurate reporting of all the government agencies and departments it is responsible for to this Parliament.

This timely report relates to personal safety and security on the metropolitan train system. We would all like to think our metropolitan train system was safe for all commuters 24 hours a day. Unfortunately we do not live in a utopian, perfect world; we live in a thriving cosmopolitan city that is open 24 hours a day,

7 days a week to tourists and residents alike. With the onset of record high world oil prices in 2006–07 Victoria saw a massive increase in utilisation of our public transport system in just a few short years. Obviously this placed an enormous strain on the public transport system. It also saw a rise in incidents of violence carried out at our train stations and on our trains by vicious thugs.

The Brumby Labor government understood the need for additional services and security and acted accordingly by injecting massive funding into the public transport portfolio. According to the Auditor-General's report, there has been a decrease in the incidence of violence at our train stations. The opposition would have us believe these figures are wrong, but I can assure all members of this house the Auditor-General does not lie or fudge figures for the benefit of politicians.

The travelling public's safety is paramount to the Brumby Labor government, and we do not want commuters to lose confidence in the transport system. Two-hundred-and-fifty transit police have been pledged to maintain security, and Victoria Police and the Department of Transport have been recognised as having successfully reduced crime since 2007–08. Notwithstanding the opposition's claims, the strategies employed in 2007–08 to reduce crime have been effective. Authorised officers dealing with ticketing will increase to 570 — a substantial increase in manpower — and their major role is the defence and protection of the metropolitan travelling public. I commend the report to the Parliament.

Education and Training Committee: potential for developing opportunities for schools to become a focus for promoting healthy community living

Mrs PEULICH (South Eastern Metropolitan) — I wish to make a few remarks on *Inquiry into the Potential for Developing Opportunities for Schools to Become a Focus for Promoting Healthy Community Living*, a report dated September 2010 which was tabled yesterday and is an all-party report prepared by the Education and Training Committee of the Victorian Parliament. I have not read the report chapter and verse, but I am disappointed by the very title. The title says 'an inquiry into the potential for developing opportunities for schools to become a focus', and it should not be a potential, it should be a critical focus — an absolute foundation — of what schools are delivering. This is in terms of teaching very important skills, knowledge, attitudes and behaviour relating to the physical, social and emotional wellbeing of our students, all of which are crucial to developing and formulating effective health practices not just for the students but for their families both now and in the future.

What disturbs me even more about this report is what appears to be a drift into a social welfare model when we are talking about development of physical, social and emotional health, rather than an education model. The education model — based on what all teachers are trained in, which is Bloom's taxonomy of learning — focuses on the development of knowledge, attitudes and behaviour. This is why the Prime Minister, Julia Gillard, was so wrong to omit the term 'education' from the title of the federal ministry that takes care of that area and just call it skills. Skills are but one element of education and learning, which as I said before should focus on knowledge, attitudes and behaviour, not just on the output but also on the process that leads up to it.

I have observed over some period of time — many, many years — the progressive deterioration of commitment to the development of health and physical education in our schools. In primary schools it has been less so, but it is increasingly serious in our secondary schools. Some schools do it very well because they have a commitment. Some schools do it to tick off a box, but it is demoted, discouraged and disorganised.

I am disappointed that it has taken so long, especially given our investment in health, to reform, revamp and reintegrate all that we do in our schools to promote good health and the development of the commensurate attitudes, knowledge and behaviour. It has been higgledy-piggledy. The current efforts of the Minister for Education make Mary Delahunty look like an absolute master, which is a thorough disappointment because Ms Pike is a teacher and should know better.

For example, we know there are issues with bullying in schools. That has to do with the development of good emotional health and emotional intelligence, something that has been completely off the radar in our schools and something that parents are crying out for. I have attended several forums on emotional intelligence that have been organised in the community in Frankston by parents, particularly those who are in single-parent families, who want this focus in our schools.

Instead we have a self-contained, almost shopping-list approach to health and wellbeing in schools. We have the Minister for the Respect Agenda making some

announcement about antibullying initiatives in schools and other initiatives about the respect agenda and cyberbullying. All of these are important things, but they need to be comprehensively integrated into the foundation skills, knowledge and attitudes that develop the physical, social and emotional health of our young people.

The most preposterous idea I have heard was the Prime Minister suggesting that children who fail to attend school should be denied the opportunity of being involved in sport. I for one can say from personal experience that sport kept me at school and kept me involved. I have heard no more retrograde idea in relation to this topic than that one. Those are the very children who need sport to keep them engaged with education. I urge the government to revisit this particular report in its response to ensure that the entire area of developing good health — physical, social and emotional — in our schools is reformed dramatically.

Benalla and District Memorial Hospital: report 2009

Ms BROAD (Northern Victoria) — I rise to make a few brief remarks about the annual report of the Benalla and District Memorial Hospital for 2009, and I note that its 2010 annual report has been tabled today. I was very pleased to make a return visit to the hospital on 9 September and to meet with its chief executive, Dan Weeks, and vice-chairman, Anthony Putt, and to congratulate them on a recent equipment grant from the Brumby Labor government of $118 500 and also to visit the new and very impressive education facility.

Our discussions on 9 September mainly focused on the ageing 30-bed high-care residential unit known as the Morrie Evans wing. Despite ageing facilities that include shared four-bed rooms with no privacy and bathrooms that are long distances from those bedrooms, staff maintain a very caring environment for residents.

The board has considered whether the hospital should continue to provide high-care residential aged care, and it has decided that it is committed to continuing to provide these services in the best interests of the community. However, as a result it is vital that the hospital is able to replace the ageing Morrie Evans wing with a modern facility that meets community expectations and makes it possible for staff to provide an even better quality service. The board is committed to working through these issues with the Brumby government and the community and undertaking planning to ensure that a new facility on land already purchased by the hospital meets the community's future needs in the best way possible.

On another matter outlined in the hospital's annual report, I have been advised that the board maintains its commitment to the goal of renaming the organisation Benalla Health because of the fact that the hospital is now only one aspect of a much greater range of health services provided, with more growth expected in non-hospital-related health services. The hospital also plays a significant and leading role in providing leadership in addressing health issues within the wider community. The hospital recognises that the proposed name change may raise some concerns, and it is committed to continuing to explain why it believes the name change will assist the community into the future. It is also committed to exploring what measures may be taken to ensure that it respects and acknowledges the past while developing its future.

I commend the report to the Council. I support the hospital in its endeavours to achieve its goals.

Department of Human Services: report 2008–09

Mrs COOTE (Southern Metropolitan) — I wish to speak today on the annual report of the Department Human Services for 2008–09. If I had known that the new one was coming out today, I would have spoken on that, but there is always the next sitting week!

I have spoken in this chamber before about the lack of information on aged care in this annual report for 2008–09. I certainly will be looking at the 2009–10 report to see what advances the department has made in aged care. I know this is a complicated area. It is an area that is growing at a rapid rate and there will be some extraordinary ramifications for all of us in this chamber as our constituents age. Our family, friends, neighbours and other people in our community are all rapidly ageing and need additional support. It is very easy for the state to renege on its responsibility for aged care and say, 'This is not a state issue. This is an issue for the federal government'. A lot of the funding for aged care does come from the federal government, but that is not to say that we should be abdicating our responsibilities in this state.

This government should have a very good look at an excellent discussion paper that was released this week, *The Future of Aged Care in Australia*. National Seniors Australia, which is the independent voice for the over-50s, commissioned Access Economics to prepare this paper. The paper is comprehensive, and

the government could learn a lot from it. I hope that when we go into a new Parliament aged care will have a greater priority. It can be looked at when we have a new government, which I expect will be a Liberal government. I know that aged care is very important for the Liberal Party.

The paper raises several issues that came up through the research undertaken by Access Economics. Access Economics concludes that funding for the current system through tax revenue results in losses in efficiency of about 29 per cent, and that choice is limited. That is a very important point for us in this state, because as we look into planning issues and the spread of aged care throughout our community we have to be cognisant of how that will be funded adequately.

Access Economics also looked at long-term care insurance. This system is more sustainable and efficient than a tax-funded system. It also looked into voluntary, incentivised healthy ageing savings accounts. This is something that I know the Treasurer will be interested in looking at. I am sure he is interested in making certain that Victoria is at the forefront of innovative funding and direction for aged care within this state. Access Economics also looked at reverse mortgages and a voucher system for care services. I do not have the time to go into those issues now, but I encourage members to look at this report because it has a great deal of merit. It needs to be part of the debate in this chamber.

On page 15 of the paper, under the heading 'Preferences and informal care supply constraints', Access Economics, referring to residential aged care (RAC), says:

> The type of aged care demanded is expected to be profoundly influenced by changing social constructs and preferences. A primary determinant of RAC admission is living alone. Spouses are an important source of informal care, so higher divorce rates have reduced accessibility of informal care for many people. On continuation of current trends there will be a 90 per cent rise in 65+ single person households from 1996 to 2021.

That is within the lifespan of us all in this chamber. This is a salutary thing to look at, because all of us will be involved in developing policies, talking about legislation and developing a community response to aged care for years hence. It is very important to recognise that we have to get our social policies right, look at aged care in a better way and make certain that there is adequate funding and that funding programs are ready to support what is a huge and growing industry. We need to be able to ensure there is dignity in ageing, and we need to make quite certain that there are safety nets for the people in our community who need the most assistance of all. We cannot just renege on our responsibilities. We have to acknowledge that we in this state have responsibilities as well. Aged care is a vitally important issue for this state, and everybody here must address this issue.

2009 Victorian Bushfires Royal Commission: final report

Mrs PETROVICH (Northern Victoria) — I rise to speak on the final report of the 2009 Victorian Bushfires Royal Commission. I would like to highlight an aspect of the 2009 bushfires that has not been addressed in the commission's report or in fact in its inquiry, which is bushfires recovery. I am disappointed to say that many people think that the recovery is in train and that things are going well. I am here to deliver a message from those people I speak to regularly that things are not fine and are not going well.

We were led to believe by Christine Nixon, the former head of the recovery task force, and by the Premier, who is the minister responsible for bushfire recovery, that the money that was donated by Victorians has been spent well, that red tape has been cut, that mental health is being addressed, that dangerous trees are not falling and damaging property and that people actually have employment and have returned to working normality. But the fact remains that many people are still out there struggling to rebuild their lives, and the resonating sound that I hear from these community members is that they need more help. During the 18 months of visiting people in bushfire — —

Business interrupted pursuant to sessional orders.

QUESTIONS WITHOUT NOTICE

School buses: safety

Mr D. DAVIS (Southern Metropolitan) — My question is for the Minister for Public Transport. I refer to the Department of Transport's annual report for 2009–10. The 'Public transport safety and regulation' section shows that in relation to bus safety non-compliance reports addressed by accredited operators the government had a mere 61 per cent compliance rate against a 100 per cent target. There is clearly a possibility of an enormous risk to the public as a result of the Brumby Labor government's failure to meet this key safety performance benchmark. Will the minister indicate to the house whether any of these buses are school buses?

Hon. M. P. PAKULA (Minister for Public Transport) — The government works consistently with bus operators in order to improve bus safety. I have indicated previously that at the moment the department is conducting a study into the safety of school buses, including the issue of seatbelts on buses. We have also indicated previously that the major bus safety risk in regard to school buses is to child pedestrians — those who are either boarding or alighting from a bus — and enormous effort has been put into preventing accidents around school buses, including through the Stay Bus Safe Around the Bus Stop education program and the Rural School Bus Safety program. Both those programs have been successful in improving safety at bus interchanges and at roadside bus stops.

We have also upgraded a whole range of school bus interchanges. A whole range of bus stops have been upgraded, and more than 200 of the buses in the Victorian school bus fleet have seatbelts fitted. We are working not just with the operators but with the federal government, which in 2007 announced a four-year $40 million program to fit seatbelts into government-contracted rural and regional school buses across Australia. Subsidies are provided to bus operators under that program. But we continue to review and we continue to work with the Australian Transport Council (ATC) and look at world best practice in regard to safety on school buses. That work is ongoing, as it ought to be.

Supplementary question

Mr D. DAVIS (Southern Metropolitan) — I am not completely assured, unfortunately. I note the 61 per cent figure, and I seek from the minister an explanation as to why almost 40 per cent failed to meet the standard and whether all these issues have now been rectified.

Hon. M. P. Pakula interjected.

Mr D. DAVIS — It is at page 153.

Hon. M. P. PAKULA (Minister for Public Transport) — I am happy to take the question on notice and provide Mr David Davis with information about what makes up those figures. As I have indicated, though, there is enormous work going on with operators, the ATC and the federal government, with reviews being conducted by the department and discussions taking place with the stakeholders about bus safety, and school bus safety in particular. Bus travel is an extremely safe form of travel. As I have indicated, the majority of incidents where there has been a danger to school students have involved getting on and getting off the bus around bus stops and bus interchanges. I have outlined for the house the work that is going on in regard to all of that, but I am happy to take the question on notice and provide Mr Davis with a more comprehensive analysis of those figures.

Solar energy: Victorian Solar in Schools

Ms MIKAKOS (Northern Metropolitan) — My question is to the Minister for Environment and Climate Change, Gavin Jennings. Can the minister please inform the house how the Brumby Labor government is helping young people learn about the benefits of renewable energy by making it easier for schools, kindergartens and community groups to install solar panels on their roofs?

Mr JENNINGS (Minister for Environment and Climate Change) — I thank Ms Mikakos for the opportunity to talk about the Victorian Solar in Schools program, which since 2007 has played a very important role in encouraging the installation of solar and other renewable technologies on the roofs of schools and at community facilities across Victoria. It has been responded to very comprehensively.

There are now 300 schools across Victoria that have taken the opportunity to install solar panels and windmills within their schoolgrounds under this fantastic program. Last week I had the good fortune to go down to one of those schools, Bentleigh West Primary School, in the company of the member for Bentleigh in the Assembly, a member of the Victorian Parliament often mentioned in this chamber and a great representative of his local community. He was there with me last week at Bentleigh West, a great school that has demonstrated its ability to deliver sustainable environmental programs to its students. It is also very popular with other schools that come to see the great environmental programs at the school. There are regular visits to the school by other school communities.

I took the opportunity of announcing the next round of grants under the Victorian Solar in Schools program: $5 million will be available to support schools and community organisations in continuing to roll out solar and other renewable technologies within their school communities and their community life. This is something that the children respond to extremely positively. The up-and-coming generations are acutely aware of the climate change challenge. They are acutely aware of the need for sustainability to underpin our resource use, to use resources wisely and

to capture renewable energy and they are very committed.

The children at Bentleigh West are indicative of schoolchildren across Victoria, who have been enthused by and are committed to this program. The government is very keen to continue to provide this support, so the $5 million funding round continues to be available to support school communities to develop these technologies into the future, and we hope many school communities will take the opportunity to roll out solar technologies into the future.

Department of Planning and Community Development: report 2009–10

Mrs PEULICH (South Eastern Metropolitan) — My question is directed to the Minister for Planning. I refer to the Department of Planning and Community Development's annual report for 2009–10. I note the printed front cover of the report has been sliced off and replaced with a fairly shabby, flimsy, sticky-taped cover, and I ask: as the lead departmental minister, will the minister explain to the chamber why the original cover was surgically sliced off and replaced with a piece of blue photocopied paper, and will he assure the house that the original cover did not contain a picture of him?

Hon. J. M. MADDEN (Minister for Planning) — I welcome Mrs Peulich's question. I suspect one way to get people not to read the report is to put a photo of me on the front cover, so I might take her up on that suggestion. But this is a very serious matter.

Whilst my initial remarks might be light-hearted in relation to the comments by Mrs Peulich, I would like to explain to the chamber what occurred in relation to the cover of that report. I appreciate the fact that Mrs Peulich has drawn it to the chamber's attention because I welcome her question.

I have only just recently been informed that 110 copies of the annual report were printed with a range of images, I understand, on the front cover. Late on Wednesday, 15 September, the department received advice that one of the photos on the front cover was of a deceased Aboriginal person. I understand that all the photos were sourced from an image bank with the approvals of the persons concerned; however, in this instance the department had no knowledge of the person's passing. Out of respect to the individual and on cultural grounds, the covers were removed from the annual report. I would hope that because of the respect being shown in these circumstances we would not seek to make it a political issue in this chamber.

The covers of those reports already printed have been replaced, as Mrs Peulich mentioned, with a paper cover sheet without the photo of that deceased person, and all further printing and publishing of the report will be with a new front cover. I understand the department will also review procedures for checking image bank currency for future use.

Mrs Peulich — I accept the minister's explanation, and there is no supplementary question.

Innovation: government initiatives

Mr EIDEH (Western Metropolitan) — My question is to the Minister for Innovation, Gavin Jennings. Can the minister outline to the house how the Brumby Labor government's smart small to medium enterprises market validation program is supporting the commercialisation of innovative products and services that seek to solve a range of challenges faced across our community?

Mr JENNINGS (Minister for Innovation) — I thank Mr Eideh for his question. I know that he was a very successful businessman in Victoria before entering Parliament and indeed is still associated with a very important Victorian business through his family connections.

We have great SMEs (small and medium enterprises) in Victoria and a great, vibrant economy that builds upon our innovation, expertise and ability to seize economic opportunities. That is certainly something that my innovation portfolio is trying to engender and support. Members of the chamber would have heard me talk on a number of occasions about the way we try to provide market-based opportunities for some of our SMEs which have expertise in research and development, particularly in the technology field, to develop new goods, services and products that may capture markets.

We understand that the path to commercialisation often depends upon a realistic commercial opportunity being created, and we try to see the marrying of public policy outcomes and objectives that we may have as a government and agencies across the Victorian public sector to provide the impetus. We say to the SME sector, 'We have some public policy challenges that we think technology may assist us in resolving. Have you got the expertise in the development of new goods and services that actually may assist us in addressing

some of these challenges in our economy or our community?'.

The examples that I will draw upon in a second are ample demonstration of not only the scientific research and development capability of the Victorian SME sector and the great collaborations that occur between small business, tertiary institutions and government agencies in Victoria in responding to these challenges but also our great scientific endeavour and our great capability in dealing with these issues.

About a year ago 130 companies put in expressions of interest for a feasibility study about work they could undertake on behalf of the Victorian community. Of those 130 companies, 20 were selected to pursue the feasibility study. Of those 20, 5 have now proceeded to proof-of-concept stage developments where the companies involved will receive grants of the order of $1.4 million to $1.5 million to support the development of their goods and services to a proof-of-concept stage that ultimately would lead to commercialisation. They are in interesting areas of endeavour.

In the agricultural sector there are a couple of very important initiatives, including one to deal with the use of algae to develop biogas and a closed loop within the dairy industry in Victoria, a very important industry. The company concerned, Algae Enterprises, has been supported through this program to work with the Ellinbank facility of the Department of Primary Industries and Deakin University to develop this closed loop system that will ultimately use dairy waste as biogas which could be restored in feedstock to support the ongoing viability of the dairy industry and reduce its greenhouse gas emissions. Agricultural emissions are an important part of our greenhouse gas profile in Victoria, so that is an extremely useful potential process for not only the Victorian dairy industry but also the Australian dairy industry and more broadly.

It is the same with our approach to turning green waste into biochar. Earth Systems has been working collaboratively with the North East Catchment Management Authority and the CSIRO to turn green waste into biochar to sequester carbon in the soil and to use green waste effectively to support our agricultural sector.

Additional technology could be applied through a collaboration between FE Technologies, the Mount Buller alpine resort and Monash University in moving beyond GPS (global positioning system) technology for tracking systems that would be able to be used in vehicles that operate in alpine terrain. Because of the nature of high altitudes and low temperatures, the viability of GPS technology across the world is limited, but this application of FE Technologies, a company based in Geelong, may tap into an international market if it proves successful in monitoring vehicles in alpine terrain.

Pro-Active Medical, in cooperation with Monash University, Grey Innovation and the Austin Hospital, has developed a novel approach to real-time monitoring of lower back pain, which many in the community suffer from. In fact many members of this chamber may suffer from lower back pain considering the number of hours we spend in this place. I do not want to have a gratuitous whack at the ergonomics of this chamber, but I reckon there would be a bit of lower back pain evident here. This taps into the national cost of $9.2 billion for dealing with the medical consequences of lower back pain, so any technology aimed at developing a self-correcting therapeutic approach to that will be extremely useful.

The last project I will refer to is something that has been undertaken in conjunction with Corrections Victoria. A company, Hysport International in Victoria, has developed something that I am sure will be of interest to those members — I will not identify which members — who are very concerned to make sure that correctional staff can carry out some of their responsibilities by using gloves which are at the same time tactile and sensitive but which can be resistant to either needle-stick injury or other difficulties that may confront them in the workplace. This technology may have great application in Victoria.

We are very supportive of the small and medium enterprise sector, and this market validation program has been extremely successful in Victoria.

Victorian Funds Management Corporation: executive bonuses

Mr DALLA-RIVA (Eastern Metropolitan) — My question is to the Greens — no, they are not here! My question without notice is to the Treasurer. I refer to the payment of executive bonuses and other benefits totalling over $960 000, as outlined in the Victorian Funds Management Corporation report tabled today. Will the Treasurer explain the basis for these bonuses and benefits and in particular release the criteria upon which the bonuses have been awarded?

Mr LENDERS (Treasurer) — On the second part, I have been suspended from the house for not

delivering that document for reasons that were explained at some length in debate yesterday. I think we have made the stand on that, and I guess the execution has been delivered, so to ask the question after someone has been expelled seems a bit strange.

An honourable member interjected.

Mr LENDERS — That is right; it goes to the measure. It is probably the Liberals' view of sentencing: you actually find someone guilty and then you ask the question. It seems just a tad strange. But leaving that minor technical detail aside, on the broader issue of Victorian Funds Management Corporation (VFMC) bonuses, we have had a discussion in this chamber before, questions have been asked on the criteria before and Dr Mike Vertigan has reported. I have spoken in this house on the basis of the bonuses before. What I can say is that, pursuant to the Vertigan report, these are bonuses based on performance, and the rest is in the annual report.

Supplementary question

Mr DALLA-RIVA (Eastern Metropolitan) — I thank the Treasurer for the non-answer. This is a report that was tabled today. As I indicated, the issue relates to the executive bonuses and other benefits. I particularly asked for an explanation of the basis for the bonuses and benefits. The Treasurer has gone to the part about the bonuses, but their other benefits include long service leave, redundancy, relocation and retirement benefits paid or payable. If the Treasurer does not want to explain the bonuses — —

The PRESIDENT — Order! Can I have Mr Dalla-Riva's supplementary question? It is not a debate.

Mr DALLA-RIVA — I was getting there, President, thank you.

If the Treasurer does not wish to respond to the bonuses point, he may wish to explain the benefits as outlined in the report tabled today?

Mr LENDERS (Treasurer) — Again Mr Dalla-Riva, perhaps following his leader, is just making some — —

Mr Dalla-Riva — Not the bonuses, the benefits.

Mr LENDERS — I do have ears, Mr Dalla-Riva; I can listen to what you say. Perhaps Mr Dalla-Riva is again following his leader by making a theatrical statement, but there are no media watching him this time.

Let us be absolutely clear about the VFMC. The state of Victoria has appointed a stand-alone body to administer funds. Mr Dalla-Riva asked about the benefits of the VFMC. It has performed above benchmark; it has delivered returns to the Victorian community that are higher than they would have been, above the benchmark. It has done that despite a campaign of vilification for a year from those opposite to get the names of individual executives into the newspapers, and despite a prejudged view, because government might actually respect commercial in confidence and the personal details of individuals not being dragged through the world. When that happens, the opposition, because it does not get its way, expels ministers from doing their job in Parliament. Then an opposition shadow minister comes into the house and specifically asks for information that is on the public record and ignores the benefits delivered to Victoria by the VFMC performing above benchmark.

I have responded to Mr Dalla-Riva's question, I have responded to his supplementary question and I would urge him, if he is genuinely seeking information, to read the *Hansard* of the last 18 months and he will find comprehensive answers to the issues he has raised.

Trams: priority lanes

Ms HUPPERT (Southern Metropolitan) — 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 improve the interaction between trams and cars during busy periods?

Hon. M. P. PAKULA (Minister for Public Transport) — I thank Ms Huppert for the question. I am pleased to be able to advise the house that passengers who use the very popular route 6 tram along High Street — I am trying to get Mrs Coote's attention — will soon benefit from improved reliability and efficiency following the installation of tram priority treatments. There are four new tram priority lanes and longer green time for trams to help keep the trams moving during peak hours. The priority tram lanes will operate from 6.30 a.m. to 10.00 a.m. during extended morning clearway hours.

On Monday, I was in High Street with the member for Prahran in the other place, Tony Lupton — —

Mrs Coote — He is shocking!

Hon. M. P. PAKULA — I knew I would get you going eventually, Mrs Coote. Come in, spinner! That

is a $594 000 project to help move people safely and efficiently. As I am sure members would agree, priority tram lanes help trams stay on schedule; they keep cars off the tram tracks during the peak hours on busy roads when trams can otherwise be delayed by cars. The tram priority treatments developed for tram route 6 on High Street between Tooronga Road and Williams Road are part of the $112.7 million Keeping Melbourne Moving plan to reduce congestion — —

Mrs Coote interjected.

Hon. M. P. PAKULA — I am amazed it took you that long, Mrs Coote. They will reduce congestion and delays to public transport on the busiest part of the tram network. Those treatments on High Street will support the more than 5.2 million passenger trips each year on tram route 6.

Tram priority lanes and extended clearway times have been shown to deliver a more reliable service, with Sydney Road being one example. You cannot keep cars off the tram tracks unless they have a clear traffic lane to move through.

Planning: car parking review

Mr GUY (Northern Metropolitan) — My question is for the Minister for Planning. Given the minister has been in office as planning minister for four years, can he inform the house what he has done with the government's car parking review, the report of which has sat with him since October 2007?

Hon. J. M. MADDEN (Minister for Planning) — I welcome Mr Guy's interest in these matters. Mr Guy may not be aware, but obviously there has been a lot of discussion about the planning and environment bill that we look forward to bringing to this chamber when some finetuning has occurred in relation to some matters. We know Mr Guy has publicly declared his opposition to some of the elements of the bill. I have put together a working party, which I announced recently, with representatives from industry and local government, to resolve many of these issues. Many of the issues in the bill will enable, or not, the implementation of the findings of a number of reviews which have been undertaken by my department.

I look forward to the introduction of that bill into this Parliament at some stage when those matters are resolved and we can announce the outcomes of those reviews. The implementation of the reviews will be complemented by the changes to the act that I look forward to seeing introduced into this Parliament at some stage in the not-too-distant future.

Supplementary question

Mr GUY (Northern Metropolitan) — I thank the minister for his answer and note that I actually asked him about the report that was done into car parking as opposed to the Planning and Environment Act. Given that he initiated public consultation on the parking review and there were some 75 submissions, can the minister advise the house on how many of those 75 submissions and what aspects of them were taken into account in the determinations of the review? Or was the consultation process just a sham, like it was with the Windsor Hotel?

Hon. J. M. MADDEN (Minister for Planning) — I welcome Mr Guy's interest in these matters. I welcome it because I know that whenever we release any reforms in any part of the planning portfolio they are met with not necessarily direct — —

Mr Guy — Derision.

Hon. J. M. MADDEN — That is a good term, Mr Guy. They are met with not direct derision but a sort of a scepticism that borders on anxiety based around making out that it is the end of civilisation as we know it.

Mr Guy — You've had it for four years; what have you done? You've been there for four years, you've had it and you've done nothing.

Hon. J. M. MADDEN — If Mr Guy wants a reminder of what has occurred in this chamber, whether in relation to the development assessment committee legislation, the growth areas infrastructure charge or the changes to the urban growth boundary, all of those major reforms of course were met with not only scepticism from the opposition but also a fear and loathing campaign. Whenever we announce even the mere suggestion of a review of residential zones or of car parking we know what the response from the opposition will be. Given that it did not make any submissions to these reviews, what is important here is that we know the technique of the opposition, which is to scare people about what these reforms may or may not mean.

As I have said before, I look forward to the introduction of new planning and environment legislation, the provisions of which will enable the implementation of any of the reforms that come out of those reviews. I know that while we have undertaken reviews and a number of reforms and we have a clear agenda for any reforms going into the future on the basis of these reviews — —

Mr Guy — Three years!

Hon. J. M. MADDEN — We look forward to the policy announcements coming from the opposition, for which they have had almost four years. Four years! They have had four long years in opposition and I am yet to hear a policy announcement. Whilst the opposition might be waiting for our review, I am looking forward to the policy announcements of the opposition coming to this place, coming into the public arena after four sad, long years of the Liberal Party in opposition, during which we have basically heard very little in terms of planning policy or reforms on any front.

Planning: urban growth boundary

Mr SOMYUREK (South Eastern Metropolitan) — My question is to the Minister for Planning, Justin Madden. Now that the expansion of Melbourne's urban growth boundary has been approved by this Parliament, can the minister update the house on the actions the Brumby Labor government is taking to make sure these new growth areas develop as well-planned and well-serviced communities?

Hon. J. M. MADDEN (Minister for Planning) — I welcome Mr Somyurek's interest in these matters. I welcome his interest because I know that his is a genuine and sincere interest in these matters, as opposed to the scepticism and — —

An honourable member — Misery.

Hon. J. M. MADDEN — Yes, miserable scepticism that we hear from the opposition in relation to any planning reform or any program reforms undertaken in relation to this portfolio. As I have mentioned on a number of occasions, we are a government that is committed to providing housing on all fronts and providing opportunities for housing no matter where it is needed, whether it is in existing suburbs or in new suburbs. We have clearly defined that in Melbourne @ 5 Million. We have clearly defined that over the next 20 years we will need somewhere in the order of 600 000 new dwellings. Of those new dwellings, 284 000 will be created in the growth areas. Included in that are the areas opened up by the expanded urban growth boundary, the legislation for which was passed — unopposed, may I mention — by this Parliament on 29 July.

I am pleased to advise the house that planning for these newest communities within the expanded urban growth boundary got under way last week. This has been worked through with councils, developers and key stakeholders, who were invited to have input into these development opportunities. This feedback will inform the preparation of the growth areas framework plans. These are the long-term strategic plans which will underpin these communities in our newest suburbs. These framework plans will identify land for jobs and homes, transport networks, open space, town centres — —

Mr Guy — And car parks?

Hon. J. M. MADDEN — And key infrastructure, Mr Guy. Read into that what you wish, Mr Guy. It depends on how you might interpret key infrastructure.

Once these framework plans are complete, we will be able to begin the work on the individual precinct structure plans for new suburbs. The growth areas framework plans take into account a number of issues. They identify the location of broad urban development types — for example, activities centres, residential, employment, freight and mixed-use employment centres. They identify the boundaries of individual communities, landscape values and, as appropriate, the need for discrete urban breaks and how these breaks will be managed. They also identify committed transport networks and options for investigation such as future railway lines and stations, freight activity centres, freeways and arterial roads. They will also identify the location of open space to be retained for recreation, biodiversity and flood risk reduction purposes, guided and directed by regional biodiversity and conservation strategies.

Mr D. Davis — Will they have any car parks?

Mr Guy — Car parks next to the railway station?

Hon. J. M. MADDEN — It is interesting. How did that song go? I look at Mr Jennings because I know there was a Joni Mitchell song about car parks, and obviously the opposition has a car park fetish.

Honourable members interjecting.

Mr Atkinson — On a point of order, President, I think there are rules within our standing orders about relevance and debating a question, and I think the minister is really taking far too much latitude in terms of this answer.

The PRESIDENT — Order! On the point of order raised by Mr Atkinson, he is correct on both points — relevance and debating.

Hon. J. M. MADDEN — I will try to ignore the provocative interjections from the opposition in relation to these matters. The plans also show significant waterways and opportunities for creating linear trails along areas required to be retained for biodiversity protection and flood reduction purposes. They identify appropriate areas described and constrained for quarry buffers and the like and include areas for objectives that also go with each of these growth areas.

We will work very closely with the Growth Areas Authority. It will be working side by side with the growth areas councils of Casey, Cardinia, Hume, Melton, Mitchell, Whittlesea and Wyndham, and submissions received during the first stage of this process will also guide the draft framework plans for each of the growth areas. In early 2011 all the draft plans will be released for further consultation and public comment before the final plans are submitted to government for consideration.

We are planning for the future. We have a vision, we are committed to that vision and we are committed to working with the community to ensure that vision is implemented. That stands in stark contrast to others, who seem to be concerned only about where they can park their cars.

It is all about delivering on the government's commitment to managing growth, protecting livability, keeping house prices affordable and ensuring that we make Victoria, as well as Melbourne, the best place to live, work and raise a family.

Land titles: legislative amendments

Mr KAVANAGH (Western Victoria) — My question is for the Minister for Environment and Climate Change, Gavin Jennings, and relates to the operation of the registrar of titles with respect to recent legislative amendments to the Transfer of Land Act. Under section 4 of the Transfer of Land Act, the court is defined as a court of competent jurisdiction, and in 2006 the Victorian Supreme Court held in the case of *Dharmalingham v. Registrar of Titles* that foreign courts — in that case the High Court of Malaya — can be courts of competent jurisdiction for certain purposes of the Transfer of Land Act and that courts of competent jurisdiction under the act can order the registrar to do things.

Is it not the case that the Victorian government has inadvertently given foreign courts, including perhaps sharia courts in Iran or bodies like that, the power to make binding orders over the registrar of titles in Victoria, a power that was previously reserved only for the Supreme Court of Victoria?

Mr JENNINGS (Minister for Environment and Climate Change) — President, I know you and those who support you would be very concerned about me proffering a legal opinion in accordance with providing an answer, and I will not do so. But I shall take advice on the matter, and in fact I will be very keen to seek advice on the matter at the earliest opportunity and share it with the member.

Mr Kavanagh — On a point of order, President, the question does not relate to a legal question. It is about the government's intention in passing these amendments to the act.

The PRESIDENT — Order! That is not a point of order. Mr Kavanagh can ask a supplementary, if he likes, but I remind him that the minister is not compelled to answer the question in a way that Mr Kavanagh might see fit. The minister gets to decide how he answers, as long as it is relevant to the question, but Mr Kavanagh may like to ask a supplementary question.

Supplementary question

Mr KAVANAGH (Western Victoria) — Perhaps if I put it this way: is the confusion over this issue not the result of the government not consulting properly with expert legal bodies like the law society on the framework of its legislation?

Mr JENNINGS (Minister for Environment and Climate Change) — I have already given Mr Kavanagh a sense that in fact I think he was seeking a legal opinion. I certainly heard him, in the way that he framed the question, asking me to provide him with a legal opinion. Certainly this supplementary relates to the nature of the advice that determined the legal opinion which the government acted upon in establishing the legislation. On both barrels this issue is a legal matter and I will take advice on it.

Information and communications technology: national broadband network

Mr MURPHY (Northern Metropolitan) — My question is to the Minister for Information and Communication Technology, John Lenders. Can the minister inform the house of the importance of the national broadband network for job creation in this state, and can he also point to the latest employment data as evidence that the Brumby Labor government is a leader in job creation?

Mr LENDERS (Minister for Information and Communication Technology) — I thank Mr Murphy for his question, and I notice when opposition members hear the word 'jobs' it is like a four-letter word to them. They get very offended when anyone on this side of the house mentions the word 'jobs'. I thank Mr Murphy for his interest in jobs and particularly his interest in ICT (information and communications technology) jobs.

Getting jobs in place requires a plan, and one of the great things that has happened with federal Labor, first under the Rudd government and now the Gillard government, is a plan for the national broadband network (NBN) that will deliver jobs in Australia. It is interesting that federal Labor can get a plan, but it has been 1591 days since Ted Baillieu was elected leader of the Liberals and there is no plan in Victoria on ICT.

But Mr Murphy asks about what the government has done for jobs. In the state of Victoria in the last year, we have had more than 100 000 jobs created. They have come from a multitude of areas, not the least of which is ICT.

We as a state have valiantly worked for a number of years to grow ICT jobs, but our job has become so much easier with a federal Labor government that is bringing in a national broadband network. We have seen the national operating headquarters come into Victoria, and I, and tens of thousands of people in regional Victoria, were delighted. It is no coincidence that the issue, the trigger, that galvanised northern Tasmania, the trigger that galvanised parts of Brunswick and Bacchus Marsh, the trigger that galvanised Tony Windsor and Rob Oakeshott, the trigger that saw Stephen Conroy promoted and Tony Smith demoted is that the NBN is an item — —

Mr D. Davis — On a point of order, President, clearly manoeuvrings within federal parties on both political sides is irrelevant to the nature of the question that has been asked and is not within the minister's area of government administration.

The PRESIDENT — Order! I think that is correct.

Mr LENDERS — What I am seeking to show is that so many opinion leaders have been galvanised by the NBN as a positive contribution to jobs growth, and what we are seeing through the NBN is a future — a technological digital economy future — for parts of Victoria that would otherwise have languished under a no-policy action.

I say to Mr Murphy that I am delighted to be associated with this great Labor initiative. I am delighted that the Gillard government is delivering the NBN. I am delighted as to the consequences that will have in regional Victoria in particular but also in metropolitan Victoria. It gives an opportunity for us to be at the cutting edge, to lead the way, and this high-speed broadband makes it even easier for Victoria to be a great place to live, to work and to raise a family.

QUESTIONS ON NOTICE

Answers

Mr LENDERS (Treasurer) — I have answers to the following questions on notice: 12 329, 12 330.

STATEMENTS ON REPORTS AND PAPERS

2009 Victorian Bushfires Royal Commission: final report

Debate resumed.

Mrs PETROVICH (Northern Victoria) — The dangerous conditions in the bushfire-affected areas have been highlighted by many, including those still trying to clear their blocks for rebuilding, those who are seeking building permits and those who have returned to their homes, sheds or tents. Surprisingly enough, 18 months on, there are still people in mountain areas living in tents.

I received a letter addressed to 'The Ones Supposedly in Charge'. It was sent to me by Ross Buchanan on behalf of Mick and Jenny Clark of Kinglake who have done their very best to move on. He has graphically detailed just how hard it is, and I quote from the letter:

> I received a phone call early Sunday morning (Fathers Day) with Mick uncontrollably sobbing and eventually worked out what he was trying to say. The above photo (supplied) is the second tree to come down onto his property, causing damage, in three weeks both from the same property behind him. As I write he is still without his fire-destroyed replacement car that is inside his new but now demolished shed and I hope this is rectified soon. Jenny also fears they will never get insurance again and I can't blame her. Both trees only just missed their rebuilt home. My instant thought went out to a recent tragedy where a young man died in his car from a fallen tree (not in a bushfire-affected zone).
>
> Mick and Jenny wanted to say how disappointed they are in the way the recovery is going from all parties said to be helping, like VBRRA, DSE, local, state and federal government. Many people, industries, the state economy and government bodies or individual groups are well off because of the fires. What's worse is the neighbour was

> informed of the dangerous trees weeks ago and as I write this, Monday morning, 6 September, there is at least three more trees that have potential to cause more damage in the property behind them (refer photo). To the left-hand side of this photo not more than 10 metres away is a family living in tents including children. How there was not more damage, death or injury is a miracle in itself.

There are a number of other points in this letter and among them are that it has been difficult to do the right thing in the rebuilding process without a rebuilding advisory centre or any real advice. Only recently one has been opened. They removed dangerous trees from their own property. A letter from Murrindindi Shire Council this year stated it has no money to repair the national park road which approximately 500 000 people use to visit Masons Falls every year, but finally repairs have started after a very bad accident. Where are the promised lights for training for the Kinglake Football and Netball Club at the Kinglake Memorial Oval? That organisation is the instigator and true leader of our recovery to date. Who was consulted before $254 000 was offered for the Kinglake memorial garden proposal, and why have we lost case managers since June 2010 for people who still need them?

In general, they call for a fully detailed report of the cost of all of the functions, activities and projects of the Victorian Bushfire Reconstruction and Recovery Authority and the other government departments in the bushfire-affected areas — —

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

Department of Human Services: report 2008–09

Mr D. DAVIS (Southern Metropolitan) — I comment on the Department of Human Services annual report 2008–09. As members in the chamber know, the report for 2009–10 was tabled today. I put on record that it appears there is a significant slippage in the financial position of the department — —

Mr Lenders — On a point of order, President, Mr Davis said the report has been tabled today. I am intrigued about how he has given notice to debate it if it has been tabled today?

Mr D. DAVIS — On the point of order, President, I made the point that I was talking about the Department of Human Services report 2008–09. I noted that the chamber would know that today the report for 2009–10 was also tabled, and I was about to make some comparisons.

The PRESIDENT — Order! Mr Davis, to continue.

Mr D. DAVIS — I will be talking about the administration of the Department of Human Services through that period, how that presages the future and where that positions the department for the future. In commenting on these reports members are entitled to make comments on matters of public record that deal with particular things pursuant to that report. One of the matters of public record is the fact that this report of 2009–10 was tabled today and is now in the public domain. It gives us further information about the progress of the management of human services and health in this state.

John Brumby has been in power for 11 years now. The *Your Hospitals* report was tabled, which relates directly to the period between 2008 and 30 June 2009, and it details the terrible performance of the health system in Victoria as outlined in John Brumby's own stripped-down report. There were five out of nine measures that failed, seriously in some cases. The number of 24-hour waits was massive, and that has become very clear, although those figures are not declared in *Your Hospitals*.

The community in Victoria wants a health system that delivers. John Brumby, after 11 years, has not delivered. He promised to fix the health system and pay attention to the basics. The performance of places like the Bendigo hospital in the 2008–09 and the 2009–10 years has not been up to scratch. In the *Your Hospitals* report, which was released publicly on Monday, there was bad performance all round.

In Bendigo there was a failure of five out of eight benchmarks for that hospital; 22 per cent of category 2 emergency department patients were not treated in the required 10 minutes; 39 per cent of category 3 urgent patients were not treated in the required 30 minutes; 29 per cent of emergency department patients waited longer than 8 hours to be transferred to a hospital bed; and of those who were not to be admitted, 24 per cent had to wait longer than the 4-hour benchmark for treatment; and 38 per cent of the category 2 semi-urgent elective surgery patients were not provided with treatment in the required 90-day benchmark — that is almost 4 in 10 patients in that category 2 elective surgery group who did not get the treatment they deserved in time.

The coalition, by contrast with this government which has mismanaged health care in Bendigo and in the surrounding region, has a plan. We have a plan for a $630 million hospital which would have more acute

beds than Labor would have, a new mother-and-baby unit as part of that package, a new and integrated cancer centre, additional resources for a headspace unit to ensure that it is of a standard that is required in Bendigo given that there is no facility to date in that northern section of the state and also includes expanded educational facilities.

I particularly want to focus on the new integrated cancer facility which will be developed on the acute health site — the Anne Caudle site. It will not, as in the government's plan, be on a separate site, which would in some cases involve moving inpatients from acute beds across the road for treatment and then back across the road into the hospital again. That is entirely unsatisfactory and shows a lack of vision in building for the future.

The community of northern Victoria and the Bendigo region should understand this is a facility that will service the whole region, which is absolutely critical given the growth in population and a predictable ageing of the population. More cancer services will be required, and we need to build to a standard for the future. We will build four bunkers and ensure there is capacity for two more. That will provide a much better outcome for the people of Bendigo, unlike that provided by Bob Cameron and Jacinta Allan, the members for Bendigo West and Bendigo East in the Assembly, who have not been prepared to stand up for their community. They have been weak over 11 years.

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

2009 Victorian Bushfires Royal Commission: final report

Ms PULFORD (Western Victoria) — I am pleased to make some comments on the final report of the Victorian Bushfires Royal Commission. I note that since we last had a discussion in this place on that report the government has made a complete and thorough response to it. The government response was released on 27 August, and it was backed with an $867 million investment to put into action the response to the royal commission's recommendations. Significantly the response includes 612 new career firefighter positions and 231 seasonal firefighters. The government has supported 66 of the 67 recommendations — that is, the government has accepted each of those recommendations either fully or in part. New fire-mapping technology will be introduced, and there will be an accelerated rollout of neighbourhood safer places and a greater maintenance regime for electricity businesses, legislation for which has already been brought to the Parliament, as has legislation to create the new office of the fire services commissioner.

The fire services commissioner will be an independent statutory officer. The first person to be appointed as fire services commissioner, Craig Lapsley, will be the most senior operational firefighter in Victoria and directly responsible to the Minister for Police and Emergency Services. The commissioner will have responsibility for developing and building operational capacity to prepare for those highest bushfire risk days and exercising control over all significant fires. As I said, legislation is before this house to implement this important recommendation of the bushfires royal commission.

The one recommendation the government has considered and determined not to accept is the one that has been referred to as retreat or as resettlement or, in some instances, as property buyback. It was the government's judgement that the implementation of this recommendation could create a more dangerous situation for people in very high-risk areas. During the extensive consultation that the government embarked on in the few weeks after the royal commission's report was tabled in the Parliament, we heard loud and clear from Victorians that they do not think it is appropriate for government to be telling them how and where they ought to be living. Nevertheless, the government is absolutely committed to ensuring that people have access to every possible piece of information about risk mitigation and safety, including where they can go if all of their best laid plans fail.

I take this opportunity to note that the opposition committed in principle to fully implementing the recommendations, including the buyback of properties and the upgrading of powerlines, but, just like Tony Abbott and Joe Hockey, they thought it would be best to leave the costings on something like this until after the state election. This is the same state opposition that committed $4 billion in one week — last week. I think it is demonstrating through that kind of spending spree and through its desire to agree to recommendations sight unseen its unfitness to govern.

I refer to the *Australian Financial Review*'s editorial of 31 August, which states:

> A rush to embrace costly recommendations without thorough cost-benefit analysis could have put a heavy financial burden on taxpayers and power consumers throughout the nation, with little gain to public safety.
>
> …

> The government has also taken a cautious approach to the recommendation to bundle underground or otherwise reduce fire risk from powerlines in areas of highest risk.
>
> …
>
> But government cannot eliminate fire risk, and should not attempt to do so with a blank cheque as opposition leader Ted Baillieu seems to suggest. A serious and proportionate response is called for.

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

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

CARDINIA PLANNING SCHEME: AMENDMENT

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

> That pursuant to section 46AH of the Planning and Environment Act 1987, Cardinia planning scheme amendment C141 be ratified.

Amendment C141 to the Cardinia planning scheme could be known as the Pakenham racecourse redevelopment. The amendment before the house provides for both the redevelopment of the current Pakenham racecourse site and the relocation of the Pakenham racecourse to what will be a new, state-of-the-art racecourse and training facility at Tynong.

Less than a year ago, at the request of the Cardinia Shire Council, I referred this matter to the priority development panel (PDP) for advice. I took this action in order to investigate a planning approval process that could assist in the delivery of positive planning outcomes for both the existing racecourse site and the new site at Tynong. Importantly this process afforded the opportunity for local residents, local businesses, council, government and other agencies to be involved.

The PRESIDENT — Order! I assume the woman in the gallery is recording the proceedings, which is totally inappropriate. I ask the attendant to ensure that the recording be wiped if that is possible.

Hon. J. M. MADDEN — Based on PDP advice, I have now approved the amendment we have before us for ratification today. The amendment provides for the existing Pakenham racecourse site to be redeveloped for medium-density residential, retail, commercial and community uses, paving the way for the Pakenham Racing Club to sell the site and use the proceeds to develop a new racecourse at Tynong.

The redevelopment of the Pakenham racecourse site supports the objectives of Melbourne 2030 and Melbourne @ 5 Million through the provision of medium-density housing and commercial activity ideally located close to public transport as well as through assisting in the active management of Melbourne's growth within established activity centres.

The existing racecourse site comprises approximately 27 hectares of land adjacent to the town centre and close to public transport. The amendment rezones the site a comprehensive-development zone with an associated comprehensive-development plan to guide the future development of the land. The new development will help ensure that the Pakenham town centre remains the major activity centre in Cardinia shire and provides opportunities for a range of uses to meet the needs of the community.

Importantly, this rezoning also paves the way for the Pakenham Racing Club to sell the site and use the proceeds to develop and build, on 235 hectares at Tynong, a new state-of-the-art racecourse and training facility, which is also facilitated as part of this amendment. This new facility will include turf, synthetic and sand tracks; a grandstand; car and float parking; horse stables and training lots; houses for trainers; and the potential for future exhibition and event facilities. Both proposals are expected to generate an estimated $84 million in economic activity and create an estimated 1700 jobs in one of Victoria's fastest growing and most vibrant areas.

Amendment C141 rezones the Tynong site from green wedge zone to special-use zone, identifying the land as a racecourse and training facility. It also allows for the provision of trainer allotments and on-site accommodation, which is a necessary element for the successful operation of the training facility. It is this element of the amendment which triggers the requirement for parliamentary ratification. The development of the new racecourse and training facility at Tynong supports the implementation of the government's green wedge policy to provide important resources for recreation and tourism and is an appropriate use to be located within the green wedge. It also has significant environmental benefits, including water retention and recycling, the creation of and improving dedicated flora and fauna habitats and the provision of substantial native vegetation.

In concluding, I would like to acknowledge the work of Cardinia Shire Council which has fully supported these two projects and helped bring them to fruition. It is a great example of how state and local government

can work together to benefit the community through improving amenity as well as boosting economic activity within a region. In anticipation of the support of all parties, I thank them for their support of this motion before the house.

Mr GUY (Northern Metropolitan) — I rise on behalf of the Liberal-Nationals coalition to support the ratification of Cardinia planning scheme amendment C141. In doing so, I state that the coalition is very happy to support this amendment, in particular because we support horseracing in Victoria. In fact, we support country racing in Victoria with much enthusiasm.

In beginning my remarks, I have to ask one very poignant question. Given that one in three governments around Australia today are a coalition of Labor and Greens parties and that the Greens hate horseracing, whose policy will apply if construction has not begun on the racecourse by the time we go into caretaker mode for the state election? Will it be an Adam Bandt policy?

Mr D. Davis — Or a Rob Hulls policy?

Mr GUY — Or a Rob Hulls policy? Mr Davis is quite right. Whose policy will apply? If it is a Labor-Greens coalition government in Victoria and the Greens hate horseracing, in a minority government situation which party's policy is going to apply? One in three governments in Australia is a coalition of Labor and the Greens, so while members opposite might malign the Greens, they may face this situation in two months.

Mr Viney — I thought you were going to support this resolution.

Mr GUY — It is in Mr Viney's electorate, and in two months he may have to decide whether he is going to continue his support for this fantastic and worthwhile initiative if the government is held to ransom by the left-wing Australian Greens.

Mr Viney — Then don't preference them.

Mr GUY — Or will the Labor Party follow what it did in the federal election where it preferenced them no. 2 in 34 of 37 seats? Will it preference them no. 2 after Mr Lenders? Will it preference them no. 2 after Mr Viney, who is no. 1 on the ticket in Eastern Victoria Region? Where will the people who hate horseracing feature on the Labor Party's ticket?

I simply say, as I said from the start, that the coalition is very supportive of country racing. Our local members in the south-east have been exceptionally supportive of this proposal — not only tonight, like the government, but for some time. In fact I am looking at a letter of 26 March 2009 to the head of the Pakenham Racing Club from the coalition spokesperson for racing, Denis Napthine, the member for South-West Coast in the Assembly. The letter is headed 'Re Pakenham Racing Club', and it says:

> Your local Liberal members Ken Smith, Edward O'Donohue and I are enthusiastic supporters of this exciting visionary proposal.

That letter was written nearly two years ago, in March 2009, and that is because the coalition supports country racing. We support the racing industry in Victoria, and we have for some time. Our local members in Gippsland — Peter Hall for The Nationals, Philip Davis, Edward O'Donohue and Ken Smith, the member for Bass in the Assembly — are fully supportive of this proposal and have been on record for many years as being supportive of this proposal.

Mr Scheffer, coming from the socialist left of the Labor Party, might find racing offensive. The socialist left are willing to do deals with the Australian Greens, the people who hate racing. He might find that offensive, but on the coalition side we are very supportive of this proposal. We approach this amendment with fervent support and with gusto because this proposal will bring millions of dollars worth of investment in the western part of Gippsland, which is in Victoria's south-east. This proposal will ensure construction jobs for the outer south-east and West Gippsland. It is a worthwhile proposal that we fully support. Relocating Pakenham racecourse to Tynong opens up huge urban renewal opportunities for central Pakenham, urban renewal opportunities that the Cardinia shire will never get again. That is why we have been pushing it for some time.

Even last week, on Wednesday, 8 September, the *Pakenham-Berwick Gazette* had an article with the headline 'Pollies back a winner' and a picture of Denis Napthine and Ken Smith, with Dr Napthine reported again as saying that:

> … the new course was an exciting opportunity for racing.
>
> …
>
> … the new facility could provide up to 1000 jobs in the local economy and would provide local businesses with a boost …
>
> I strongly support it, as does the Liberal-Nationals coalition …

Dr Napthine went on to say further:

> I urge the government also back this project and if there is a change of power after the election we will be riding it all the way to the finish line.

Too right we will, because we have backed this proposal for a long time. We are very pleased to support this amendment. We are very pleased that the government has finally come on board to support a worthy proposal that has been out there and that despite the gutting of country racing around Victoria we are now seeing the opportunity Pakenham needs for urban renewal and new investment in places like Tynong.

I say again that the coalition is very supportive of this initiative. We are very concerned about some people who wish to destroy these initiatives for country Victoria. We hope that after 27 November there is not a situation in Victoria where projects like this could be compromised for the sake of politics, because this is one that needs to go ahead right now and those jobs need to come to West Gippsland straightaway.

Ms MIKAKOS (Northern Metropolitan) — I rise to make a brief contribution to indicate my enthusiastic support for the motion before the house. I want to give Mr Guy every assurance that this project is in fact going to get under way immediately. I had the great privilege on Tuesday to represent Minister Madden at the Pakenham Racing Club for this very important announcement. There was a great deal of enthusiasm from everyone who was present. I want to inform the house that there was a great deal of support from Cardinia Shire Council. The mayor spoke in glowing terms about this particular project. There was also support from representatives of Racing Victoria and Country Racing Victoria as well as the representatives of the Pakenham Racing Club itself.

The club's representatives said that the current racecourse site was on the market as of Tuesday. The club needs the proceeds from the sale of what will be a rezoned property following ratification of this planning scheme amendment in order to fund the development of a new racecourse in Tynong. I do not want to go into all the details, because the minister has already explained that. However, I reiterate that there are huge economic benefits for the community in Pakenham. Cardinia shire will benefit from this new medium-density development at the existing racecourse site, which is very close to the town centre.

The development will obviously have huge benefits for the shire in terms of diversity of housing choices. It will provide people with housing very close to the rail line, and it will provide the community of Cardinia shire and the whole region with huge economic benefits in terms of this new racecourse in Tynong. It is estimated that $84 million in economic activity and 1700 jobs will be generated as a result of this project. I am sure all members would welcome that.

I want to assure Mr Guy that we in government highly value the racing industry. We know that this industry employs thousands of people across the state, and it is fantastic that this new racecourse will not only be a much bigger, state-of-the-art facility but will also be a training facility for the industry and for the state. That is a very important aspect of this proposal.

Also, I know there will be opportunities for trainers to reside on site. The good reasons for that needing to occur are explained in the panel report; they are reasons that are unique to the horseracing industry — issues around security and the health and safety of the very valuable racehorses. Many protections will be implemented in relation to how those dwellings will be provided. These protections will be taken up in response to the panel's recommendations. They relate to the trainer allotments and the requirements for strict legal agreements to be lodged to ensure that the land on which a dwelling is located must be used for the purposes of horse training and horse stables and that the land may only be used for the purposes of a dwelling if it is in conjunction with horse training and horse stables and occupied by a trainer. All of those conditions will be required under section 173 agreements. That provides the appropriate safeguards as recommended to the minister by the panel report.

In conclusion, I will say that we are very enthusiastic supporters of this project. We want to see this project get under way very quickly. In response to Mr Guy's comments about the Greens and so on and so forth, I make the point that there may well be a Liberal-Greens government in this state in the future, so I would ask Mr Guy which policies would apply in those circumstances. I can assure members that this project is going to get under way, as I understand it, as of this week. The ratification that we can hopefully get through here today will ensure that this racing club is able to commence that process. I want to commend everybody involved in putting this together, and in particular Minister Madden for his leadership in ensuring that this project is able to be delivered for the racing community and for the local community in Cardinia shire.

Mr O'DONOHUE (Eastern Victoria) — I am pleased to rise in support the ratification of Cardinia planning scheme amendment C141. It was interesting

listening to the comments of the minister and Ms Mikakos. They forgot one very important piece of recent history going back to the 2006 election when the then Premier said desalination was a hoax and incredibly expensive. The government went to that election ruling out desalination. Six months later, in mid-2007, the government announced that the largest desalination plant in the Southern Hemisphere was to be built. Where will the power for that desalination plant come from? Despite all the rhetoric about renewable energy, the fact is that desalination plant will be hooked up to the brown coal grid of the Latrobe Valley.

The government's plan to deliver that power was to build powerlines right through the middle of the property we are discussing today. This represents an absolute lack of foresight, a lack of consultation with the Pakenham Racing Club and consideration of its long-term plans, and a lack of understanding of the impact of those powerlines on that very productive and fertile country. Fortunately, thanks to the work of the Shire of Cardinia, the Power Grid Option Group, which was formed in response to this erroneous plan, the local community and others, the government changed its policy.

While there is plenty of self-congratulation on the side of the government today, we should not forget that this project was for a period derailed because of the government's plan to ram enormous overhead powerlines right through the subject property. Fortunately, thanks to opposition from the coalition, the local community, the local council, local business, farmers and others, eventually sense was seen.

I want to pay tribute to the Pakenham Racing Club. The club has long shown leadership in the field of racing. It has long shown a great connection to the Pakenham and West Gippsland communities, and it has also demonstrated a great vision now for some time. It showed vision in buying its current site from the Bourke family. Those who know racing in West Gippsland will understand the importance of the Bourke family to not only Pakenham racing but racing more generally in Victoria.

The club showed great vision in buying the site that is now in the middle of the growing Pakenham CBD, and it showed enormous vision in buying this site in Tynong several years ago. The club looked for some time for an alternative site. It realised its long-term future was not in the Pakenham CBD. It was a short track; it did not have a long enough straight to attract the sorts of horseraces the club wished to attract to Pakenham. It recognised the need for a new location and new facilities to take the Pakenham Racing Club through to the next generation and keep it competitive.

I congratulate Don Duffy, who is the chairman of the club and has been on the committee since 1993 and the chair since 2003, and Michael Hodge, who is the CEO of the racing club and the Cardinia Club, on their work and their ability to deal in a logical and professional fashion with each and every issue as it has presented itself. They are to be congratulated on what they have achieved. As Mr Guy said and as the member for South-West Coast in the other place, Dr Napthine, said, this is a very exciting development for West Gippsland. The Pakenham CBD will now be able to reach its potential. The racing club land is opposite Pakenham railway station and therefore has great connectivity to public transport.

The move presents opportunities for job growth in the shire of Cardinia, which is very important given that the overwhelming majority of workers in the shire work outside the shire — and many commute the 60 kilometres or so to Melbourne. That is not sustainable in the long term. It is not the answer for the growth of this community, and the availability of this 27-hectare site presents a real opportunity to create jobs in the Pakenham CBD, which is good for Pakenham. It is good for Cardinia and it is good for local people to be able to work in their local community. The site, being that size, will present a range of exciting options and possibilities, and I look forward to seeing it develop.

The 235-hectare site that the club has purchased is a significant size. It will give the club the flexibility and capacity to build a large track, modern facilities and, very importantly, the creation of 120 trainer allotments. I know this is potentially controversial in this green wedge zone, but it is the right decision from the government and it is the right thing for this Parliament to endorse that decision. Those 120 trainer lots will give trainers the ability to use this magnificent new track when it is completed. It will give those trainers the ability to work locally. That will create jobs. The West Gippsland corridor is becoming a hub for the horse industry, both for horseracing and for those who pursue horseriding for pleasure. This is a very exciting time for the shire of Cardinia and for Pakenham, and I am pleased to support the ratification of amendment C161.

Motion agreed to.

PUBLIC FINANCE AND ACCOUNTABILITY BILL

Committed.

Committee

Clause 1 postponed.

Clause 2

The DEPUTY PRESIDENT — Order! The first of the Treasurer's amendments affects clause 2. I understand the Treasurer proposes to circulate further amendments and then the committee will report progress.

Mr LENDERS (Treasurer) — There are two lots of amendments I will seek to move; the first are procedural amendments that deal with the start-up time of the legislation. We originally envisaged this legislation would take effect on 1 July this year. Clearly that has not happened, so the first amendments to clause 2 are simply to move the start-up date for a year. The second set of amendments deal with the exemption of various officers from the procedures of the proposed legislation. Those amendments have now been circulated.

I suggest the committee report progress. The purpose of the government's amendments and further amendments has been discussed. That is now on the public record. I seek to report progress after any comments other speakers may wish to make.

The DEPUTY PRESIDENT — Order! The minister's previously circulated amendments are about time frames, and they affect clause 2. The further amendments which the minister has now sought to have formally circulated affect later clauses. In the context of the minister's remarks I will entertain comments by other speakers on the proposed direction of those amendments but will not specifically deal with them at this point, given that they affect later clauses. We are really dealing with them in principle at this point on the basis of their circulation.

Mr RICH-PHILLIPS (South Eastern Metropolitan) — I am happy to receive these further amendments from the Treasurer and will consider them in due course before the committee resumes.

Ms PENNICUIK (Southern Metropolitan) — I welcome the amendments that the government has circulated because this is an issue that I have raised with the government in discussions. It is also an issue that has been raised in the deliberations of the Public Accounts and Estimates Committee on this bill and in the reports to this chamber from that committee regarding the concern of the Auditor-General raised in evidence tabled in the Council that that was an issue for his office and the other independent officers of the Parliament. His is one of the key concerns regarding the Public Finance and Accountability Bill.

Progress reported.

EDUCATION AND CARE SERVICES NATIONAL LAW BILL

Introduction and first reading

Received from Assembly.

Read first time on motion of Mr LENDERS (Treasurer).

CONFISCATION AMENDMENT BILL

Committee

Resumed from 15 September; further discussion of clause 64 and Ms Pennicuik's amendment:

4. Clause 64, after line 16 insert —

'(2) In section 139A(1)(e) of the Principal Act, for "institutions." **substitute** "institutions; and".

(3) After section 139A(1)(e) of the Principal Act **insert** —

"(f) the number of restraining orders and civil forfeiture restraining orders made in respect of property on application by or on behalf of the Chief Commissioner of Police and the value of the property that is restrained in each case; and

(g) the number of forfeiture orders made under Division 1 of Part 3 on application by or on behalf of the Chief Commissioner of Police and the value of the property that is forfeited in each case.".

(4) After section 139A(2)(e) of the Principal Act **insert** —

"(ea) the number of restraining orders and civil forfeiture restraining orders made in respect of property on application by the law enforcement agency and the value of the property that is restrained in each case; and

(eb) the number of forfeiture orders made under Division 1 of Part 3 on application by the law enforcement agency and the value of the property that is forfeited in each case; and".

(5) After section 139A(2) of the Principal Act **insert** —

"(2A) As soon as practicable after the end of each financial year, the DPP must submit a report to the Minister that includes the following information —

(a) the number of restraining orders and civil forfeiture restraining orders made in respect of property on application by the DPP and the value of the property that is restrained in each case; and

(b) the number of forfeiture orders made under Division 1 of Part 3 on application by the DPP and the value of the property that is forfeited in each case; and

(c) the number of forfeitures occurring under Division 2 of Part 3 and the value of the property that is forfeited in each case; and

(d) the number of civil forfeiture orders made under Division 2 of Part 4 and the value of the property that is forfeited in each case.".

(6) In section 139A(3) of the Principal Act, for "(1) and (2)" **substitute** "(1), (2) and (2A)".'.

The DEPUTY PRESIDENT — Order! There has been an opportunity for the minister to consider answers to some questions that had been posed. In respect of clause 64 we have already had an amendment moved by Ms Pennicuik and, as I said, there were some questions put to the minister that we are now seeking responses to, which is why the committee reported progress. Subsequent to the proceedings last night, Mr Rich-Phillips also has some further amendments which would amend the proposals put by Ms Pennicuik. I will call on him shortly to describe his amendments.

Hon. J. M. MADDEN (Minister for Planning) — For the sake of the committee, I undertook last night to obtain some information from the Attorney-General about the source of the information about the value of seized assets reported in government media releases earlier this year. I am advised that is an estimate of the value of the property provided by Victoria Police. I understand that the overwhelming majority of this value comprises restrained real estate, and I am advised that these properties are valued on the basis of council valuations and basic real estate valuations, where appropriate.

Other assets such as vehicles, boats and the like are valued on the basis of very broad estimates of their market value. Given that those other assets are much lesser components of the overall estimates — a small percentage — the predominant values that you see in those media releases are overwhelmingly based on restrained real estate and associated values.

Ms PENNICUIK (Southern Metropolitan) — I was going to thank the minister for that, but it seems to be somewhat contradictory to the advice Mr Tee was giving us that we could not have an estimated value on a restrained property. It appears that the Attorney-General relies on an estimated value of restrained property, which Mr Tee was saying we could not have. I think the information helps us to come to an agreed position on the sort of information we could ask for realistically and responsibly in amendments to the bill.

Mr RICH-PHILLIPS (South Eastern Metropolitan) — I, too, can say that the coalition parties take comfort from the minister's response, which endorses our view that a lot of these valuations can be obtained on the basis of estimates and on readily available information. It is clear that is the practice the government has engaged in in producing those estimates for the Attorney-General's public statements, so it is consistent with the position we were putting to the committee last night.

Mr TEE (Eastern Metropolitan) — There is furious agreement, because I, too, take comfort from the statement made by the minister. It is relatively easy to obtain a market value for a house, which is what is valued in the overwhelming majority of cases. What is far more difficult and what is not done is to obtain an estimate of the vast majority of items in each case, which is the vast pool of materials that are bundled together and auctioned. Coming back to Ms Pennicuik's point, I think it is entirely consistent with the statements I made.

The DEPUTY PRESIDENT — Order! Unless there is any further discussion, I propose to call on Mr Rich-Phillips to move his amendments, which would, in effect, amend the amendment proposed by Ms Pennicuik and which is already before the Chair. Mr Rich-Phillips may move all his amendments. We will deal with them on the basis that if one is acceptable, for instance, then really all of them will be acceptable by the committee in terms of that proposition. Obviously there is the same intent in all the amendments.

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

1. In proposed subclause (3), in paragraph (f) omit "and the value of the property that is restrained in each case".
2. In proposed subclause (3), in paragraph (g) before "value" insert "estimated".
3. In proposed subclause (4), in paragraph (ea) omit "and the value of the property that is restrained in each case".
4. In proposed subclause (4), in paragraph (eb) before "value" insert "estimated".
5. In proposed subclause (5), in paragraph (a) omit "and the value of the property that is restrained in each case".
6. In proposed subclause (5), in paragraph (b) before "value" insert "estimated".
7. In proposed subclause (5), in paragraph (c) before "value" insert "estimated".
8. In proposed subclause (5), in paragraph (d) before "value" insert "estimated".

These are amendments to Ms Pennicuik's amendment 4. My proposed amendments go to the issues that were discussed last night with respect to the suggestion that there are difficulties in providing values for restrained property, which was the argument led by Mr Tee. I must say that, based on what the minister said earlier today and on the discussion last night, we do not necessarily accept that would be the case. However, through an abundance of caution and in addressing Mr Tee's point, the purpose of my amendments is to remove the requirement for the value of restrained property to be reported for restraining orders. That is the purpose of amendments 1, 3 and 5, which apply to different sections of Ms Pennicuik's amendment as shown.

The second intent of my amendments, being amendments 2, 4, 6, 7 and 8, is to preserve the intent of obtaining a value of a property for actual forfeiture orders rather than merely restraining orders. However, to clarify that value, which is required to be reported, it can be an estimated value. Again, that is consistent with what the minister has just told us — that is, that the Attorney-General has relied on estimated values in his public statements. We believe that inserting the word 'estimate' with respect to the requirement for forfeiture orders will provide sufficient latitude not to impose an unreasonable burden when reporting the matters as required by Ms Pennicuik's amendment.

Ms PENNICUIK (Southern Metropolitan) — I am happy to accept the amendments to my amendment put forward by Mr Rich-Phillips. In the context which you described, Deputy President, in that each amendment is a replication of the previous amendment, we would not need to put them all separately. We can accept the amendments as a block to my amendment 4.

I accept them because last night we had quite a long discussion during which Mr Tee made the point to us that this could be very difficult to achieve. That is what the committee is for: to explore the issues. We have thought about it, and the minister has come back and said that the Attorney-General relies on estimates of the value of property. Yesterday I mentioned that the annual report the Office of Public Prosecutions contains a global figure of $15.33 million. On the last page of its report for 2009–10, which was tabled with all the reports yesterday and today, the asset confiscation operations (ACO) report shows a comparison of annual revenue for asset confiscation from 1998–99 to the last financial year, which indeed has been increasing, because in 1998–99 it was $0.768 million and now, according to the report, it is $11.93 million.

Mr Tee interjected.

Ms PENNICUIK — There is either more organised crime or more forfeiture — whatever. My point is that Mr Tee conceded that it is easy to estimate the value of a property. The minister told us the Attorney-General gets the estimate of the value of a property from real estate agents. However, I assume the last figure from the ACO of $11.93 million does not refer to just real estate, but also to other confiscated property for which an estimated value must have been obtained in order to get this figure. The figure must be made up of estimated values or actual values; it cannot be made up of anything else. That is what we are looking for — a breakdown of the estimated value of the properties, be they real estate, a vehicle or whatever. That should be in the report. From what Mr Tee and the minister have told us, that is doable.

Mr TEE (Eastern Metropolitan) — I appreciate that members of the Liberal Party and the Greens have gone away and sought to address some of the issues that came up in the debate. They have certainly focused on one particular area, but there are four other areas where there are deficiencies which have not been addressed. I remind the committee that this amendment is conceptually flawed because it requires the Director of Public Prosecutions to have an obligation to be responsible for something the office has no control over. Section 139A(2)(a) of the principal act notes that the DPP is required to report on the value of forfeited property, but the DPP does

not have that role. The property is vested in the Attorney-General and is sold by asset confiscation operations or by Victoria Police on its behalf. The DPP's office is the prosecuting authority; it does not deal with the property. That is the first flaw — that the DPP is being asked to do something in relation to property over which the office has no control.

Mr Rich-Phillips says, 'If it does not have any control, then it does not have to do it', in which case why would you have this meaningless provision? Otherwise you are requiring the DPP to do something which the office is not legally able to do because it does not have a role in the disposal of property. That is the first flaw which is not addressed in the amendment.

The second flaw in Ms Pennicuik's amendment 4 which is not addressed by Mr Rich-Phillips's amendments is in relation to proposed clause 139A(1)(f) which requires the Chief Commissioner of Police to report on the number of civil forfeiture restraining orders made on his or her application. Again, the Chief Commissioner of Police is not empowered to apply for these orders. We have got this absurdity where this amendment can never make any sense because it relates to an action taken by the Chief Commissioner of Police when the Chief Commissioner of Police is not empowered, has no legal capacity, to act in that particular way. It is a misalignment of who does this. It is not the Chief Commissioner of Police; it is another authority. That is the second problem. In that sense this amendment is defective. I think Mr Rich-Phillips's response last night was to say if it does not happen because the chief commissioner does not have the power, then it does not matter. That is an absurd construction in terms of the legislation.

The third flaw which is not remedied by the omissions in these amendments is that there are a number of forfeiture orders. This amendment deals with some of them; it does not deal with all of them. The picture Ms Pennicuik and Mr Rich-Phillips are going to get will be an inaccurate figure because these amendments do not pick up civil forfeiture orders and automatic forfeiture orders under division 2 of part 3 of the principal act, nor do they pick up pecuniary penalty orders. There are three kinds of orders that are not picked up.

The third flaw is that through these amendments we are trying to pick up the massive amount of work that is required to be done by police. Unfortunately Mr Gordon Rich-Phillips's amendment fails to do this, because — and I would have thought Mr Dalla-Riva would be sympathetic to this — there are more than 2000 Magistrates Court cases, forfeiture cases, end point cases every year. These are just cases, each of them dealing with the forfeiture of property. They might deal with 10 bits of property, they might deal with 100 bits of property. There might be a hundred of those cases, there might be a thousand of those cases but at a particular point in time the property is bundled together and auctioned. That auction result, that outcome, is what is reported every year. They might bundle CDs from one case with CDs from another case. They might bundle together all the properties forfeited and then they auction them. That auction result, whether it is of CDs or hosepipes — —

Hon. J. M. Madden — Or bicycles.

Mr TEE — Or bicycles — that is what is then recorded. What Mr Gordon Rich-Phillips is asking through his amendment is that in each of those 2000 cases — and this is just the Magistrates Court; it does not include the County or Supreme courts — police resources be used to go through and itemise those CDs, itemise those bicycles, itemise each of those bundles and then come up with a value for each of those cases. That is what the amendment says.

Mr Rich-Phillips — The amendment as amended.

Mr TEE — As amended. It talks about an estimated value, but still you need to come up with a value. It does not say whether that should be the value as new or the value as at auction, so there is a question about the lack of clarity around it, but still in each of those more than 2000 Magistrates Court cases there is a job that is required to be done, which is not being done now, for us to identify an estimate of the value of the property. Then it can be bundled together and can be sold and then we will have the actual realised value. It is the impost, the cost of going through those files, of identifying each of those bits of property and coming up with an estimated value, that is our concern.

This does not pick up the high-end stuff and the stuff that the minister was talking about. Housing is easy, because there are not that many of those cases. There are not more than 2000 of them. That is easy, and that is what is being done currently. But what the opposition parties are asking for, even under these amendments to Ms Pennicuik's amendment, is estimates for those 2400 cases, a process which is not being done now and which would be very intensive.

For those reasons these amendments are technically flawed and conceptually flawed. They ask the wrong authority, an authority that does not have the power, but more importantly, although they would create a lesser impost than what we were dealing with last

night, it would still be a very substantial drain on operational police resources.

Mr RICH-PHILLIPS (South Eastern Metropolitan) — I will just respond briefly to Mr Tee's first point with respect to attaching this responsibility to a party that does not have the power for it. The substantive amendment quite clearly seeks to require reporting only by a party which has been an applicant with respect to an order, so it is not looking to put a responsibility onto a third party that is not involved with this process; it is looking to require reporting by a party which has been an applicant for an order under the various categories.

On the question of reporting values, we believe the amendment that removes the requirement for values to be reported with respect to restraining orders and applies a requirement for providing an estimated value with respect to forfeiture orders does address the issue of unreasonable diversion of resources and is consistent with the government's practice to date.

The DEPUTY PRESIDENT — Order! If there is nothing further, I will put the amendments proposed by Mr Rich-Phillips, being the latest amendments circulated to the committee. Those amendments seek to modify the amendment moved by Ms Pennicuik, which is still live. Mr Rich-Phillips's amendments would change Ms Pennicuik's amendment.

Hon. J. M. MADDEN (Minister for Planning) — This is quite an unusual circumstance in terms of the way in which we vote. It is not often that we vote on an amendment to an amendment; we often just vote on the amendment, so I am seeking clarification.

The DEPUTY PRESIDENT — Order! The clarification is I will be putting Mr Rich-Phillips's amendments to the amendment and we will vote on that. If they are accepted by the committee, then I will put Ms Pennicuik's amendment as amended and we will vote on that. In the circumstances described by Mr Tee on behalf of the government, I would suggest that the minister will be voting against all of them.

Hon. J. M. MADDEN (Minister for Planning) — That is correct.

The DEPUTY PRESIDENT — Order! Because the intent is exactly the same and because the eight amendments moved by Mr Rich-Phillips all fold into this amendment 4 moved by Ms Pennicuik, I propose to put them as a package.

Committee divided on Mr Rich-Phillips's amendments:

Ayes, 20

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

Noes, 18

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

Pair

Peulich, Mrs Darveniza, Ms

Amendments agreed to.

Committee divided on amended amendment:

Ayes, 20

Atkinson, Mr	Hartland, Ms
Barber, 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	Pennicuik, Ms
Finn, Mr (*Teller*)	Petrovich, Mrs
Guy, Mr (*Teller*)	Rich-Phillips, Mr
Hall, Mr	Vogels, Mr

Noes, 18

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

Pair

Peulich, Mrs Darveniza, Ms

Amended amendment agreed to.

Amended clause agreed to; clauses 65 to 71 agreed to.

Reported to house with amendments.

Report adopted.

Third reading

Motion agreed to.

Read third time.

EDUCATION AND TRAINING REFORM AMENDMENT (SKILLS) BILL

Second reading

Debate resumed from 15 September; motion of Hon. M. P. PAKULA (Minister for Public Transport).

Mr HALL (Eastern Victoria) — I take up where I finished last night. I was talking about international students and mentioned the fact that the education of international students in Victoria is our largest export income earner, worth in the vicinity of $4.9 billion per year. But unfortunately it has been somewhat hit by falling enrolments for a number of reasons over the last 12 months.

I mentioned and acknowledged that in this bill there are provisions that require certain private providers to establish things like complaint-handling and dispute resolution processes, student welfare schemes and fair contract terms. At the conclusion of my remarks last night I made the point that the coalition does not object to those. We feel there is a need for protection of overseas students insofar as these provisions go. I concluded by making the point that I am not sure whether these changes alone are sufficient to arrest the fall in enrolments of overseas students, which is creating a parlous situation for many providers.

I am reminded about what the government might do about this by its policy, released in September 2009, Thinking Global — Victoria's Action Plan for International Education. While this plan contains some very admirable initiatives, one wonders just how much is being implemented by government, because it states that this is a $14 million plan which is broken down into a number of different areas where that $14 million is proposed to be expended, yet there is no outcome from these policy documents. It is very difficult to account for the $14 million — whether it is being spent, how much has been spent and whether the plan is on target to expend the total amount of money. It was only by chance that I flicked through the annual financial report, which was tabled in this chamber yesterday, and noticed at page 177 that a figure of $2.187 million is to be spent on the program. But the financial report does not give any breakdown or detail as to exactly how that $2 million will be spent.

If we, as members of the opposition parties, and the Victorian public want to know how that program is going, there is scant detail for us to check on. I make the same point about the skills reform package, a $316 million program; again there is scant detail provided as to any expenditure of that amount. I posed a question during statements on reports and papers this morning. The Treasurer previously informed me that full details would be disclosed in the financial report, but there are none at all. That is a matter I will continue to pursue with the Treasurer, because we and the people of Victoria are entitled to know whether the promised funds for those programs have been spent and, if they have been spent, exactly how they have been spent.

Having said that, in terms of overseas students, we believe the provisions contained in this bill, which are described as protection measures for overseas students, are worthwhile, and we will be supporting those.

I turn to part 4 of the bill and in particular clause 57, which is about TAFE board membership. I need to set up my remarks by having a look at clause 57 and informing the house of what is proposed. Clause 57 is headed 'Board directorship' and proposes a different way in which TAFE institute boards are to be appointed. It says that a TAFE board will consist of not less than 10 and not more than 14 persons, consisting of:

> (a) the chairperson of the board who must be appointed by the Minister;
>
> (b) one staff member of the institute elected by staff of the institute;
>
> (c) one student of the institute elected by students of the institute;
>
> (d) the chief executive officer of the institute;
>
> (e) persons appointed by the Minister on the recommendation of the chairperson.

Apart from those three positions, being the staff member, the student member and the chief executive officer, the remaining persons appointed to institute boards are all appointed by the minister of the day, including the chairperson. That is distinctly different to the current situation, which is described in the principal act in section 3.1.16, 'Board directorship'. It provides that a board consists of:

> … not less than 9 and not more than 15 persons of whom —

> (a) more than one half must be appointed by the Minister …

It provides for a staff member, a student member and a chief executive officer and states:

> (e) the remaining directors must be persons with knowledge of or experience in the community or any industry served by the institute or in adult, community and further education or with special skills or knowledge relevant to the board appointed by the board by co-option.

Under the current arrangements there are two distinct differences between what the government proposes in this amendment bill and exactly what occurs now. Under the current arrangement the minister of the day appoints more than half of the board. It is very clear. The exact words are 'more than one half must be appointed by the Minister'.

Under the new proposal — setting aside the staff representative, the student representative and the chief executive officer — all members must be appointed by the minister, and the chairperson must be appointed by the minister, whereas in the current situation the board itself elects its own chair. The reason for this change is given in the second-reading speech, where the justification for this change is:

> After a comprehensive review it is proposed to make changes to the governance structures of TAFE institutes which are designed to strengthen their managing boards and clarify lines of accountability between those boards and the minister. It is important that these institutions have the range of commercial, financial and management skills and experience that are needed for them to direct their institutes in the new, demand-driven and competitive training market.

That is what it says. It does not go into any detail as to what the changes mean, how the management boards are going to be strengthened or how the lines of accountability between the boards and the minister are going to be clarified. Currently the act requires the board to report to the minister and have a direct line of accountability. If the minister is dissatisfied with the performance of the board, under the current act the minister has the power to sack the board, so there is no strengthening of provisions between the boards and the minister, apart from the minister saying, 'I will appoint everyone I want to appoint to the board'.

These arrangements of appointment and no local cooption do not give the local people any choice to appoint those who they feel would add value to their board. If the minister is so concerned about controlling the members of the board, I repeat that under the current arrangement more than one half of the members must be appointed by the minister anyway. This is an unnecessary grab for power. It is an expression of the minister's wish to centralise all these appointments. It is typical of this Labor government, the members of which feel they must have their hands on absolutely everything. The minister suggested there needed to be more lines of accountability because these institutes are engaging in commercial activities and as they receive significant funding from the taxpayer they need to be accountable to the taxpayer. They are already accountable, and they are already engaging in significant commercial activity.

More than half of the revenue of the 18 TAFE institutes in Victoria is self-generated revenue. It is not revenue that comes out of the taxpayers public purse. TAFE institutes are expected to go out and engage in commercial activity, offering fee-for-service activities and educating international students. Every one of the TAFE institutes in Victoria to some degree is out there competing actively, and doing it well, in the commercial field. To suggest that this government now must appoint every single board member apart from the staff representative, the student representative and the CEO is ludicrous. It is an unnecessary grab for power and in the view of the coalition is simply not warranted.

It is a slap in the faces of local people on TAFE boards and suggests that they do not do well enough now. They do do well — they do magnificently well — and they coopt people responsibly. They coopt people's experience, skills and knowledge of what is required locally. To suggest to all those people that it will be the government of the day centred in Melbourne that is going to make all those appointments, rather than giving the local boards some powers to coopt local people, is a real slap in the face. That is why the coalition is going to move amendments to seek to rescind the particular provisions which alter the way in which TAFE boards are going to be appointed.

We are not saying the current arrangement is absolutely perfect — there may be room for modification — but in terms of the changes being suggested by this government we do not believe they are necessary and we do not believe they are in the interests of local TAFE providers. Therefore we will be moving amendments to resist and abolish the proposed new appointment processes, which will leave us with the current appointment processes as described in the act. There is strong support in communities and certainly among providers for the stance the coalition proposes to take.

In terms of this appointment process there are a few inconsistencies in this bill, which I think put in doubt

the government's credibility and logic in terms of appointment processes. Clause 55 of the bill proposes to add new subsection 3.1.13(3) to the principal act. It states:

> Subject to any direction or guideline issued by the Minister the board of an institute may engage in an activity on a commercial basis if the activity is consistent with, and does not interfere with, the carrying out of the functions referred to in subsections (1) and (2) or the institute's strategic plan.

That contrasts with a requirement in the Public Finance and Accountability Bill 2009 which this chamber had a look at a while ago that forces the institutes to invest in the Treasury Corporation of Victoria and nowhere else. On the one hand the government is saying, 'We will give you new commercial powers and allow you the flexibility to invest, borrow and utilise funds in a way you think is best', but at the same time it is seeking to strictly control the investment operations of every one of those TAFE institutes. Again it seems to be a totally contradictory situation.

I want to take up some comments made in the Legislative Assembly during the debate on this bill. There were some misapprehensions among government members about the initiatives being undertaken by TAFE institutes around the state. In particular I refer to comments made by the member for Bentleigh in the Assembly, Rob Hudson, who said in reference to Holmesglen TAFE that:

> … they are borrowing large amounts of money … they are engaging in some very significant capital works programs to provide the facilities … for the training programs …they think are needed.

He said that on this basis they must be 'accountable'.

When I talked to some of the people at Holmesglen they were amazed at the naivety and lack of information on which those comments were based, because the TAFE institute has not received any public money from this state to build those facilities. In fact for 10 years it has not received a cracker for capital works from this state government. The capital works it was undertaking were being done using funds accumulated from its own commercial activity to provide facilities for training. The particular facility Rob Hudson, the member for Bentleigh in the other place, was referring to was to accommodate degree-level nursing programs — that is, commonwealth-funded positions for nursing degrees. Yet the government is saying it wants to appoint all its own Indians to serve on the board to try to keep a handle on institutions such as this, which are surviving magnificently by themselves.

Until we see any hard evidence put forward by this government of financial risk associated with the powers of TAFE boards, we will continue to reject outright this move to centralise appointments that relate to TAFE institute processes. There is no need for it. It is a hungry grab from what is philosophically a bureaucracy-centred government expressing its wish to dominate and have total control of every board process in every public institution around the state.

I conclude this topic by reminding members that these institutions do not rely totally on public or government funding. Many of them earn considerably more than half their income from their own commercial activity, and they do that extremely well.

I want to go on to a couple of other matters in this bill. Concerning TAFE boards, as I said, I will be interested in the debate the committee will have about the appointment process. I will be very keen to hear from the government whether it has any further defence of how it proposes to change the appointment process. To this point of time, that defence has been at best fairly flimsy.

I received correspondence from Dr Anne Jones, the deputy vice-chancellor and director of TAFE at Victoria University, in which she made some extremely good points about duplication in the system. Being a dual-sector institution and subject to the same controls applying to the stand-alone TAFE institutes leads to a far-from-effective situation in governance arrangements. Victoria University has duplicate reporting requirements: it is reporting on both higher education and vocational education programs. It is also required to report separately on TAFE programs in isolation from higher education programs, yet one report clearly shows the separation between the two.

In terms of governance review, which this government claims to undertake, there is no provision whatsoever to take in the different circumstances of the four dual-sector institutions we now have in the state. There is good call for supporting some of the arguments advanced by Dr Jones from Victoria University and people at the other dual-sector universities, who have argued strongly that there should be different governance arrangements for each of them.

Other amendments in this bill concern the appointment of the skills commission, the adult community and further education board and various university acts. Each of those amendments is fairly minor, particularly those being made to the university

acts, which seem to predominantly involve changes to terminology rather than substance.

The last point I want to make on this amending bill and some general powers conferred upon the minister under the Education and Training Reform Act is that extensive regulation-making powers are assigned for some very important tasks. They are all listed in a schedule to the principal act. With the passage of this bill a number of further measures will be introduced via regulation. Throughout the whole of my time in this chamber I have always and consistently suggested that when delegating the responsibility for regulations to others the Parliament should still have the ability to call back and have oversight of any measures introduced under regulations if it considers them to be inappropriate. Therefore one of the amendments I will put during the committee stage will make regulations made under the Education and Training Reform Act 2006 disallowable by either house of the Parliament. This sort of provision is in many acts, though not all. It is not in the Education and Training Reform Act, but I believe it should be, and I will seek to fix what I consider to be an anomaly.

There are some very important issues in this bill. I welcome the debate that will take place in committee on the training guarantee and particularly on any variations to that. I also welcome debate on the areas I have nominated about TAFE board appointments.

As a closing remark, it has been brought to my attention that the government proposes to put some of its own amendments in this debate. That comes to me by way of a third party. I am disappointed to hear that, given that throughout this whole process, both when the bill was debated in the Assembly and as it has been debated in this chamber, I have worked very closely with the government in discussing the amendments I intend to propose. As late as 8 o'clock last night I sat down with members of the government to discuss what I thought of the amendments proposed by the Greens — and the Greens have been very open and transparent in what they are proposing by way of amendments.

I consider it extremely discourteous that the government has not notified me that it may also be putting amendments before the chamber and that I have heard that second-hand. That breaches the trust we try to share and the cooperation we try to achieve to work with government to get legislation through this house. I am therefore extremely disappointed that the proposed government amendments have not been discussed with me at all. That does not reflect at all well on the government and those who are assisting the government in getting this legislation through.

With those remarks, I will conclude my second-reading debate comments. The Clerk is looking at me to suggest that my amendments should be circulated. I am more than happy to have those amendments circulated to the whole chamber. I might add that they have previously been circulated to key speakers for other parties. I am more than happy to make those amendments available to all so that they can give due consideration to them before the committee stage, which I look forward to.

The Nationals amendments circulated by Mr HALL (Eastern Victoria Region) pursuant to standing orders.

Ms PENNICUIK (Southern Metropolitan) — It is a pleasure to speak on the bill before the chamber, which is very important. I will start by thanking Peter Hall for his comments. I know Peter has a passionate, sincere and longstanding interest in education, and I would agree with very many, if not all, of the comments he made in his contribution to this debate. The Greens and I are also very passionate about education in the state of Victoria and particularly public education.

We share in the concern about what the results will be of the contestable, demand-driven philosophy that is underpinning the changes the government is making to the vocational education and training (VET) system, and particularly to TAFE, in this state. There is an underlying philosophy, and a lot of assertions are being made. There are government documents like *Securing Jobs for Your Future — Skills for Victoria*, which was released two years ago, in August 2008, and is a glossy document that talks about what is going to be achieved by this new atmosphere and new approach to vocational education and training, which we know is also being driven at the national level. Victoria is the vanguard for this new world of vocational education and training.

However, the Greens are not convinced that this brave new world of VET is going to be best for students, and we are not alone in that. The problem the government has with its reform agenda in vocational education and training is that it is not taking the students with it, it is not taking the TAFE teachers with it and on aspects of this bill it does not even have the Victorian TAFE Association with it. The three key groups of people in the community that are to be affected by this new regime are not with the government on it, but the

government is forging ahead anyway. It is important to say that up front.

Vocational education and training is an important part of public policy. It is important for the economy, for jobs and for skills. We hear this all the time from the government, and everyone agrees with that, but it is also important for people's lives that we get the system right. There are so many people who are in the vocational education and training system or wanting to enter it who are already having their lives impacted on in a negative way by the new system. Even if that was only a perception, which I do not accept, it would be bad enough. The fact that the government has not got the community on board with these changes to the TAFE and VET system should be giving it pause, but it is not. I find that very concerning. It is important that we get this area of public policy right.

Mr Hall said in his contribution yesterday that, whatever the government is claiming, what is being put in place under this bill does not ensure that standards will necessarily rise. He also mentioned the viability of local providers and the viability of the TAFE sector itself if it is forced to compete with private providers which are not necessarily subject to the same level of regulation, although there is some more regulation in this bill, which I will get to.

Regarding the new fee structure, the new so-called training guarantee is causing much concern amongst TAFE students and teachers, and the government cannot pretend that is not the case. I am sure the government has noticed — unless it is blind and deaf — that pretty much every week in this place there is a different bunch of students from a different TAFE institute standing out on the steps of Parliament saying they are not happy with what is happening in the TAFE sector and to them personally as a result of these changes.

My colleague Ms Hartland and I have been out to speak to many of those students. Mr Hall and I are in contact with the Australian Education Union, which represents TAFE teachers. Members would all know the union is running a campaign called TAFE 4 All. It is a good campaign, and we support it, because that is what TAFE is for — TAFE is for all. The underlying philosophy of TAFE is that it is socially inclusive. It is inclusive of everyone, whatever their socioeconomic background, age and current skill level. Whether someone is disadvantaged in other ways or whether they have disabilities, TAFE is the place for everybody.

The government is driving this new system far too fast, without enough consultation and with almost a blind faith that this ideology will give the result it is claiming it will. It is very concerning to many people in the community, and it is concerning to the Greens. The government is pressing ahead with this brave new world, but it is not taking the community with it.

The idea that opening everything up to contestability but having the government providers operate by different rules to the private providers will result in — as Mr Hall said, and I agree with him — the private providers cherry picking the cheapest and most popular courses and delivering those, with the government TAFE institutions left to deal with the courses that require more input and that are possibly not as popular but are needed in terms of skills for tradespeople et cetera.

Mr Hall referred briefly to the article that appeared in the *Age* on Tuesday regarding comments made by former Prime Minister Paul Keating. I could not resist referring to this in the context of this debate. The article states that Mr Keating:

> … has raised concerns about the Victorian government's overhaul of vocational training, saying it could be shutting prospective students out of the system.

The article goes on to say:

> Mr Keating said it was important to consider the impermanent nature of Australia's modern workforce when determining skills policies.

The article quotes Mr Keating as saying:

> A case can be made for the equitable treatment of those whose ambitions are to retrain.
>
> Equal opportunity should be given to those responding to changes in the workforce, seeking to step sideways or even taking a step back before they take a step forward.

I agree totally with what Mr Keating said. I raised similar arguments in the context of the motion on changes to TAFE put forward last year by Mr Hall. The Greens supported Mr Hall's motion in that regard and on the questions he was raising about the statements of Minister Allan, then the Minister for Skills and Workforce Participation, regarding her claims of what the new regime would achieve. I made the point then that, as a training guarantee, the idea outlined in *Securing Jobs for Your Future — Skills for Victoria* that students over the age of 20 can be guaranteed a government-subsidised place only if they are so-called 'upskilling' — that is, retraining at a level higher than their current level — is a totally flawed premise to start on.

I hope the house will forgive me, but I cannot remember the source I was reading the other day that stated that it was expected that on average generation X people will change their career at least three times in their lives and generation Y five times in their lives. The time when people are changing careers and directions much more than has ever been the case in the past is the very time when the government's training guarantee is going completely in the wrong direction.

We hear so many times from students we talk to out on the steps of Parliament House or who email or ring us about their situation under the new TAFE regime that their current job requires them to either get a new skill that is of the same level they are at or another skill that is of a lower level. They may have certificate IV but they may need another skill in certificate III. These changes will not let them do that unless they are willing to pay up to $10 000 a year under the new scheme. Over three or four years that is a lot of money for TAFE students.

How the government can say in its overall statement that this will be better and fairer for students and that given the 20 per cent increase that is the national target, it will get more people trained, when it is putting all these barriers in place, is just so counterintuitive. It is already having effects. It is difficult to get solid figures on what is going on, but we know that enrolments, particularly at the diploma level, are falling and that, as Mr Hall mentioned yesterday and as is well-documented in the literature — which I mentioned in the debate on Mr Hall's motion last year — people from low socioeconomic backgrounds are loath to take on loans or to get themselves into the situation where they incur an education debt. That is so much against the philosophy of TAFE, particularly the retraining of mature age students. Even the age of 20 at which this comes in is weird.

I suppose I have made it clear that the Greens have grave concerns about the direction in which the government is going with the changes to TAFE. In terms of the fees, it is worth pointing out that concessions have been abolished for courses at diploma level and above, so the fees will immediately increase from $55 to at least $1500 per year. That assumes that concession holders do not have a right to a concession fee for a course at diploma level or above. I do not know how that fits with the government's claim that this is about improving access for students, particularly mature age students.

What we are looking at here are higher fees per year in the TAFE sector, with courses for diplomas and advanced diplomas rising from $887 to $2000 for this year and to $2500 or 180 per cent by next year, and the introduction into the TAFE system of loans like the HECS (higher education contribution scheme) loans, leaving students with debts to pay off. I understand that repayment comes in at a certain level of income, but it is a complete overhaul of the TAFE system and a disincentive for people to enter it.

I mentioned retraining. As I have said before in this chamber, the evidence about HECS for university students is not good, either. That has not been a swimming success. People are saddled with HECS debts for a long time, and it affects their lives. It is worth pointing out that it does not have to be like this. It is a matter of values and choices as to whether the government keeps subsidising education and making TAFE very accessible by continuing to subsidise people's retraining when they need it, whether they are changing jobs, whether they need it in the job they are in or whether they are re-entering employment after an absence from the workforce. That is done in many countries in Europe where people do not pay fees at all for this type of retraining, or if they do, they are of the sort that we used to have in TAFE — very low fees — which make retraining accessible to people. That is how you get people more skilled up and more people skilled, not by putting up financial barriers to them. It is a flawed philosophy that is entering the whole vocational education and training system.

I would like to turn to the bill, probably belatedly, but what I have said is pertinent to the bill. I am reading a little bit from the briefing notes that were provided to me by the department and the ministerial advisers who provided me with a good briefing on the bill and with a lot of information, including follow-up information that I asked for. The follow-up information I asked for concerned the composition of the boards of TAFEs because part of the bill deals with that, and also the budgets of the various TAFEs, which I could have found myself but it would have taken me some time and they kindly found that information for me. I thank them for the efforts they have made, and the information they have provided is very helpful.

I will even go on to say every time an education bill has been before the Council the department has provided really good briefing notes which have been very helpful. They are perhaps an example for some other departments to follow in terms of the amount of information laid out explaining the bill. Mr Hall talked about the second-reading speech — and it is probably

a good opportunity to talk about the second-reading speech — which sort of glosses over what is happening. It is like many second-reading speeches we have had to deal with in this Parliament: they are not detailed enough. They often say something like, 'There is a change to this provision in the act and it will achieve that'. Sometimes they do not even go that far but just say, 'There will be a change', or make a similar general statement. I do not think they provide enough information, particularly considering that many times the courts rely on them to interpret the legislation. There needs to be some improvement in the level of second-reading speeches.

According to the briefing notes, and I agree, there are four main aims of the bill. One of them is about students, and particularly overseas students. That has been brought about by changes to the registration of RTOs (registered training organisations) and also the ability of VRQA (Victorian Registration and Qualifications Authority) to regulate in that area. I have to say that was much needed and overdue. I think it was on 10 December last year that we were in this chamber debating the Education and Training Reform Amendment (Overseas Students) Bill 2009, and that was brought in as a result of all the debacles that were happening with overseas students, with training organisations falling over and with bogus training organisations popping up and falling over and popping up again under a different name. All of that was going on, so some quick fixes were brought in and spot audits were happening et cetera. I said at the time — and I think Mr Hall did also — that they were some much-needed quick fixes but that much more needed to be done. And here we are, nine months later, debating the second tranche of amendments to the regulation of registered training organisations.

There are some amendments to that system which I think will go a long way to tightening up the regulation of registered training organisations, particularly the amendment that stipulates that training organisations need to have training and education as their primary purpose before they are registered. That is a good provision and a good move by the government.

I do not want to go into all the details, suffice it to say that they are mostly supportable, but there is one glaring omission from the whole thing. The government has failed to regulate the staff who deliver the education and training. There is no regulation of the staff — that is, there is no requirement that staff in RTOs and sometimes even in TAFEs, but mainly in RTOs, have a teaching qualification. That is the glaring omission. That is the big area that is not being addressed. In some ways that is the area that in the competitive, demand-driven — whatever that means — market, the new world order of vocational education and training will disadvantage TAFEs, because TAFEs tend to have qualified teachers and lots of RTOs do not. While they are cherry picking the best courses and not necessarily having to have such qualified teachers and therefore having to pay them the rates that are due to the qualified teachers, that does not necessarily provide a level playing field. However, these changes are definitely needed, and if they had been there before, we probably would not have had the debacles with the registered training organisations that we have seen over the last two years.

The bill also enshrines what the government calls its Victorian training guarantee, which is a guarantee of a government-subsidised place for any student under 20, and then for students over 20 there is a guarantee of a government-subsidised place if they are so-called 'upskilling' — that is, availing themselves of a course for a higher qualification than they already have. I like the words that are used on page 15 of the government's document *Securing Jobs for Your Future — Skills for Victoria*. It states:

> For people from the age of 20 years onwards, the eligibility criteria reflect workforce development priorities …

Whatever they are! Whether they are the priorities of the student does not seem to get a look-in there. On page 11 it states:

> Individuals will be supported in undertaking training at various levels and encouraged to move on to higher levels of learning.

They will be encouraged to do that because they will not get a subsidised place unless they do that. That is how they will be encouraged.

The Greens are totally opposed to the philosophy of the training guarantee, and as such I have prepared an amendment to change that in the bill. I am happy to have the amendments circulated.

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

Ms PENNICUIK — While the amendments are being circulated I take the opportunity to say they have been circulated to the lead speakers. Mr Hall has had a copy of them. The government was sent a copy of them the minute I received them back from parliamentary counsel, which I think was Tuesday morning, and so far I have not heard a thing from the

government. I was interested to hear Mr Hall say the government has had a conversation with him about the Greens amendments when I have not had a conversation with the government about my amendments. I am very happy that the government has discussed them with Mr Hall, but it has not discussed them with me; wonderful!

I also echo what Mr Hall said in that we have been told — there is a rumour — that there are government amendments to this bill which we have not seen. We have not even had that confirmed, so I still think it is a rumour. If there are amendments, it would have been nice to have been told about those as well.

The key amendment that I will be moving is to clause 3 of the bill, which the minister describes as enshrining the training guarantee in the act. I will take this opportunity to return to the article that reported Mr Keating's doubts over the TAFE changes. That article went on to say:

> Victorian TAFE Association executive director David Williams said the sector would also like changes made to the policy.
>
> 'We've been calling for a complete review of the eligibility criteria, particularly in relation to apprentices and areas of skills shortage, but we've also been pushing the issue [of] career changes — those who have been retrenched and those who are re-entering the workforce', he said.

I understand that in the Securing Jobs for Your Future policy there is $10 million for exemptions to the training guarantee, but as Mr Hall pointed out, that is $10 million over four years divided amongst 500 000 TAFE students, which probably ends up at about half a cent each; I am not quite sure because I have not worked it out, but it will not be very much.

Interestingly, the article also says:

> A spokesman for Victorian skills minister Bronwyn Pike said the government was considering the results of an independent review of the skills-training changes.

The government is considering the results of an independent review of the changes. I would have thought that, because this is such a contentious issue in the community, if that review were happening, the government should wait before it enshrines into legislation the training guarantee of which there has been a review which it is considering.

The amendment I will be moving to clause 3 of the bill would change the guarantee for students 20 years of age or older such that they would be able to undertake study if it was required in their current or prospective employment or to re-enter the workforce whether or not it led to the same or a higher qualification. I refer to the examples I gave before, which must be well-known to every member in this chamber, and say that that would apply to people who in their daily lives or their working lives need to retrain at the same level or perhaps a lower level or are retraining into a completely new career for whatever reason that is affecting them in their personal life, and they would be able to get a government-subsidised place in the VET system to do that.

We should always bear in mind that it is not as if people are going to go about willy-nilly doing retraining. People are going to go and retrain in a certain direction, be it sideways or be it to acquire a skill that might be below a certificate, diploma or even degree level they already have. They will do that because there is a need to do so in their life, but it is not as if people will be going off in all directions doing this. It is not as if it is going to be unaffordable. It is affordable, and it is particularly affordable if the government is saying that education is its no. 1 priority. It should be its no. 1 priority and the funds should be put into it to enable all Victorian students who want to retrain at whatever level they desire to do so with a government-subsidised place.

That is the philosophy of TAFEs and the public education system that the Greens support, and it should never be seen as just a cost to the community either. It should always be seen as an investment in the people of Victoria so that they are able to access low-cost, high-quality education; that is what we are talking about. I will be proposing an amendment to the bill which addresses that.

I will be proposing some other amendments in terms of the regulation of registered training organisations. One is to put a duty on VRQA to actively monitor registered training organisations to make sure that they are complying with their conditions, because the way it is at the moment is a bit passive in just waiting for things to go wrong. There are the step-in powers that the government inserted in the lower house, which I think are good, but I also think VRQA needs to be more active in its monitoring, so I will propose a duty there. That raises the issue, and I raised it in my briefing and last year when we were discussing the amendment bill concerning overseas students, that VRQA needs more resources to do the job it is entrusted to do. I am not quite sure, but I think it might be useful if the government could update us on the resources that will go to VRQA to enable it to do the new job that has been assigned to it under this bill.

The other issue that has exercised my mind — as it has everybody else's, including those of the Victorian TAFE Association and the opposition — is the issue of the reconstitution of TAFE boards. I had a conversation with the minister about that last week and she put the government's point of view, which was that boards need to be more accountable to the government through the minister because they expend large amounts of public funds, and they do. But I think Mr Hall's point is valid in that they have been doing this for a long time with the current board structure and there are already significant powers under the act whereby the minister may amalgamate or dissolve boards and dismiss people from boards; the minister has wide-ranging powers over the boards already.

Having discussed this issue with the other stakeholders — including the Victorian TAFE Association, which has been to see me about this — and thinking more about it, I do not believe this is an urgent issue to start with. The boards are operating fine as they are; there is no suggestion they are not operating well. I have looked at the list of people assigned to TAFE boards, which was supplied to me by the department. It looks as if they are people with wide-ranging skills. It is important, though, that TAFE boards have people with experience in education and training. That seems to be a glaring omission from TAFE boards as outlined in the bill. It is all about people with legal, financial and management experience being on boards. I do not have an objection to those people being on the boards. The boards are quite big; they have a lot of people on them, so they can accommodate a wide range of skills, but those skills should include experience of and qualifications in education and training because that is what they are doing. They are boards of education and training organisations. That is a deficiency in the bill.

I have consulted widely and thought about this. The government would know that I put forward a counter amendment, which I hoped would accommodate the government's as well as my concerns about not requiring the boards to have people with education experience on them. The staff and student-elected representatives should stay in the list for those who will be on the boards; that is welcome. On reflection, I will not proceed with that amendment because there is no urgency to the matter. The Victorian TAFE Association opposes the amendment, as does the coalition, and I am not convinced it is urgent or needed. The minister already has significant powers. The government needs to consult more on how the issue can be addressed with the stakeholders, including the VTA.

I want to return briefly to the exploitation of overseas students and the measures in the bill designed to tighten up the regulation of training organisations to assist in ameliorating that problem. On Monday night *Lateline* had a story about the exploitation of students in accommodation and the workplace. It was quite frightening to see the situation many overseas students find themselves in. They are crammed into apartments and have to deal with dodgy landlords. They are being ripped off and are afraid to speak out about dodgy and exploitative employers, some of whom are not paying students who work for them. The students are, of course, in a vulnerable position. I raise the issue to put on the record that it is another matter, which I am sure the government is aware of and doing something about, but obviously not enough is being done because it has been raised by community legal centres as the outstanding issue for overseas students.

Those are the main issues the Greens have with the bill. It is a mixed bag. There is some good stuff and there are concerning things in the bill. We have some amendments prepared to be debated, no doubt in committee, that we think will improve the bill. Hopefully we will be able to garner some support for those amendments.

Mr MURPHY (Northern Metropolitan) — I welcome the opportunity to speak on this bill this afternoon. It is great that we are debating issues relating to education. The more we debate and discuss education throughout our society, the better it will be. Hopefully, the more it is discussed, the more progressive our attitude towards education in our society will be. Education is the no. 1 way to raise the standard of living of our community. It has been recognised as the no. 1 way to help people escape poverty by being able to provide them with skills and employment.

As has been mentioned before, the bill has four main aims. They are to protect student rights and ensure their fair treatment; to improve the regulatory system for vocational education and training; to reform the governance of the state's TAFE institutions and agencies; and to enshrine in legislation the state's guarantee of subsidised places for students undertaking training to acquire essential literacy, numeracy and language skills and raise their qualification levels.

In the area in which I grew up, a lot of people I associated with did and do go to TAFE because they were not able to access university for a number of reasons, perhaps because of their socioeconomic background. When I was growing up, a number of my

friends and family went into the TAFE system. I was fortunate to get into university. I have some concerns that the people who can probably ill afford to lose out under this system are losing out. I would like to read an article from the *Whittlesea Leader* dated 7 September and headed 'Student loses $20 000'. It states:

> A Thomastown student says his IT training school's collapse has cost him $20 000.
>
> Excom Education, a leading IT training school, provided courses across Australia for about 15 years but closed its doors and appointed external administrators on 25 August.
>
> The student, who wanted to be known only as Ash, paid his course fees up-front and said Excom's closure had left him in debt with no job prospects and dependent on welfare. 'I paid all my fees up-front on my credit card and I don't have anything … I don't know what I'm going to do,' he said.
>
> 'I'm looking for a job, but I don't have many contacts in the industry so I was relying on Excom and my course.'
>
> Ash is barely surviving on his $490 fortnightly study allowance. Rental payments take more than half of that amount …

The article continues:

> A former Excom worker, who did not want to be named, said more than 100 people nationwide, including about 40 in Melbourne, had lost their jobs.

The intention of the government is to make sure there is a strong regulatory system so that students are protected.

I take up some of the previous speaker's concerns about fees and education generally. I have some concerns about the fees charged across the tertiary education system in Australia, but that is probably a debate for another time. I support the bill primarily because it seeks to strengthen our regulatory system to ensure that students who are having to pay at the moment are protected and are able to express their grievances within the system.

Just to take up one more of Ms Pennicuik's points, in relation to registered training organisations (RTOs), my understanding is that all teachers in an RTO have to be qualified and that that it is a national requirement. They may not be qualified in the tertiary system, but they have to be qualified. I think that is significantly different from what I heard, which was that anyone can teach in an RTO if they have been in that industry. I would like to record my understanding that all teachers in an RTO have to be qualified to teach in that system and to help people increase their skills and education.

Mrs COOTE (Southern Metropolitan) — I have followed with interest the contributions to debate on this bill of three speakers, particularly Mr Hall and Ms Pennicuik, who both gave very comprehensive outlines of what is contained in the bill and put up amendments to try to improve it. My colleague Mr Hall's contribution was an excellent and very detailed one in which he went to great lengths to identify a number of the major issues with the bill. I must say both he and Ms Pennicuik gave support and recognition where recognition was due. I think that was a good type of debate to have in this place, because, as we all know, skills and vocational training are very important to Victoria and Victorians.

The Education and Training Reform Amendment (Skills) Bill 2010 contains provisions relating to five major areas: the Victorian training guarantee; the Victorian Registration and Qualifications Authority; protecting the interests of overseas students; TAFE governance; and adult and community further education and university acts.

As Mr Hall rightly pointed out, it is a major concern that participants in the system who will be affected by this bill — that is, students, the industry, training providers and the Australian Education Union — have some strong criticisms of it. We have heard in detail what these groups think. As Ms Pennicuik said, you only have to walk out of this place when Parliament is sitting to see another group of TAFE students demonstrating against something else they are concerned about. The government is not listening to the people at the grassroots and the coalface to find out how things could be done better. That is reflected in this bill, which is a pity and a lost opportunity.

It is of concern that small private providers, especially those enrolling domestic students, believe they are being strangled by the red tape of regulation. This has probably resulted from the scrutiny applied to unscrupulous providers of education in this area. We have to make quite certain that we do not crack a walnut with a hammer. It is important that we recognise the people who are doing very good work and who have done very good work for a considerable time. It is important for the government to recognise what our small private providers have done in the past and want to continue to do in the future. Another area of concern is the series of changes to the arrangements for appointing chairpersons and members of TAFE boards. Those changes are strongly opposed, as Mr Hall rightly said, by the TAFE institutes.

Going back to the various areas the bill deals with, there are two I want to briefly touch on. One is the

Victorian training guarantee. In relation to that I would like to quote from an article by Michael Harvey published in the *Herald Sun* of 10 September this year, which states:

> 'Seasonally adjusted employment now stands at a record high of 11 272 000, so more Australians than ever before are working', employment minister Simon Crean said.
>
> But the picture is not so rosy for young jobseekers.
>
> The August figures show under-25s are missing out on the fruits of the economy's world-beating comeback from the GFC.
>
> And the situation facing 15 to 19-year-olds is especially bleak: their jobless rate of 17.8 per cent is more than triple the national rate.

The economist Saul Eslake, who is now at the Grattan Institute in Melbourne, said that employment among over-25-year-olds rose 3 per cent but for 15 to 24-year-olds it has stalled at 11.7 per cent. The *Herald Sun* article further states:

> The number of 15 to 24-year-olds in work is still about 57 000 fewer than the pre-financial crisis peak.
>
> 'It's simply another indication of the extent to which younger people have not participated to the same extent as adults in the post-GFC recovery in employment,' Mr Eslake said.

This bill has missed an opportunity to address that and to put in some more innovative programs to deal with this issue. The statistics tell the story, and they are statistics that are supported by a member of the ALP federally. It is important that there be some dialogue between the state and federal Labor governments in the short time they have left before Labor loses government in this state.

The other area of concern is TAFE governance. In relation to this, I had a letter from a constituent who had been the CEO of a TAFE institute in the hospitality area. He gave me very articulate and detailed documentation of his personal experience of ministerial-appointed positions not working. He said he had had several ministerial appointees put on his board without his approval who did the best they could, but once the industry prevailed the organisation went from strength to strength and took off because it understood its own requirements better than people who had just been put there as political appointments. In the email he sent to me he said:

> The ability of the chair to advocate an industry or regional perspective would be difficult under the proposed legislation and my fear is that boards would be stacked with people that the party owes favours or those aspiring to political careers.

He went on to say:

> Not all boards work effectively. Some board members hang on for too long. The idea of student-elected representatives as currently occurs is in my opinion a form of tokenism and adds little value. Staff-elected reps are also of dubious value in many cases.
>
> The solution to that lies in maximum terms, regular board reviews and training of board members. But that is not the reason to make them puppets of the minister of the time.

I think that encapsulates it. This is something that should be addressed much more thoroughly, and there was an opportunity to do that in this bill.

One final comment I want to make is that once again this bill is about young people. We have a rapidly ageing population. We have got to look at upskilling people over 50 and 55 years of age. They too should be considered in these types of bills — what their options are, how they can get into the system and how they can use the system better. They are not even mentioned. That is done at our peril, because we need to have the skills in our community. Sure we need to have young people trained, but we are increasingly going to need to have people in the 55-year-plus echelon trained as well. It is imperative that people have opportunities to enter the TAFE system at any point. It is really important that older people have those opportunities. That is the final comment I make about this bill. I look forward to the debate and to debating the amendments at the committee stage.

Mrs PEULICH (South Eastern Metropolitan) — I join in making some remarks on the Education and Training Reform Amendment (Skills) Bill 2010. I will not take the methodical and technical approach that I think would duplicate the work that has already been done by Mr Hall and Ms Pennicuik; suffice it to say that the government is making a number of reforms with specific objectives, and whether or not those objectives are going to be achieved is certainly very suspect and most unlikely. The government claims to be introducing a range of legislative measures designed to protect students in the vocational education and training (VET) sector in relation to both the quality of that education and fair treatment.

In particular one of the concerns I have is that whilst it sets up a complaints mechanism for international students within organisations there is no independent and external oversight of that. There are a couple of incidents that have prompted me to consider what mechanisms exist to ensure that international students in particular who are studying here are not exploited whilst they are here. One example I saw was on election day when a number of them were handing out how-to-vote cards for a particular member of Parliament, claiming they were required as part of

their course to do that and that it was systemically organised by a registered training organisation (RTO). I have grave concerns that that sort of exploitation occurs with the collaboration of those who run RTOs, and I am not sure that an internal complaints mechanism will do the trick. I would like to see some external oversight of those complaints.

The governance arrangements, which I thought Mr Hall presented compellingly, and the concerns that Mrs Coote mentioned about likely stacking of boards and a lack of connection to a locality are concerns I share. People ought to be appointed on merit and application, and having the vast majority appointed by the minister raises enormous concerns for me in terms of possible party-political interference.

The incorporation of the Victorian training guarantee, however, is my most significant concern. I have been on the record on numerous occasions expressing concern about the nature of the reforms simply because retraining and reskilling are important parts of creating a flexible labour force, and this regime will not do that. In fact it will hamper and diminish the ability of people to do that, irrespective of which point they are at in life. Given that most people work in approximately seven different types of jobs in a lifetime, the reskilling and retraining of a flexible labour force is absolutely crucial for a productive, modern economy.

Mr Hall and previous speakers have spoken about the importance of TAFE organisations to Victoria and their capacity for generating their own funds. The vast majority of the funds are the product of their commercial activity, as more than half their revenue is generated by their commercial activity. The TAFE organisations that serve my electorate include: Swinburne at Wantirna and Holmesglen at Glen Waverley and Chadstone, serving the lower house electorate of Mount Waverley; Gippsland at Warragul and Chisholm at Berwick, serving the Gembrook electorate; and Chisholm at Frankston, Holmesglen at Moorabbin and Chisholm at Cranbourne, serving the Frankston and Mordialloc electorates. A number of other key seats are well served by a number of very undervalued and, I think, unsupported education systems.

Completion rates for traineeships are very low, and completion rates for apprenticeships in most of the key engineering trades have declined significantly during the current decade. My concern has been that young Victorians have been missing out on a technical education since former Premier Joan Kirner closed the technical colleges. Technical education has been systematically fragmented and pushed and pulled in various directions to the detriment of our population.

There will be major shortfalls in trained tradespersons in the medium term unless there is a change in policy settings. The VET qualification completion rate in the 15 to 24-year-old cohort is estimated to be approximately 23.7 per cent. The number of existing workers completing higher level VET qualifications has declined significantly in the past few years. The proportion of Australian adults with at least an upper secondary education is now below the OECD (Organisation for Economic Co-operation and Development) average. A very high proportion — 50.1 per cent — of the existing working-age population does not have post-school qualifications, and that proportion is high compared to most other productive economies.

Australia ranks near the bottom of the OECD in terms of the growth rate of science and engineering graduates. Despite the long economic boom period, workforce participation rates in Australia are low when compared to other productive economies. Still more than 11 per cent of the workforce is unemployed or underemployed, and the underemployment area is something we must grapple with as a society because it conceals a lot of poverty and disadvantage.

I understand and accept that the measure of employment has not changed over time, but I think it is a huge problem. The proportion of young people not engaged in full-time work or full-time training has remained static, and these — up to half a million — disengaged youth are much more likely to remain unemployed or underemployed and affected by depression, crime, drug abuse, homelessness, poor health and poverty.

We are not doing very well in the area of technical education. The growth in the proportion of young people successfully completing year 12 or its equivalent has stalled during the last decade. I believe — and this comment was made by Mr Hall — the level of public investment in all levels of education and training is well below that of the leading economies and has been declining at a time when leading economies have dramatically increased their investments. There is no area where it is more true than VET education.

With regard to the Victorian training guarantee, it makes no sense whatsoever for the government to be doing what it is doing. This was well encapsulated by — and I never thought I would be quoting him — former Prime Minister Keating. His comments echo

those I have made time and again. Why should people be having to fork out enormous fees for retraining at a lower level in a different direction? It makes absolutely no sense. I would like to quote very briefly, because I have undertaken to speak only briefly on this, from an article in the *Age* of 14 September, at page 5, with the title 'Keating doubts over TAFE changes', by Sarah-Jane Collins, a higher education reporter. She says:

> Former Prime Minister Paul Keating has raised concerns about the Victorian government's overhaul of vocational training, saying it could be shutting prospective students out of the system.

Ho, ho, ho!

> New rules mean that students wanting to undertake a lesser qualification than one they already hold will not be eligible for a government-funded place. The cost of a full-fee TAFE course can reach $10 000 a year.

For underprivileged and disadvantaged families, working families and families with a sole parent these are huge obstacles and disincentives. Not only are we talking about the fees; we are talking about accommodation, food and clothing. We are talking about living expenses. The article goes on to say:

> Mr Keating said it was important to consider the impermanent nature of Australia's modern workforce when determining skills policies.
>
> 'Someone who has been forced by retrenchment to retrain, or chooses to pursue a new career pathway and needs to undertake a diploma should be able to undertake this with the same level of government support as those attaining a new or higher qualification', he said.
>
> A case can be made for the equitable treatment of those whose ambitions are to retrain.
>
> Equal opportunity should be given to those responding to changes in the workforce, seeking to step sideways or even taking a step back before they take a step forward.

The article goes on to quote Victorian TAFE Association executive director, David Williams, as saying that the sector would like to see changes made to the policy. He is reported as saying:

> We've been calling for a complete review of the eligibility criteria, particularly in relation to apprentices and areas of skills shortage, but we've also been pushing the issue [of] career changes — those who have been retrenched and those who are re-entering the workforce …
>
> A spokesman for Victorian skills minister Bronwyn Pike said the government was considering the results of an independent review of the skills-training changes.

To entrench something that makes no sense in terms of the modern needs of our economy is just crazy. All I say is: stop sticking your head in the sand, stop proceeding with something that is neither viable nor makes any sense and do what we, our young people and Victorians need to play a productive role in our economy and to have some constructive pathways to follow in their lives.

Mr DRUM (Northern Victoria) — I, too, will be brief in my contribution to the debate on the Education and Training Reform Amendment (Skills) Bill. This bill will amend the Education and Training Reform Act 2006 and is the legislation that will give the Victorian training guarantee the right of passage it needs to become part of the working arrangements in the TAFE sector.

The training guarantee will offer training places to those aged under 20 and others who are over the age of 20 provided that they are upskilling. We have heard comments from many speakers who have consulted in the sector with TAFEs, students and industry about how ridiculous this aspect of the policy is.

Speakers from this side of the chamber have spoken about the state of the world we live in now and the uncertainty that exists. People need flexibility because of the ever-changing face of the workforce. People need to pick up additional qualifications not just for the sake of racking up a list of qualifications but simply to move through the uncharted waters and the pecking order of the workplace, and to become genuine providers for their families.

We are going to witness an increase in the scope of the qualifications people will need, no matter what their field. They could be builders or plumbers, but they will need to continue to pick up additional qualifications as new products come onto the market. IT skills, occupational health and safety skills and many other associated qualifications will need to be acquired just for people to be able to do their core work. More frequent opportunities will be needed so that people can attend additional courses and acquire further qualifications through the education sector.

The policy we are discussing at the moment is all part of the government's big move 18 months ago. It discriminates against young people who want to move sideways and acquire additional but lesser qualifications by forcing them to be full-fee-paying students.

I have accompanied Mr Hall, in his role as shadow Minister for Skills and Workplace Participation, to regional Victoria and to various TAFE colleges. When those TAFE colleges compare their enrolments for early this year with their enrolments for the previous

12 months it is clear that they are all experiencing a reduction in the vicinity of 30 per cent in enrolments in diploma and advanced diploma courses. The government is committed to spending $316 million, but it is making outlandish claims that it is going to find another 170 000 training places. Yet in the sector that really counts and views itself as an alternative educational model it now finds itself to be substantially below its enrolments for the previous year.

The reduced number of people studying for diplomas and advanced diplomas has been fairly and squarely attributed to government policies. The Australian Education Union has sponsored websites which are calling for the Minister for Skills and Workplace Participation, Jacinta Allan, to be sacked. It must set alarm bells ringing for the Labor Party when a website sponsored by the education union is calling for a minister to be sacked not just from the ministry but also from her seat because she has botched this policy.

As Ms Pennicuik stated, the introduction of the higher education contribution scheme, which has been foisted on the student population, has resulted in students protesting on the front steps of Parliament House. Teachers are continually writing letters to editors saying that this is the worst reform ever in the TAFE sector. At some stage or another the alarm bells should start ringing, because the Labor government has botched this up. However, it seems there is more of a head-in-the-sand reaction with the government pretending it is not happening. It is pretending there is no opposition to these reforms and that we should just keep ploughing ahead. It would never dare acknowledge that it has botched up more education policy.

As a member and the chair of the Rural and Regional Committee during this Parliament I have spent the last nine months travelling around Victoria and talking to a range of communities that have been struggling with their version of disadvantage. One of the most crystallised issues in relation to disadvantage is the direct correlation education has with that disadvantage. When people are experiencing disadvantage we generally find they are part of a community that has been severely lacking in high-quality education. Disadvantage is often related to access to education. Where we have a problem is that so much of that is centred around access — access to choice, access to quality education and access to higher education. This government's policies have made education and qualifications even less accessible because of its reforms.

The introduction of the Victorian training guarantee through this bill will discriminate further against families from low socioeconomic areas. It will make it harder for families to drag themselves out of generational unemployment, generational welfare dependence and generational disadvantage. We are going to solidify the lot of some of these people, which will result in uneducated and unqualified people in the future.

Part 2 of the bill relates to the Victorian Registration and Qualifications Authority and talks largely about setting various standards which training organisations need to work with and be on top of in relation to gaining accreditation. The bill also puts in place some conditions on registration for RTOs (registered training organisations). That measure is well supported because only last year and earlier this year we had a debacle when it came out that some of those RTOs were not living up to their promises.

Division 2 of part 3 of the bill relates to single-purpose entity registration requirements for registered training organisations and protecting the interests of overseas students. The coalition is supportive of that measure due to the fact that so many overseas students were coming to Victoria only to realise they had been conned, which caused damage to what has become our premier export industry. We need to do a lot of work to protect the interests of overseas students.

I turn now to part 4 of the bill, which relates to TAFE governance. The bill changes the way in which TAFE boards will be put together. We currently have a system where the number of board members ranges from 10 to 14 and where the minister appoints half of those members. However, there has always been a student representative, a staff representative and the chief executive officer of the institute who would take their places on the board. Currently the board members are appointed from within by the board members. As is typical of Labor in this state, we will now have a situation where all members of the boards will be appointed by the minister, with the exception of the representatives from the student body, the teaching staff and the CEO. Everybody else will be appointed by the minister.

Government members are control freaks. They want to control every little area within these boards, whether they are the boards of health organisations or the boards of TAFE institutes. Government members want to ensure they do not receive any criticism, and that is why they want to control board appointments. That is what this is all about. They want to take the current system and turn it on its head. This is a

horrendous decision which shows that government members have no confidence and no trust that the communities surrounding and supporting TAFE colleges can do this work themselves. Government members do not think local communities can find leadership among themselves so that they can look after the TAFEs. Local people should be coming onto those boards even if it means they have to acquire new skills to do so. If the minister wants to appoint half the number of board members, as he currently does, that is fine, but he should give the boards the opportunity to go out and source the other skills they need. That is the way every board operates around this state and around the country. They look around to try to get the skills they need, because they know they are going to need all these people who are going to bring together all the various skills to operate the board.

Therefore the coalition urges the house to support the circulated amendments that go directly to board appointments. Hopefully we can gain that support so that we can undo some of the things the government is trying to foist on the communities of Victoria surrounding the governance of TAFE colleges in this state.

Mr KAVANAGH (Western Victoria) — I will speak very briefly on the Education and Training Reform Amendment (Skills) Bill. The bill seeks to change the governance arrangements of TAFE institutes in Victoria. I am not aware of any evidence that suggests there is a need for such a change. Indeed as far as I know Victorian TAFEs are widely regarded around Australia as being the best, and probably the best run, in the country. There is an old saying they use in America: if it is not broke, do not fix it. It seems to me that TAFE is not broken and does not need to be changed in this respect, and it would be better not to make the changes proposed by the bill; therefore I will support Mr Hall's amendments to that effect.

Motion agreed to.

Read second time.

Ordered to be committed later this day.

JUSTICE LEGISLATION FURTHER AMENDMENT BILL

Second reading

Debate resumed from 2 September; motion of Hon. M. P. PAKULA (Minister for Public Transport).

Mr DALLA-RIVA (Eastern Metropolitan) — I am pleased to make a brief contribution on behalf of the Liberal Party to the debate on the Justice Legislation Further Amendment Bill. I acknowledge the work of my parliamentary colleague Peter Ryan, the Leader of The Nationals in the other place, for the detail in the report that has been provided to assist me in my contribution.

This omnibus bill follows on from the Justice Legislation Amendment Bill, which was in the chamber just recently. I always question why we need to have a further amendment bill to an amendment bill, particularly when all the amendments could have been made in the same time period.

This bill makes various amendments to a whole range of acts which I do not propose to read out, although I will go into detail on each of the amendments.

The bill makes amendments to provisions in the Crimes Act applying to 'proscribed persons' such as police, lawyers and law students. I remember that when I was at Bonehead College, which I believe is still the colloquial name for detective training school, material provided as part of that training was often of a graphic nature and came from, for example, police shows. My understanding is that this bill attempts to provide for the use of that graphic material. The bill also talks about a period of seven years for the processes of obligations of the departments and Victoria Police in the storage of such recordings. There are some other amendments in terms of fixing flaws to some legislative areas that need to be corrected.

The amendments to the Liquor Control Reform Act provide for right of entry for fire services inspectors and a whole range of issues around the bill granting powers to the director of liquor licensing to order the closure and/or evacuation of licensed premises. They are, again, tidy-up amendments.

The amendments to the Drugs, Poisons and Controlled Substances Act 1981 include provisions for the banning of the sale of ice pipes. This amendment makes it an offence to display or sell an ice pipe. Obviously ice is a form of drug, and the bill has been amended to capture the new paraphernalia for using that drug.

There are amendments to the Metropolitan Fire Brigades Act 1958 and the Country Fire Authority Act 1958. The bill repeals section 63 of the act I have mentioned and makes further amendments to both acts to adopt the penalty interest rate figures. It is a minor

amendment, but it is necessary to free up the legislation and make it more efficient.

The amendments to the Children, Youth and Families Act 2005 and the Infringements Act 2006 are based on recommendations from the Premier's child protection proceedings task force, which was established after the Ombudsman's 2009 own-motion investigation, the report of which has been debated in this chamber previously. I do not propose to go through what the Ombudsman's report said. I am sure many other recommendations have not seen the light of day. I note the approach to dealing with the issues of Ms Neville, the Minister for Community Services, that we saw in the Public Accounts and Estimates Committee recently. Anyway, I digress.

Clause 13 of the bill removes the 21-day limit on interim accommodation orders made in the Children's Court when a child is placed in an out-of-home care service or with a suitable person. Again that reflects part of what were the major concerns expressed in the Ombudsman's report, but as I said I think the situation is pretty light on in terms of other amendments.

The amendments to the Corrections Act in clause 15 of the bill are to provide certainty for sheriffs and staff of the sheriff's office in terms of accessing offenders' address information held by Corrections Victoria on the E*Justice system. Again the amendments in this clause just give that process more clarity.

Clause 21 makes retrospective amendments to the Legal Profession Act 2004 to allow the legal services board to enter into financial arrangements in relation to the Public Purpose Fund. Written approval of the Treasurer is required. It is always a worry when you have retrospective amendments involving issues relating to the accessibility of funds; there are some concerns there.

Amendments to the Serious Sex Offenders (Detention and Supervision) Act 2009 clarify that a media outlet may publish the identity and location of a serious sex offender, despite the existence of a suppression order, if the information is published at the request of a member of the police force and in the course of the execution of a law enforcement function. Whether this is a *Herald Sun* amendment or not, it is one I support. It makes no sense, when we are trying to ascertain particular issues in the normal course of an investigation, that these matters cannot be revealed in the public domain when there is a need to ensure that serious sex offenders are kept under watch, irrespective of a suppression order made by a court. This is a good amendment.

The amendments to the Interpretation of Legislation Act 1984 insert a new part V into that act to allow the chief parliamentary counsel to authorise electronic copies of acts, statutory rules and consolidations of acts and statutory rules to be published at www.legislation.vic.gov.au. I gather that means that in future the clerks may not have to keep these red books in front of us and could put this material on disk, and we could each have a computer — —

Mr Koch interjected.

Mr DALLA-RIVA — I am just being adventurous. We could each have a computer at our desk on which we could access legislation without the need to drag old books up to the lectern. I live in hope that that might happen. This could involve the interpretation of acts. I have an interjection from the Clerk: record that as a new one for the year! The amendments to the Interpretation of Legislation Act could allow this, and I look forward to that happening in the chamber — not.

Amendments to the Guardianship and Administration Act 1986 in part 7 of the bill will insert a new part 5A into that act to create a new system to appoint an administrator to oversee missing persons' estates. The new section follows legislation in New South Wales and the Australian Capital Territory.

The amendments to the Gambling Regulation Act 2003, which are in part 8 of this further amendment bill, make various technical amendments to that act to reflect changes in the post-2012 gambling environment, which has been such a roaring success under this government. The way it has dealt with this has been outstanding, he says with a full wad of sarcasm.

The amendments to the Supreme Court Act 1986, the Magistrates' Court Act 1989, the County Court Act 1958, the Children, Youth and Families Act 2005, the Coroners Act 2008, the Victims of Crime Assistance Act 1996 and the Victorian Civil and Administrative Tribunal Act 1998 are contained within part 10 of this further amendment bill. The provisions amending this suite of acts relate to the courts and the Victorian Civil and Administrative Tribunal and extend statutory immunity for judges and judicial and non-judicial court officers in the exercise of their official administrative functions in courts and VCAT.

The list goes on. Amendments to the Prostitution Control Act 1994 allow members of Victoria Police to issue 72-hour banning notices if police reasonably suspect a person has just committed or is committing

an offence within a prescribed area. Ms Pennicuik may have much to say about this at the committee stage or in her second-reading speech. The banning notices are issued to clients soliciting street prostitutes, but they do not apply to the prostitutes themselves. There is a 20-penalty-unit infringement notice provided for breaches. The banning notice provisions have a 12-month sunset clause timed from commencement, and the chief commissioner must report back to Parliament via the minister on the success or otherwise of the banning notices. I think that provides some clarity for those who have some issues about them.

The bill makes further amendments to the Emergency Management Act 1986 and the Fair Work (Commonwealth Powers) Act 2009. When you have such an omnibus bill there is a whole range of things that can cause you concern. For the record, Premier John Brumby once said that where an omnibus bill:

> … affects many acts of Parliament that contain matters of great substance and the amendments to them deserve full debate of their own …

there was 'a gross abuse of the democratic process', yet here we are with a second tranche of amendments in the Justice Legislation Further Amendment Bill, which follows the Justice Legislation Amendment Bill which was brought into this chamber only recently.

There are some issues concerning provisions that relate to the Crimes Act which have not yet been enacted. We know the government has had a very long and poor track record of legislative reform in this chamber, and that is ongoing. The bill bans the sale of ice pipes. As many would know, the coalition has a clear policy on banning the sale of bongs. It is not clear why the bill bans the sale of ice pipes but bongs still remain available. I do not know if it is for any reason. It seems to me that the government just does not want to copy this particular policy, even though it has copied many others before.

The Greens candidate for the lower house seat of Richmond has called for the decriminalisation of all forms of prostitution. There is concern among some people, and we need to put on the record that banning notices will apply to clients only and not to both parties in the transaction. Establishing the trial may just move street crawling areas to other parts of the city of Port Phillip.

Given that there is a whole range of amendments to a whole range of acts, the opposition will not be giving the bill full support, but we are not opposing the bill. Obviously as we move through the committee stage there will be some issues that we may look at.

Ms TIERNEY (Western Victoria) — I rise to make a contribution to debate on the Justice Legislation Further Amendment Bill 2010. This is a multifaceted bill and, as the previous speaker said, an omnibus bill. It makes a number of changes to legislation within the justice portfolio. Some 18 amendments amend an even larger number of acts that are instruments of this Parliament.

Firstly, there is an amendment to the Liquor Control Reform Act 1998 to enable the immediate closure and evacuation of licensed premises where there is a serious fire or other emergency threat to the health and safety of any persons on or in close proximity to the licensed premises. The bill repeals section 63 of the Metropolitan Fire Brigades Act 1958 and amends that act and the Country Fire Authority Act 1958 to enable the penalty interest rates applicable to offences under those acts to change accordingly whenever the Attorney-General fixes a new penalty interest rate under the Penalty Interest Rates Act 1983. The bill also amends the Emergency Management Act 1986 to correct a cross-reference.

The bill amends the Corrections Act 1986 to allow sheriffs and contracted staff working in the sheriff's communication centre to access and use particular Corrections Victoria information held on E*Justice when carrying out their duties. It also amends the Serious Sex Offenders (Detention and Supervision) Act 2009 to clarify that media organisations may publish the identity and location of an offender if the information is published at the request of the police and the publication is in the course of law enforcement functions or in the execution of a warrant or the arrest or apprehension of an offender. The bill amends the Crimes Act 1958 in relation to the digital evidence capture scheme and its impact on agencies other than Victoria Police that conduct investigations of indictable criminal matters. The bill also amends the Drugs, Poisons and Controlled Substances Act 1981 to ban the sale, supply and display of ice pipes in Victoria, and I will go to that a little later.

The bill amends the Supreme Court Act 1986, the Magistrates' Court Act 1989, the County Court Act 1958 and other acts to extend statutory immunities for judges and other court officers in the exercise of administrative functions in courts and VCAT (Victorian Civil and Administrative Tribunal).

The bill amends the Gambling Regulation Act 2003 to make a range of technical amendments to clarify the

functions and obligations of the post-2012 monitoring licensee and gaming venues with respect to the operation of linked jackpot arrangements, to extend the powers of the Victorian Commission for Gambling Regulation to make standards for monitoring and gaming under the post-2012 gambling industry structure and to amend the wagering tax provisions to give effect to concessional tax arrangements for premium customers. The bill amends the Legal Profession Act 2004 to clarify the powers of the Legal Services Board of Victoria to invest money standing to the credit of the Public Purpose Fund.

The bill amends the Children, Youth and Families Act 2005 to remove the 21-day limit on the duration and extension of certain interim accommodation orders (IAOs) and remove the requirement that the young person, parent or suitable person give an undertaking as a condition of the IAO. It amends the same act and the Infringements Act 2006 to clarify an earlier amendment to provide an extension of time to file a charge sheet in the Children's Court in children's infringement matters.

The bill amends the Interpretation of Legislation Act 1984 to permit parliamentary counsel to authorise electronic versions of legislation and statutory rules to be admissible as evidence. It amends the Fair Work (Commonwealth Powers) Act 2009 to replace a reference to the Equal Opportunity Act 1995 with a reference to the new Equal Opportunity Act 2010.

The bill amends the Guardianship and Administration Act 1986 to enable VCAT to appoint an administrator to manage the financial affairs of missing persons. Finally, the bill amends the Prostitution Control Act 1994 to establish a banning notice scheme directed at reducing the detrimental impact of street prostitution in certain residential areas.

As I said in my opening remarks this is an omnibus bill that packages together several measures and amendments to ensure the ongoing safety of the Victorian community, which has been a very strong core value of Labor governments over the last 11 years. As I said, 18 specific amendments are made by this bill, but it affects a larger number of acts. The core areas that all those 18 amendments address come under the banners of personal safety, community safety, law and order and up-to-date, timely procedures to ensure that these measures flow through to our communities.

In respect of personal safety it is often said that this government is not only committed to ensuring that there is greater personal safety for all Victorians but is committed to a program that will ensure that that is delivered in a very practical sense. A number of amendments in this bill work towards this highest possible degree of personal safety. One is the amendment to the Drugs, Poisons and Controlled Substances Act 1981 that will ban the sale and display of ice pipes in Victoria. An ice pipe is broadly defined as a device which is used to smoke methamphetamines, or 'ice' as it is most commonly known. Victorians, if they were not aware of this device, may have seen one used in the recent Ben Cousins documentary.

Methamphetamine is a substance that can be snorted, injected, swallowed or smoked, with the recent trend being for users to smoke methamphetamines. According to an Australian Institute of Health and Welfare report titled *Statistics on Drug Use in Australia 2006*, methamphetamine seizures now make up the vast majority of drug seizures in Australia. This bill enables police to seize ice pipes they suspect have been displayed, sold or supplied.

In respect of community safety, a number of acts are to be amended by the bill. This will work towards maintaining the highest possible degree of community safety. Each and every person has the right to feel safe in their community. In this respect there are a number of amendments. One is the amendment to the Liquor Control Reform Act 1998 that enables immediate closure and evacuation of licensed premises where there is a threat of serious fire or emergency. There is also the Serious Sex Offenders (Detention and Supervision) Act 2009 amendment and an amendment to the Prostitution Control Act 1994.

Victoria, particularly Melbourne, is famous for its vast array of entertainment, including live music, world-class sporting events and a vibrant nightlife. On average over 300 000 people converge on the Melbourne CBD every weekend. Whilst there is a strict fire safety inspection program for licensed premises that is administered by fire agencies, there are instances where these fire agencies have seen violations such as locked emergency exit doors and disconnected exit signs, sprinkler systems and fire extinguishers. This amendment will provide the director of liquor licensing with the power to immediately close and evacuate a venue which is believed to pose a serious threat in relation to fire or emergency.

The other area that these amendments touch on comes under the broad heading of 'Procedure'. The bill contains a number of amendments to achieve the most

timely and effective way for law and order matters to be resolved. The three examples I would give here include the amendment to the Corrections Act 1986, which provides sheriffs with the appropriate access needed to carry out their role in an effective manner; the amendment to the Children, Youth and Families Act 2005, which removes the 20-day limit; and the amendment to the Guardianship and Administration Act 1986, which enables the Victorian Civil and Administrative Tribunal to appoint an administrator to manage the financial affairs of missing persons.

There is also the amendment to the Corrections Act 1986. Sheriffs play a very important role in upholding law and order in this state. They are responsible for warrants for the non-payment of fines and have the power to seize property, assign payment plans and in some circumstances arrest an offender. This amendment to the Corrections Act will give sheriffs access to offender address information and personal details held by Corrections Victoria, making the sheriffs' time far more effective in exercising the powers of their office and executing their role.

Whilst this is a fairly long bill, and as I said it has got 18 specific amendments, it is a bill that is about making this state safer not only on an individual level but also in a community sense. It is a bill that is designed to streamline our law and make its processing far more effective and efficient in this state. I commend the bill to the house.

Ms PENNICUIK (Southern Metropolitan) — As has already been mentioned, the Justice Legislation Further Amendment Bill that we have before us is an omnibus bill. It amends a host of acts, including the Justice Legislation Amendment Bill 2009, which has not even come into force yet. This bill not only amends acts but also amends certain provisions of a bill which have not even come into effect, including provisions in clause 6 that add some transitional provisions which were left out of that particular bill.

In the time between a bill appearing in the Assembly, which is the first we ever see of it, and the moment it appears in the upper house it is always a challenge for members to get our heads around everything that is in the bill. This is particularly difficult with an omnibus bill such as this that amends so many acts. My staff and I attended a briefing on the bill at which there were 20-plus departmental and ministerial staff in meeting room 1 in Parliament House. It was a very cosy affair, I must say. I can see them waving to me from the advisers box. It was a very helpful briefing, and it did assist us in getting our heads around the various provisions in the bill.

I want to talk about the main provisions in which we have an interest. I do not want to go to every single provision in the bill, because that would have us here for a very long time. One of the amendments in the bill is to enable an Metropolitan Fire Brigade or Country Fire Authority inspector to report to the director of liquor licensing regarding unsafe conditions in a licensed premises. That is to make it easier for licensing conditions to be varied or revoked until such unsafe conditions are remedied rather than having to go through the building code, which I understand is the current arrangement. We support that fire safety amendment.

The next amendment goes to information sharing, with the sheriff to access information about debtors — their address, their history in terms of whether or not they have had access to a community work permit under the act and whether or not they have complied with that in the past, and also certain information about their medical risk. As it has been explained to me, that is in terms of whether they are a suicide risk, for example. We are not convinced on that point, and clause 15 is a particular provision of the bill about which I wish to ask the minister some questions. I can see him in the house, and I am sure he is very excited that I will be asking him some questions about clause 15.

The issue is about releasing personal information which we are not convinced the sheriff needs to have. I might point out that it was certainly put to us that it is in regard to community work permits. It is our understanding that of all warrants issued for non-payment of infringement notices, only 0.3 per cent of debtors were issued with community work permits. That is not such a huge number to warrant more intrusion into people's private information, be they debtors or not. Some are just people who have not paid a fine. The issues of human rights, payment of fines and private information all need to be looked at a bit more seriously.

Another provision is to allow the identity of serious sex offenders to be released by the media if that is requested by the Chief Commissioner of Police, in particular if a person has absconded. We will not be opposing that provision.

There are technical amendments regarding children to reduce the time they spend in court, particularly with regard to extensions of time relating to child infringement matters. Currently there has to be a return to court every 21 days. This amendment provides that that does not necessarily have to happen and that there can be extensions of time without

returning to court. That is an improvement for children who appear before the justice system.

There is an amendment to the Crimes Act regarding digital evidence, which is an amendment to the provisions in the previous legislation. It is about the use of digital technology in prosecution evidence, and we will support it.

There is an amendment to the Drugs, Poisons and Controlled Substances Act regarding the banning of ice pipes, which were already banned under a commonwealth of Australia banning order in 2004 and in other states under the drugs and poisons legislation in those states, so this provision is basically to bring Victoria's legislation in that regard into line with that of other states and the commonwealth. But it is worth saying that banning the sale of ice pipes or their possession with the intention of selling them will not stop people fashioning their own devices to use in place of the ice pipes they would otherwise have purchased. We are sceptical as to the efficacy of these provisions. It is interesting to note that Mr Kavanagh brought in a private members bill not too long ago to ban the sale of bongs. The government opposed that bill, as we also did, for the same reason: that it will not stop people fashioning their own devices to use to smoke marijuana.

I know I am not allowed to use a prop, but during the briefing I was given a photograph of the types of ice pipes that will be banned, and I made the comment that one of them looked like a Vegemite jar with a little pipe poking out of it. I would not think it would be very hard for people to fashion those for themselves, so the provision will not be effective in stopping people from using a device. They will fashion their own device that looks just like the one they could have purchased. Given that this appears to be a national initiative and it is in place in other states we will not necessarily oppose it in this omnibus bill, but I merely point out that it will not achieve the desired effect.

One of the other provisions in the bill is to amend the courts acts to extend immunities to certain classes of non-judicial officers for certain classes of administrative activities and also to limit those to activities done in good faith. I will have some questions about that particular amendment as well, because there will be consequences for people facing the justice system if a mistake is made by a legal practitioner or judicial officer, if an administrative mistake is made in the courts or if there is negligence. The question is what redress those people will have if the immunities are extended.

One of the other amendments proposed by parliamentary counsel is the extension of what is an authorised version of an act from the printed blue hard copy versions we have to the authorised versions that are on websites, including the 'Victorian law today' statute website. That is a good thing. We certainly are in the age of digital technology, so not everybody will avail themselves of a paper copy of an act of Parliament.

An extensive part of the bill contains extensions to guardianship provisions and the move to have VCAT (Victorian Civil and Administrative Tribunal) oversee the provisions regarding missing persons, which are currently quite limited in Victoria. Trustees can exclude families and friends, especially in the case of liabilities. Recently a case was reported in the media where a person was missing and his parents were wishing to take control of his affairs while he was missing. This provision concerned me in that I thought there needed to be checks and balances to make sure that nobody was misappropriating the assets or not dealing properly with the liabilities of a missing person. But having looked through the provisions and having had the benefit of the briefing I was satisfied that the active involvement of VCAT in the provisions of the bill will be an adequate safeguard in that regard. It will mean that the affairs of missing persons will be able to be better looked after than they are at the moment, and that is a good thing.

There are some amendments to the gaming provisions, which are described as mainly technical and consequential and to clarify equipment that monitors should provide to venues. They also extend the powers of the Victorian Commission for Gambling Regulation regarding monitoring and linked jackpot arrangements, which we have concerns about. We have concerns about linked jackpots in and of themselves, and I will be asking the minister some questions about them.

Clause 45 provides some tax concessions for wagering by those you might describe as certain high rollers, and we have concerns about that as well.

I will put on record our issues with linked jackpots. The Productivity Commission in its gambling inquiry report released on 23 June observed that the number of electronic gaming machines with linked jackpots has greatly increased in the last 10 years. It cites a submission based on a 1997 survey which found that more than 30 per cent of problem gamblers, compared with only 3 per cent of non-problem gamblers, went to specific venues to play linked jackpot machines.

Furthermore, the report, referring to electronic gaming machines (EGMs), states:

> The Victorian InterChurch Gambling Taskforce noted that the potential to win a large linked jackpot was one of the reasons that EGM gamblers break their precommitment decisions …

The Productivity Commission concluded that:

> Some features of jackpots are problematic and may impact disproportionately on problem gamblers:
>
> — this should be the subject of further research.

In other words, the Productivity Commission was unable to reach a definitive conclusion on the impact of jackpots but definitely raises concerns about them. The Productivity Commission accepted that without evidence to the contrary it was conceivable that linked jackpots 'may accentuate harm for some consumers' and recommended that governments fund initiatives to research this further.

Linked jackpots appear to disproportionately influence decisions made by problem gamblers compared with decisions made by recreational gamblers. While further studies need to be conducted, we believe the precautionary principle should be applied and linked jackpots should be suspended until further research shows that they are not detrimental to problem gamblers. However, I accept that that is very unlikely to happen under the bill before us now.

The other part of the bill which I would like to briefly address is part 11, which amends the Prostitution Control Act in relation to the issuing of 72-hour banning notices in a declared area under the Summary Offences Act. In reality, it concerns the issuing of 72-hour banning orders in one declared area in the suburb of St Kilda. During my deliberations on the bill I decided that because this is in my area of Southern Metropolitan Region I should ring the council and ask for its view on this particular issue. I know it has been a longstanding issue in St Kilda. Before I was elected to Parliament — going back some eight years, before the 2002 election — there was a regime of 'tolerance zones' which was negotiated between the then Port Phillip City Council and the state government. Although there were some loud objectors to it, there was a great amount of community support for the tolerance zones in St Kilda, largely and particularly in terms of the welfare of the sex workers. Everybody was looking forward to that regime being implemented but unfortunately at the last minute the Attorney-General lost his nerve and it did not come into effect — and here we are now. I can remember saying at the time, 'If we do not do something like introduce tolerance zones, we will be stuck with what we have now', which is what we are stuck with. It is eight years hence and the government is coming up with this solution to the problem.

I concede that the government has in place an exit program for street sex workers in other areas, and that is a good program. It probably needs more funding and extension, but it is there. The welfare of street sex workers is of concern to me. This trial will go for 12 months. It is good that it has a sunset clause, but there are concerns about this particular measure.

I called the ward councillor and asked him, 'Do you know about this?'. The response was that the council had not been consulted. One of the staff members of the City of Port Phillip also confirmed that they had not been consulted on the bill. We went back to the minister's office and asked what was going on, and we were told by email that there had been a meeting between some councillors, council staff and the members for Albert Park and Prahran in the Assembly. That is not consultation, and it is certainly not viewed by the council as such. Cr Thomann, the Catani ward councillor, and Mayor O'Connor have confirmed to me that they do not consider themselves to have been consulted on the provisions of this bill. They say they have had a conversation about what might be in the bill and about the issues in the area. In fact every couple of months the councillors have ongoing conversations with the residents in the area about this particular issue in the city of Port Phillip.

They do not feel that they are part of this trial because they have not been carried along in the process. They have not been involved in the bill, and they did not even know that with the passing of this bill this regime will descend upon them. They have raised concerns about how it will operate, how many police will be involved in monitoring the area — will there be police there every night? — and how records will be kept so that the 12-month trial can actually be evaluated to decide if it is working and to see what effect it has on the street workers.

The biggest fear — and it is the obvious one to anyone looking at this sort of regime of banning notices — is that the people who are banned from a certain area, in this case street sex workers, will probably move to another area. There is some evidence that that may already be happening.

Another concern I have is about how the police can be sure that a person is committing an offence and is worthy of a banning order rather than just innocently being in the area. A wrongful accusation in that regard

could have serious consequences for the person accused.

Quite a lot of issues are raised by this provision in the bill before us. I was planning to move an amendment to remove this part of the bill until the government went away and properly consulted with the council, because this is a regime that will be enforced in the council's area and it does not feel that it has been fully consulted on it. However, I would not say the council is totally opposed to it. It has concerns and it does not feel that it has been fully consulted, but it conceded that a lot of residents in this particular declared area will probably be very happy about this trial.

I have raised the concerns I have about the council not being properly consulted and about the downsides this could have, but on balance I am prepared to not move the amendment I was originally going to move. With those comments, I look forward to the committee stage.

Mr TEE (Eastern Metropolitan) — I will briefly address the part of the bill that Ms Pennicuik just ended her contribution by discussing, which is the introduction of a power to ban kerb crawlers from soliciting sex from street sex workers. This is an important issue not only for street sex workers but also for the livability of the community.

Ms Pennicuik raised the issue of the test. Police need to reasonably suspect — so it is an objective test — that a person had committed or was committing an offence by soliciting someone on the street for sex. We think the test is about right.

Another important point Ms Pennicuik made is that it is part of a package. The other important part of the package is the Exit pilot program that is in place to connect sex workers with services — including mental health support, rehabilitation, housing, counselling, job network support and training services — to try to get them out of the sex industry. It is part of a package of measures that is being introduced, but we think the power to ban kerb crawlers is an important tool for police. It will allow them to exclude a person from a designated area for up to 72 hours.

I take issue with the comments about consultation. There has been a bit of disagreement in terms of the degree of consultation that has occurred. The members for Albert Park and Prahran in the Assembly have, as Ms Pennicuik indicated, met with all councillors and senior officers of the City of Port Phillip early on in the process — —

Ms Pennicuik interjected.

Mr TEE — No, it was very early on, Ms Pennicuik — there is no disagreement about that. They talked about the sorts of strategies that could be developed — the sorts of strategies that have led to the packages I have outlined — and there was a discussion about that sort of joint approach. As I understand it, there was agreement that the issue of policing and the Exit program funding would be developed by the state government in consultation with the council and that the council would work on a number of measures to address amenity issues. I suppose that was really the strategy that was worked on.

There were a number of conversations with the CEO and the mayor of the City of Port Phillip prior to the introduction of the legislation around the outline of the sorts of measures that could be considered as part of the strategy. There was a broad discussion. The member for Albert Park informed the CEO and the mayor when the legislation was introduced into Parliament and provided them with details of the proposal. Obviously I was not there; I am relying on information that I have obtained from the member for Albert Park. He is very clear that he had discussions with the mayor and the CEO about the proposals once the legislation had been introduced.

Since the introduction of the legislation the member for Albert Park has continued to meet with the mayor, and I suspect with others, but certainly with the mayor and the CEO of the City of Port Phillip. Again, I anticipate that as the program unfolds there will continue to be regular dialogue. We reject the assertion that there has been no consultation. My advice is that there has been longstanding dialogue and communication which has been instrumental in the development of the package of measures of which this bill and this provision are one part.

Motion agreed to.

Read second time.

Committed.

Committee

The DEPUTY PRESIDENT — Order! Members might be aware that Ms Pennicuik was considering proposing some amendments to the legislation, but as I understand it she has now decided not to proceed with them. However, she wishes to seek clarification from the minister on a number of clauses, and other members might also wish to do that.

Clauses 1 and 2 agreed to.

Clause 3

Ms PENNICUIK (Southern Metropolitan) — My question to the minister is on clause 3(2). It is a new provision, and it expands circumstances in which a recording might be played — that is, it might be played in legal proceedings that do not relate to the charge which is the subject of the recording. Under the original section of the Crimes Act a person must not play an audio recording to another person unless the recording is played for the purposes connected to the prosecution, defence or legal proceedings related to a charge to which the recording relates. This clause is a significant amendment to the act. I wonder if the government can explain why it has gone to this extent.

Hon. J. M. MADDEN (Minister for Planning) — We are just getting some technical advice on that issue. I am happy to come back to the clause if Ms Pennicuik wants to move on. We can return to that clause once we get that advice.

Clause postponed; clauses 4 to 14 agreed to.

Clause 15

Ms PENNICUIK (Southern Metropolitan) — Clause 15 is entitled 'Secrecy'. The clause is described in the second-reading speech as enhancing:

> information sharing between sheriff's officers and Corrections Victoria so that sheriffs have access to particular offender information necessary to carry out their functions.

It does this by inserting in section 30 of the Corrections Act new subsections so that existing powers will additionally apply to sheriffs, deputy sheriffs, sheriff's officers or a person employed as a deputised person under the Sheriff Act. This clause provides staff with access to information about the offender's address, the compliance history and limited generic risk information regarding their behaviour and medical issues. It is the latter part that concerns me, not so much the address or compliance history. This expands the number of persons who can access risk and medical information regarding a person who is a debtor — someone who has not paid a debt. At the moment this only applies to prison officers, a delegate of the secretary, a person authorised to exercise functions or powers of a prison officer or medical officer. It is an extension of the access to personal information, including medical information, by the sheriff. I am not sure that is adequately justified, and I ask the minister to justify that.

Mr TEE (Eastern Metropolitan) — I will briefly answer the question. The sheriffs, as we know, perform a very difficult task. When they are issued with a warrant, they can seize property in order to execute that warrant. This is a person with a court warrant. This provision provides them with an address, which is not contentious. It enables them to ask Corrections Victoria for information including an address and compliance history regarding community work permits.

That is important because the sheriff might have a warrant in relation to money but it might be that instead of seizing property it is better that the person be put on a community work permit. When exercising their discretion the sheriff would want to have a look at that person's history in relation to their compliance with those orders. I do not think that is contentious.

The third aspect is the more generic information that is made available. This is made available to protect the sheriff and also a person who may be a debtor. It is more along the lines I suppose of a red flag, and it is generic information about the person — whether they have a propensity to violence, to suicide or to self-harm or whether they have any psychiatric conditions. What it means is that the sheriff, armed with that information, knows there might be a risk to them or to the person, and that might mean that they go along with someone who can provide the appropriate support. That is the reason for that provision. It just means that we are not putting our sheriffs at risk of knocking on the door of someone who has a violent history without them at least being aware in a generic sense, not a very detailed sense, that there is a red flag — that they need to exercise a different degree of caution than they might otherwise exercise.

Ms PENNICUIK (Southern Metropolitan) — I thank Mr Tee for that answer. The reason I raise this is that I think it is important if you are going to release information on people's medical histories, in particular, that you are careful in doing so. I take Mr Tee's point.

My next question is: how generic is that information? Where is it actually going to be accessed from? Where is that information kept, who is holding it and what are the safeguards to make sure that when the sheriff or the other persons mentioned here — an officer or an appointed deputised person — access that information it is kept confidential?

Mr TEE (Eastern Metropolitan) — In relation to the first part of the question, the information is kept by Corrections Victoria. It is not as if sheriffs have access to the database, as it were. They need to request the

information from Corrections Victoria. Corrections Victoria is in control of the information and is in control of the release of the information, including the type of information that is available. It will be information of a generic nature rather than a particular nature.

Clause agreed to; clauses 16 to 35 agreed to.

Clause 36

Ms PENNICUIK (Southern Metropolitan) — In relation to my earlier comments regarding linked jackpots and the concerns raised by the Productivity Commission, clause 36 contains a definition of 'linked jackpot arrangement', and the following clauses refer to linked jackpots. The Productivity Commission asked that the states resource some research into the effects of linked jackpots, and given the changed situation with the Victorian gaming regime, my question is: does the government have any plans to do such a thing?

Mr TEE (Eastern Metropolitan) — Again, we acknowledge that the Productivity Commission has in its report expressed concerns about this issue. The bill does not seek to address those concerns. It is more about clarification around aspects of the existing regime. The Productivity Commission has indicated to us that it is doing further work and research in this area, and we await that. We will respond once we get that further work which the Productivity Commission is doing.

Clause agreed to; clauses 37 to 44 agreed to.

Clause 45

Ms PENNICUIK (Southern Metropolitan) — As far as I understand it, clause 45 will create tax concessions for premium customers. The taxation rate ceiling for a regular wagerer is 19.11 per cent, but under this clause for a premium customer it will be 7.6 per cent, which is less than half the normal ceiling rate. As I understand it — perhaps the minister could explain — this will apply to certain high-rollers, heavy gamblers or people who spend a certain amount in a year on wagering. Could the minister confirm that that is the case and explain the policy position behind doing this?

Mr TEE (Eastern Metropolitan) — I can confirm that the intention is for these provisions to apply to wagering by those called premium customers. The justification is that there is an international and a national market and there is a concern that if we are not competitive in terms of our taxation, then we will lose premium customers to other markets, whether they are in Australia or internationally. This gives some flexibility in relation to the setting of a tax rate. It might give Ms Pennicuik some comfort to know that any concessional tax rate will be set by the Treasurer, who would be required to be convinced of the merits of any change. The Treasurer will consider Victoria's competitive position and whether we are at a disadvantage. He will consider the interests of the industry and also the interests of the state.

Ms PENNICUIK (Southern Metropolitan) — Would it be true to say that this is really giving wealthy premium customers a 50 per cent tax cut?

Hon. J. M. MADDEN (Minister for Planning) — It is not really because what you will find is that, as Mr Tee has already mentioned, because of the competitive nature of other jurisdictions many of these high-spending, professional-type gambling individuals or organisations seek to get the best tax rate they possibly can. What I understand is happening is because of new technologies some of those who would have traditionally been wagering within this state are able to locate their wagering in other jurisdictions. Because of that there is the potential for revenues to be lost to the state. As Mr Tee has mentioned, it is just about maintaining our competitiveness in relation to other jurisdictions so that over time we do not lose those high-rolling, professional-type individuals or organisations that now wager within this state.

I understand this is a position that is supported by the relevant industries, particularly the racing industry which is concerned that without the ability to affect these changes over a period of time there will be a net loss of those high-rolling individuals, as Ms Pennicuik described them — and I light-heartedly but also seriously in a sense refer to them as professional punters — either the individuals or organisations that might spend most of their time wagering in one form or another. It is so they will not be lost from this state to other jurisdictions going into the future.

Ms PENNICUIK (Southern Metropolitan) — Is the minister able to provide me with any estimation of the amount of money that would be involved if this provision was not implemented — or if it is implemented, if you get my drift?

Hon. J. M. MADDEN (Minister for Planning) — I do not have the figures before me, and I do not want to get involved in a technical argument about those figures. Basically this is, as I mentioned, supported by the wagering industry — not because it is specifically

going to derive direct benefit from it but because it is concerned about the loss, as the state is, of those who would wager in this area who may reside in Victoria but be lost to other jurisdictions. Over time what we would end up with is an industry that still exists, but it would exist in other jurisdictions to the great loss of Victoria.

Ms PENNICUIK (Southern Metropolitan) — Is the minister able to tell me how many individuals — professional punters — this is envisaged to capture?

Hon. J. M. MADDEN (Minister for Planning) — I am not able to today, but I am happy to try to seek those numbers for the member to give her that further technical detail. I hope that would not delay the passage of this bill.

Committee divided on clause:

Ayes, 33

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

Noes, 4

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

Clause agreed to.

Clauses 46 to 59 agreed to.

Clause 60

Ms PENNICUIK (Southern Metropolitan) — I am raising my question under clause 60, but similar provisions apply in clauses 60 to 68, which amend the Magistrates' Court Act, the County Court Act, the Children, Youth and Families Act, the Coroners Act, the Supreme Court Act, the Victims of Crimes Assistance Act and the Victorian Civil and Administrative Tribunal Act to extend statutory immunities for judges and other court officers for the exercise of administrative functions in courts and at the Victorian Civil and Administrative Tribunal. It gives judicial officers immunity they currently do not have when they are acting non-judicially, and it gives registrars in the County and Supreme courts immunity in line with registrars in the Magistrates, Children's and Coroners courts. Apparently the existing framework lacks certainty, flexibility and legal uniformity across the various jurisdictions. That is true — it does lack uniformity, in terms of both the scope of the immunities and their practical application.

My concern, which I raised in the second-reading debate, is that people can suffer greatly from administrative mistakes and/or negligence. My question is: does this extension of immunity apply to negligence?

Mr TEE (Eastern Metropolitan) — Firstly, the rationale is that we have previously in this house talked about juries legislation which deals with the extension of the role of registrars in particular and, consistent with that extension, we are applying the same sort of immunity.

The immunity is not a blanket immunity; it requires the registrar to be acting in good faith. But occasionally, notwithstanding that, there might be an incident where there is a loss or damage as a result of acting in an administrative way. The question is: what occurs in that case? These provisions provide an immunity to the registrar; they do not provide an immunity to the state. Depending on the circumstances there may be an opportunity to sue the state, in which case effectively the state would be the entity that is sued rather than the registrar and the state would take responsibility for any liability.

Clause agreed to; clauses 61 to 68 agreed to.

Clause 69

Ms PENNICUIK (Southern Metropolitan) — I do not have any questions on clause 69, except that I take the opportunity to contradict what Mr Tee said in his second-reading debate contribution when he relied on what the member for Albert Park in the other place said regarding consultation with the City of Port Phillip, whereas I was relying on the councillors of the City of Port Phillip for their view on how they felt they had been consulted. It was not right for Mr Tee to rely on hearsay advice when I actually spoke to the councillors only 24 hours ago.

Hon. J. M. MADDEN (Minister for Planning) — We beg to differ.

Mr TEE (Eastern Metropolitan) — I stand by my contribution to the second-reading debate, but in deference to others that will be my response.

Clause agreed to; clause 70 agreed to.

Postponed clause 3

Mr TEE (Eastern Metropolitan) — The original section in the principal act caused concern because of its ambiguity, particularly in relation to whether or not there was a connection between prosecution or defence and the legal proceedings and there was not necessarily, in that construction, a connection. The amendment makes a change which is really designed to clarify and tighten the circumstances in which a recording can be played. My understanding is that we are trying to curtail that and limit it to where a recording is played for purposes connected with civil or criminal proceedings or any inquiry before a court.

Postponed clause agreed to.

Reported to house without amendment.

Report adopted.

Third reading

Motion agreed to.

Read third time.

EDUCATION AND TRAINING REFORM AMENDMENT (SKILLS) BILL

Committed.

Committee

Clauses 1 and 2 agreed to.

Clause 3

Ms PENNICUIK (Southern Metropolitan) — I move:

1. Clause 3, lines 15 to 21, omit all words and expressions on these lines and insert —

   “(ii) the student is 20 years of age or older on 1 January in the year the study is undertaken, and the study is required by the student in his or her current or prospective employment or to re-enter the workforce, whether or not the study leads to the same or a higher level of vocational education and training qualification already obtained by the student — ”.

I regard this as a crucial amendment to the Education and Training Reform Amendment (Skills) Bill. Under clause 3 of this bill the government has proposed some amendments to the Education and Training Reform Act which include inserting into the act after section 1.2.2(2)(d) a provision that says a student has a guaranteed vocational education and training place for a government-subsidised course if:

> (i) the student is under 20 years of age on 1 January in the year the study is undertaken; or
>
> (ii) the student is 20 years of age or older on 1 January in the year study is undertaken, and the study leads to a higher vocational education and training qualification than the highest such qualification already obtained by the student …

In order for anyone who is over 20 years of age to obtain a government-subsidised place in vocational education and training they must be, under this provision, undertaking study to attain a higher level of qualification than they already have.

I spent quite a lot of time — and I do not want to rehash the second-reading debate — on the fundamental flaw with this whole philosophy, given that people in their working lives often have to retrain or reskill very often, probably even more so than in the past, at a level the same as or a level below their current qualification. Under the provisions the government is putting into this act those people would not be eligible for a government-subsidised place. I think this is the wrong way to go, and the Greens are opposed to this philosophy.

This amendment would broaden the eligibility for a government-subsidised place such that it would be a skilling requirement for their employment — either their current employment or their prospective employment — or for re-entering the workforce if they have been out of the workforce for any reason. The amendment does limit it in some capacity in that a person would not be able to decide they wanted to complete a qualification they did not need for their employment. That is the only qualification that is there.

Without rehashing the second-reading debate as to why the Greens very strongly believe that this provision needs to be inserted, I make the remark that originally it was going to be a suggested amendment, but my advice is that it does not have to be a suggested amendment and can be an ordinary amendment. I commend that amendment very strongly to the committee.

Hon. M. P. PAKULA (Minister for Public Transport) — Taking up the last point made by Ms Pennicuik first — and the government will be seeking some guidance from the Chair on this — we believe it is appropriate that this amendment be in the form of a suggested amendment. I am advised that, if carried, this amendment would necessitate a substantial further appropriation. I am advised the estimate is more than $200 million over two years, and that is primarily because if this amendment is carried, the condition that the person is seeking to upgrade his or her vocational education and training qualifications would be removed, as Ms Pennicuik has noted, and would be replaced by a condition that the training only be employment related.

We are sympathetic to the motives behind the amendment, but the training guarantee is not an exhaustive statement of the training programs that the government will make available or fund at any given time. It is a guaranteed minimum level of training, which will be available at all future times, and for those reasons we consider that the guarantee to provide training for upskilling is appropriate. Perhaps before I go any further I could seek guidance on the matter of whether this is more properly a suggested amendment. Let me restate that my advice is that, if carried, this amendment would require an additional appropriation in the vicinity of $200 million over two years.

The DEPUTY PRESIDENT — Order! I seek the advice of the minister on why that additional appropriation would be required.

Hon. M. P. PAKULA — Because it broadens quite substantially the class of persons to whom this training guarantee would apply, and it broadens it in quite an indeterminate way. Obviously the costings have been made on the basis of the provision as it stands in the bill. The additional class of persons to whom this legislation would apply if the legislation were amended in the way Ms Pennicuik proposes would effectively require almost an open-ended guarantee, and it would do so in a way that at this stage we could not nail down to the dollar. Certainly the number of people who would be eligible would be substantially increased by this amendment.

The DEPUTY PRESIDENT — Order! Mr Hall, on the question of additional costs and, firstly, whether I should be considering this as a suggested amendment.

Mr HALL (Eastern Victoria) — On whether this should be a suggested amendment or an amendment as such, I must admit that when I first saw this amendment I thought it would impose some cost implications and therefore a suggested amendment may have been the way to go, but I understand Ms Pennicuik has consulted with parliamentary counsel on this and it has come back with the advice that this is appropriate.

Related to this, and I think pertinent to your consideration, is the fact that the minister has suggested that this is a substantial cost, and he indicated a figure of $200 million over two years. The committee is not in a position to be able to say whether that is an accurate figure. If you are permitting me to ask a question in respect of this, which might help your deliberations as well as the committee's on this matter, I ask the minister to make available the basis on which that cost estimate has been arrived at.

The DEPUTY PRESIDENT — Order! I will let the minister consider that for a moment. Ms Pennicuik can also have input, but again I am only taking advice at the moment on a suggested amendment proposition.

Ms PENNICUIK (Southern Metropolitan) — What happened was that when I was having the amendments drawn up it originally was a suggested amendment. Another draft was furnished to me by parliamentary counsel, who said they had sought advice and were advised that it did not need to be a suggested amendment. That is all I know.

The DEPUTY PRESIDENT — Order! The minister has heard both the other speakers, particularly Mr Hall requesting the basis of the calculation. From my point of view, whether it is $20 million or $200 million I am still in the same suggested-amendment bind. The actual amount of money is not an issue, but there is the question of whether or not there is an increased financial commitment.

Hon. M. P. PAKULA (Minister for Public Transport) — I agree with you, Chair. So long as you as Chair accept that there is an increased financial commitment, then I think the quantum of it is in some respects irrelevant.

To deal with Mr Hall's specific question, given the terms of the proposed guarantee proposed by the Greens it is too vague and too indefinite to be practically administered. It is frankly impossible to quantify what an open-ended commitment like that proposed by the Greens would cost the taxpayer. For

those reasons the figure I referred to is an estimate, but I will concede it is an imperfect estimate.

What the proposal appears to do is give an open-ended commitment to provide training and retraining indefinitely to an individual so long as the purpose of that is employment related. Let us use the example of an electrician. Once that person has upgraded their skills as an electrician, which would be appropriate under the bill that has been put forward by the government, the amendment as drafted by the Greens would enable that person to then retrain in another field entirely and then potentially in another field entirely after that, and so on indefinitely. I am unable to provide Mr Hall with the proper costings on the basis that we see this Greens amendment as so indefinite and so open-ended that that is difficult to do, but frankly there will no doubt be an additional cost to the taxpayer and therefore the need for an additional appropriation.

Mr HALL (Eastern Victoria) — I seek your guidance, Deputy President, on whether I can continue the line of questioning in respect of costs and cost calculations, or do you want to rule on its appropriateness?

The DEPUTY PRESIDENT — Order! My position is that I do not intend to rule before dinner; I never make major decisions on an empty stomach!

Because of the issue that has been raised, I intend to ask the clerks to clarify this for me over the dinner break so that I am in a position to make a decision on the suggested amendment concept after dinner. With the committee understanding that position, I am happy for Mr Hall to pursue those questions, which may even help those deliberations by the clerks. As I said, I do not intend to rule until 8.00 p.m.

Mr HALL (Eastern Victoria) — In terms of pursuing the question on cost calculations, in the document *Securing Jobs for Your Future — Skills for Victoria* there was a commitment by government to $316 million, and not all but part of that $316 million was a cost estimate of introducing the training guarantee, the very guarantee we are seeing imposed in this legislation. The government never could and never has explained exactly how that cost estimate was worked out. The figure of $316 million is a far more precise figure than the $200 million over two years the minister is suggesting in respect of this proposed change to the youth guarantee.

Somewhere there must have been some costing, some formula, some estimation and some analysis with a financial model to arrive at both the figure in this document and the figure the minister has given here tonight. It would be instructive for us all in terms of better understanding the issues surrounding the subject we are debating if an explanation could be given to the committee — and I understand it may have to be taken on notice — as to how these estimates were arrived at. I therefore ask the minister whether he would be prepared to seek some briefings and some material — perhaps over the dinner break there would be an opportunity to prepare them — and come back to provide us with a clearer explanation as to how those costs may have been arrived at.

Relevant to that is a question I want to ask in respect of the guarantee itself. This provision, as it is proposed to be inserted in the Education and Training Reform Act, provides for a guarantee for people aged under 20 and, in certain circumstances, for people aged over 20, of a government-supported place in a training institution. I will now read from the annual report of the Victorian Skills Commission, which was tabled in this place yesterday, where there is also commentary about the youth guarantee. In chapter 5 this report says:

> On 1 July 2009 the Victorian training guarantee was implemented for all places in diploma qualifications and above, and for the targeted small business program Skills for Growth.
>
> Implementation has accelerated following recent COAG —

that is, Council of Australian Governments —

> decisions, and funding arrangements now extend the Victorian training guarantee to retrenched workers. Since 1 January 2010 the guarantee has also been available for people aged between 16 and 24. Full implementation will occur in 2011.

This advice about the training guarantee from the Victorian Skills Commission, the body that is the vehicle through which funding is provided for training in Victoria, seems not to perfectly match up with the training guarantee we are seeking to insert in the legislation. The Victorian Skills Commission's statement talks about people aged between 16 and 24, but I thought that under this training guarantee, whether you are aged 25, 35 or 40, if you wanted to upskill, you would be guaranteed a funding place. Moreover, I am not sure whether according to this document the extension of the training guarantee applies just for upskilling.

Because it is a training guarantee that the government is seeking to have inserted in the legislation, I want to know why the statement made in this annual report

seems to be at variance with what we are being asked to insert into the legislation.

The DEPUTY PRESIDENT — Order! Before the minister responds, and as we will breaking for dinner — —

Hon. M. P. Pakula — I was going to give a 20-second answer.

The DEPUTY PRESIDENT — Order! Ms Pennicuik had a matter that I think she wanted us to be across before the dinner break and which may well reflect on my deliberations.

Ms PENNICUIK (Southern Metropolitan) — I want to take up the minister's point in that he said it is an open-ended guarantee. In fact the existing one is open-ended too: it says that if anybody over 20 wants to upskill, they have a guaranteed place. I put to the minister that if they wanted to upskill four times, they would have a guaranteed place each time. I am a bit confused as to how many times in their career people can do that if they want to sideways skill or downskill. I am not sure that the government is able to say, 'There will be so many more going sideways and downwards than going upwards'.

The point that the minister was making is that because this widens the eligibility there will be more people doing it. I am not sure that holds up; there could be a plumber, for example, who has a qualification — a certificate III or certificate IV — who may decide to do a diploma, then another diploma and in three years another diploma and another diploma.

Hon. M. P. Pakula — That is wrong.

Ms PENNICUIK — Under this there is nothing to stop them from doing it.

Hon. M. P. PAKULA (Minister for Public Transport) — I know it is past 6.30 p.m., but that is just not correct. The fact is that the provision in the bill talks about study that leads to a higher vocational education and training qualification. There is a limit imposed by that qualification. Ms Pennicuik's proposed amendment says quite clearly:

> … whether or not the study leads to the same or a higher level of vocational education and training qualification already obtained …

The limit imposed by the bill, as it has been put forward by the government, is more restrictive than that put forward by Ms Pennicuik's amendment.

Sitting suspended 6.32 p.m. until 8.09 p.m.

The DEPUTY PRESIDENT — Order! Before the meal break Minister Pakula sought advice as to whether Ms Pennicuik's proposed amendment 1 to clause 3 ought to be considered a suggested amendment because of potential money implications. After consideration and following a check with parliamentary counsel I believe it is in order for the amendment to be moved in its current form.

As has been pointed out by Ms Pennicuik, the bill already contains provisions to expand the age of students who can undertake further higher vocational training, and one would assume that the government has made a commitment to fund this new principle. In any case, the government is still required to approve the course of study to receive a government subsidy.

I need to stress that this subsection of the bill in question is also merely adding a principle to the bill. It is not mandatory or binding on the government and it cannot, in my view, be forced on the government. Indeed, section 1.2.3 of the principal act which deals with these principles states that no civil cause of action can be taken against the government if it does not adhere to these principles.

Finally, I note that an incidental message was not sought by the government when this bill was introduced in the Assembly, and I therefore can only presume that additional funding for this new principle was not an issue at that time. Therefore it is my determination that this can be considered as an amendment and does not require consideration by this committee as a suggested amendment.

Hon. M. P. PAKULA (Minister for Public Transport) — For clarity, obviously the government accepts the ruling, and the government opposes the amendment.

Mr HALL (Eastern Victoria) — Prior to the dinner break, pertinent to this provision I had sought some information from the minister with respect to costings and his suggestion that this may cost somewhere around $200 million over a period of two years. I wonder if the minister is able to respond to those questions at this point.

Hon. M. P. PAKULA (Minister for Public Transport) — I am able to respond only in the broadest of terms. The modelling that was used to arrive at the figure — and as I indicated before the dinner break, the figure was a rough figure by necessity, given the open-ended nature of the amendment moved by Ms Pennicuik — was in effect the same modelling as that used previously by the

government in determining the cost of the training guarantee. Modelling was carried out which assumed the number of students who might be eligible under the government's proposed clause, then it added back in the number of students that the government had estimated may be eligible and the amount of training they may undertake in accordance with the Greens proposed clause. It then extrapolated from that.

Mr HALL (Eastern Victoria) — I would not mind if the minister was prepared to take the question on notice. For some guidance I give him this: on page 11 of the skills reform document, *Securing Jobs for Your Future*, it says:

> $178 million will be invested to provide more training places, at a wider choice of providers, with a fairer fee structure.

In his preface to this document the Premier said this funding would provide for an additional 172 000 places in TAFE institutions over a period of four years. So we are looking at an extra 172 000 places over four years at a cost of $138 million. What the minister is suggesting to us by way of the very broad figure of $200 million over two years is almost double the number of places compared to the figure calculated here. Given that there are only about 500 000 students in total undertaking training courses in the TAFE system, it seems to me an extraordinary figure; it does not even seem to me to be in the ballpark. I wish to ask whether the minister will take on notice my request to provide the house with some more detailed costings of how those estimates of costs have been reached.

Hon. M. P. PAKULA (Minister for Public Transport) — I do not mind providing those costings, but I would seek Mr Hall's guidance and an undertaking from him. This week in matters before committee in this chamber a minister undertaking to get that kind of information for a member led to a motion to adjourn debate. I would assume that it is not the intention of Mr Hall to do that. If that is the case, I am more than happy to seek further advice, provided Mr Hall's request is not a device to adjourn this debate.

Mr HALL (Eastern Victoria) — In response to that fair request, no, getting this information is not conditional on adjournment of the debate. I am quite happy for the debate in the committee stage to proceed and hopefully conclude this evening, but I request that Mr Pakula provide me with those cost calculations by the next scheduled sitting week; I think that would be an appropriate time frame.

While I am on my feet, prior to the dinner break I asked for clarification regarding a statement made in an annual report of the Victorian Skills Commission. I suggested in committee that the statement appeared to be at variance with the youth guarantee that we were seeking to insert into the principal act. I wonder if the minister is now in a position to be able to respond to that question.

Hon. M. P. PAKULA (Minister for Public Transport) — I am advised that the reason for the difference that was referred to by Mr Hall prior to the dinner break is that the training guarantee that we intend to enshrine in this legislation is a minimum. The government is free to make policy decisions to fund places beyond the guarantee. We have done that for retrenched workers, but this legislation is about all Victorians knowing they are eligible for a government-subsidised place with conditions that are not unreasonable in terms of economic and social policy. One is about a minimum and one is about additional places that might be provided by government in accordance with policy from time to time.

Ms PENNICUIK (Southern Metropolitan) — I welcome the Chair's ruling. It accords with the feeling I had that any attempt by the government to say that it was going to cost one thing or another or one formulation was going to cost one thing or another was a matter of some speculation as to however many people would take up however many places. I am happy to proceed with putting the amendment.

Mr HALL (Eastern Victoria) — I can announce that the coalition will be supporting this amendment. The reason we are supporting it is this: I made very clear in my comments on the second-reading speech that it would be my earnest desire that, within the budget available to undertake this, we should be expanding the eligibility criteria for a government-supported position. Ms Pennicuik's amendment does not go as far as I think would be ideal, because this amendment still excludes those who wish to pick up a qualification at a lesser level than they currently hold.

Ms Pennicuik interjected.

Mr HALL — That is my interpretation — that somebody will still not be eligible for a government-funded position if it is for a lesser qualification. The amendment says:

> … the study is required by the student in his or her current or prospective employment or to re-enter the workforce,

> whether or not the study leads to the same or a higher level of vocational education and training qualification …

The way I interpret that is that if a person was undertaking training at a lesser level than they currently hold, they would not be guaranteed a government-funded position. The circumstances would be quite normal for that to occur — for example, a builder who has completed an apprenticeship at a certificate III level might want to go back and obtain some certificate II level plumbing skills to enhance their building skills so that they might be qualified to put on a tin roof or to do minor plumbing work associated with a building project.

Ms Pennicuik interjected.

Mr HALL — If they are qualified to do that. It is quite normal for a qualified tradesperson to go back and gain qualifications in areas other than their specified trade to broaden their scope. There would be plenty of possibilities for that to occur. I have mentioned somebody who made submissions to me on this particular matter and had completed degree training in architecture and another profession which I simply cannot recall at the moment. He still had to go back and do diploma-level vocational training to apply skills he had achieved by doing a degree. There will still be quite a number of people who will not be guaranteed a government-subsidised position because of the fact they are moving backwards rather than moving up or sideways in terms of skill acquisition. This amendment does not go as far as I would ideally like, but it goes some way towards it, and that is why the coalition will support the amendment.

Ms PENNICUIK (Southern Metropolitan) — The wording of this clause was a matter of some discussion between parliamentary counsel and me, because I wanted to be clear that it would include persons who wanted to get either an equivalent or lesser qualification. We had some discussion about that, and when you think about it and reread the clause it means the student can undertake the study, and if you take it in two parts, whether the study leads to the same qualification or a higher qualification, it could be higher, lower or the same. My interpretation is that it is inclusive of a lesser qualification, the same qualification or a higher qualification.

The DEPUTY PRESIDENT — Order! The issue might not be qualifications, it might be union card memberships. If there is no further discussion in respect of this amendment, I will put it to the test.

Committee divided on amendment:

Ayes, 19

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

Noes, 17

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

Pairs

Dalla-Riva, Mr	Darveniza, Ms
Finn, Mr	Pulford, Ms

Amendment agreed to.

Amended clause agreed to; clause 4 agreed to.

Clause 5

The DEPUTY PRESIDENT — Order! With respect to clause 5, Ms Pennicuik has several amendments. Her amendment 2 is a stand-alone amendment. I call on her to formally move that amendment and make any remarks in support of it.

Ms PENNICUIK (Southern Metropolitan) — Thank you, Chair. Before I move the amendment, am I able to ask a question of the minister?

The DEPUTY PRESIDENT — Order! I would prefer that Ms Pennicuik move her amendment first and then ask the question.

Ms PENNICUIK — Whether I move the amendment is contingent on the answer.

The DEPUTY PRESIDENT — Order! All right, then, Ms Pennicuik may ask the question.

Ms PENNICUIK — The amendment is simple. Clause 5(2)(na) of the bill reads:

> protect the interests of students as consumers in the delivery of accredited courses and qualifications …

It is my contention that you could just as easily say, 'protect the interests of students in the delivery of accredited courses and qualifications'. I am wondering why the words 'as consumers' have been inserted there.

Hon. M. P. PAKULA (Minister for Public Transport) — The word 'consumers' is there because a centrepiece of the legislation is the introduction of better protection of the interests of students as consumers. There is widespread concern in the community about instances of poor treatment of fee-paying students, especially overseas students. We brought in this bill in part to significantly improve regulation of the industry, and whilst it is important to protect students in a general sense, part of the purpose of this bill is to specifically acknowledge the need to protect students in their capacity as consumers.

Ms PENNICUIK (Southern Metropolitan) — I thank the minister. That goes some way towards answering my question. Could the minister elaborate on which part or parts of the bill actually hang off that notion of students as consumers?

Hon. M. P. Pakula — Which part of the bill does what? What was the question?

Ms PENNICUIK — I would like to know which parts of the new provisions of the bill, which the minister just said are about protecting students as consumers, hang off that notion of students being more than students — that is, the notion of students also being consumers.

Hon. M. P. Pakula — Do you mean apart from clause 5?

Ms PENNICUIK — Apart from clause 5, yes.

Hon. M. P. PAKULA (Minister for Public Transport) — I am advised that clauses 35 and 36 are the provisions of the bill regarding fair contract terms — which, by the way, Chair, I understand that in a subsequent amendment the Greens are seeking to omit.

Ms PENNICUIK (Southern Metropolitan) — I thank the minister. I may have taken the same approach to those clauses that I am taking to this clause, and I did somewhat suspect that the answer he has just given me might be the case. Reading the bill in the last day or so while preparing my amendments, I have wondered why there was the introduction of the idea of contracts into this regime when normally a student would attend an institution or a training organisation and their enrolment would sort of be the contract. And the contract of the organisation is to supply the training for the advertised fee at the advertised hours with a qualified teacher and to the accredited standard et cetera, which would not necessarily require the signing of a contract between the student and the organisation. I think that is a new regime that has been put into the bill, and there probably needs to be some explanation as to why the government feels that is necessary and why just a duty to the student by the organisation is not enough.

Hon. M. P. PAKULA (Minister for Public Transport) — Chair, I am happy to seek your guidance, but I thought we would get to that debate or discussion when we come to clauses 35 and 36. We are on clause 5.

The DEPUTY PRESIDENT — Order! Yes, although Ms Pennicuik sees them as linked, and the minister actually raised that as a part of his answer in respect of the member's questions on clause 5. She has indicated that if those answers were satisfactory, she would not be proceeding with her amendment 2.

Hon. M. P. PAKULA (Minister for Public Transport) — Okay. I will start with clause 35, which the Greens are seeking to omit. We are committed to ensuring the fair treatment of students in our education system.

The DEPUTY PRESIDENT — Order! For the sake of the way we treat these amendments, and for the sake of going forward — and we only have one more week — I make the point that when we refer to amendments I am keen that we refer to them not as party amendments but as a member's amendments. In the context of these amendments, the amendments are proposed by Ms Pennicuik; they are not Greens amendments. It is as a matter of form for the house.

Hon. M. P. PAKULA — Yes. Let me start again then, Chair. In relation to what I will describe as the foreshadowed amendment to clause 35 to be moved by Ms Pennicuik, which I will speak to now, the Victorian Registration and Qualifications Authority (VRQA) receives many complaints from students of registered training organisations in relation to the perceived unfairness of their contracts. There is little regulation of the consumer protection aspects of the relationship between for-profit RTOs (registered training organisations) and the students, who are effectively their clients.

Under the Fair Trading Act, for example, it is unlawful for any trader to engage in misleading or deceptive conduct. VRQA receives a lot of complaints

about misleading information or a lack of adequate information for students, but in the absence of specific standards about the kind of information that needs to be provided it is difficult for the student or the client of the RTO to establish that misleading conduct has occurred.

Some students, in particular overseas students, are in a vulnerable position regarding their contractual relationship with a for-profit registered training organisation. Unlike students of government TAFE institutes or universities, they do not have access to the Ombudsman. Students often do not have sufficient knowledge of the relevant issues to negotiate terms or to evaluate the fairness of the terms that are set out in the RTO's standard contracts. Once they have committed to a course they are very much in the hands of the RTO in depending on its integrity for fair treatment, and if they do not receive that fair treatment, they do not have many, or in some cases any, avenues of redress. In the case of overseas students, continued enrolment in their course is often a condition of their student visa. If they stop being enrolled, they often have to leave the country, which makes it very difficult for them to negotiate redress of a complaint.

For those and other reasons, we think it is desirable to have minimum fair contract terms which would apply as a default, but those fair contract terms would be set by regulations and the power to make those regulations would be conferred by the provisions of clause 36, which the Greens are seeking to omit. In speaking to clause 5 and now clause 35, I have effectively spoken on clause 36 as well.

The DEPUTY PRESIDENT — Order! It was a clause that Ms Pennicuik sought to omit.

Hon. M. P. PAKULA — Ms Pennicuik sought to omit it; indeed.

The DEPUTY PRESIDENT — Order! Does that assist Ms Pennicuik in whether or not to proceed with this amendment?

Ms PENNICUIK (Southern Metropolitan) — In fact it assists me greatly, and I thank the minister for his comprehensive answer. I would like to assure the minister that my concern was not to remove protections from students. Far be it for him to imply or even think that that would be my aim. In fact my concern was that the student was not, by way of a contract with a registered training organisation, actually entrenched in a situation of imbalance of power, if you will. I hear and accept what the minister is saying, but my only further question is: by what means will the student be able to assert the terms of their contract if it is broken?

Hon. M. P. PAKULA (Minister for Public Transport) — I am advised that there would be a number of avenues of redress depending on the circumstances. Redress could be through the courts, the institution could have an internal complaints procedure, and VRQA would have jurisdiction over some matters as well.

Ms PENNICUIK (Southern Metropolitan) — Thank you; that is helpful too. What I am concerned about is the situation the minister has painted whereby an overseas student has to assert the terms of their contract by going to court, which is not necessarily the best remedy for an overseas student. Perhaps the minister could give me some more assurance that one of the other two avenues he has mentioned — VRQA and complaints handling by the institution — would be the preferred method.

Hon. M. P. PAKULA (Minister for Public Transport) — I am advised that the details would be contained in the regulations, but the intent would be to provide students with the simplest method of remedy possible.

Mr HALL (Eastern Victoria) — If I could just add to that and help the minister out, the act also requires the RTO to have in place complaints procedures, so in the first instance it would make sense that somebody would seek to resolve a dispute through the required complaints procedures of the institution before taking it to court. The coalition believes this is a satisfactory arrangement whereby an internal dispute mechanism is required to be put in place.

The DEPUTY PRESIDENT — Order! Ms Pennicuik, the fate of your amendment 2?

Ms PENNICUIK (Southern Metropolitan) — Thank you, Chair. Given that there are provisions in the bill for making those procedures better known, I am happy to withdraw that amendment. I do not have to move the amendment, I understand.

The DEPUTY PRESIDENT — Order! Ms Pennicuik is not proceeding with amendment 2; therefore we would move to amendment 3, moved by Ms Pennicuik, which I regard as a test for amendment 4. Does Ms Pennicuik plan to proceed with amendment 3?

Ms PENNICUIK (Southern Metropolitan) — I would be grateful if I could take a similar approach

with this amendment, and it might assist the committee in its business. Amendment 3 talks about the regulation of RTOs. Could the minister enlighten me as to how VRQA will be actively monitoring the conditions that RTOs have upon them, because that is what they are asking in the community? What will it actually do to make sure that RTOs comply with the regulations or their registration conditions?

Hon. M. P. PAKULA (Minister for Public Transport) — I am advised that the bill gives powers to VRQA to conduct spot audits and also provides VRQA with greater inspection powers.

Ms PENNICUIK (Southern Metropolitan) — That is what I am looking for, that it will be active, rather than, 'Here's the registration. Make sure you comply with it, and then when you don't we will step in and clean up the mess', which was the concern. If the minister is assuring us that VRQA is going to be more active in terms of spot audits and inspections, that would cover off the subject matter of clause 5 that I am trying to work towards here.

Hon. M. P. PAKULA (Minister for Public Transport) — I can give Ms Pennicuik the satisfaction that she is after in regard to that question.

Ms PENNICUIK (Southern Metropolitan) — Thank you, minister, because it is an issue that has been of concern in the sector that has not been the case in the past. With your assurance in mind, I am happy to not proceed with that amendment either.

The DEPUTY PRESIDENT — Order! The minister is right; I attended the briefing and heard the same thing. In that case Ms Pennicuik will not be proceeding with either amendment 3 or amendment 4. On that basis, we are in a position to resolve the committee's attitude to the clause.

Clause agreed to.

Clause 6

The DEPUTY PRESIDENT — Order! In respect of clause 6 Ms Pennicuik has amendment 5.

Ms PENNICUIK (Southern Metropolitan) — With the Chair's indulgence — and I hope this is assisting the committee — I would like to ask the minister a question about clause 6, which amends section 4.2.4(1) and (2) which deal with membership of the authority. In nominating people for appointment, the minister must have regard to their skills et cetera. New section 4.2.4(2)(a)(i) lists a number of fields:

> education, including school education, vocational education and training, adult, community and further education and higher education.

Subparagraphs (ii), (iii) (iv), (v), (vi) and (vii) list separate fields. They are: quality assurance, business management, institutional governance, law, finance and industry, which it could be argued — in particular subparagraphs (ii) to (vi) — are fields requiring similar skills or skills in the same sort of area. I wonder why they have been grouped in that way. Can the minister tell me why some are given a roman numeral of their own and others are lumped together?

Hon. M. P. PAKULA (Minister for Public Transport) — I am advised it is for no particular reason and it has no particular effect. The change Ms Pennicuik is foreshadowing in her amendment 5 does not have any practical impact. Given the nature of the amendment, I wonder whether Ms Pennicuik might believe that the fact those qualifications, or characteristics if you like, are separately enumerated somehow suggests that you need a person with each of those individual skills. If that is the concern Ms Pennicuik has, I can assure her that is not the case. Any individual may have a combination of some or all of the skills listed in subparagraphs (i) through (vii).

Ms PENNICUIK (Southern Metropolitan) — I thank the minister for his answer. At a glance it would seem there is a particularly deliberate way of expressing this. If he is saying it makes no difference, would he have any particular objection to the way in which I wish to group them?

Hon. M. P. PAKULA (Minister for Public Transport) — This might shock the chamber, but I am advised that while the government believes that the manner in which the bill is laid out currently is more elegant and more easily understood, quite frankly the changed proposed by Ms Pennicuik, given it has no practical effect, is capable of being accepted by the government if she insists on pursuing it.

Ms PENNICUIK (Southern Metropolitan) — I thank the minister. In that case I move:

> 5. Clause 6, page 9, lines 1 to 6, omit all words and expressions on these lines and insert —
>
> "(ii) quality assurance, business management, institutional governance, law, finance and industry; and".

Amendment agreed to; amended clause agreed to; clauses 7 to 34 agreed to.

Clause 35

The DEPUTY PRESIDENT — Order! Ms Pennicuik has moved amendment 6, which invites the committee to omit clause 35. In addition, the amendment can be considered a test for amendment 7, which invites the committee to omit clause 36. However, Ms Pennicuik sought advice at an earlier clause, and I think she was convinced that these two clauses offer the protections she is seeking. I anticipate she will not be proceeding with these two amendments.

Ms PENNICUIK (Southern Metropolitan) — You are correct, Deputy President. I will not be proceeding with the amendments.

Clause agreed to; clauses 36 to 48 agreed to.

Heading to clause 49

The DEPUTY PRESIDENT — Order! I consider Mr Hall's amendment 1 to be a test for his amendment 2 which also relates to clause 49. In proposing the change to the clause heading, Mr Hall may wish to foreshadow amendment 2.

Mr HALL (Eastern Victoria) — I move:

1. Clause heading to clause 49, omit "**Schedule 5**" and insert "**regulation-making powers**".

I agree with the Deputy President's interpretation that this amendment will test proposed amendment 2. This is all about the ability of the house to exercise judgement on regulations that are made under the Education and Training Reform Act 2006. There are significant regulation-making powers in the act. The amendment bill before the chamber also adds to those regulation-making powers which are available to the minister of the day. As I said during the second-reading debate, it has always been my strong view that regulations made under an act of Parliament should be disallowable by either house. Currently when using the Subordinate Legislation Act, the house can exercise a right to disallow regulation only on the recommendation of the parliamentary Scrutiny of Acts and Regulations Committee. I think this should be part of the act itself. Therefore I have moved amendment 1 and circulated proposed amendment 2. They will enable the house to directly disallow regulation if it so chooses.

Hon. M. P. PAKULA (Minister for Public Transport) — The government will not oppose this amendment. We accept the proposal that these regulations can be disallowed by either house. It is envisaged that major regulations proposed by the bill would be subject to consultation through a regulatory impact statement. In taking this position, I note that a number of acts contain provisions that enable regulations to be disallowed by either house for general policy reasons as well as procedural reasons. I note also that the amendment proposed by the opposition would apply not only to regulations made for the purposes of this bill but any regulations made under the Education and Training Reform Act 2006. For example, they will also apply to regulations relating to school education. Even so, the government does not oppose the amendment.

Amendment agreed to; amended heading agreed to.

Clause 49

Mr HALL (Eastern Victoria) — I move:

2. Clause 49, page 66, after line 31 insert —

'() After section 5.10.2(4) of the **Education and Training Reform Act 2006 insert** —

"(5) The regulations may be disallowed in whole or in part by resolution of either House of Parliament in accordance with the requirements of section 23 of the **Subordinate Legislation Act 1994**.".'.

Amendment agreed to; amended clause agreed to; clause 50 agreed to.

Clause 51

Ms PENNICUIK (Southern Metropolitan) — I invite the committee to vote against this clause. Again, with the Chair's indulgence, I would like to ask the minister a question regarding clause 51. Currently section 3.1.2 (1)(c) of the act which the government's amendment repeals provides that the function of the commission that the government is seeking to repeal is:

> … to support local learning and employment networks of providers and stakeholders in post-compulsory education and training.

My question is: why does the government wish to repeal that subsection?

Hon. M. P. PAKULA (Minister for Public Transport) — I think I can satisfy Ms Pennicuik on this matter as well. The reason that we are proposing to repeal the reference to local learning and employment networks from the list of functions of the Victorian Skills Commission is merely a reflection of the fact that this function, through

machinery-of-government changes, has now been moved and is performed by a different agency, namely the Department of Education and Early Childhood Development.

Ms PENNICUIK (Southern Metropolitan) — That is an excellent explanation. If that is in fact the case, I will not proceed with my invitation to the committee to vote against the clause.

The DEPUTY PRESIDENT — Order! I thank Ms Pennicuik. I might make the observation, though, that a number of the amendments Ms Pennicuik is not proceeding with might not have come to the house had the questions she is seeking answers to been raised with advisers, who would have given her equally competent advice as the minister.

Hon. M. P. Pakula — No, not equally.

The DEPUTY PRESIDENT — Order! I think equally.

Ms PENNICUIK (Southern Metropolitan) — Chair, sometimes time does not necessarily allow. That is the reason I had the amendments circulated. In fact I forwarded them to the government immediately, hoping to enter into some dialogue about them, but that did not happen. That is why the dialogue is happening here now.

The DEPUTY PRESIDENT — Order! Fair enough.

Clause agreed to; clause 52 agreed to.

Clause 53

Ms PENNICUIK (Southern Metropolitan) — I move:

> 9. Clause 53, line 30, after “experience” insert “, evenly balanced between them,”.

This is a simple amendment to clause 53(2)(a) which states that the membership of the commission should include:

> … at least 7 persons with knowledge of or experience in industry, training, workforce development or community development …

It would insert the words ‘evenly balanced between them’ to ensure that the membership is evenly balanced between those skills and that experience.

Hon. M. P. PAKULA (Minister for Public Transport) — The government will be opposing this amendment moved by Ms Pennicuik. We believe it is based on a misunderstanding of how the legislation works and how appointments are made. Our view is that the Victorian Skills Commission needs a range of skills and experience to carry out its role properly. The VSC is not a representative assembly with a delegate from each of a number of stakeholder groups.
Ms Pennicuik’s amendment appears to be based on the assumption that the references in section 3.1.7 of the principal act to the various backgrounds and experience needed on the board somehow creates a representation of stakeholder groups. That is not the intention. The section sets criteria for the minister to consider when selecting members so that collectively the commission’s membership has a broad range of all of those skills. Some members may bring to the table more than one of the skills or backgrounds referred to in the section. For that reason the proposal by Ms Pennicuik for membership to be evenly balanced between those groups is, in our view, misconceived. They are not delegates of interest groups but members of a collegiate body.

Mr HALL (Eastern Victoria) — The coalition is of the view that this is probably not a necessary amendment because the implication of what is sought to be achieved goes without saying. I would have thought that any reasonable person in making an appointment where there were certain skills required would seek to have at least some balance in respect of those criteria being represented in their membership. There is no case which one might refer back to where there was a grossly uneven balance of skills as legislated for. I do not think such precedents exist, and I think, as I said, any reasonable person would ensure that the sort of balance being sought by this amendment was indeed achieved.

Amendment negatived.

Clause agreed to; clause 54 agreed to.

The DEPUTY PRESIDENT — Order! Both Mr Pakula and Ms Pennicuik have amendments in relation to clause 55. However, the need for Mr Pakula to proceed with his amendments will be shaped by Mr Hall’s later amendments and whether these are agreed to. The key one of Mr Hall’s amendments relates to the omission of clause 57. Therefore I propose postponing consideration of clause 55 and returning to it after clause 57 has been considered.

Mr Pakula has also moved an amendment in relation to clause 56, which is an omission of the clause. However, once again whether Mr Pakula succeeds with his amendment will be determined by Mr Hall’s

later amendments and whether these are agreed to. I therefore propose postponing consideration of clause 56 as well. I point out that in making that ruling the government's amendments also have precedence over Ms Pennicuik's amendments. My proposition to the committee, which I will test, is that clauses 55 and 56 be postponed.

Clauses 55 and 56 postponed.

Clause 57

The DEPUTY PRESIDENT — Order! I call on Mr Hall to formally move his amendment 3, which is inviting the committee to omit clause 57. I consider that this amendment is also a test of his remaining amendments 4 to 10.

Mr HALL (Eastern Victoria) — I invite the committee to vote against this clause. I agree that this is a test for the other amendments, given that clause 58 also relates to the process outlined in clause 57. My amendment 5 relates purely to transitional measures, which are therefore consequential to amendments 3 and 4, and the remaining renumbering is again consequential.

This goes to the heart of an issue that I raised in the course of the second-reading debate, and that is the way in which TAFE institute boards are appointed. It is a fact that under the provisions of proposed clause 57 the minister of the day would appoint the chairperson of the board and also, on the recommendation of the chairperson, appoint the remaining persons on the board, apart from the staff person, the student and the chief executive officers. It is a fact of the matter that the minister is appointing all members, bar those three I just mentioned, to the board.

One of the great features of TAFE institute boards has been the commitment, skills and knowledge of local people that make them work. TAFE institutes are generally set up to serve their local communities. They have a regional or geographical focus on the areas they serve. There have been expressions to that effect throughout the second-reading debate when there have been amendments, and the second-reading speech for this bill made reference to the importance of having local knowledge in serving the TAFE communities. One of the strengths of our TAFE boards has been the fact that they have the ability to coopt local people with knowledge of local issues, enhancing the operation of the board.

I know the government is concerned about accountability. That is the issue that has been raised and the argument that has been put forward — that the board needs to be accountable, so therefore the government needs to appoint every person on the board. I claim that that is overkill, because, as I said in the second-reading debate, the provision under the current act requires that more than half of the board be appointed by the government of the day through the minister. There is already absolute control of the board through ministerial appointments, so denying an institute board the option of being able to coopt and utilise local knowledge will detract from the quality of the boards. It is a slap in the face for those institute boards that have served their local communities well.

I feel strongly about this. I have outlined my reasons for this in the second-reading debate and I will not go through them again, but we are strong on this issue. We believe there are still appropriate accountability mechanisms in place that should satisfy the government, particularly as the funds that are raised to operate these institutions are not solely government funds. As I said, in many cases more than half of the funds these institutions receive are self-generated. There is no real history to suggest the need for this, and I do not believe the government has made the case for it. I have therefore moved this amendment, and I urge members on both sides of the house to think again and be prepared to support it.

Ms PENNICUIK (Southern Metropolitan) — The Greens will be supporting the amendment of Mr Hall to omit this clause. As Mr Hall said, we spoke about this issue at some length in the second-reading speech, and I know the chair does not wish us to repeat our second-reading debate speeches in committee, but I briefly state that I accept that TAFE boards in Victoria are working well. The Victorian TAFE Association is not in support of this move by the government to change the structure of the boards. I accept that there may be a need to somehow tweak the structure of TAFE boards, but I think the government should do it in such a way that it has the broad agreement of everybody concerned rather than foisting it upon the existing boards and TAFE associations when they are so opposed to it.

I say there is no urgency to this and it should be worked through by the government to some point where people can agree. I also agree with Mr Hall that currently under the act the majority of the board is already appointed by the minister and the minister has substantial powers under the act with regard to TAFE boards and can amalgamate them, dismiss them or sack them, so I believe there is quite a lot of control there already.

Unlike registered training organisations in this bill, where there is a serious problem that needs to be addressed, there does not seem to be a burning problem that needs to be solved, so we are prepared to support the amendment. In the amendments I circulated — and I have mentioned that I circulated them to the government as soon as they became available to me — I put forward the idea of a sort of compromise between the two positions, and I was greeted with complete silence at that attempt at a compromise. I was then told that the government had discussed my amendments with Mr Hall but had not discussed them with me.

There could have been a compromise, which would have perhaps involved a ministerial appointment of the chair, but more thinking and talking about it with the stakeholders and the other parties in the chamber has convinced me that we should support Mr Hall's amendment.

Hon. M. P. PAKULA (Minister for Public Transport) — Mr Hall is right. Mr Hall made significant reference to this matter during the second-reading debate, and Ms Pennicuik has indicated that the Greens are going to support Mr Hall's amendments; nevertheless, I will put on the record why the government will not be supporting Mr Hall's amendment.

The opposition has characterised the change that the government proposes in this piece of legislation as politicisation. We would rather look at it as professionalisation of the board. We believe the bill limits the scope for political appointments by establishing clearer criteria for the appointments based on professional skills and backgrounds. The effect of Mr Hall's amendment would be to leave unchanged the rules that currently govern the selection criteria for members of TAFE institutes. Those changes will affect other proposals in the bill, especially clauses 55 and 56 that are about enabling TAFEs to engage in commercial activity and the imminent commencement of the fully contestable training market.

The effect of Mr Hall's amendment is that the chair of TAFE institute boards would be chosen by the boards themselves from amongst their members. Roughly a quarter of board members, including the chairperson, would be coopted by the members already appointed with no reference to the minister. The criteria for appointment would continue to include backgrounds in adult education or knowledge of the local community — that is, board members are effectively chosen to represent stakeholders rather than the expertise they bring to the management of the institute, and coopted members would continue to enjoy security of tenure with procedural limits on the ability of the minister to remove them on performance grounds.

As a result of this bill the responsibilities of TAFE institute boards will be increased through the introduction of a fully contestable training market from 2011 and through enhanced commercial powers. Giving those additional training powers to the boards of TAFE institutes increases the commercial exposure of the state. The market expects the state government to honour the obligations and liabilities of its agencies, and those who deal with TAFE institutes will assume that they have explicit or implicit government backing. In that environment it is important that the governing boards of major public authorities have the professional skills, competencies and experience to discharge those responsibilities and functions. That is not intended as a criticism of existing boards — they have done a fantastic job serving the state and its communities — but there is a significant difference between, on the one hand, a board of an institute that operates within a framework of centrally set policies and priorities as at present and, on the other hand, a fully fledged commercial operation that sets its own priorities and competes in a free training market.

The new boards will be responsible — just like the board of a private company — for the commercial operations of the institution. They will be accountable — as major public statutory authorities answering to the minister and hence to this Parliament — for their stewardship of the public resources entrusted to their care and for their operational performance. That new role calls for something more akin to a management board chosen to ensure that the board has the professional, management, commercial and related skills necessary to carry out its new role successfully. I could go on, but let me say in conclusion that if this amendment succeeds as has been foreshadowed, the government will be proposing that the commercial powers that were to be or are to be conferred on TAFEs as a consequence of this bill would be omitted from the bill.

Mr HALL (Eastern Victoria) — I think we are going to agree to disagree on this provision, but the minister has foreshadowed that if this is successful, then the commercial powers as outlined in clause 55, subsection 3 are going to be withdrawn. It says in that section that, subject to any directional guidelines issued by the minister, the board of an institute may engage in an activity on a commercial basis if that activity is consistent with and does not interfere with

the carrying out of its functions et cetera. Could I ask the minister, therefore, to give me an example of what sort of commercial activity may be available to TAFE institutes under these new provisions — if they go forward — that they currently do not do?

Hon. M. P. PAKULA (Minister for Transport) — One example would be that the TAFE institute would be allowed to establish a commercial training company.

Mr HALL (Eastern Victoria) — But all that is subject to the direction or guideline issued by the minister, is it not? If the minister felt that there was a particular provision which would adversely impact or not be in line with the functions or duties of the institute, then the minister could, by directional guideline, make comment to that effect and prohibit that sort of commercial activity. I think we are clutching at straws, and I do not think there are too many activities that TAFE institutes currently undertake that this threat to remove that provision is going to impact upon.

I think it is just trying to blackmail, if you like, the committee by suggesting that if you are going to change this, we are going to withdraw that particular provision, but that means you are just going to take away existing powers that TAFE institutes have now.

Hon. M. P. PAKULA (Minister for Public Transport) — I repeat back to Mr Hall a comment he made a moment ago: we will have to agree to differ on this. Mr Hall has used quite pejorative language. The government, notwithstanding Mr Hall's commentary on this, believes strongly that if Mr Hall's invitation to the committee to vote against the clause gets up, then the government would be extremely reluctant to confer upon TAFE institutions the commercial powers contained in clause 55. Mr Hall may believe that removing that is unnecessary, but the government and Mr Hall will have to have a different view on that.

Committee divided on clause:

Ayes, 18

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

Noes, 18

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

Pairs

Darveniza, Ms	Dalla-Riva, Mr
Pulford, Ms	Finn, Mr

Clause negatived.

Clause 58 negatived.

Clause 59

Ms PENNICUIK (Southern Metropolitan) — Chair, with your indulgence, I would like to ask the minister a question regarding clause 59, which proposes that a new section is added to the act requiring the board of a TAFE institute to: formulate a strategic plan, with some conditions attached; produce a statement of corporate intent, including some prescribed content; and convene annual meetings.

My question to the minister relates to the fact that it is already a requirement under the functions of a TAFE institute board to prepare a strategic plan — that is already in the act. I am querying why a whole new section is being inserted into the act about strategic plans when it is already a function of the board to prepare one.

Hon. M. P. PAKULA (Minister for Public Transport) — I am advised that there is in the act already an obligation for a TAFE board to prepare a strategic management plan, but what clause 59 provides is an entire and comprehensive scheme of accountability of which strategic plans are one part.

Ms PENNICUIK (Southern Metropolitan) — Yes, it as I described it, but I suppose the essence of my question is: why are the existing duty to prepare a strategic plan, which we presume TAFE boards have been doing, and the existing duty to comply with those strategic plans and implement them not enough?

Hon. M. P. PAKULA (Minister for Public Transport) — As I have indicated, the provisions of clause 59, which Ms Pennicuik is seeking to remove, through the obligation to prepare a strategic plan, to prepare a statement of corporate intent and to hold annual meetings forms a package of accountability measures — an accountability framework, if you like. That is why we oppose the removal of those reforms by Ms Pennicuik's amendment. We say they are about

ensuring good governance and accountability in managing TAFE institutes, and we say clause 59 significantly improves openness, transparency and accountability in the management of TAFE institutes.

TAFE institutes are major public authorities. They are comparable in size to major public hospitals. They consume significant amounts of public resources. They deliver important services to the community and to industry. They are about ensuring that individuals in our community have the work skills to improve their earnings and their quality of life, and we think it is critical to good governance that there be proper accountability through the minister to the Parliament for the delivery of those services in an effective and efficient manner. Clause 59 is designed to achieve that by requiring TAFE institutes to develop long-term strategic plans and to submit them to the minister. It also requires that each year a TAFE institute prepare and submit to the minister a statement of corporate intent about the coming year's activities.

Ms PENNICUIK (Southern Metropolitan) — It is good that I am blessed with excellent hearing, because I was able to discern the minister's answer above the general din. I can report to the minister that I thank him for his answer and therefore intend not to proceed with the amendment.

Clause agreed to; clause 60 agreed to.

Progress reported.

CONFISCATION AMENDMENT BILL

Council's amendments

Returned from Assembly with message disagreeing with following Council amendments:

1. Clause 5, line 5, after "proceeds of" insert "certain".

2. Clause 64, after line 16 insert —

'(2) In section 139A(1)(e) of the Principal Act, for "institutions." substitute "institutions; and".

(3) After section 139A(1)(e) of the Principal Act insert —

"(f) the number of restraining orders and civil forfeiture restraining orders made in respect of property on application by or on behalf of the Chief Commissioner of Police; and

(g) the number of forfeiture orders made under Division 1 of Part 3 on application by or on behalf of the Chief Commissioner of Police and the estimated value of the property that is forfeited in each case.".

(4) After section 139A(2)(e) of the Principal Act insert —

"(ea) the number of restraining orders and civil forfeiture restraining orders made in respect of property on application by the law enforcement agency; and

(eb) the number of forfeiture orders made under Division 1 of Part 3 on application by the law enforcement agency and the estimated value of the property that is forfeited in each case; and".

(5) After section 139A(2) of the Principal Act insert —

"(2A) As soon as practicable after the end of each financial year, the DPP must submit a report to the Minister that includes the following information —

(a) the number of restraining orders and civil forfeiture restraining orders made in respect of property on application by the DPP; and

(b) the number of forfeiture orders made under Division 1 of Part 3 on application by the DPP and the estimated value of the property that is forfeited in each case; and

(c) the number of forfeitures occurring under Division 2 of Part 3 and the estimated value of the property that is forfeited in each case; and

(d) the number of civil forfeiture orders made under Division 2 of Part 4 and the estimated value of the property that is forfeited in each case.".

(6) In section 139A(3) of the Principal Act, for "(1) and (2)" substitute "(1), (2) and (2A)".'.

For **Hon. J. M. MADDEN** (Minister for Planning), Hon. M. P. Pakula (Minister for Public Transport) — I move:

That the Council insists on amendment 1 with which the Assembly have disagreed.

Motion agreed to.

For **Hon. J. M. MADDEN** (Minister for Planning), Hon. M. P. Pakula (Minister for Public Transport) — I move:

That the Council does not insist on amendment 2 with which the Assembly have disagreed.

Mr TEE (Eastern Metropolitan) — With the indulgence of the house I can confirm that there have been some discussions with the parties with a view to progress what has become an impasse between the Council and the Assembly, and I am pleased that those discussions have been fruitful. A way forward has been found which achieves a way to the openness and transparency sought by the parties in terms of the operation of the confiscation regime without unduly confining, constraining or diverting the resources of police and other agencies.

With that background, I can indicate to the house that the government will work with confiscation agencies, including asset confiscation operations, with a view to greater reporting on scheme outcomes. In particular the government will work with the asset confiscation operations in expanding its existing reporting on the scheme to include a breakdown of the funds realised under the scheme to include the following: the total number of forfeiture orders and the aggregate value of property forfeited; the total number of automatic forfeiture cases and the aggregate value of property forfeited; the total number of civil forfeiture orders and the aggregate value of property forfeited; and the total number of pecuniary penalty orders and the aggregate value paid under these orders. In addition, it is proposed that the information reported on the scheme by the asset confiscation operations could include the total number of restraining orders made and the total number of civil forfeiture restraining orders made.

As automatic forfeiture and civil forfeiture represent the most serious end of cases dealt with under the confiscation regime, these figures would provide a picture of the relative total value realised by the most serious cases. I should add that it is unlikely to be meaningful to provide a detailed breakdown of the 2000-plus forfeiture orders in the lower courts, which typically involve large numbers of low-value items taken out of the hands of criminals.

These reporting measures are likely to be achievable without imposing a substantial resourcing and administrative burden within the scheme. I thank the parties for the cooperation they have shown in relation to this matter and thank the house for its indulgence.

Ms PENNICUIK (Southern Metropolitan) — I thank Mr Tee for the assurances he has given that the reporting regime will be improved such that the community and Parliament will be able to, I presume through the annual reports of those agencies, have more detail about the breakdown of the nature and value of what has been confiscated under this confiscation bill as amended here today. That was my primary purpose in moving the amendments I first moved, and no doubt Mr Rich-Phillips will talk about his purpose in amending the amendments. Given the extensive and comprehensive assurances that, by way of Mr Tee, the government has outlined, we are prepared to support this motion.

Mr RICH-PHILLIPS (South Eastern Metropolitan) — In speaking to the minister's motion this evening, I indicate that we will not oppose the motion that the second amendment not be insisted on on the basis of the assurances that have been given by Mr Tee. As indicated in the second-reading debate and during the committee stage of debate on this bill, our concern was the lack of information available as to the number and value of assets that had been seized pursuant to orders under the confiscation regime. The intent of the amendments was to improve the disclosure of that information. We accept that assurances have now been given by the government with respect to a number of those matters, and I make an assumption that they will be dealt with by way of annual report. Accordingly we will not be opposing the motion moved by the minister.

Motion agreed to.

Ordered to be returned to Assembly with message intimating decision of house.

JUDICIAL COMMISSION OF VICTORIA BILL

Introduction and first reading

Received from Assembly.

Read first time for Hon. J. M. MADDEN (Minister for Planning) on motion of Mr Lenders.

ROAD SAFETY AMENDMENT (HOON DRIVING) BILL

Introduction and first reading

Received from Assembly.

Read first time for Hon. M. P. PAKULA (Minister for Public Transport) on motion of Mr Lenders.

FAIR TRADING AMENDMENT (AUSTRALIAN CONSUMER LAW) BILL

Statement of compatibility

For Hon. J. M. MADDEN (Minister for Planning), Mr Lenders 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 Fair Trading Amendment (Australian Consumer Law) Bill 2010.

In my opinion, the Fair Trading Amendment (Australian Consumer Law) 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 apply the Australian Consumer Law as a law of Victoria by:

> inserting the relevant application provisions into the Fair Trading Act 1999;
>
> repealing provisions of the Fair Trading Act 1999 that are superseded by that law; and
>
> making consequential and other amendments to the Fair Trading Act 1999 and other acts.

The Australian Consumer Law delivers on the Council of Australian Governments national partnership agreement to deliver a seamless national economy and the intergovernmental agreement for the Australian Consumer Law. These agreements commit all Australian governments to apply and implement the Australian Consumer Law by the end of 2010.

The Australian Consumer Law was enacted on 24 June 2010 as a schedule to the existing Trade Practices Act 1974 (cth), which was renamed as the Competition and Consumer Act 2010 (cth).

Once applied as a law of the states and territories, the Australian Consumer Law will:

> replace nine existing state, territory and federal schemes for regulating unfair practices with a single national consumer law for Australia, based on the consumer protection provisions of the Trade Practices Act 1974 (cth);
>
> introduce unfair contract terms laws covering standard form contracts, based on the existing approach in the Fair Trading Act 1999 (Vic);
>
> replace nine existing state, territory and federal product safety schemes with a single product safety framework;
>
> introduce a reporting requirement for suppliers to notify the appropriate safety regulator when it becomes aware of consumer goods it has supplied that have been associated with a serious injury or death;
>
> introduce a threshold for product safety bans and product recalls;
>
> replace nine existing state, territory and federal schemes on implied conditions and warranties with a single scheme based around consumer guarantees;
>
> replace core enforcement powers and remedies in all jurisdictions with a common set of core powers;
>
> replace existing civil penalty levels for consumer protection breaches in all jurisdictions with harmonised penalty amounts;
>
> introduce new powers for courts to order redress for non-party consumers affected by breaches of the Australian Consumer Law; and
>
> introduce other provisions drawing on best practice in state and territory laws.

Human rights issues

The right to privacy — section 13 of the charter

Section 13 of the charter provides that a person has the right not to have his or her privacy unlawfully or arbitrarily interfered with.

Clause 9

Clause 9 of the bill applies the Australian Consumer Law as a law of Victoria. Consequently, I have considered the charter compatibility of the sections of the Australian Consumer Law.

Section 129 of the Australian Consumer Law provides that a responsible minister may publish on the internet a safety warning notice about certain goods or services providing that the goods or services are under investigation to determine whether they will or may cause injury. Section 223 provides that the regulator may issue a public warning notice containing a warning about the conduct of a person if the regulator has reasonable grounds to suspect that the conduct may constitute a contravention of chapters 2, 3 or 4 and the regulator is satisfied that one or more persons may have suffered detriment as a result of the conduct and that it is in the public interest to issue the notice.

The issuance of public warnings under these sections engages the right to privacy and reputation as such notices could impact on the reputation of an individual. As these sections do not authorise an unlawful attack on a person's reputation, and the power in sections 129 and 223 can only be used where there are reasonable grounds to suspect that a contravention has occurred, and in circumstances where members of the public may have suffered detriment, I consider that these sections do not limit section 13 of the charter. However, even if these sections did constitute a limit to section 13 of the charter, it would be justifiable on the basis that it is necessary to issue the notice in the public interest to prevent further detriment from occurring as a result of contraventions.

Additionally, clause 9 of the bill inserts a new subsection 9(1)(c) into the Fair Trading Act 1999 (Vic), which confirms that the Australian Consumer Law is a part of the Fair Trading Act 1999 (Vic). Therefore, certain powers under the Fair Trading Act 1999 (Vic) relating to the administration and enforcement of that act, also apply to the administration and enforcement of the Australian Consumer Law. Accordingly, in this statement I have considered the charter compatibility of the relevant sections in parts 7, 8, 9, 10, 11 and 12 which will now extend to the administration or enforcement of the Australian Consumer Law in Victoria. Clause 45 of the bill makes clear that some of the powers in the Fair Trading Act 1999 (Vic) do not apply with respect to the administration or enforcement of the Australian Consumer Law in Victoria, so I have not considered those provisions against the charter.

Section 113A of part 9 of the Fair Trading Act 1999 (Vic) provides that a person may apply to the Victorian Civil and Administrative Tribunal for an order requiring the director to provide the full name and address of a supplier who is not registered or licensed or whose details are not contained on any public register established under a business licensing act or other act. The tribunal may make the order if it is satisfied that it is just and convenient to do so. I do not consider that this section limits the right to privacy as it is unlikely that a supplier engaged in commercial activity would have an expectation of privacy in relation to such information. Further, given that the tribunal will only order the provision of the information if it is just to do so, the disclosure will also not be arbitrary.

Section 119 of part 10 of the Fair Trading Act 1999 (Vic) provides that if an inspector believes on reasonable grounds that a person has contravened either the Fair Trading Act 1999 (Vic) or the Australian Consumer Law the inspector may, with the consent of the occupier of the premises, enter and search the premises; seize anything found on the premises which the inspector believes to be connected with the alleged contravention; and examine and take samples of any goods found on the premises that the inspector believes on reasonable grounds to be connected with the alleged contravention or make any still or moving image or audiovisual recording that the inspector believes is necessary for the purpose of establishing the alleged contravention. In relation to a document on the premises, the inspector may require the document to be produced for examination; examine, make copies or take extracts from the document; or remove the document for so long as is reasonably necessary to make copies or take extracts from the document.

Given that such a search can only occur with the consent of an occupier and that the search will relate to commercial information rather than private information, in my view this section does not interfere with an occupier's privacy.

Section 121, as amended by clause 26, provides that if an inspector believes on reasonable grounds that there is evidence on the premises of goods being supplied from the premises which are dangerous if used or which are being supplied in contravention of an interim ban order or a permanent ban order, the inspector may enter and search the premises at any time. The inspector may seize goods found on the premises and require the production and examination of documents.

As section 121 will only apply where an emergency entry by an inspector is necessary, any interference with privacy that may occur as a result of the entry will be lawful and not arbitrary. Accordingly, section 121 is compatible with section 13 of the charter.

Section 121A provides that, for the purpose of monitoring compliance with either the Fair Trading Act 1999 (Vic) or the Australian Consumer Law, an inspector may enter and search a premises at which the inspector believes on reasonable grounds a person is conducting a business or supplying goods or services or the person is keeping a record or document that is required to be kept by either the Fair Trading Act 1999 (Vic) or the Australian Consumer Law or that may show whether or not either the Fair Trading Act 1999 (Vic) or the Australian Consumer Law has been complied with. An inspector may examine anything found on the premises; take and keep samples of anything found on the premises; seize or secure anything found on the premises; and examine or test any equipment found on the premises. In the case of any document found on the premises, the inspector can require the document to be produced; examine and make copies of the document and remove the document for so long as is reasonably necessary to make copies.

Section 121A(2) provides that an inspector must not exercise this power in any part of the premises that is used for a residential purpose, or except between the hours of 9.00 a.m. to 5.00 p.m., or when the premises are open for business.

If an inspector exercises a power of entry under section 121A without the owner or occupier being present, the inspector must leave a notice specifying the time of entry, the purpose of entry, a description of the things done while on the premises, the time of departure and the procedure for contacting the director for further details.

In my view, while the exercise of the search power by an inspector under section 121A may interfere with the privacy of an individual in some cases, any such interference will not be arbitrary given that the power will only be exercised for the purpose of monitoring compliance, and the power will not be exercised in relation to residential premises.

Section 122 provides that an inspector may apply to a magistrate for the issue of a search warrant in relation to particular premises if the inspector believes on reasonable grounds that there is on the premises evidence that a person or persons may have contravened either the Fair Trading Act 1999 (Vic) or the Australian Consumer Law. Since an inspector can obtain a warrant if he or she has reasonable grounds to believe a contravention has occurred, and the warrant must be issued by a magistrate, any interference of privacy occasioned through the operation of this provision will be lawful and not arbitrary.

Section 148 provides that the director must maintain a register of undertakings. The register of undertakings includes the following information: the name and address of the person who gave the undertaking; the date of the undertaking and a copy of the undertaking. The register of undertakings may be inspected by any person at any reasonable time without charge. Undertakings are provided in accordance with section 46. A person may withdraw or vary their undertaking at any time if the person has first obtained the consent of the director. Clause 32 of the bill

provides that section 148 applies to undertakings made under section 218 of the Australian Consumer Law.

By authorising the placing of information such as a person's name and address on a publicly accessible register, section 148 interferes with privacy. However, given that this section operates in a clear and easily understood manner, and that there is scope for a person to withdraw or vary their undertaking, I consider that this interference is not arbitrary. Accordingly, section 148 is compatible with section 13 of the charter.

Clause 24

Clause 24 of the bill will insert a new section 106P into the Fair Trading Act 1999 (Vic), which provides that the director may enter into, or approve of, an arrangement with a relevant agency for the purposes of sharing or exchanging information held by the director and the relevant agency.

The information to which an information-sharing arrangement may relate is limited to information concerning investigations, law enforcement, assessment of complaints, licensing or disciplinary matters, or probity assessments and reference checks concerning persons who provide, or propose to provide, goods or services to consumers, as well as any other information concerning the interests of consumers or any other information of a prescribed kind.

Under an information-sharing arrangement, the director and relevant agency are authorised to request and receive information held by the other party to the arrangement and disclose information to the other party, but only to the extent that the information is reasonably necessary to assist in the exercise of functions under this act or any other act administered by the minister or the functions of the relevant agency concerned.

In my view this section will not lead to any interference with privacy, as any disclosure of personal information authorised by this section will only occur to the extent necessary to carry out the director's legal functions. Accordingly, any disclosure of personal information under this clause will be lawful.

Additionally, given that the disclosure can only occur where it is reasonably necessary, and that the director or other relevant body must comply with the charter when making such a disclosure, in my view any such disclosure will not be arbitrary. Consequently, I consider that clause 24 is compatible with section 13 of the charter.

The right to property — section 20 of the charter

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.

Clause 9

Clause 9 of the bill applies the Australian Consumer Law as a law of Victoria. Sections 41, 42, 43, 85, 109, 114, 122 and 232, as well as part 3-5, of the Australian Consumer Law will therefore engage the right to property.

Section 41 provides that, if a person supplies unsolicited goods to another person, the other person is not liable to make any payment for the goods and is not liable for loss or damage to the goods, other than loss or damage arising from a wilful and unlawful act. Following the end of the recovery period, the sender is not entitled to take action to recover the goods.

Section 42 provides that if a person supplies unsolicited services to another person, the other person is not liable to make any payment for the services. Section 43 provides that a person must not assert a right of payment from another person for placing an unauthorised advertisement in a publication. Both of these sections could lead to a loss of income.

Section 85 provides that goods become the property of a consumer if the relevant supplier does not collect the goods from the consumer within 30 days after the termination of the contract where the consumer gives notice to the supplier.

Section 109 provides that a responsible minister may impose an interim ban on consumer goods or on product-related services. Section 114 provides that the commonwealth minister may impose a permanent ban on consumer goods or product-related services. Both of these sections may lead to the deprivation of property, since the issuance of a ban by a minister may lead to the loss of income.

Section 122 provides for the compulsory recall of consumer goods in certain circumstances. This could also potentially lead to a loss of income.

Part 3-5 of chapter 3 of the Australian Consumer Law contains provisions relating to the liability of manufacturers for goods with safety defects and provides for the circumstances in which persons may recover amounts for loss or damages against manufacturers.

Section 232 provides that the court may grant an injunction requiring a person to refund money, transfer property, and destroy or dispose of goods.

While these sections may result in the deprivation of property, any such deprivation will occur as a result of powers conferred by legislation and will not occur in an arbitrary manner, given that the provisions are confined and clearly formulated. Consequently, these sections and part 3-5 are compatible with the right to property.

Clause 9 of the bill also provides that certain powers under the Fair Trading Act 1999 (Vic) will apply to the Australian Consumer Law.

Sections 106J, 117, 121 (as amended by clause 21 of the bill), 121A, 122, 125, 126, 126A (as amended by clause 26 of the bill), 128, 129A and 130 of the Fair Trading Act 1999 (Vic) relate to the seizure of goods and documents and the taking of samples. These sections may potentially result in the deprivation of property of an individual. However, to the extent that any deprivation does occur, it will do so through the use of the clearly formulated and reasonable powers in these sections, and so will not be unlawful. Consequently, these provisions are compatible with section 20 of the charter.

Clause 29

Clause 29 of the bill substitutes section 129A(1) of the Fair Trading Act 1999 (Vic) to provide that the director may apply to a court for an order permitting the destruction of goods seized by an inspector.

As any deprivation of property which occurs as a result of the operation of this provision will occur by way of a court order, it will be in accordance with law. Accordingly, clause 29 is compatible with section 20 of the charter.

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

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 9

Evidential onuses

Sections 151(1)(e) and (f) of the Australian Consumer Law provide that a person commits an offence if the person makes a false or misleading representation that purports to be a testimonial by any person relating to goods or services or makes a false or misleading representation concerning a testimonial by any person or a representation that purports to be such a testimonial. Section 151(2) provides that, for the purpose of applying subsection (1) in relation to a proceeding concerning a representation of a kind referred to in subsection (1)(e) or (f), the representation is taken to be misleading unless evidence is adduced to the contrary. Section 151(3) provides that section 151(2) does not have the effect of placing on any person an onus of proving that the representation is not misleading.

Accordingly, section 151 imposes an evidential onus on a defendant to adduce evidence that rebuts a presumption that a representation is misleading.

Sections 154(3), 158(8), 161(2), 166(3), 166(5), 170(2), 172(4), 189(2), 190(2), 194(4), 197(4), 205(2) and 206(2) are all exceptions to offences. These sections arguably place an evidential onus on a defendant to raise these exceptions to the relevant offences.

Section 163(1) provides that a person commits an offence if the person asserts a right to payment from another person of a charge for placing, in a publication, an entry or advertisement relating to the other person, or the other person's business. Section 163(6) provides that a person is not taken for the purposes of section 163(1) to have authorised the placing of the entry or advertisement unless a document authorising the placing of the entry or advertisement had been signed off by the person and a copy of the document was given to the person before the right to payment is asserted, and the document specifies, amongst other things, the name and address of the person publishing the entry or advertisement.

In my view, none of the above sections impose a legal burden on a defendant. The provisions do 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 elements of the relevant offences.

Courts in other jurisdictions have generally taken the approach that an evidential onus on an accused does not limit the presumption of innocence. Additionally, the above exceptions and defences are based on matters which are peculiarly within the knowledge of the relevant defendant and which only a defendant would be cognisant of, given the fact that any defendant accused of committing a relevant offence would be participating in commercial activities regulated by the Australian Consumer Law. Consequently, even if these sections were found to limit the right to be presumed innocent in section 25(1) of the charter through imposing evidential onuses on defendants, the limitation would be reasonable and justifiable under section 7(2) of the charter.

For these reasons, I consider that it is appropriate for an evidential burden to be placed on a defendant in this instance.

There are also several civil penalty provisions which impose evidential onuses, namely sections 4 (where a person must adduce evidence that he or she had reasonable grounds for making a representation, otherwise the representation is taken to be misleading); 29 (where a representation is taken to be misleading unless evidence is adduced to the contrary); and 70 (which provides for circumstances where, in proceedings relating to a contravention, an agreement or proposed agreement is presumed to be an unsolicited consumer agreement). These provisions potentially impose pecuniary penalties on individuals. As the pecuniary penalties potentially imposed are civil debts in the form of orders made in civil proceedings against the person, a person will not be imprisoned for a failure to discharge the debt. Accordingly, in my view these provisions do not relate to criminal offences and thus do not engage the right to be presumed innocent in the charter.

Legal onuses

The following sections of the Australian Consumer Law all place a legal onus on defendants by requiring them to prove, on the balance of probabilities, the relevant defences and exceptions:

> section 157 (which is a defence to the offence of bait advertising);
>
> section 162 (the offence provision will not apply if the person proves that he or she had reasonable cause to believe that there was a right to the payment or charge);
>
> section 163 (the offence provision will not apply if the person proves that he or she knew that the other person authorised the placing of an entry or advertisement);
>
> section 207 (which is a defence to a number of strict liability offence provisions in chapter 4 of the Australian Consumer Law);
>
> section 208 (which is a defence in relation to a chapter 4 offence if the defendant proves that the contravention was due to the act or default of another person and the defendant took reasonable precautions and exercised due diligence to avoid the contravention);
>
> section 209 (it is a defence in relation to a chapter 4 offence if the defendant proves that the defendant did

not know that the publication of an advertisement would amount to a contravention);

section 210 (it is a defence in relation to a chapter 4 offence if the defendant proves that the defendant could not have known that the relevant goods did not comply with the relevant safety or information standard); and

section 211 (it is a defence in relation to a chapter 4 offence if the defendant proves that the defendant could not have known that the relevant services did not comply with the relevant safety or information standard).

Sections 157, 207, 208, 209, 210 and 211 require defendants to prove certain things in order to make out the relevant defence, and sections 162 and 163 require a defendant to prove something in order to be exempt from the application of the relevant provision.

By placing a burden of proof on a defendant, these provisions limit the right to be presumed innocent in section 25(1) of the charter. However, I consider that the limits upon the right are reasonable and justifiable in a free and democratic society for the purposes of section 7(2) of the charter having regard to the following factors.

(a) The nature of the right being limited

The right to be presumed innocent is an important right that has long been recognised well before the enactment of the charter. However, the courts have held that it may be subject to limits, particularly where, as here, the relevant offences are public welfare offences of a regulatory nature; and the defences and exceptions are enacted for the benefit of defendants so that they can escape liability in certain circumstances.

(b) The importance of the purpose of the limitation

The purpose of imposing a legal burden is to ensure the effectiveness of enforcement and compliance with the bill by enabling the offences to be effectively prosecuted and to thus operate as an effective deterrent and protection of the public.

The defences and the associated legal burdens reflect a policy of imposing obligations upon persons who engage in consumer activity to ensure compliance with the act. It is intended to make persons responsible for any breaches that occur, not just deliberate breaches. However, in order to avoid overly harsh consequences, defences are provided to enable persons to escape liability for breaches where they are able to establish that the breach genuinely occurred in circumstances beyond their control, such as where they did not and could not know of the facts or where they took all reasonable steps to prevent a breach.

The defendants seeking to rely on these defences will be persons who engage in trade or commerce, and who are in the business of providing consumer goods or services. Therefore, they should be well aware of the regulatory requirements and, as such, should have processes and systems in place that enable them to effectively meet these requirements, including maintaining proper financial records and associated documents which would enable defendants to prove the elements of the relevant defence, or to access the relevant exception. In addition, most of the defences relate to states of knowledge or belief that are solely within the knowledge of the accused, or establishing due diligence. Conversely, it would be difficult and onerous for the Crown to investigate and prove these elements beyond reasonable doubt. Therefore, it is appropriate for the burden to rest with the defendant.

(c) The nature and extent of the limitation

The burden of proof is imposed in respect of defences and exceptions. The prosecution would first have to establish the relevant elements of the offences.

Additionally, the offences under chapter 4 of the Australian Consumer Law are not punishable by way of imprisonment — the maximum penalty for offences under chapter 4 is $220 000, which is not unduly harsh given that the penalties are imposed for the purposes of protecting consumers.

(d) The relationship between the limitation and its purpose

The imposition of a burden of proof on the defendant is directly related to the purpose of enabling the relevant offence to operate as an effective deterrent while also providing suitable defences and exceptions in circumstances where the contravention was not deliberate. A legal burden is imposed to avoid evidentiary problems that may arise, particularly where the relevant facts are within the knowledge of the accused, and which may lead to a loss of convictions.

(e) Less restrictive means reasonably available to achieve the purpose

Although an evidential onus would be less restrictive upon the right to be presumed innocent, it would not be as effective because it could be too easily discharged by a defendant. The inclusion of a defence with a burden on the accused to prove the matters on the balance of probabilities achieves an appropriate balance of all interests.

There are also several civil penalty provisions which impose legal onuses, namely:

section 40 (where a person bears the onus of proving that the person had reasonable cause to believe that there was a right to the payment or charge);

section 43 (where a person bears the onus of proving that the person knew or had reasonable cause to believe that the person against whom a right to payment was asserted had authorised the placing of the relevant entry or advertisement);

section 106 (where a defendant bears the onus of proving that the defendant's manufacture, possession or control of goods was not for the purpose of supplying the goods (other than for export) in relation to proceedings under part 5-2 in contravention of a safety standard);

section 118 (where a defendant bears the onus of proving that the defendant's manufacture, possession or control of goods was not for the purpose of supplying the goods (other than for export) in relation to proceedings under part 5-2 in contravention of a ban);

section 136 (where a defendant bears the onus of proving that the defendant's manufacture, possession or control of goods was not for the purpose of supplying such goods);

section 251 (it is a defence if the defendant proves that the defendant did not know that the publication of an advertisement would amount to a contravention);

section 252 (it is a defence if the defendant proves that either the defendant did not know that the consumer goods did not comply with a safety standard or that the defendant relied on, in good faith, a representation by the person from who the defendant acquired the goods);

section 253 (it is a defence if the defendant proves that either the defendant did not know that the services did not comply with a safety standard or that the defendant relied on, in good faith, a representation by the person from who the defendant acquired the services from).

These provisions potentially impose pecuniary penalties on individuals. As discussed above, the pecuniary penalties potentially imposed are civil debts in the form of orders made in civil proceedings against the person and thus do not engage the right to be presumed innocent in the charter.

Accordingly, the above sections of the Australian Consumer Law are compatible with the right to be presumed innocent in section 25(1) of the charter.

The right to freedom of expression — section 15

Section 15 provides that every person has the right to freedom of expression, which includes the freedom to impart information and ideas of all kinds. The right has also been held to include the right not to impart information.

Imparting information

Clause 9

Several sections of the Australian Consumer Law engage the right to freedom of expression, including:

section 66 (the commonwealth minister may determine in writing that suppliers are required to display guarantees);

section 73 (a dealer must not call on a person for the purposes of negotiating an unsolicited consumer agreement on certain days and at certain times);

section 74 (a dealer must advise a person that the dealer is obliged to leave the premises on request and also provide to the person such information relating to the dealer's identity as is prescribed by the regulations);

section 75 (if a prospective consumer makes a request, the dealer must not contact the prospective consumer);

section 78 (the dealer must give a copy of an agreement to the consumer);

section 79 (the supplier must ensure that an unsolicited consumer agreement contains certain information);

section 88 (a person must not place a consumer's name on a list of defaulters);

section 96 (a supplier who is party to a lay-by agreement must give a copy of the agreement to the consumer);

section 100 (a supplier must provide a consumer with proof of a transaction for goods or services exceeding $75);

section 101 (a supplier must give a consumer an itemised bill when requested);

section 125 (a person who has supplied goods to a person outside of Australia must give that person written notice if the goods are compulsorily recalled);

section 128 (a person who has supplied goods to a person outside of Australia must give that person written notice if the goods are compulsorily recalled);

section 131 (if a supplier of goods becomes aware of the death, serious injury or illness of any person and that the death, serious injury or illness was caused or may have been caused by the use or misuse of the relevant goods, the supplier must give the commonwealth minister written notice that identifies the goods and includes information regarding the death, serious injury or illness);

section 132 (if a supplier of services becomes aware of the death, serious injury or illness of any person and that the death, serious injury or illness was caused or may have been caused by the use or misuse of the relevant goods, the supplier must give the commonwealth minister written notice that identifies the services and includes information regarding the death, serious injury or illness);

section 132A (where a person is prohibited from disclosing any information in a notice issued under sections 131 or 132);

section 134 (the commonwealth minister may issue an information standard which requires the provision of information about goods or services, or provide that information about goods and services is not to be provided);

section 148 (a person seeking to defend a defective goods action, on the basis that there was compliance with a commonwealth mandatory standard for the goods, must give the commonwealth the prescribed notice);

section 171 (it is an offence to fail to clearly advise a person that a dealer's purpose is to seek the person's agreement to the supply of goods or services concerned and to advise the person that the dealer is obliged to leave the premises immediately on request and to produce relevant information regarding the dealer's identity);

section 173 (it is an offence to not provide a person with information regarding the person's right to terminate a consumer agreement);

section 174 (a dealer must provide a copy of a negotiated unsolicited sales agreement to a consumer);

section 175 (an unsolicited consumer agreement must set out certain information, including the supplier's name and address);

section 176 (agreements not negotiated by telephone must set out the supplier's name and address);

section 219 (the regulator may give a person notice requiring a person to provide information or produce documents); and

section 246(2)(c) and (d) (the court may order a person to disclose such information as specified in the order and the court may order the person to publish an advertisement).

The assistance of those engaged in a variety of commercial activities that are regulated by the Fair Trading Act 1999 (Vic) and the Australian Consumer Law is necessary to conduct investigations into whether or not the regulatory obligations on such persons are being complied with. This duty to assist is co-extensive with the other obligations imposed upon these individuals.

These provisions enable appropriate oversight and monitoring of compliance with the Fair Trading Act 1999 (Vic) and the Australian Consumer Law, and are reasonably necessary to ensure individuals who choose to participate in commercial activities regulated by the Fair Trading Act 1999 (Vic) and the Australian Consumer Law are acting in accordance with their obligations and responsibilities, which have been designed to protect consumers. Therefore, to the extent that freedom of expression is engaged, these provisions fall within the exceptions to the right in section 15(3) of the charter, as reasonably necessary to respect the rights of other persons, or for the protection of public order.

Clause 9 of the bill also provides that certain powers under the Fair Trading Act 1999 (Vic) will apply to the Australian Consumer Law. Section 106A of the Fair Trading Act 1999 (Vic) provides that the director may require a person who publishes a statement to provide the director with proof of any claim or representation made in the statement.

Section 106HA of the Fair Trading Act 1999 (Vic) provides that the director may require a person who the director believes is capable of providing information or producing documents that may assist the director in monitoring compliance with the act to provide the director with information and documents.

Section 117 of the Fair Trading Act 1999 (Vic) provides that if an inspector believed a person has contravened either the Fair Trading Act 1999 (Vic) or the Australian Consumer Law, the inspector may apply to the Magistrates Court for an order requiring any person at a time and a place specified by an inspector to answer questions, to supply information or to produce specified documents.

Section 118 provides that the director or an inspector may require a person who is the publisher of a publication to produce to the director or an inspector specified information which is required by the act to be kept or which has been published by the publisher.

Section 126B provides that an inspector may apply to the Magistrates Court for an order requiring an owner of a thing to which an embargo notice under section 126 relates, or the occupier of a premises where the thing is kept, to answer questions or produce documents at a time and place specified by the inspector.

Section 131 provides that an inspector exercising a power of entry under this part may require the occupier of a premises, or an agent or employee of an occupier, to give information to the inspector; produce documents and give reasonable assistance to the inspector.

These provisions enable appropriate oversight and monitoring of compliance with the Fair Trading Act 1999 (Vic) and the Australian Consumer Law, and are reasonably necessary to ensure individuals who choose to participate in commercial activities regulated by the Fair Trading Act 1999 (Vic) and the Australian Consumer Law are acting in accordance with their obligations and responsibilities, which have been designed to protect consumers. Therefore, to the extent that freedom of expression is engaged, these provisions fall within the exceptions to the right in section 15(3) of the charter, as reasonably necessary to respect the rights of other persons, or for the protection of public order.

Clause 20

Clause 20 of the bill inserts a new section 102C into part 7 of the Fair Trading Act 1999 (Vic) which applies where a court makes an order for amounts to be paid into the Victorian Consumer Law Fund. This section provides that the order issued by the court must require notice to be given to non-party consumers. This section may engage the right to freedom of expression by requiring the provision of information. However, as the provision of information under this section is necessary for enabling payments to be made from the Victorian Consumer Law Fund, this section falls within the exceptions to the right in section 15(3) of the charter, as reasonably necessary to respect the rights of other persons, or for the protection of public order.

Other activities

Section 109 of the Australian Consumer Law, which will apply as Victorian law by virtue of clause 9 of the bill, provides that a responsible minister may impose an interim ban on consumer goods or product-related services of a particular kind. Similarly, section 114 provides that the commonwealth minister may impose a permanent ban on consumer goods or product-related services of a particular kind. Section 118 provides that a person must not supply goods in certain circumstances which are subject to a ban and section 119 provides that a person must not supply product-related services in certain circumstances which are subject to a ban. Similarly, sections 106 and 107 provide that a person must not supply goods or services that do not comply with relevant safety standards, and sections 136 and 137 provide that a person must not supply goods or services where he or she has not complied with a relevant information standard.

Section 232 of the Australian Consumer Law provides that the court may grant an injunction restraining a person from carrying on a business.

Additionally, sections 47, 48, 49 and 50 of the Australian Consumer Law all place certain restrictions on the manner in which persons can engage in trade and commerce. Section 86 also provides that the supplier under an unsolicited agreement must not supply to the consumer under the agreement, or accept any payment, or require any payment in connection with those goods or services during the period of 10 business days starting from the day on which the agreement was made, which also impacts upon a person's ability to carry on his or her business. Section 93 restricts the supplier under an unsolicited agreement from enforcement of the agreement if a provision of division 2 of part 3-2 of the Australian Consumer Law has been contravened.

Section 106D of the Fair Trading Act 1999 (Vic), which will apply to the provisions of the Australian Consumer Law by virtue of clause 9, provides that the director may suspend a licence by notice in writing to the licensee. Section 106B of the Fair Trading Act 1999 (Vic) provides that the director may require a supplier to show cause why the supplier should be allowed to continue carrying on the business of supplying goods or services. Additionally, section 154 provides that a court may make certain orders, including orders prohibiting payment; preventing a person from parting with possessions, or transferring or encumbering, any of the person's money or property; or an order prohibiting the taking, sending or transfer of other property.

Item 2(3) of the schedule of the bill provides that section 221S(1)(e) of the Building Act 1993 (Vic) is amended to provide that the commission may refuse to license or register a person who has been convicted of an offence against section 12, 16, 17, 18, 20 or 22 of the Fair Trading Act 1999 (Vic); section 10, 11, 12, 17, 19 or 21 of the Fair Trading Act 1999 (Vic); section 29, 33, 34, 35, 36, 50, 151, 157, 158 or 168 of the Australian Consumer Law; or section 53, 55, 55A, 56, 58 or 60 of the Trade Practices Act 1974 (cth). Similarly, item 2(4) amends section 221ZD(2)(e) of the Building Act 1993 (Vic) to provide that the commission may refuse to renew the licence or registration of a person who has been convicted of an offence against those same sections.

All of these sections may interfere with an individual's ability to carry on his or her business and related commercial enterprises, which could potentially limit an individual's right to freedom of expression, to the extent that such interferences restricted an individual's ability to communicate ideas and information.

Commercial expression has been found to be protected on the grounds that the right to freedom of expression does not apply solely to certain types of information or ideas or forms of expression (see *Markt Intern and Beermann v. Germany* (1989) 12 EHRR 161, paras 25–26). However, commercial expression is treated as being of less importance than either political or artistic expression. Restrictions on commercial expression will generally be subject to less scrutiny on the basis that commercial expression serves a private, rather than a public, interest.

In light of this, and the fact that the purpose of the above provisions is to protect consumers from dangerous goods or services, or from traders engaging in non-compliant trading activity, in my view the above provisions do not limit the right to freedom of expression. Rather, the provisions fall within the exceptions to the right in section 15(3) of the charter, as reasonably necessary to respect the rights of other persons, or for the protection of public order.

The right to freedom of movement — section 12

Section 12 of the charter provides that every person lawfully within Victoria has the right to move freely within Victoria.

Section 172 of the Australian Consumer Law, which applies by virtue of clause 9 of the bill, provides that a dealer commits an offence if the dealer calls on a person for the purpose of negotiating an unsolicited consumer agreement and does not leave the premises immediately on request of the occupier of the premises or the person with whom the negotiations were being conducted.

Given that section 172 relates to private premises, in my view it does not engage the right to freedom of movement.

The right to protection against self-incrimination — sections 24(1) and 25(2)(k)

Section 25(2)(k) of the charter provides that a person who has been charged with a criminal offence has the right not to be compelled to testify against himself or herself or to confess guilt. This right is also an aspect of the right to a fair trial protected by section 24 of the charter. The decision in *Re Application under the Major Crime (Investigative Powers) Act 2004* [2009] VSC 381 holds that this right, as protected by the charter, is at least as broad as the privilege against self-incrimination protected by the common law. It 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.

Clause 9

Clause 9 of the bill applies the Australian Consumer Law as a law of Victoria. Several sections of the Australian Consumer Law engage the right to protection against self-incrimination. These include sections 205 (a person must comply with a substantiation notice unless the information or production of the document might tend to incriminate the person or expose the person to a penalty); 221 (a person who is given a substantiation notice must comply with it within the compliance period for the notice unless the information or production of a document might tend to incriminate the individual or to expose the individual to a penalty); and 225 (evidence of information given or evidence of the production of documents is not admissible in criminal proceedings against the individual if the individual previously gave the evidence or produced the documents in proceedings for an order under section 224 for a consumer protection breach and the conduct alleged to constitute the offence is substantially the same as the conduct that was claimed to constitute the consumer protection breach).

In my view, the protections contained in each of the above sections are sufficient to protect a person from being required to testify against himself or herself. Accordingly, these provisions do not limit the right to protection against self-incrimination in the charter.

Section 248 provides that a court may, on application of the regulator, make an order disqualifying a person from

managing corporations for a period that the court considers is appropriate. Section 249 provides that a person cannot refuse to answer a question or refuse to produce a document on the basis that to do so would expose the person to an order under section 248. In my view, section 248 does not constitute a criminal penalty and therefore does not engage sections 24 and 25(2)(k) of the charter.

Clause 9 of the bill also provides that certain powers under the Fair Trading Act 1999 (Vic) will apply to the Australian Consumer Law by virtue of the Australian Consumer Law forming part of the Fair Trading Act.

Part 8 of the Fair Trading Act 1999 (Vic)

Section 106HA of the Fair Trading Act 1999 (Vic) provides that the director may by notice in writing require a person who the director believes is capable of providing information or producing documents that may assist the director in monitoring compliance with the act to provide the director with information and documents. It is an offence to refuse or fail to comply with the notice, punishable by 20 penalty units, or $2389. A person is not excused from answering a question, providing information or producing or permitting the inspection of a document on the ground that the answer, information or document may tend to incriminate the person. Consequently, section 106HA abrogates the privilege against self-incrimination. Section 106HA(3) provides a direct use immunity, in stating that the answer by a person to any question asked in a notice under this section or the provision by a person of any information or the production by any person of a document in compliance with a notice under this section is not admissible in evidence against the person in any proceedings other than proceedings under this section.

Section 106HA consequently limits the protection against self-incrimination as a person who is compelled to provide information to the director is not protected against the indirect use of that information in future criminal proceedings.

Section 106I of the Fair Trading Act 1999 (Vic) provides that, if the director believes that a person is capable of providing information, producing documents or giving evidence relating to a matter that constitutes, or may constitute, a contravention of the act, the director may give notice requiring that person to provide the director with information or documents, or to appear before the director and give evidence. The director may require the evidence to be given on oath or affirmation. It is an offence to refuse or fail to comply with a notice, punishable by 60 penalty units, or $7167. A person is not excused from answering a question, providing information or producing or permitting the inspection of a document on the ground that the answer, information or document may tend to incriminate the person. Consequently, section 106I abrogates the privilege against self-incrimination. However, section 106I(5) provides a direct use immunity, in stating that the answer by a person to any question asked in a notice under this section or the provision by a person of any information or the production by any person of a document in compliance with a notice under this section is not admissible in evidence against the person in any criminal proceedings other than proceedings under this section.

The immunity provided in both these sections does not apply to 'derivative' use, which is when, as a result of the compelled statement, further evidence is uncovered that incriminates the maker of the statement. This means that such further evidence is permitted to be used in a criminal prosecution against the person which thus arguably limits the right against self-incrimination.

However, I am of the view that any such limitation is reasonable under section 7(2) of the charter for the following reasons.

(a) The nature of the rights being limited

As outlined above, Chief Justice Warren in *Major Crime* held that the right not to be compelled to incriminate oneself as protected by sections 25(2)(k) and 24(1) of the charter covers information obtained from a person either prior to or after a charge is laid. Her Honour held that the self-incrimination privilege extends to include both direct use and derivative use immunity. 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.

However, 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.

(b) The importance of the purpose of the limitation

The statutory purpose underlying the limits to the right against self-incrimination is to enable the director to monitor compliance with the Fair Trading Act 1999 (Vic) and the Australian Consumer Law, as well as to investigate potential contraventions. The effective monitoring of compliance with these acts, and the investigation of potential contraventions of the acts, are both activities necessary to adequately protect consumers from detriment through non-compliance with, or contravention of, the regulatory scheme.

The availability of a derivative use immunity to counter the director's compulsory information-gathering powers is too great a forensic advantage to provide to the person being required to provide information. This would enable such persons to extract a considerable forensic benefit by providing the director with information through ensuring that any information, document or other thing derived directly or indirectly from the information they provided would be rendered inadmissible in any later criminal or penalty-exposing proceedings against them. This would limit the director's ability to effectively monitor compliance and investigate potential contraventions. The director would potentially be reluctant to question persons early (or at all) who may be suspected of non-compliance with, or contraventions of, the regulatory scheme, given the possibility of these persons attempting to make themselves prosecution-proof by volunteering information during questioning under this section.

A derivative use immunity would also place an excessive and unreasonable burden on the prosecution to prove that any item of evidence it sought to tender in a criminal trial against a person who had claimed derivative use immunity was not obtained either directly or indirectly from the questioning of a person under these sections. This would

unduly complicate trials and generate separate hearings to determine when, and from what sources, particular information was obtained.

(c) The nature and extent of the limitation

As outlined above, the provision compels a person who the director believes is capable of providing information or producing documents that may assist the director in monitoring compliance with the act and the Australian Consumer Law, or in relation to a contravention of the act and the Australian Consumer Law, to answer and provide information and documents (or to give evidence in relation to section 106I) to the director even if it may tend to incriminate that person. While the provision prevents an answer from being admissible in evidence against a person in a criminal proceeding (in the case of section 106I), or any proceeding (in the case of section 106HA), there is no protection against the subsequent use of this information to assist with the further investigation of the person.

Here, the aspect of the right at issue relates to the use of derivative evidence. While this 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. 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: *Ferreira v. Levin* [1995] ZACC 13 per Ackerman J at para 153. The 'principal matter' covered by the privilege is protected: see the comments of Sir Anthony Mason in *Hamilton v. Oades* (1989) 166 CLR 486 at 496.

While the provision potentially covers a wide class of persons (being persons who can provide information that may assist the director to monitor compliance, or relating to contraventions of the act or the Australian Consumer Law), it is likely that only a small percentage of persons in this class would potentially be affected by the lack of a derivative use immunity, being such persons who engage in regulated activities under the Fair Trading Act 1999 (Vic) and the Australian Consumer Law, and who would consequently be aware of their obligations under these acts to comply with the regulatory scheme.

Additionally, the penalty for failing to comply with a notice issued by the director is relatively low under both sections.

(d) The relationship between the limitation and its purpose

There is a close relationship between the limits and their purposes. As outlined above, experience of enforcing these laws has shown that granting immunities in a regulated commercial context to the type of individuals most likely to be questioned and exposed to criminal and civil penalties leads to protracted investigations, with the result that those responsible for wrongdoing and misconduct can ultimately escape liability. The limitation addresses this issue by allowing the director to effectively monitor compliance with the regulatory scheme without jeopardising the success of any criminal or civil penalty proceedings which may be brought after all relevant information concerning a person's activities have come to light.

(e) Less restrictive means reasonably available to achieve the purpose

As outlined above, the availability of derivative use immunity, far from being a proper and balanced counterweight to the director's compulsory information-gathering powers, would give some persons a forensic advantage far in excess of what was ever contemplated under the privilege against self-incrimination. Accordingly, there are no less restrictive means reasonably available to achieve the purpose of this limitation.

Part 9 of the Fair Trading Act 1999 (Vic)

Section 113 of the Fair Trading Act 1999 (Vic) provides that if a consumer and trader dispute involves the failure of a supplier to comply with this act or any other act the Victorian Civil and Administrative Tribunal may make an order to resolve the dispute even though the supplier has not been charged with the offence; or has been charged with the offence, but has not had the charge heard; or has had the charge heard, but was not convicted of committing the offence; or has had the charge heard and was convicted of committing the offence; or has been sentenced in relation to the offence; or is the subject of pending disciplinary action; or may be, or has been, subject to disciplinary action.

It is possible that a proceeding before the tribunal could involve a person providing information on the matters that form, or that may form, the basis of a charge against that person. However, whether or not the right against self-incrimination is engaged by the operation of section 113 is dependent upon the circumstances of each particular case. In any event, I consider that the tribunal has sufficient powers available, such the direct use immunity in section 105 of the Victorian Civil and Administrative Tribunal Act 1998 (Vic), as well as the power to hold a hearing in private under section 101 of that act, to enable it to ensure the fairness of the hearing and to protect a person's right against self-incrimination.

Section 117 of the Fair Trading Act 1999 (Vic) provides that if an inspector believed a person has contravened either the Fair Trading Act 1999 (Vic) or the Australian Consumer Law, the inspector may apply to the Magistrates Court for an order requiring any person at a time and a place specified by an inspector to answer questions, to supply information or to produce specified documents.

Section 126B provides that an inspector may apply to the Magistrates Court for an order requiring an owner of a thing to which an embargo notice under section 126 relates, or the occupier of a premises where the thing is kept, to answer questions or produce documents at a time and place specified by the inspector.

Section 133(1) of the Fair Trading Act 1999 (Vic) provides that it is a reasonable excuse for a natural person to refuse or fail to give information or do any other thing that the person is required to do if the giving of information or the doing of the thing would tend to incriminate the person.
Section 133(2) provides that it is not a reasonable excuse for a natural person to refuse or fail to produce a document if the document would tend to incriminate the person.

The right in section 25(2)(k) of the charter is a right not to 'testify against oneself', the core idea being that a person should not be conscripted into incriminating themselves. In other jurisdictions, the right has generally been regarded as not extending to real evidence or the production of pre-existing documents. At common law though, the right has been found to extend to the production of documents (*R v. Sorby* (1983) 152 CLR 281), and it is also implicit in the judgement of Warren CJ in *Re an application under the Major Crime (Investigative Powers) Act 2004* [2009] VSC 381 that the privilege extends beyond testimonial statements and protects against the production of incriminating documents. Consequently, it is possible that section 133(2) would be found to be a limit on the right against self-incrimination by not preserving the privilege against self-incrimination in relation to documents or providing a use immunity. Even if section 133(2) does impose a limit on the right though, in my view any such limit is justified within the meaning of section 7(2) of the charter for the following reasons.

(a) The nature of the right being limited

At common law, the High Court of Australia has recognised that the application of the privilege to documentary material is potentially less far reaching, than the protection for oral answers (*Environment Protection Authority v. Caltex Refining Co Pty Ltd* (1993) 178 CLR 477, 502 per Mason CJ and Toohey J; 527 per Deane, Dawson and Gaudron JJ and 555 per McHugh J.

Accordingly, any protection afforded to documentary material by the privilege is limited in scope.

(b) The importance of the purpose of the limitation

Section 133 applies to persons who engage in the regulated activity of trade and commerce. Under part 10 of the Fair Trading Act 1999 (Vic), such persons are required to provide certain documents and records (which relate to compliance or non-compliance with the act) so that the regulatory scheme can be effectively administered. The limitation serves the important purpose of enabling the effective administration of the regulatory scheme.

(c) The nature and extent of the limitation

The limitation is not extensive as the privilege is preserved in relation to giving information. The abrogation of the privilege extends only to the production of documents. Additionally, the documents which are required to be provided relate to trading and commerce and the persons required to provide the documents are choosing to participate in these regulated activities. Accordingly, such persons will be aware of their obligations to keep and provide documents which relate to compliance (or non-compliance) with the regulatory scheme.

(d) The relationship between the limitation and its purpose

It is necessary for regulators under the Fair Trading Act 1999 (Vic) to have access to documents to ensure the effective administration of the regulatory scheme. The limitation is directly related to this purpose.

(e) Any less restrictive means reasonably available to achieve its purpose

There are no less restrictive means available to achieve the purpose of enabling regulators to have access to relevant documents. Providing an immunity would enable persons who were engaged in the regulated activities of trade and commerce in contravention of the act to escape liability, and would thus undermine the regulatory scheme. Additionally, providing an immunity would limit the investigatory activities of inspectors and regulators which would also lessen the effectiveness of the regulatory scheme.

The right not to be punished more than once (section 26) and the right against retrospective criminal laws (section 27)

Clause 9

Sections 237 and 239 provide that a court may make compensation orders for persons who have suffered loss or damage due to conduct of another person who contravened a provision in chapters 2, 3 or 4, or by relying on an unfair contract term. An application can be made under either of these sections even if an enforcement proceeding has not been instituted (section 242). Section 243 provides for the types of orders which a court may make, including an order varying a contract, refusing to enforce the provisions of a contract and an order directing the respondent to pay the injured person the amount of the loss or damage (except if the order is to be made under section 239(1)).

Section 238 provides that if, in a proceeding instituted under a provision of chapter 4 or 5, a person who is a party to the proceeding has suffered, or is likely to suffer, loss or damage because of the conduct of another person who was engaged in a contravention of chapter 2, 3 or 4 or constitutes applying or relying on an unfair term of a contract, the court may make such orders as it thinks appropriate against the person.

Section 246 provides that a court may, on application of the regulator, make an order in relation to a person who has contravened chapter 2, 3 or 4 or who was involved in a contravention. The types of orders that can be made include an order directing the person to perform a service that is specified in the order, and that relates to the conduct, for the purpose of benefiting the community and an order directing the person to establish an education and training program for employees.

Section 247 provides that a court may, on application of a regulator, make an adverse publicity order in relation to a person who has contravened chapter 2, 3 or 4 or who has committed an offence against chapter 4.

Section 248 provides that a court may, on application of the regulator, make an order disqualifying a person from managing corporations for a period that the court considers is appropriate.

To the extent that the above provisions allow for the court to make an order following on from criminal proceedings under chapter 4 of the Australian Consumer Law, such orders will not constitute double punishment or amount to a retrospective application of criminal law since such orders will be made in civil proceedings and will not be punitive in nature.

The right to a fair hearing (section 24(1))

Under section 24(1) of the charter, 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. The right to a fair hearing includes a right to access a court.

Clause 9

Section 88 of the Australian Consumer Law

Section 88 of the Australian Consumer Law, which will apply as Victorian law by virtue of clause 9 of the bill, provides that if an unsolicited agreement is terminated in accordance with section 82, a person must not bring legal proceedings against the consumer.

Section 82 provides for the manner in which a consumer may terminate an unsolicited agreement, and imposes time limits for doing so.

A person will only be prevented from bringing legal proceedings in the limited circumstances of where an unsolicited agreement is terminated by a consumer within the specified time limits. Additionally, persons affected by this section will be engaged in trade and commerce and thus will be aware of the restrictions regarding making unsolicited agreements. Consequently, in my view, section 88 does not limit the right to a fair hearing.

Sections 143, 236 and 273 of the Australian Consumer Law

Section 143 of the Australian Consumer Law provides that a person may commence a defective goods action at any time within three years after the time the person became aware, or ought reasonably became aware, of the alleged loss or damage; the safety defect of the goods; and the identity of the person who manufactured the goods.

Section 236 provides that an action under this section may be commenced at any time within six years after the day on which the cause of action that relates to the conduct accrued.

Section 239(6) provides that an action under this section may be made at any time within six years after the day on which the cause of action that relates to the contravening conduct accrued or the relevant declaration is made.

Section 273 provides that an affected person may commence an action for damages under division 2 of part 5-4 at any time within three years after the day on which the affected person first became aware, or ought reasonably to have become aware, that the guarantee to which the action relates has not been complied with.

The imposition of these time limits could impact on a person's right of access to a court. However, the right to access the courts is not absolute, and may legitimately be limited by the needs and resources of the community and individuals (*Kay v. Attorney-General* (Unreported, Court of Appeal, 3726/2009, 19 May 2009)). In my view, these sections do not unreasonably restrict the right of access to courts, as the time limitations are reasonable in the circumstances and necessary to ensure certainty.

Clause 9 of the bill also provides that certain powers under the Fair Trading Act 1999 (Vic) will apply to the Australian Consumer Law.

Section 111 of the Fair Trading Act 1999 (Vic) provides that once an application has been made to the Victorian Civil and Administrative Tribunal in respect of a consumer and trader dispute, or in respect of any other matter on which the tribunal has jurisdiction under the Fair Trading Act 1999 (Vic), the issues in dispute are not justiciable at any time by a court unless the proceeding was commenced before the application to the tribunal was made; the application to the tribunal is withdrawn or struck out for want of jurisdiction or the tribunal refers the proceeding to a court under section 77 of the Victorian Civil and Administrative Tribunal Act 1998. Section 164 of the Fair Trading Act 1999 (Vic) provides that it is the intention of section 111 to alter or vary section 85 of the Constitution Act 1975.

The purpose of section 111 is to ensure that there are not concurrent proceedings running in both the tribunal and a court relating to the same issues in dispute. As this section does not preclude an appeal from a decision of the tribunal once the tribunal has decided the relevant application, in my view section 111 does not limit the right to a fair hearing.

Section 112 provides that, if a person commences proceedings in a court, the court must stay the proceedings if the proceedings could be heard by the tribunal under the Fair Trading Act 1999 (Vic) or the Australian Consumer Law and the court is satisfied that the proceedings would be more appropriately dealt with by the tribunal. Section 164 of the Fair Trading Act 1999 (Vic) provides that it is the intention of section 112 to alter or vary section 85 of the Constitution Act 1975. As with section 111, this section does not preclude an appeal from a decision of the tribunal once the tribunal has decided the relevant application and in my view this section also does not limit the right to a fair hearing.

Conclusion

I consider that the bill, and the provisions of the Australian Consumer Law applied by the bill, are compatible with the charter.

Justin Madden, MLC
Minister for Planning

Second reading

Mr LENDERS (Treasurer) — I note that there were minor technical amendments to this bill in the Legislative Assembly, particularly revolving around the starting date. I move:

That the bill be incorporated into *Hansard*.

Motion agreed to.

Mr LENDERS (Treasurer) — I move:

That the bill be now read a second time.

Incorporated speech as follows:

Introduction

This bill, the Fair Trading Amendment (Australian Consumer Law) Bill, gives effect to one of the most significant consumer law reforms in Australia's history.

The bill applies a new Australian Consumer Law as a law of Victoria, and makes related changes to the Fair Trading Act 1999. As a result of this bill and of the application of the Australian Consumer Law in each jurisdiction across Australia, uniform consumer protection laws will apply nationally.

Background to the Australian Consumer Law

The Productivity Commission's review of Australia's consumer policy framework in April 2008 identified a need to harmonise consumer laws across Australia, removing regulatory duplication and inconsistency, and improving the coordination of consumer policy development.

Following the Productivity Commission's review, the Ministerial Council on Consumer Affairs developed proposals for a single national consumer law informed by the consumer protection provisions in the commonwealth Trade Practices Act 1974 and the best practice elements from the various state and territory fair trading acts. It was agreed that the national laws would include a new national product safety regime, civil pecuniary penalties, enforcement powers and options for representative actions. Significantly, it was also agreed that the uniform laws should include provisions based on the Victorian Fair Trading Act, protecting all Australians against unfair terms in consumer contracts.

In July 2009, the Victorian Premier signed the Intergovernmental Agreement for the Australian Consumer Law. The intergovernmental agreement sets out the agreement between the commonwealth, state and territory governments for the initial implementation of the new Australian Consumer Law and the future administration and enforcement of those laws.

This bill implements the Australian Consumer Law in Victoria. This bill delivers on Victoria's commitment under the intergovernmental agreement. It also delivers on a key aspect of the Council of Australian Governments national business and regulatory reform agenda, the realisation of a seamless national economy.

The Australian Consumer Law

I turn now to the key features of the Australian Consumer Law, which will be applied as a law of Victoria under part 2 of this bill.

The commonwealth Parliament has passed two acts to establish the framework for the new Australian Consumer Law.

The Trade Practices Amendment (Australian Consumer Law) Act (No. 1) 2010 of the commonwealth received the royal assent on 14 April 2010. The Trade Practices Amendment (Australian Consumer Law) Act (No. 2) 2010 of the commonwealth received the royal assent on 13 July 2010.

The second of these commonwealth acts renames the Trade Practices Act 1974 the Competition and Consumer Act 2010. It is scheduled to commence on 1 January 2011. The Australian Consumer Law to apply in Victoria will comprise of schedule 2 to the Competition and Consumer Act of the commonwealth, and regulations made for the purpose of that schedule.

A copy of the Australian Consumer Law is available in the parliamentary library for use by members. It is available to the public on the internet from the Commonwealth Law website, www.comlaw.gov.au.

Consistent with the intergovernmental agreement, the text of the Australian Consumer Law includes provisions equivalent to the current consumer protection provisions in the commonwealth Trade Practices Act. These core provisions are mirrored in almost all other state and territory fair trading acts, including Victoria's, and include laws prohibiting misleading or deceptive conduct, unconscionable conduct, false or misleading representations, unsolicited supplies, pyramid schemes, and harassment and coercion.

The Australian Consumer Law is also enhanced by best practice provisions drawn from existing state and territory consumer protection and fair trading laws.

Overall, 14 best practice proposals were adopted within the Australian Consumer Law. Eleven of these originated from the Victorian Fair Trading Act. These include:

a prohibition on false or misleading testimonials;

a provision clarifying that a consumer is not liable to pay for unsolicited services;

a requirement for specified consumer agreements to be transparent;

a statutory right to an itemised bill or receipt for goods or services supplied above a certain value; and

provisions clarifying the intended interpretation of laws relating to pyramid selling.

Significantly, the Australian Consumer Law also includes laws protecting consumers against unfair contract terms in consumer contracts, based on Victoria's Fair Trading Act provisions which have been in place since 2003.

The inclusion of a number of best practice provisions based on Victoria's current consumer laws confirms that Victorians have, for many years, benefited from some of the most effective consumer and fair trading laws in the country. Simplified, nationally consistent laws that draw on the greatest strengths in Victorian consumer law will extend these benefits to all Australian consumers.

The Australian Consumer Law also includes a harmonised product safety regime for consumer goods and services related to the supply, installation or maintenance of consumer goods. Under this new regime, state and territory ministers will retain the ability to issue interim product safety bans, compulsory recall notices and public warning statements. However, to ensure national coordination and consistency, only the commonwealth minister will have the power to issue permanent bans, make safety and information standards and conduct voluntary recalls.

There is also a new national system of statutory consumer guarantees, which replaces nine existing commonwealth, state and territory implied condition and warranty schemes. The new consumer guarantees laws are based on substantial analysis conducted by the Commonwealth Consumer Affairs Advisory Council in 2009.

For the first time, there will also be nationally consistent laws on unsolicited consumer agreements, which incorporate many features taken from the current Victorian provisions governing contact sales and telephone agreements. Unsolicited consumer agreements represent a new, generic category of conduct, encompassing door-to-door and other forms of direct selling which do not take place in a retail environment. Telephone sales will be covered to the extent that the commonwealth Do Not Call Register Act 2006 does not already apply.

Importantly, door-to-door salespeople will be banned from contacting households after 6.00 p.m.

The Australian Consumer Law will include a prohibition on multiple pricing. This means Victorian consumers will no longer have to deal with the confusion created when more than one price for a product is displayed. These protections reflect national best practice in consumer protection and fair trading laws.

The Australian Consumer Law includes enforcement powers and remedies which will apply in Victoria, including civil pecuniary penalties, disqualification orders, substantiation notices, infringement notices, public warning (‘naming and shaming’) powers and redress options for non-party consumers. While many of these powers have been available to the Victorian regulator under the Fair Trading Act, civil penalties and redress options for non-party consumers are an enhancement to the remedies available for contraventions of consumer laws.

One law, multiple regulators

The Australian Consumer Law will be supported by a national approach to enforcement, enabling regulators to take coordinated and effective action to stamp out unfair practices and enforce the new product safety regime.

Breaches of specific consumer protections — including those governing unfair practices, unsolicited consumer agreements, lay-by sales, and safety of goods and product-related services — will attract both civil and criminal penalties. Most of these are based on existing penalty amounts in the Trade Practices Act, including maximum fines of up to $220 000 for a person and up to $1.1 million for companies. These amounts are significantly higher than existing penalty amounts under the Fair Trading Act and will serve as a significant disincentive to rogue traders.

The Australian Consumer Law also includes a range of civil remedies. These include injunctions, damages, compensation orders, corrective advertising orders, adverse publicity orders, orders seeking redress on behalf of consumers who are not parties to enforcement proceedings and orders disqualifying a person from managing a corporation.

The Victorian bill

I turn now to the specific contents of the Victorian bill.

The bill will insert a new part 2 into the Fair Trading Act, which will apply the Australian Consumer Law as a law of Victoria. It is intended that the bill will commence contemporaneously with the national legislation creating the Australian Consumer Law on 1 January 2011.

The bill provides that laws applying in Victoria will include regulations made by the commonwealth for the purposes of the Australian Consumer Law. The intergovernmental agreement sets out the procedures for the implementation of future amendments to the Australian Consumer Law or related regulations, and allows commonwealth, state or territory governments to propose amendments.

The bill recognises that the state minister may issue interim bans, compulsory recall notices, and safety warning notices for the purposes of the Australian Consumer Law. It also allows for the making of regulations in Victoria for the purpose of dealing with calling hours for unsolicited consumer agreements under the Australian Consumer Law.

The bill confirms that the director of Consumer Affairs Victoria will be the ‘regulator’ for the purposes of the enforcement and administration of the Australian Consumer Law in Victoria, and sets out the jurisdiction of the Victorian courts and the Victorian Civil and Administrative Tribunal to deal with disputes arising under the Australian Consumer Law.

The bill modifies the Fair Trading Act to repeal those parts and provisions that will be replaced by new Australian Consumer Law provisions and, where appropriate, amends the remaining provisions of the Fair Trading Act to ensure consistency with the new national framework.

The bill substitutes the existing part 2 of the Fair Trading Act, dealing with unfair practices, with new provisions applying the Australian Consumer Law as a law of Victoria. Provisions dealing with unfair practices will instead be included in the Australian Consumer Law.

Most of the provisions governing implied conditions and warranties in certain contracts of supply, currently governed by part 2A of the Fair Trading Act, will be repealed. Instead, part 3-2 of the Australian Consumer Law will apply, introducing a new framework for the regulation of consumer guarantees.

There are some provisions in part 2A, which do not form part of the Australian Consumer Law, such as existing exemptions for recreational services and provisions that interact with the Goods Act 1958 (Victoria). These will be retained and will continue to apply in Victoria.

The bill will repeal part 2B of the Fair Trading Act, dealing with unfair contract terms. The unfair contract terms provisions in the Australian Consumer Law will instead apply as law in Victoria.

As part of the move to a nationally consistent product safety scheme, the bill repeals most of part 3 of the Fair Trading Act. In its place, the product safety provisions of the Australian Consumer Law, namely, parts 3-3, 3-4, 3-5, the offence provisions in chapter 4 and enforcement and remedy provisions in chapter 5, will apply.

The bill repeals part 4 of the Fair Trading Act, which will be replaced by the provisions of the Australian Consumer Law regulating unsolicited sales agreements, including

door-to-door selling, telephone sales and other forms of direct selling that take place outside of a retail environment. These provisions will not apply to matters already covered by the commonwealth Do Not Call Register Act 2006.

For the first time, consumers and businesses across Australia will benefit from the same clear laws about unsolicited selling practices. The new national scheme includes clear and nationally consistent requirements about the ways consumers can be approached, and how consumer agreements can be made. In addition to stricter visiting hours, there are also clear obligations on suppliers to leave premises on request, to disclose information about the purpose and identity of the supplier, and inform a consumer about their rights to terminate an agreement. The unsolicited selling provisions in the Australian Consumer Law were heavily influenced by the provisions in part 4 of the Fair Trading Act.

The bill repeals part 5 of the Fair Trading Act. The Australian Consumer Law introduces simplified, nationally consistent laws for lay-by agreements as part of the laws governing consumer transactions. Although the regulatory scheme for lay-by sales will be less detailed compared with the current approach in the Fair Trading Act, the new scheme nevertheless upholds the same principles of fairness and transparency, whilst taking a less prescriptive approach.

The bill repeals much of part 12 of the Fair Trading Act. This includes sections 161 and 161A, which will be covered by the general obligation to provide a bill or receipt in sections 100 and 101 of the Australian Consumer Law. Section 163 will also be replaced by a general requirement for prescribed consumer documents to be transparent. Transparency requirements will apply to standard form consumer contracts, unsolicited consumer sales agreements, display notices relating to consumer guarantees, lay-by agreements, bills and receipts.

Section 162 will also be repealed, on the basis that it does not add to the rights of consumers that exist at common law.

Sections 162A, 163A and 164 in part 12 will be retained but amended to ensure that they reflect the changes to the Fair Trading Act resulting from the application of the Australian Consumer Law.

Parts 1, 6, 7, 8, 9, 10 and 11 of the Fair Trading Act will, for the most part, continue as the framework for administering and enforcing fair trading and consumer protection in Victoria. Part 2C of the Fair Trading Act will also continue to govern frustrated contracts in Victoria.

The bill does not propose changes to the current part 5A of the Fair Trading Act, which deals with fair credit reporting. Similarly, the provisions in part 6 of the Fair Trading Act will continue to operate, enabling the preparation and approval of codes of practice.

This bill amends parts 7 and 8 of the Fair Trading Act to ensure that it applies to the Australian Consumer Law and allows for the administration of the Australian Consumer Law in Victoria. Some powers in part 8 will not survive — for example, the bill repeals the power in section 106A to issue a substantiation notice as this power has been taken up by the Australian Consumer Law. However, the power of the director of consumer affairs to issue a ‘show cause’ notice in section 106B of the Fair Trading Act will remain, as there is no equivalent power in the Australian Consumer Law. This will ensure that the regulator’s power to effectively enforce the remaining provisions of the Fair Trading Act, the Australian Consumer Law, and other consumer acts in Victoria is not reduced as a result of the shift to the national framework.

This bill makes a number of additional changes to the Fair Trading Act, based on a desire for greater consistency between state and territory fair trading laws. The bill will insert new provisions into the act to enable the director to provide financial assistance to consumers seeking to initiate or continue proceedings, in certain circumstances. The bill amends the power in section 106P of the Fair Trading Act to enable the director to enter into information-sharing arrangements for specific purposes, an important practical element of national enforcement of consumer protection laws.

The bill will establish a Victorian Consumer Law Fund, into which will be paid civil penalties awarded under the Australian Consumer Law. When ordered by a court, the fund will also be able to receive and distribute payments from defendants to redress ‘non-party’ consumers who are entitled to refunds as a result of conduct that contravenes specified Australian Consumer Law provisions. Amounts from the fund may also be paid as special purpose grants to not-for-profit organisations or to the director of Consumer Affairs Victoria to be used for purposes consistent with the objectives of the Australian Consumer Law.

Part 9 of the Fair Trading Act will be retained to ensure that Victorian consumers have continued access to the Victorian Civil and Administration Tribunal, as a low-cost forum to resolve disputes arising under the Australian Consumer Law and the Fair Trading Act.

This bill also amends the inspection powers in part 10 of the Fair Trading Act to ensure they align with the Australian Consumer Law. The inspection powers in this part will be used to administer and enforce the Australian Consumer Law in Victoria. Powers related to embargo notices will be retained in the Fair Trading Act, as the Australian Consumer Law does not include equivalent provisions.

Reflecting the agreement that the Australian Consumer Law will be enforced through a multiple regulator approach, the provisions of part 11 of the Fair Trading Act will be used for the enforcement of the Australian Consumer Law in Victoria.

Certain provisions in the Fair Trading Act relating to enforcement will be repealed, and replaced with equivalent provisions in the Australian Consumer Law. For example, the bill repeals section 165 of the Fair Trading Act, which will be replaced by section 106 of the Australian Consumer Law, dealing with the issue of when a supply of goods is deemed to have occurred. Other enforcement provisions will be retained in the Fair Trading Act for the purpose of enforcing the remaining provisions of the Fair Trading Act and other consumer acts in Victoria, but will not be used for the purposes of the Australian Consumer Law. The bill specifies those sections of the Fair Trading Act that do not apply to the enforcement of the Australian Consumer Law.

The bill includes savings and transitional provisions to ensure that there are no gaps in protection for Victorian

consumers or businesses as a result of the transition to the new Australian Consumer Law.

The bill also makes consequential amendments to a number of Victorian acts to reflect the repeal of certain Fair Trading Act provisions and the commencement of the Australian Consumer Law as a law of Victoria.

Conclusion

The introduction of nationally consistent consumer protection and fair trading laws is an important development in Australia's consumer protection laws. It is appropriate that Victoria, which has been a leader in consumer protection and fair trading laws for many years, is the first of the states or territories to introduce a bill to apply the Australian Consumer Law.

This bill delivers on Victoria's commitment to introduce laws that encourage fair trading across a seamless national economy, and reflects Victoria's leading role in shaping the new Australian Consumer Law and helping it to become a reality.

Consumers and businesses, as well as bodies that represent their interests, were actively involved in the consultation processes that led to the development of the Australian Consumer Law. The new national framework has been developed with the benefit of these views and contributions, and I thank those individuals and organisations who have generously dedicated time and expertise toward the development of these new laws.

I commend the bill to the house.

Debate adjourned for Mr GUY (Northern Metropolitan) on motion of Mr Rich-Phillips.

Debate adjourned until Thursday, 23 September.

ROAD LEGISLATION MISCELLANEOUS AMENDMENTS BILL

Statement of compatibility

For Hon. M. P. PAKULA (Minister for Public Transport), Mr Lenders 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 Road Legislation Miscellaneous Amendments Bill 2010.

In my opinion, the Road Legislation Miscellaneous Amendments 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 a number of important changes to road safety and road legislation:

extend the operation of the immediate licence suspension system to the offence of failing to provide a sample of oral fluid;

provide a minimum three-month licence cancellation period for a first offence, and a minimum six-month licence cancellation period for a subsequent offence, where a person is convicted or found guilty by a court of failing a drug-driving test;

remove the maximum licence cancellation and disqualification periods for failing a drug-driving test (which were six months for a first offence and 12 months for a subsequent offence);

provide for three-month licence suspension for a drug-driving infringement;

allow VicRoads to confirm whether or not a person or body is the registered operator of a vehicle or trailer in response to a request by a vehicle or trailer dealer; and

confirm that vehicle-related information such as the make, model and year of manufacture can be released by VicRoads upon request.

In addition, the bill addresses a number of issues that have arisen in relation to leases granted under the Melbourne City Link Act 1995 and the operation of the freeway management system installed on the Link road as part of the M1 upgrade. It will also further amend the Melbourne City Link Act 1995 and the EastLink Project Act 2004 to clarify that the existence of a suspended tollway billing arrangement cannot be used as a defence to the offence of driving a vehicle in a toll zone that is not registered for tolling purposes.

Further, the bill amends:

the Road Management Act 2004 to address some minor issues relating to the powers of state road authorities to deal with vehicles moved, kept or impounded on the grounds that they are causing an obstruction or danger or are illegally parked; and

the Transport (Compliance and Miscellaneous) Act 1983 to clarify the intended operation of the regulation-making power to facilitate the operation of the evidential provisions relating to the smartcard ticketing system.

It is considered that various provisions in the bill engage the following rights in the charter:

the right to freedom of movement (section 12);

the right to privacy (section 13);

the right not to be arbitrarily deprived of property (section 20); and

the right to be presumed innocent until proven guilty (section 25(1)).

Of these, it is considered that the right to be presumed innocent is limited by provisions in the bill. However, the limitation is reasonable for the purpose of section 7(2) of the charter.

Human rights issues

Section 12: freedom of movement

Section 12 of the charter states that 'Every person lawfully within Victoria has the right to move freely within Victoria …'.

Road Safety Act amendments

Three clauses in the bill that amend the Road Safety Act 1986 may engage the right in section 12.

Cancellation of a driver licence or learner permit for drug-driving offences

Clause 14 will amend section 50(1E) of the Road Safety Act 1986 by providing that if a court convicts or finds a person guilty of failing a drug-driving test, that person's driver licence or learner permit must be cancelled for no less than three months for a first offence and no less than six months for a subsequent offence. Under the current provision the court has a discretion as to whether to cancel the person's licence or permit and there are no minimum cancellation periods. The current maximum cancellation periods of six months for a first offence and 12 months for a subsequent offence will also be removed.

Immediate suspension of driver licence or permit in certain circumstances

Clause 15 proposes to extend the operation of the immediate licence suspension system to a first offence of refusing to provide a sample of oral fluid in a roadside drug-driving test or refusing to comply with the requirements in relation to giving that sample by including this offence under section 51(1A) of the Road Safety Act 1986. Under clause 15 a person who has been charged with this offence by a police member may be given a notice informing the person that his or her licence or permit is immediately suspended. The suspension will remain until the charge is determined by a court.

Suspension of licence or permit for excessive speed infringements

Clause 21 will extend the operation of the licence suspension system that currently applies to excessive speed infringements to drug-driving infringements by amending section 89D of the Road Safety Act 1986. Under this clause, if a traffic infringement notice for a drug-driving offence is issued and no notice of objection is given and the 28-day objection period expires, the person's licence or permit will be suspended for three months and the notice will take effect as a conviction.

In my opinion, even though clauses 14, 15 and 21 may all result in the suspension or cancellation of a person's driver licence or learner permit, the right to freedom of movement is not limited by these proposed amendments because they only potentially limit one mode of movement, namely, travel by a motor vehicle. The amendments will not prevent a person moving freely within Victoria by other means. Courts in both Canada and New Zealand have considered arguments to the effect that restrictions on the ability to drive constitute a limitation on the right to freedom of movement. However, the balance of judicial opinion in both jurisdictions indicates that this is not the case.

Road Management Act amendments

Power to remove vehicles causing obstruction or danger

Section 44(1) of the Road Management Act 2004 provides that, subject to the Road Safety Act 1986 and any regulations made under that act and without limiting any other powers of a state road authority, the powers of such an authority include the specific traffic management powers set out in schedule 4 to the Road Management Act 2004.

Clause 5 of schedule 4 to the Road Management Act 2004 provides that a state road authority may, in certain circumstances, move or impound a vehicle. These circumstances include where the vehicle is causing an unlawful obstruction, has been left standing in an area which, in the opinion of the state road authority, constitutes a hazard to road safety, is unlawfully parked for a period of at least two days or is unlawfully parked or left standing in an area designated by the minister.

Clause 11(1) of the bill proposes an amendment to clause 5(1) of schedule 4 to clarify that, in such circumstances, the state road authority may keep any vehicle in addition to moving or impounding that vehicle. This makes this clause consistent with clause 4 of schedule 4 which sets out a state road authority's power to move, keep or impound any unregistered or abandoned vehicle. It is desirable that the powers of state road authorities in relation to the treatment of vehicles are uniform and consistent unless there are clear policy reasons for differences in these powers. There are no such reasons in this case.

The right to freedom of movement is not limited by the proposed amendment because, to the extent that it empowers a state road authority to keep a vehicle in the circumstances set out in clause 5 of schedule 4, it potentially limits only one mode of movement (travel by motor vehicle) in the case of the owner or user of the vehicle concerned. The amendment does not stop people moving freely within Victoria by other means. As I have previously pointed out, courts in both Canada and New Zealand have considered whether restrictions on the ability to drive limit the right to freedom of movement, with the balance of opinion in those jurisdictions being that it does not.

It should also be noted that the amendment is a relatively minor one, given that state road authorities already have the power to move or impound vehicles under clause 5 of schedule 4 to the Road Management Act 2004 and can also move, impound or keep vehicles under clause 4 of schedule 4 to that act.

Section 13: right to privacy

Section 13(a) of the charter provides that every person has the right not to have his or her privacy, family, home or correspondence unlawfully or arbitrarily interfered with. An interference with the right to privacy will not limit the right if that interference is neither unlawful nor arbitrary.

Road Safety Act amendments

Clause 22(1) will amend section 92 of the Road Safety Act 1986 by providing that information relating to a vehicle may be released by VicRoads. The kind of vehicle-related information that may be disclosed includes the following:

> the vehicle's make, model, year of manufacture, its description and mechanical configuration, engine identification number and whether the registration number or chassis number is the same as that of a vehicle recorded as stolen.

It is debatable whether any of this vehicle-related information could be considered to be of a personal nature or commercially sensitive. However, the purpose of clause 22(1) is to put this issue beyond doubt, and to provide a clear permission for VicRoads to release vehicle-related information to the community in order to assist in the protection of consumers when purchasing vehicles. It will also enable VicRoads to participate in national vehicle information-sharing initiatives that will help combat motor vehicle theft and insurance fraud.

The disclosure of vehicle-related information should not, therefore, involve any interference with a person's right to privacy. However, even if there were some interference it would be of a very minor and indirect kind. It would also not be arbitrary as it would not be based on any random choice and it would not be unlawful, as it will be authorised by clause 22(1). The right to privacy will therefore not be limited by clause 22(1).

Clause 22(2) will permit VicRoads to confirm whether or not a person or body is the registered operator of a vehicle or trailer in response to a request from a licensed motor car trader, or a trader who participates in VicRoads dealer certification scheme. The disclosure of this information will assist these dealers in avoiding fraudulent transactions and in expediting transactions.

While clause 22(2) engages the right to privacy by extending the circumstances in which information of a personal nature may be disclosed, the disclosure will not limit the right because the interference will be lawful as it will be specifically authorised by clause 22(2). Any interference will not be arbitrary as it will not be of a random nature but rather will be tightly circumscribed. The information disclosed will also be limited to only that which is needed to achieve the objective of assisting vehicle and trailer dealers.

In that regard, the information that may be disclosed will be restricted to confirming whether a named person or body is the registered operator of a vehicle or trailer. No other information about that person may be disclosed. This confirmation will only be provided to a limited group of dealers for the purpose of determining whether a person or body from whom a dealer is intending to purchase a vehicle or trailer is indeed the registered operator of that vehicle or trailer. The dealer must supply the name and address of the person or body, and indicate the purpose of his or her request, or the confirmation will not be provided.

Additionally, before any disclosure is made, the dealer must enter into a confidentiality agreement with VicRoads, as required by section 92(4) of the Road Safety Act 1986, which will govern the use and security of the information. It is a criminal offence to breach the terms of such an agreement.

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.

Road Management Act amendments

Clause 11(1) of the bill engages, but does not limit, this right.

Clause 11(1) amends clause 5 of schedule 4 to the Road Management Act 2004 to clarify that a state road authority may, in addition to moving or impounding a vehicle in the circumstances set out in clause 5, also 'keep' such a vehicle.

Clauses 11(2) and 11(3) further amend clause 5 of schedule 4 to the Road Management Act 2004 to:

> ensure that a state road authority that keeps or impounds a vehicle under clause 5 may refuse to release the vehicle until a fee has been paid; and
>
> empower a state road authority to sell, destroy or give away a vehicle that has been kept or impounded under clause 5 or if the fee charged for its release has not been paid within 60 days of that vehicle having first been moved or impounded.

The charter allows deprivation of property 'in accordance with law'. A deprivation of property will be in accordance with law when it conforms with a set of procedures established by law and is not arbitrary. Deprivation of property under the proposed amendments can only occur in the limited circumstances set out in clause 5(1), meaning that the proposed amendments provide for deprivation of property in accordance with law and do not limit the right in section 20 of the charter.

Section 25(1): right to be presumed innocent

Section 25(1) of the charter states that a person charged with a criminal offence has the right to be presumed innocent until proved guilty according to law.

Road Safety Act amendments

Clause 15 — Licence or permit may be suspended prior to court hearing

As previously stated, under clause 15 a person charged with a drug-driving offence may have his or her driver licence or learner permit immediately suspended on the person being given a notice by a police member, and that suspension will remain until the charge has been determined. The person will also have to surrender his or her licence or permit to the police member. He or she will be disqualified from obtaining a further licence or permit during the period of suspension and it will be an offence to apply for or to obtain one.

The amendments made by clause 15 will limit the right under section 25(1) of the charter because they will impose a penalty in the form of a licence or permit suspension on a person who has been charged with an offence but who has not yet been formally proved guilty. However, in my opinion, such a limitation is reasonable for the purpose of section 7(2) of the charter, taking into account all relevant

factors including those set out in section 7(2)(a) to (e) of the charter.

(a) the nature of the right being limited

The right to be presumed innocent is aimed at ensuring that the burden is on the prosecution to prove beyond reasonable doubt that the defendant committed all of the elements of the offence. It will also normally entail that the defendant will not be punished or be subject to any kind of penalty until the prosecution has proved its case and a court of law has found the person guilty.

However, the right to the presumption of innocence may be subject to reasonable limitations in accordance with section 7(2). Jurisprudence in other jurisdictions holds that the right may be limited.

(b) the importance of the purpose of the limitation

The limitation in clause 15 is designed to improve road safety by removing from the road persons who may be affected by an illicit drug and who are therefore a serious risk to themselves and other road users.

The importance of the limitation satisfies the tests developed by Canadian courts that the limitation must address 'societal concerns which are pressing and substantial'.

(c) the nature and extent of the limitation

The nature and extent of the limitation are summarised above.

(d) the relationship between the limitation and its purpose

The suspension of a person's driver licence or learner permit for refusing to provide an oral fluid sample or to comply with the requirements in relation to giving that sample directly relates to the purpose of the limitation, as it removes potentially unsafe drivers from the roads as soon as practicable, and should therefore reduce the risk to public safety that is posed by such drivers. Furthermore, although the purpose of the limitation is a highly significant one the penalty is a relatively short period of suspension. The penalty is therefore not disproportionate to the limitation.

(e) any less restrictive means reasonably available to achieve the purpose that the limitation seeks to achieve

There are no less restrictive means available to deal with persons who refuse to provide an oral fluid sample which would achieve the goal of increasing road safety by preventing offenders from driving before the matter comes before a court.

I also note that a person who is charged with refusing to provide an oral fluid sample may appeal his or her licence suspension to a Magistrates Court on the basis of exceptional circumstances. The Chief Commissioner of Police may also cancel a notice. There are, therefore, means by which a person can have the suspension cancelled prior to the court hearing.

Clause 15 — Reverse onus

As previously noted, under clause 15 persons who are charged with refusing to provide a sample of oral fluid will be required to surrender their licence or permit to a police member. The Road Safety Act 1986 currently includes section 51(5) and persons who will now be subject to an immediate licence suspension by virtue of clause 15 will be subject to this provision. Under section 51(5) a person who, without just cause or excuse, refuses or fails to surrender a document as required by a notice under subsection (1A) is guilty of an offence. The penalty is 5 penalty units. Under section 51(6) the accused has the burden of proving just cause or excuse.

This reverses the usual onus of proof by imposing a legal burden on the accused to prove on the balance of probabilities that she or he had a just cause or excuse for refusing to give his or her licence or permit to the police member. Provisions which impose a legal burden on the accused are considered to limit the right to be presumed innocent under section 25(1) of the charter.

However, in my view, this limitation is also reasonable for the purpose of section 7(2).

(a) the nature of the right being limited

I have previously outlined the nature of the right being limited.

(b) the importance of the purpose of the limitation

The requirement to surrender a driver licence or learner permit is aimed at ensuring that the suspension of that licence or permit is not circumvented in any way by the retention of the document. The main objective of this requirement is to ensure that such persons do not continue to drive because they are considered to be a danger to public safety. The offence under section 51(5) of refusing or failing to surrender a licence or permit without just cause or excuse underscores the importance of this public safety objective. The purpose of reversing the onus of proof is to assist in the prosecution of this offence and thereby assist in securing the overall road safety objective of removing drug-affected drivers from the roads.

(c) the nature and extent of the limitation

I have previously outlined the nature and extent of the limitation.

(d) the relationship between the limitation and its purpose

The reversal of the onus of proof is aimed at assisting the prosecution in light of the fact that the circumstances that could give rise to a just cause or excuse for refusing or failing to surrender a licence or permit are those that are likely to be peculiarly within the knowledge of the accused. That being the case, it would be impractical for the prosecution to prove that just cause or excuse for failing to surrender the licence did not exist. On the other hand, however, the burden to be discharged by the accused is not onerous. Furthermore, the penalty for failing to surrender a licence or permit is also not severe, being a fine only and not a term of imprisonment.

(e) any less restrictive means reasonably available to achieve its purpose

I do not consider that there are any less restrictive means reasonably available to assist in the prosecution of this offence. If the accused were subject to an evidentiary burden he or she could discharge this burden by adducing or

pointing to some evidence that puts the matter in issue. The prosecution would then bear the burden of disproving the issue beyond reasonable doubt. However, the issue in question is likely to be a matter that is peculiarly within the knowledge of the accused, as it will relate to why the accused refused or failed to surrender his or her licence or permit. It is unlikely to be practical for the prosecution to disprove such matters and, therefore, an evidentiary burden does not present a realistic alternative to a legal burden.

EastLink Project Act and Melbourne City Link Act amendments

Clause 3(2) of the bill amends the EastLink Project Act 2004 by inserting a new section 204(4A) into that act. This section provides that, in relation to the offence of driving a vehicle in a toll zone that is not registered for the purposes of a toll zone, a certificate purporting to be given by the tollway operator certifying that a tollway billing arrangement was suspended in relation to a vehicle alleged to have been involved in such an offence is admissible in evidence in any proceedings and, in the absence of evidence to the contrary, is proof that the billing arrangement was suspended at that time.

Clause 7(2) of the bill amends the Melbourne City Link Act 1995 by inserting a new section 73(3C) into that act which has the same effect as that described above in relation to the EastLink Project Act 2004.

The effect of these clauses is to impose an evidential burden on an accused. Provisions that merely place an evidential burden on the accused (that is, the burden of showing that there is evidence to raise an issue) with respect to any matter do not generally limit the right to be presumed innocent because the prosecution still bears the legal burden of disproving that matter beyond reasonable doubt (*R v. Director of Public Prosecutions, ex parte Kebilene* [2000] 2 AC 326, 379).

In the case of clauses 3(2) and 7(2) of the bill, the accused has only to produce evidence that the tollway billing arrangement was not suspended at the time of the alleged offence. The legal burden then reverts to the prosecution to prove beyond reasonable doubt that, notwithstanding the evidence adduced by the accused, the billing arrangement was suspended at that time.

Further, clause 3(1) of the bill amends section 204(4)(b) of the EastLink Project Act 2004 to require that a driver seeking to rely on the defence provided for in that section, in relation to the offence of driving an unregistered vehicle in a toll zone, must prove that he or she believed on reasonable grounds that the vehicle was covered by a tollway billing arrangement that was not suspended. At present, the requirement is only that the driver proves that he or she believed on reasonable grounds that the vehicle was covered by a tollway billing arrangement at the time of the alleged offence.

Clause 7(1) of the bill makes the same amendment in respect of clause 73(3)(b) of the Melbourne City Link Act 1995, which provision mirrors that contained in section 204(4)(b) of the EastLink Project Act 2004.

These provisions engage the right to be presumed innocent contained in section 25(1) of the charter and potentially limit that right to the extent that they will impose a greater legal burden on the accused than exists at present. In my view, however, any limitation is demonstrably justifiable in accordance with section 7(2) of the charter, for the reasons set out below.

(a) The nature of the right being limited

The right to be presumed innocent until proved guilty according to law is fundamental to our system of justice but is not an absolute right and is subject to reasonable limitations in accordance with section 7(2) of the charter.

(b) The importance of the purpose of the limitation

At present, a driver who seeks to rely on the defences set out in section 204(4)(b) of the EastLink Project Act 2004 and section 73(3)(b) of the Melbourne City Link Act 1995 must prove that he or she believed on reasonable grounds that the vehicle was covered by a tollway billing arrangement at the time of the alleged offence.

The amendments to these provisions will clarify that, in order for the defence to apply, the driver must also prove that he or she believed on reasonable grounds that the vehicle was covered by a tollway billing arrangement and that this billing arrangement was not suspended at the time of the alleged offence.

This clarification is important to ensure that drivers are not permitted to rely on the defence of reasonable belief as to the existence of a tollway billing arrangement in circumstances where that billing arrangement was suspended at the time of the alleged offence and the driver was aware, or should reasonably have been aware, of that fact.

(c) The nature and extent of the limitation

Section 204(4)(b) of the EastLink Project Act 2004 and section 73(3)(b) of the Melbourne City Link Act 1995 already impose a legal burden on the accused to prove that he or she had a reasonable belief that the vehicle was covered by a tollway billing arrangement at the time of the alleged offence. The proposed amendments will clarify that, in order for the defence to apply, the accused must prove that he or she believed on reasonable grounds that the tollway billing arrangement was not suspended at that time. This amendment extends the legal burden on the accused but does so to the minimum extent necessary to protect the integrity of the defence.

(d) The relationship between the limitation and its purpose

The limitation imposed is directly and rationally connected to its purpose, which is to safeguard the integrity of the defence by ensuring that an accused cannot rely on the existence of a belief on reasonable grounds of the existence of a tollway billing arrangement in circumstances where that billing arrangement was suspended at the time of the alleged offence and the driver was aware, or should reasonably have been aware, of that fact.

In general terms, where the accused seeks to rely on the defence, it is more practical and reasonable for him or her to prove the existence or otherwise of those facts than to require the prosecution to disprove them. This reasoning, which underpins the imposition of the existing legal burden

on the accused, also holds true in relation to the proposed extension of this burden.

(e) Any less restrictive means available

In my opinion, there are no less restrictive means available to achieve the stated purpose. As stated above, the relevant facts will be within the knowledge of the accused and it is both more practical and reasonable to require him or her to prove the existence of these facts in order to establish the defence than to require the prosecution to disprove their existence.

Conclusion

I consider that the bill is compatible with the charter. While the bill may limit the right conferred by section 25(1), any such limitation is reasonable and demonstrably justifiable having regard to the matters set out in section 7(2) of the charter.

Martin Pakula, MLC
Minister for Public Transport

Second reading

Ordered that second-reading speech be incorporated into *Hansard* on motion of Mr LENDERS (Treasurer).

Mr LENDERS (Treasurer) — I move:

That the bill be now read a second time.

Incorporated speech as follows:

This bill makes a number of amendments to road transport legislation in Victoria:

improves road safety through:

the extension of the immediate licence suspension system to refusing to provide a sample of oral fluid;

providing for a mandatory minimum three-month licence cancellation and disqualification period for a first offence and six-month period for a subsequent offence where a person is convicted or found guilty by a court of failing a drug-driving test;

removing the maximum licence cancellation and disqualification periods for failing a drug-driving test (which were six months for a first offence and 12 months for a subsequent offence);

providing for a three-month licence suspension for a drug-driving infringement;

improves the operation of the operator onus system;

will enable Victoria to participate in national information-sharing initiatives to combat motor vehicle theft and insurance fraud and to assist vehicle and trailer dealers to avoid fraudulent transactions;

provides flexibility in relation to the areas of Crown land subject to lease as part of the Melbourne City Link;

facilitates the operation by VicRoads of part of the freeway management system installed on the link road as part of the Monash-CityLink-West Gate (M1) upgrade;

clarifies, in relation to both CityLink and EastLink, that a suspended tollway billing arrangement cannot be used as a defence to a charge of driving a vehicle that is not registered for tolling purposes in a toll zone;

clarifies the powers of state road authorities in relation to vehicles illegally parked or causing an obstruction or potential hazard; and

clarifies the intended operation of the regulation-making power in the Transport (Compliance and Miscellaneous) Act 1983 (previously known as the Transport Act 1983) to facilitate the operation of the evidential provisions relating to the smartcard ticketing system.

Road Safety Act amendments

Tougher response to drug driving

The government's Arrive Alive 2008–2017 road safety strategy aims to reduce deaths and serious injuries by 30 per cent over the 2008–17 period. Meeting these targets will significantly reduce the emotional, physical and financial impact of road trauma on individuals, families and communities. Arrive Alive recognises that driving while affected by illicit drugs is a growing problem and can be as dangerous as drink driving. The first action plan 2008–10 of Arrive Alive includes a commitment to review penalties for drink and drug-driving offenders to appropriately reflect the risk to the community and ensure that penalties are aimed at, and are recognised by the community as, achieving improved road safety. That review has determined that penalties for drug driving are currently inadequate and should be raised to bring them more into line with the penalties that apply to drink-driving offenders. The bill therefore modifies the licence suspension and cancellation penalties that apply to drug driving.

The bill extends the operation of the immediate licence suspension system to a first offence of refusing to provide a sample of oral fluid in a roadside drug-driving test or refusing to comply with any other requirement in relation to providing that sample. Under the amendments to be made by the bill, a person charged by a member of the police force with this offence may be given a notice advising that his or her driver licence or learner permit is immediately suspended until the charge has been determined. A second or subsequent drug-driving offence is already subject to immediate licence suspension.

Additionally, a person who is issued with a traffic infringement notice in respect of a drug-driving infringement, and who does not lodge a notice of objection to the infringement notice, will have his or her licence or permit suspended for a period of three months and receive a conviction in relation to that infringement.

The bill will also create minimum licence cancellation and disqualification periods for persons convicted or found

guilty by a court of failing a drug-driving test. It provides that the court must, on convicting or finding a person guilty of this offence, cancel a driver licence or permit and disqualify the driver from obtaining one for not less than three months for a first offence and not less than six months for a subsequent offence. Under the current provision the court has a discretion to allow a person to keep his or her licence for this offence, and there are no minimum cancellation and disqualification periods. The bill will also remove the maximum licence cancellation and disqualification periods for these offences (which were six months for a first offence and 12 months for a subsequent offence).

Other improvements to the operation of the Road Safety Act

The bill makes a number of other improvements to the operation of the Road Safety Act 1986:

> The bill permits VicRoads to confirm whether or not a person or body is a registered operator of a vehicle or trailer, in response to a request made by a dealer for the purpose of determining whether the person or body from whom the dealer is purchasing the vehicle or trailer is in fact the registered operator of that vehicle or trailer. The dealer making the request must provide the name and address of the person or body believed to be the registered operator and before any confirmation is given, the dealer must enter into a confidentiality agreement with VicRoads. The proposed amendment will allow VicRoads to assist vehicle and trailer dealers to avoid fraudulent transactions with persons who falsely claim to be the registered operator of a vehicle or trailer and to expedite those transactions.
>
> The bill will also clarify that vehicle-related information, such as the make, model and year of a vehicle's manufacture, may be disclosed upon request. This amendment will allow VicRoads to participate in national information-sharing initiatives, including the vehicle information request system which assists in combating the reuse of stolen vehicles, and to help protect consumers when purchasing vehicles by providing confirmation of vehicle information.
>
> The bill will also allow a person who has been issued with an excessive speed infringement under the operator-onus provisions of the act to make one of the statements available under those provisions by which liability for an operator-onus offence can be avoided (such as nominating another driver), and allow for an application to be made extending the time within which such a statement may be made. An excessive speed infringement is an offence of driving a motor vehicle at a speed of 130 kilometres per hour or more or at a speed of 25 kilometres per hour or more in excess of the speed permitted. This offence can be detected by a prescribed road safety camera and is an operator-onus offence, which means that a person can avoid liability for the offence if he or she can establish that he or she was not responsible for the vehicle at the time of the offence.

Currently, persons who have been issued with a traffic infringement notice for an excessive speed infringement may object to a traffic infringement notice and have the matter determined by a court. However, the bill will enable these persons to avoid having to go to court by also allowing them to give an enforcement official a statement that establishes that he or she was not responsible for the vehicle in accordance with the operator-onus provisions under the act. This is considered to be a fairer and more expedient means of dealing with the matter and is also consistent with the way other operator-onus offences are dealt with under the act.

Road Management Act amendments

The bill will amend the Road Management Act 2004 to clarify that state road authorities have the same powers to deal with vehicles that are illegally parked or causing an obstruction or road safety hazard as they have in relation to the removal of abandoned or unregistered vehicles. In particular, the bill will clarify that state road authorities may charge a fee before releasing a vehicle that is impounded on the basis that it is illegally parked or causing an obstruction or hazard and may sell, destroy or give away an impounded vehicle if that fee is not paid within 60 days. These amendments ensure that these vehicles can be appropriately dealt with by road authorities and that these authorities are able to recover the costs of removal and impoundment.

EastLink Project Act amendments

The bill will amend the EastLink Project Act 2004 to make it clear that the existence of a suspended tollway billing account in respect of a vehicle cannot be used as a defence to a charge of driving an unregistered vehicle in a toll zone.

Melbourne City Link Act 1995 amendments

The bill will amend the Melbourne City Link Act 1995 to make it clear that the existence of a suspended tollway billing account in respect of a vehicle cannot be used as a defence to a charge of driving an unregistered vehicle in a toll zone. The bill will also:

> provide for a greater degree of flexibility with respect to land leased under the Melbourne City Link Act. This will facilitate further development or redevelopment projects involving Melbourne CityLink;
>
> facilitate the operation by VicRoads of the ramp meters that form part of the freeway management system installed on Melbourne CityLink as part of the Monash-CityLink-West Gate (M1) upgrade. The ramp meters are an important component of the freeway management system, which will help achieve safe and efficient traffic management through this corridor.

Transport (Compliance and Miscellaneous) Act 1983 amendments

The bill will make a technical amendment to the Transport (Compliance and Miscellaneous) Act 1983 to ensure that the evidential provisions relating to computer-derived evidence set out in that act adequately support prosecutions involving ticket-related offences under the new smartcard ticketing system.

Taken together, the measures in this bill contribute to the efficient and effective operation of the Victorian road network.

I commend the bill to the house.

Debate adjourned on motion of Mr KOCH (Western Victoria).

Debate adjourned until Thursday, 23 September.

FIRE SERVICES COMMISSIONER BILL

Statement of compatibility

For Hon. J. M. MADDEN (Minister for Planning), Mr Lenders 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 Fire Services Commissioner Bill 2010.

In my opinion, the Fire Services Commissioner 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:

establish the position of the fire services commissioner and provide for the functions and powers of the fire services commissioner;

amend the Forests Act 1958 to make the position of the chief fire officer in the Department of Sustainability and Environment a statutory position; and

make related amendments to the Emergency Management Act 1986, the Country Fire Authority Act 1958, the Metropolitan Fire Brigades Act 1958 and the Forests Act 1958.

Human rights issues

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

Certain provisions of the bill engage the right to privacy under section 13 and the right to a fair hearing under section 24 of the charter.

Section 13 — privacy and reputation

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 secrecy of personal information lies at the heart of the privacy right because of its direct relevance to the choices or circumstances of an individual's personal life over which he or she is responsible and autonomous. The protection of privacy through confidentiality of documents is not, however, absolute. Disclosures that are authorised by law and not arbitrary are permissible under the charter.

Clause 28 provides that public servants or persons employed by a fire services agency have no obligation to maintain secrecy and no restriction on the disclosure of information where that information is required by the fire services commissioner (commissioner) under section 27 (for the purpose of developing or reviewing plans, standards or procedures). Clause 27 provides that the commissioner may require a fire services agency to provide any information that the commissioner reasonably believes is necessary for the purposes of developing or reviewing a fire services reform actions plan, certain performance standards and incident management operating procedures. Clause 44 amends section 21F of the Emergency Management Act 1986 to provide that the emergency services commissioner may require any agency to provide any information that the emergency services commissioner reasonably believes is necessary to prepare or review a standard for the prevention or management of emergencies prepared under section 21D of that act, or to monitor compliance with such a standard.

To the extent that this information may relate to information about individuals, any interference with the right to privacy is not arbitrary. Each commissioner requires this information in the interests of public safety and is bound by the Information Privacy Act 2000.

Clauses 47 and 57 respectively amend section 81A of the Country Fire Authority Act 1958 and section 45A of the Metropolitan Fire Brigades Act 1958 by substituting references to the emergency services commissioner with the fire services commissioner. While these clauses do not create any new powers of disclosure of information, they respectively provide that the authority and board may disclose or publish information. The provision does not permit the disclosure or publication of information that could lead to the identification of an individual, except certain information may be disclosed to a member of the police force if the board is satisfied that the disclosure is reasonably necessary for the purpose of the investigation of an offence. The provision of access to personal information by police in the limited circumstances provided by the legislation is essential for police to be able to properly investigate and prosecute offences. The limited intrusion on individual privacy occasioned by the disclosure of information in accordance with the amendment is reasonable and is not arbitrary. Therefore, these provisions are compatible with section 13(a) of the charter.

Section 24 — fair hearing

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, or independent 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.

Clause 9 provides that the Governor in Council (Governor) may suspend the fire services commissioner from office on the grounds of misconduct, neglect of duty, inability to perform duties of office, or any other ground that would make the commissioner unfit for office. The commissioner must be removed from office by the Governor if each house

declared by resolution that the commissioner ought to be removed from office. The Governor must act in accordance with principles of natural justice, and the decision to suspend is amenable to judicial review. I am satisfied that this provision is not inconsistent with section 24 of the charter.

Clauses 33 and 50 (new section 61C, Forests Act 1958) respectively provide that the commissioner and the chief fire officer of the Department of Sustainability and Environment are not personally liable for anything done or omitted to be done in good faith in the exercise of a power or discharge of a duty or in a reasonable belief that the act or omissions was in exercise of the power or discharge of duty. However, any liability arising from such an act or omission respectively attach to the Crown and the Secretary to the Department of Sustainability and Environment. Therefore, the right is not limited.

Conclusion

I consider that the bill is compatible with the Charter of Human Rights and Responsibilities because to the extent that some provisions do raise human rights issues, these provisions do not limit human rights.

Justin Madden, MLC
Minister for Planning

Second reading

Ordered that second-reading speech be incorporated into *Hansard* on motion of Mr LENDERS (Treasurer).

Mr LENDERS (Treasurer) — I move:

That the bill be now read a second time.

Incorporated speech as follows:

The government established a royal commission to inquire into the Black Saturday bushfires that devastated the Victorian community on 7 February 2009. A key aim in establishing the commission was to learn the lessons from this unprecedented tragedy so that measures could be taken to ensure that future bushfires did not cause such catastrophic loss.

The commission delivered its final report on 31 July this year. Among its recommendations, the commission proposed:

> The state enact legislation to achieve two specific ends:
>
> > appoint a fire commissioner as an independent statutory officer responsible to the Minister for Police and Emergency Services and as the senior operational firefighter in Victoria;
> >
> > make the chief fire officer of the Department of Sustainability and Environment a statutory appointment.

The government supports that recommendation and this bill delivers on that commitment.

The bill establishes the office of the fire services commissioner as a Governor in Council appointment. The Premier has already announced that Mr Craig Lapsley will be Victoria's first fire services commissioner.

In accordance with the royal commission's recommendations, the fire services commissioner will have two principal roles.

First, the commissioner will be the permanent state controller responsible for the planning and preparation and overall response of the fire agencies to major fires. To provide flexibility and to cater for the escalation in the scale of fires, the bill amends the Emergency Management Act 1986 to:

> assign the commissioner the role of state controller of the overall response to potential or actual major fires (including for forecast dangerous fire-risk days);
>
> empower the commissioner to assume control from one of the fire services agencies' chief officers of the response to a major fire (or a fire with the potential to become a major fire);
>
> allow a chief fire officer to transfer control of the response to a potential or actual major fire to the commissioner; and
>
> permit the commissioner to appoint one of the fire chiefs as the state controller.

In addition, the bill gives the commissioner the power to delegate the state controller responsibility. This delegation power will facilitate what the royal commission envisaged would be standing delegations to the chief officers of the fire services agencies for many level 3 fires, such as for urban firefighting.

In this context, it is important to note the royal commission concluded that there was no compelling evidence for the merger of the three fire service agencies and that such a move may indeed undermine the individual strengths and specialisations of the agencies. The government shares that view. Further, the commission acknowledged the importance of volunteers in Victoria's fire and emergency management response. The bill recognises the enormous contribution of volunteers to this state's firefighting capacity by requiring the fire services commissioner to take their importance into account in performing his or her functions.

Second, the fire services commissioner will be responsible for driving a reform program to improve the fire services agencies' operational performance, which the royal commission considered an absolute priority. This reform program will be focused on enhancing the operational capacity and capability of the fire services agencies and in particular their ability to work together.

In accordance with the royal commission's views, the bill requires the commissioner to drive this reform program through:

> the development of a rolling three-year reform action plan;
>
> the setting of performance standards for each fire service agency; and

the establishment of incident management operating procedures.

In developing these measures, the fire services commissioner is required to consult with the agencies and take into account their available resources and any existing procedures. The bill also amends:

the fire agencies legislation to impose reporting obligations on the agencies in terms of their performance against standards and progress in implementing the reform action plan; and

the Emergency Management Act 1986 to require the emergency services commissioner to monitor the performance of the fire services agencies against the standards and provide quarterly reports to the fire services commissioner.

Under the bill, the fire services commissioner must provide the minister with an annual report, which the minister is required to table in the Parliament. Importantly, for transparency and accountability purposes, the annual report will include a report on progress against the fire services reform action plan and the agencies' performance against the standards set by the fire services commissioner.

The bill amends the Forests Act 1958 to make the chief fire officer of the Department of Sustainability and Environment a statutory position. This statutory recognition is designed to elevate the status of this position as the royal commission recommended.

I commend the bill to the house.

Debate adjourned for Mr DALLA-RIVA (Eastern Metropolitan) on motion of Mr Koch.

Debate adjourned until Thursday, 23 September.

EDUCATION AND CARE SERVICES NATIONAL LAW BILL

Statement of compatibility

Mr LENDERS (Treasurer) 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 Education and Care Services National Law Bill 2010.

In my opinion, the Education and Care Services National Law 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 creates a nationally consistent framework for the delivery of high-quality outcomes in education and care services in all states and territories in Australia. Developed in accordance with the National Partnership Agreement agreed to by the Council of Australian Governments, the bill establishes an Australia-wide licensing and regulatory system for such services. Its objectives are to:

ensure the health, safety and wellbeing of children attending education and care services;

improve the education and developmental outcomes for children attending education and care services;

drive continuous improvement in the provision of quality education and care services, including preschool services;

improve the efficiency and effectiveness of the regulation of education and care services;

promote national integration and shared responsibility between participating jurisdictions and the commonwealth in the regulation of education and care services; and

improve public knowledge about and access to information about the quality of education and care services.

Human rights issues

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

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.

Declaration of conflict

Clause 238 engages the right to privacy by requiring members of the Australian Children's Education and Care Quality Authority Board to declare any interests which could conflict with their duties as a member of the board. Clause 256 imposes a similar duty on the chief executive officer of the national authority.

In some circumstances, these clauses may require the disclosure of private or personal information. However, I consider that such disclosure is neither unlawful nor arbitrary. Disclosure need only occur in defined circumstances, and such disclosures are essential to ensure the proper functioning of the board and the authority. I therefore consider that these clauses are compatible with the right to privacy under section 13(a) of the charter.

Prohibition on employment

Clause 182 states that the regulatory authority may issue a prohibition notice to a person involved in the provision of an approved education and care service if it considers that there may be an unacceptable risk of harm to children if the person were allowed to remain on the premises or to provide education and care to children. The prohibition notice prohibits any involvement in an education and care service. In considering whether to issue such a notice, the regulatory authority must give the person an opportunity to make written submissions, and must have regard to those submissions in coming to its final decision.

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 (see, for example, *Sidabras and Dziautas v. Lithuania* (Application nos. 55480/00 and 59330/00)).

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 prohibition is limited to employment in a specific industry, 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. It is clearly reasonable to restrict a person's access to employment in this area where they may be an unacceptable risk to children. Indeed, this would be required by the right of children in section 17 of the charter to such protection as is in their best interests. I therefore consider that clause 182 is compatible with the right to privacy under section 13(a) of the charter.

Sharing of information between jurisdictions

Clauses 27, 31, 42, 75, 80, 101, 131, 150, 153, 221, 223, 228, 267, 271, 281 and 322 provide for the sharing of information between bodies in different jurisdictions in a range of circumstances. I consider that any interference with the right to privacy occasioned by these clauses is neither unlawful nor arbitrary. Information may only be shared for particular purposes related to exercising functions under the bill. The sharing of such information is necessary to ensure the regulatory bodies and government agencies are able to access all information necessary to effectively regulate the education and care industry. Further, clause 263 provides that for the purposes of the national quality framework, the commonwealth Privacy Act 1988 applies as a law of the participating jurisdiction. Clause 273 also imposes a duty of confidentiality on persons exercising functions under the bill in relation to protected information (meaning information that is personal to a particular individual and that identifies or could lead to the identification of that individual, where that information came to the person's knowledge because or in the course of exercising functions under the bill). I therefore consider these clauses to be compatible with the right to privacy in section 13(a) of the charter.

Collection and use of information

Clauses 227 and 261 grant the national authority and regulatory authority the power to collect, hold and use information obtained under the bill regarding the provision of education and child-care services, including information about outcomes for children and information about providers of education and care services in each participating jurisdiction. The clauses also provide that, subject to the commonwealth Privacy Act 1988, the authorities may collect, hold and use information about providers of education and care services, family day care educators and certified supervisors.

Not all information dealt with under these provisions will be of a private nature. However, to the extent that these provisions do relate to private information, any interference with the right to privacy will be neither unlawful nor arbitrary. The provisions only relate to information obtained by the regulatory authority or national authority under the bill itself. Any use of that information will be restricted to legitimate purposes under the bill, and, as mentioned above, the commonwealth Privacy Act 1988 applies, as well as a duty of confidentiality in relation to personal information. The collection, retention and use of such information is necessary to effectively regulate the provision of education and care and related services for children, as it allows the regulatory and national authorities to make decisions and carry out their functions in regulating the industry with the best information possible. This enables those bodies to protect the rights and interests of children by ensuring they are receiving appropriate care and education. I therefore consider these provisions are compatible with the right to privacy under section 13(a) of the charter.

Protected disclosures

Clause 296 provides that a person may disclose information or documents to the regulatory authority pursuant to a request under the national law or where the person making the disclosure has a reasonable belief that an offence against the national law has been or is being committed. This may result in the disclosure of private or confidential material. However, I consider that any interference with the right to privacy occasioned by this clause is neither unlawful nor arbitrary. The circumstances in which material may be disclosed are clearly defined, and the clause is necessary to ensure that persons are able to alert the regulatory authority to breaches of the national law without fear of reprisal. I therefore consider that this clause is compatible with the right to privacy in section 13(a) of the charter.

Publication of information

Clauses 153, 160, 180, 195, 225, 227, 266, 267, 268, 270, and 280 provide that in particular circumstances the regulatory authority or national authority may publish information or otherwise make that information available to the public. Such information includes registers of approved providers, approved education and care services, and certified supervisors, and information about the national quality framework, including ratings and prescribed information about compliance with the national law. The regulatory authority may also publish information about enforcement actions taken under the bill, but that information must not include information that could identify a person other than an approved provider or certified supervisor.

Not all information dealt with under these provisions will be of a private nature. However, to the extent that these provisions do relate to private information, any interference with the right to privacy will be neither unlawful nor arbitrary. The type of information that may be published is clearly specified, and the publication of that information serves the necessary purpose of ensuring that parents and other members of the public are able to make informed decisions regarding the provision of education and care services to their children. I therefore consider these provisions are compatible with the right to privacy under section 13(a) of the charter.

Powers of entry, inspection, search and seizure

Various provisions of the bill grant powers of entry, inspection, search or seizure. These provisions are considered below.

Clauses 46 and 311 enable the regulatory authority to enter at any reasonable time the premises of services applying for service approval for the purpose of inspecting the premises or inspecting the policies and procedures of the service. Clauses 89 and 96 enable the regulatory authority to inspect the premises and the offices of an applicant for a service waiver or a temporary waiver.

Clause 197 provides that an authorised officer may, at any reasonable time and for specified purposes, enter and inspect any premises at which the officer believes on reasonable grounds an approved education and care service is operating or being coordinated. The authorised officer may be accompanied by any assistants reasonably required, and under clause 198 may also be accompanied by a person authorised by the national authority. The authorised officer may inspect various items at the premises and may take photographs or make other recordings or copies of anything at the premises. Further, the authorised officer may take any document or other thing at the premises likely to be being used in the provision of education and care services, and may ask questions or request documents. Documents or other items taken under this section must be returned within seven days.

Clause 199 provides that an authorised officer of the regulatory authority may investigate an approved education and care service if he or she reasonably suspects that an offence may have been or may be committed against the bill. The authorised officer may enter the premises of the approved provider at any reasonable time and exercise any power set out in clause 5(2) of schedule 2 (these include powers relating to searching premises, documenting and taking items for analysis, and requiring the occupier to provide information or otherwise assist in the conduct of the investigation). There is no requirement to apply for a search warrant. Clause 200 provides a similar power in relation to the principal office or any other business premises of an approved provider, however such searches cannot take place without the consent of the occupier.

Clause 201 provides that an authorised officer may, under the authority of a search warrant, enter certain premises at which the authorised officer believes an education and care service is operating in contravention of the bill, or at which the authorised officer believes there are documents or other evidence of the commission of an offence under the bill. The authorised officer must have reasonable grounds for such a belief. Warrants under this section are issued in accordance with schedule 2 by the Magistrates Court. A warrant authorises the authorised officer to enter, inspect and search premises, and to copy or take any document or thing at the premises, as well as to require the occupier to provide information or otherwise assist in the conduct of the investigation.

‘Premises’, under these provisions, extends to a residence at which an education and care service is operating, and to parts of a family day carer’s residence that are used to provide care or education to children on behalf of a family day care service.

Most of the above clauses will operate in relation to business premises (as opposed to private residences), and occupiers of such premises would have a limited expectation of privacy. However, even if the exercise of the powers in these clauses will interfere with a person’s privacy, home or correspondence, such interference is lawful and is not arbitrary. The powers are necessary to monitor compliance with the regulatory scheme and are limited to that purpose. In addition there are a number of protections contained in the bill, including a requirement that certain inspections occur at a ‘reasonable time’; the return of items seized during inspections and searches; the provision of access to the occupier to things seized during a search; and a limit on the exercise of such powers at unlicensed premises without a search warrant. The powers under clauses 199, 200 and 201 are also necessary to ensure the detection and prosecution of offences against the act, which helps to ensure the protection of children in education, care and family day care services.

Accordingly, I consider the provisions are compatible with s 13(a) of the charter.

Requirements to provide information

Clauses 11, 14, 22, 37, 39, 40, 44, 45, 54, 56, 59, 64, 88, 89, 95, 96, 107, 110, 119, 129, 139, 141, 142, 145, 150, 152, 154, 159, 186, 191, 197, 199, 200, 201, 204, 205, 206, 214, 215, 216, 269, and 311 each provide that persons must provide information in specified circumstances to the regulatory authority or national authority. The circumstances in which information must be provided include: for the purposes of approvals, certifications, or ratings under the bill; for the purposes of variations, suspensions, transfers, or reviews of such approvals, certifications or ratings; for the purposes of temporary waivers or service waivers; for the purposes of applications to lift prohibition notices; and for the purposes of monitoring and enforcing compliance with the bill or regulations. Information that must be provided under the bill is in some circumstances likely to include personal details, and may include information regarding an applicant’s criminal history, medical condition or financial status. It is particularly likely that persons will be required to provide personal information where the regulatory authority is assessing whether they are ‘fit and proper’ to provide education and care services to children.

To the extent that information required under these provisions relates to individuals, these provisions engage the right to privacy under section 13(a) of the charter. However, in my view, any interference with the right to privacy is neither unlawful nor arbitrary. The instances in which information is required to be shared are specifically defined in the act. The provisions are necessary to respect the rights of children by ensuring that the authorities are able to make informed decisions about the fitness of particular persons to provide, engage in, or be present at the premises of child education and care services, to monitor compliance with the bill and regulations, and to provide accurate information to the public and to parents of children receiving education or care about the quality of education and care services. Further, when exercising jurisdiction in Victoria, both the regulatory authority and the national authority are public authorities for the purposes of section 38 of the charter. When seeking information under the bill, the authorities and their officers will therefore be required to act in accordance with human rights.

Clauses 35 and 83 identify circumstances where an approved provider must provide the regulatory authority with the identity and contact details of all parents of children who attend an education and care service. These clauses engage the parents' right to privacy. However, I consider that any interference with the right to privacy is neither unlawful nor arbitrary. The circumstances in which such information is to be provided are clearly defined in the legislation, and the purpose of sharing the information is to ensure that the regulatory authority is able to keep parents informed of any changes to the approval status of an approved provider or education and care service. This ensures that parents are able to make informed decisions regarding where their children receive education and care services.

I therefore consider that these provisions are compatible with section 13(a) of the charter.

Freedom of expression

Section 15 of the charter provides that every person has the right to freedom of expression. This includes the right to seek, receive and impart information and ideas of all kinds.

Section 15(3) provides that special duties and responsibilities attach to the right of freedom of expression under section 15 of the charter and 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.

Clause 104 engages the right to freedom of expression by providing that it is an offence to knowingly advertise a service as an education and care service if that service has not been approved. To the extent that this clause restricts the right to freedom of expression, it comes within section 15(3) as it is reasonably necessary to protect public health and the rights of others. Services that have not been approved cannot be guaranteed to meet the standards provided in the national quality framework, and so could potentially pose a risk to the health, safety and wellbeing of children in their care. This provision both protects the best interests of children and promotes public health by ensuring people can make confident and informed choices about services that can be entrusted with the care of their children.

The right to freedom of expression also includes the right not to express oneself.

As discussed above under the privacy right, various clauses in the bill provide that persons must provide information to the regulatory authority or national authority. Other clauses within the bill require the display of ratings information and other prescribed information at the premises of education and care services.

Clauses 199, 200, 201, 206, 215, and 216 all provide that the regulatory authority or its authorised officers may require persons involved in the provision of education and care services or family day care services to answer questions, produce documents or provide information in certain circumstances. These provisions only apply for the purposes of monitoring compliance, gathering information relating to the cancellation or transfer of an approval, conducting a rating assessment, or investigating suspected offences under the bill.

Clause 204 provides that an authorised officer of a regulatory authority may, if a person is, or is reasonably suspected of, committing an offence against the bill, require that person to state and supply evidence of their name and residential address. Clause 205 provides that an authorised officer may, if he or she reasonably suspects that a person is employed at an education and care service or family day care service and has not attained the minimum age specified by the regulations, ask the person their correct age and ask the person to provide evidence of their stated age. The authorised officer may also require the person to provide their name and residential address.

Clauses 172 and 313 impose requirements on approved providers and declared approved services to display certain information regarding their service, including their rating.

Further, clauses 35, 39, 56, 59, 75, 80, 83, 114, 121, 173, 174 and 306 impose requirements to notify the regulatory authority of certain events or information. For example, the regulatory authority must be notified of any change in name of an approved provider and of any appointment or removal of a person with management or control of an approved provider. Clauses 35, 36, 37, 38, 69, 83, 84, 85, and 86 also provide circumstances where the regulatory authority or the approved provider may or must notify parents of children attending an education or care service of certain events relating to the approval status of the approved provider or education and care service. Clause 189 further requires parents to be notified if a child is removed from the premises of an education and care service in emergency circumstances.

Most notably, clause 174(1) provides that approved providers of education and care services must notify the regulatory authority of any serious incidents at the service and any complaints alleging that the safety, health or wellbeing of a child is being compromised while that child is attending the service, or that the national law is being contravened.

To the extent that these provisions engage the right not to express oneself, I consider that they fall within section 15(3) of the charter. In this case, the provisions are necessary to ensure the safety and wellbeing of children in children's services by enabling the effective monitoring and enforcement of the regulatory standards. Accordingly, I consider that the provisions are compatible with the right to freedom of expression.

Right to take part in public life

Section 18(2)(b) of the charter provides that every eligible person has the right, without discrimination, to have access on general terms of equality to the Victorian public service and public office. 'Discrimination' for the purposes of the right means discrimination within the meaning of the Equal Opportunity Act 2010. The discrimination must be on the basis of one of the attributes set out in section 6 of the Equal Opportunity Act 2010.

Clause 254 enables the board of the Australian Children's Education and Care Quality Authority to terminate the appointment of the chief executive officer (CEO) of the authority for a range of reasons. Relevantly, these include for 'physical or mental incapacity that significantly impacts upon the ability of the chief executive officer to perform the

role'. This clause engages the right to take part in public life by potentially restricting a person's access to public office.

A 'physical or mental incapacity' is likely to constitute a defined attribute of 'impairment' in the Equal Opportunity Act 2010. However, in my view, clause 254 will not result in either direct or indirect discrimination under that act. A CEO with a physical or mental incapacity will not be treated differently because he or she has an impairment, but rather because he or she has become unable to perform the functions of a CEO. Section 20 of the Equal Opportunity Act 2010, which requires that an employer make reasonable adjustments for a person with an impairment, unless the person or employee cannot adequately perform the genuine and reasonable requirements of the employment even after the adjustments are made, continues to apply. I therefore consider that this clause is compatible with the right to take part in public life under section 18(2)(b) of the charter.

Property

Clauses 197, 199, 200, and 201 enable the seizure and retention of certain items by authorised officers for the purposes of monitoring compliance with the bill and gathering evidence of offences against the bill. Time frames for the return of that property are set out under clauses 197(3) and 202. A court may also extend time frames under clause 203 in defined circumstances.

In my view, any deprivation of property occasioned by these provisions will be lawful, and therefore compatible with the right to property under section 20 of the charter.

Right to a fair hearing

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.

Immunity clauses

Clause 289 provides a personal immunity against legal liability to members of the board of the national authority, committees of the board, the ratings review panel, the regulatory authority, and members of the governing body of the regulatory authority.

Where an immunity clause restricts a person's ability to access a court by effectively removing a person's ability to bring an action in court due to the absence of an appropriate defendant, the right to a fair hearing may be engaged. However, in this case, a person's access to the courts will not be hampered as liability is transferred to either the national authority or, in the case of the regulatory authority or members of its governing body, to the state of Victoria. I therefore consider that clause 289 is compatible with the right to a fair hearing under section 24(1) of the charter.

Decision-making processes

In *Kracke v. Mental Health Review Board & Ors* (General) [2009] VCAT 646, Bell J concluded that the right to a fair hearing is not confined to proceedings of a judicial character and can apply to civil proceedings which are of an administrative character. 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.

Parts 2, 3 and 4 provide for the granting, variation, transfer, suspension, and cancellation of provider and service approvals and the granting, amendment, suspension, or cancellation of supervisor certificates. Part 7 provides for the issue of compliance notices and prohibition notices, and the suspension of family day care educators, as well as providing for certain emergency measures (such as the emergency removal of a child from an education and care service where there is an immediate danger to the child's health, safety or wellbeing). Following Kracke, to the extent that these decisions relate to individuals, the right to a fair hearing may be engaged by these provisions.

I have considered the process of decision making set out in these parts and in part 8, which provides for the review of these decisions, and consider that the processes are compatible with the right to a fair hearing. Affected persons often have the opportunity to make submissions to the original decision-maker (see clauses 26, 32, 71, 78, 124, 178, and 183). In many cases, the decision-maker must provide reasons for the decision (see clauses 16, 50, 66(3), 113, and 143). Further, except in the case of decisions made to respond to emergency circumstances (see decisions under clauses 171, 179 and 189), decisions which affect the rights of persons operating under the bill are generally subject to internal review under clauses 190 and 191, and external review under clause 192 and 193. Judicial review is also available. I therefore consider that parts 2, 3 4, and 7 are compatible with the right to a fair hearing under section 24(1) of the charter.

Right to be presumed innocent

Clause 25 provides that the regulatory authority may suspend a provider approval if the approved provider has been charged with an indictable offence. This provision may engage the right under section 25(1) of the charter to be presumed innocent until proven guilty according to law. However, in my view, the provision does not limit the right. It does not affect the criminal proceeding relating to the person. Nor does it presume that person to be guilty. Rather, it is simply a precautionary measure which protects children from exposure to persons charged with indictable offences, who may be unsuitable or inappropriate to engage in the provision of education and care services, until the matter is resolved. The suspension can only be in place for six months. Further, clause 26 provides that prior to any suspension, the person charged with the offence has the opportunity to make a written submission to the regulatory authority providing reasons why the suspension should not take place. I therefore consider that clause 25 is compatible with the right to be presumed innocent under section 25(1) of the charter.

Clause 208 provides that a person must not, without reasonable excuse, fail to answer questions, or produce documents, as required by an authorised officer, or fail to assist an authorised officer in conducting an investigation under a search warrant. Clause 209 provides that a person must not, without lawful authority, destroy or damage any notice or document given, prepared or kept under or in accordance with the bill. By including the words 'without reasonable excuse' and 'without lawful authority' these provisions impose an evidential onus on an accused to adduce or point to evidence that goes to the excuse or authority. These clauses, read in conjunction with section 72 of the Criminal Procedure Act 2009, impose an evidentiary burden on the accused.

In my view, these provisions do not inappropriately 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 excuse or lawful authority. 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 of reasonable excuse and lawful authority that are 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.

Right not to be tried or punished more than once

Section 26 of the charter provides that a person has the right not to be tried or punished more than once for an offence in respect he or she has already been finally convicted or acquitted in accordance with the law.

Clause 31 provides that the regulatory authority may cancel an approval if a provider has been found guilty of an indictable offence or an offence against this law.

Clause 314 provides that when determining whether to suspend or cancel an approval under part 2 or part 3, the regulatory authority may take into account any non-compliance by an approved provider with a former education and care services law that occurred in the period of three years prior to commencement.

The right in section 26 of the charter has been interpreted as applying only to punishments of a criminal nature and does not preclude the imposition of civil consequences for the same conduct. I do not consider that the consequences under these clauses are penal in nature so as to engage section 26. Their purpose is not to punish the convicted person, but to protect children by ensuring that only appropriate persons are able to engage in the provision of education and care services. I therefore consider that these clauses are compatible with the right not to be punished more than once under section 26 of the charter.

2. Consideration of reasonable limitations — section 7(2)

Right to equality

Section 8 of the charter provides that every person is equal before the law and is entitled to the equal protection of the law without discrimination. 'Discrimination' for the purposes of the equality right means discrimination within the meaning of the Equal Opportunity Act 2010. Under the Equal Opportunity Act, 'direct' discrimination occurs where a person treats someone with an attribute less favourably than the person treats someone without that attribute, or with a different attribute, in the same or similar circumstances.

Clause 106(2) provides that a person cannot be granted a supervisor certificate enabling them to work as a supervisor in an education and care service until they are 18 years of age. The provision amounts to a prima facie discrimination on the attribute of age. However, the discrimination is a reasonable limitation on the right for the reasons set out below.

(a) the nature of the right being limited

The prohibition of discrimination is one of the cornerstones of human rights instruments and this is reflected in the preamble to the charter. However, the right is not absolute and can be subject to reasonable limitations in section 7 of the charter.

(b) the importance of the purpose of the limitation

The purpose of the limitation is to ensure that persons who supervise education and care facilities have the necessary maturity to engage in the activity. It is important for the proper care and education of children in these services that supervisory positions be limited to persons of legal adult age. The limitation aims to prevent harm to children, and therefore serves to give effect to the best interests of the child, a right protected by section 17 of the charter.

(c) the nature and extent of the limitation

The right is limited only to the extent a person aged under 18 years of age is prohibited from being granted a supervisor certificate.

(d) the relationship between the limitation and its purpose

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 to act responsibly, which is necessary in this situation. It is reasonable for Parliament to set an age limit reflecting its assessment of when most persons will have sufficient maturity to ensure responsible decisions are made by those in a position to supervise education and care services.

(e) any less restrictive means reasonably available to achieve its purpose

There is no less restrictive means reasonably available to achieve the purpose of ensuring that minors are not allowed to act as supervisors in education and care services.

I therefore consider that the limitation on the right to equality imposed by clause 106(2) is demonstrably justifiable in a free and democratic society.

Freedom of movement

Section 12 of the charter 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.

The right to move freely within Victoria is not dependent on any particular purpose or reason for a person wanting to move or stay in a particular place. It encompasses a right not to be forced to move to, or from, a particular location. The right includes freedom from physical barriers and procedural impediments.

Clause 170 limits the right to freedom of movement by prohibiting the presence of 'unauthorised persons' at an education and care service or family day care service unless

they are under the direct supervision of an educator or staff member.

Clause 171 further limits the right by providing that the regulatory authority may make a direction that an 'inappropriate person' be excluded from a care or education service. An 'inappropriate person' is a person who may pose a risk to the health, safety and wellbeing of a child attending the service, or whose behaviour or state of mind is such that it would be inappropriate for that person to remain at the premises while children are present (for example, a person under the influence of drugs or alcohol).

Clause 215(1)(c) also limits the right to freedom of movement by providing that the regulatory authority may by notice require a person who is or has been an approved provider, a certified supervisor or a staff member of an education and care service to appear before the authority at a time and place specified in the notice, for the purpose of giving evidence or producing a document specified in the notice.

These provisions limit the right to freedom of movement under section 12. However, the discrimination is a reasonable limitation on the right for the reasons set out below.

(a) the nature of the right

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 purpose of the limitations in clauses 170 and 171 is to ensure that children at education and care services are protected from exposure to unauthorised or unsuitable persons. The limitations aim to prevent harm to children, and therefore serve to give effect to the best interests of the child, a right protected by section 17 of the charter.

The purpose of the limitation in clause 215(1)(c) is to allow the regulatory authority to obtain information necessary for it to efficiently regulate children's services. The ability to secure the presence of a person to provide information is essential to the effective administration of the regulatory authority's functions in licensing and regulating children's services. By ensuring high-quality education and care services, this too serves to give effect to the best interests of the child.

(c) the nature and extent of the limitation

The limitations in clauses 170 and 171 limit inappropriate and unauthorised persons' access to the premises of education and care services. The clauses do not otherwise interfere with the freedom of movement. Further, although inappropriate persons will be entirely excluded from such premises, unauthorised persons will still be able to be present on such premises if they are supervised by an educator or staff member.

Directions excluding inappropriate persons are intended to be used as an emergency measure of limited duration. A person who considers they have been wrongly subject to such a direction will be able to seek judicial review of that decision. Further, the regulatory authority, in making the decision, will also be bound to give proper consideration to human rights in order to comply with section 38 of the charter.

Clause 215(1)(c) limits a person's freedom of movement to the extent that a person may be compelled to be physically present before the regulatory authority at another location for a specified time for the purpose of giving evidence or producing documents.

(d) the relationship between the limitation and its purpose

The limitations imposed are directly and rationally connected to their purposes.

(e) any less restrictive means reasonably available to achieve its purpose

In my opinion, there are no less restrictive means available to achieve the purposes of the limitations.

I therefore consider that the limitations on the right to freedom of movement in clauses 170, 171 and 215(1)(c) are demonstrably justifiable in a free and democratic society.

Cultural rights

Section 19 of the charter provides that all persons with a particular cultural, religious, racial or linguistic background must not be denied the right to enjoy his or her culture, to declare and practise his or her religion, and to use his or her language.

Clause 166 of the bill prohibits the use of any form of corporal punishment by family day carers. There is no exception. This may engage the right to enjoy culture or to practise religion under section 19. In the UK case of *R (Williamson) v. Secretary of State for Education and Employment and Others* [2005] 2 AC 246, the House of Lords found that a prohibition on corporal punishment in schools was considered to amount to a limitation on the claimant's rights to practise their religion. However, the House of Lords found that the limitation was justified.

Clause 166 also provides that it is an offence for an approved provider, nominated supervisor, staff member or volunteer at an education and care service, or a family day care educator to subject a child to 'any discipline that is unreasonable in the circumstances'. This too could potentially limit cultural rights if a form of discipline traditionally used by a particular religious or cultural group were regarded as 'unreasonable'.

The limitation on 'unreasonable' discipline could arguably be considered too 'vague' to impose a limitation on a human right. As the Scrutiny of Acts and Regulations Committee noted in their comment on a similar provision in the Children's Legislation Amendment Bill 2008, the European Court of Human Rights has said that a provision that limits a right:

> … cannot be regarded as a 'law' unless it is formulated with sufficient precision to enable the citizen to regulate his conduct: he must be able — if need be with appropriate advice — to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail.

(*Sunday Times v. the United Kingdom* [1979] 2 EHRR 245, 271)

However, I note that the court went on to say that:

> … consequences need not be foreseeable with absolute certainty: experience shows this to be unattainable. Again, whilst certainty is highly desirable, it may bring in its train excessive rigidity and the law must be able to keep pace with changing circumstances. Accordingly, many laws are inevitably couched in terms which, to a greater or lesser extent, are vague and whose interpretation and application are questions of practice.

In the present case, guidelines will be issued to assist those engaged in the education and care of children to determine what constitutes 'unreasonable' discipline in the circumstances. Further, in Victoria there are existing provisions prohibiting this type of conduct, so educators and carers will already be familiar with the boundaries of reasonable discipline. I therefore consider that the provision is sufficiently precise to enable a limitation to be imposed on a human right.

The prohibition on corporal punishment and unreasonable discipline may therefore limit the right to religious and cultural rights under section 19 of the charter. However, I consider that the limitation is reasonable, for the reasons set out below.

(a) the nature of the right

The right to enjoy cultural rights under section 19 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 purpose of the limitation in clause 166 is to protect children from the potential harm that can result from the infliction of physical violence or unreasonable discipline against young children. The limitation therefore serves to give effect to the best interests of the child, a right protected by section 17 of the charter.

(c) the nature and extent of the limitation

The limitation prohibits all forms of corporal punishment and unreasonable discipline in education and care services.

(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 the purpose of the limitation.

Accordingly, in accordance with the judgement in Williamson, I consider that any limitation on rights imposed by clause 166 is demonstrably justifiable in a free and democratic society.

Self-incrimination

Section 25(2)(k) of the charter provides that a person charged with a criminal offence is entitled not to be compelled to testify against himself or herself or to confess guilt.

Part 9

Part 9 of the bill includes a range of clauses which compel persons involved in the provision of education and care services to answer questions and provide documents or information in certain circumstances. These provisions are described below.

Under clause 199, an authorised officer who reasonably suspects that an offence may have been or may be committed against the bill may require an occupier of education and care services to give the authorised officer information to help in the conduct of the investigation (pursuant to clause 5(2)(g) of schedule 2). Clause 201 provides the same power to an authorised officer exercising powers under a search warrant.

Clauses 204 and 205 provide that an authorised officer may in defined circumstances request specified persons to state and supply evidence of their name, residential address and age. Clause 206 also provides that an authorised officer may, by notice, require an approved provider, certified supervisor, staff member of an education and care service, or family day care educator, to provide information specified in the notice.

Under clause 208, it is an offence to fail to: answer a question asked by an authorised officer; provide a document or information required by an authorised officer; or assist an authorised officer exercising a search warrant. However, the privilege against self-incrimination is expressly preserved by clause 211. That clause states that it is a reasonable excuse to refuse to comply with a requirement of an authorised officer to answer a question or produce information if to do so might tend to incriminate the individual. Further, clause 212 provides that the authorised officer must advise the person of the effect of clause 211, ensuring that he or she is aware that the privilege against self-incrimination is not abrogated.

The provisions preserving the right against self-incrimination do not extend to the production of documents that are required to be kept under the bill, or to the giving of the individual's name or address. However, clause 211(3) provides both a direct and derivative use immunity for such documents, providing that any information obtained directly or indirectly from the documents is not admissible in a criminal proceeding (except proceedings under the bill) or in any civil proceedings. In relation to the provision of a person's name or address, I further note that in my opinion, such information does not constitute information that would 'tend to incriminate', and so the privilege against self-incrimination does not arise in these circumstances.

The privilege against self-incrimination also arises in relation to clauses 215 and 216. Those clauses provide that the regulatory authority may require a person involved in the provision of education and care services to answer questions, provide information or produce documents. The regulatory authority may only exercise these powers if it reasonably suspects that an offence has or may have been committed against the bill. Under section 219, a person is not excused from answering a question, providing information or documents on the ground that the answer,

information or document may tend to incriminate the person.

A direct and derivative use immunity is provided for answers given and information disclosed under these provisions. This means that answers and information provided under clause 215 or 216, and any information obtained directly or indirectly because of those answers or information, are not admissible against the individual in a criminal proceeding (other than proceedings under clause 218) or in any civil proceedings. The immunity may be claimed if the individual objected at the time on the grounds that providing the information or giving the answer might incriminate him or her, or if the individual was not warned that they were able to object on such grounds. These requirements are consistent with the fact that, at common law, in order to exercise the privilege against self-incrimination, a person needs to claim the privilege at the point of the refusal to testify.

At the time the person is required to provide information under clauses 199, 204, 205, 206, 215, or 216, he or she will not have been charged with an offence. On this basis the right in section 25(2)(k) of the charter would have no application. However, the Supreme Court has said that the right is also an aspect of the right to a fair trial protected by section 24 of the charter. The decision in *Re Application under the Major Crime (Investigative Powers) Act 2004* [2009] VSC 381 (Major Crime) holds that this right, as protected by the charter, is at least as broad as the privilege against self-incrimination protected by the common law. It 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.

In my view, the clauses under discussion generally do not limit the right not to incriminate oneself. I have reached this view for two reasons. First, the privilege against self-incrimination has not been extended so far as to protect persons from providing information necessary for the monitoring and enforcement of compliance in relation to a regulatory regime. Second, the direct and derivative-use immunities provided under clauses 211 and 219 protect persons from the use of any self-incriminatory answers or information (or information derived from those answers or information) in criminal or civil proceedings. As the information cannot be used against a person as evidence in a criminal proceeding, it cannot be said to ‘incriminate’ that person. Therefore, the privilege against self-incrimination is not limited.

However, clauses 211 and 219 provide for two minor exceptions to the direct and derivative-use immunities. To the extent that those exceptions apply, the right not to testify against oneself may be limited. For the reasons set out below, I consider that any limitation on the right not to testify against oneself imposed by part 9 of the bill is demonstrably justifiable under clause 7(2) of the charter.

(a) the nature of the right

The right not to testify against oneself is an important right under the charter. However, as acknowledged by Warren CJ in Major Crime, the right may be subject to reasonable limitations so long as they can be demonstrably justified.

(b) the importance of the purpose of the limitation

The purpose of the limitation is to ensure that the regulatory regime under the bill can be adequately monitored and enforced, with the ultimate aim of protecting children from being exposed to substandard or unregulated education and care services. The limitation therefore serves to give effect to the best interests of the child, a right protected by section 17 of the charter.

(c) the nature and extent of the limitation

As discussed above, the direct and derivative-use immunities provided under clauses 211 and 219 mean that the right not to incriminate oneself is largely undisturbed by part 9 of the bill.

There are, however, two exceptions which allow some types of self-incriminatory information to be used in certain types of proceedings. The relevant exceptions are:

(1) Clauses 211(3) and 219(3) provide that documents required to be kept under the bill, or information obtained from those documents, may be admitted into evidence in criminal proceedings under the bill (see clauses 211(3) and 219(3)).

(2) Clause 219 provides that information disclosed under clauses 215 or 216 may be admitted as evidence in criminal proceedings under clause 218. Clause 218 provides that it is an offence to hinder or obstruct the regulatory authority in exercising a power under clause 215 or 216.

I note that both these limitations apply only to persons who voluntarily participate in the provision of education and care services, which is a highly regulated industry. They do not apply to members of the general public. In relation to the first exception, I further note that at common law, the privilege against self-incrimination in relation to existing documents is weaker than the protection that applies to oral testimony: *Environment Protection Authority v. Caltex Refining Co. Pty Ltd* (1993) 178 CLR 477, 502. This is particularly so in the case of documents that are required to be kept as part of a regulatory regime: *R v. Fitzpatrick* [1995] 4 SCR 154, at [54].

(d) the relationship between the limitation and its purpose

In my opinion, the limitation imposed is clearly directly and rationally connected to its purpose.

In relation to the first exception referred to above, which relates to documents that are required to be kept under the bill, it is necessary that such documents are available to be used as evidence in proceedings under the bill for the purposes of enforcing the regulatory scheme. Without those documents, it would be very difficult to prove breaches of many of the regulatory obligations under the bill, particularly those obligations which require record keeping. Further, the only documents affected are those which the bill specifically requires must be kept, so it is appropriate that they be available in proceedings under the bill.

In relation to the second exception, which relates to the use of information in proceedings under clause 18, there is again a clear connection between the limitation and its purpose.

Clause 18 prohibits a person from obstructing or hindering the regulatory authority in exercising a power under clause 215 or 216. The relevant information may in itself form the obstruction or hindrance if it is false or misleading. Therefore, although that information may tend to incriminate the person, it is nonetheless necessary that it be admissible as evidence under clause 218.

As such, both these clauses facilitate the proper enforcement of the regulatory regime by enabling successful prosecutions for failure to comply with the regime in specific circumstances.

(e) any less restrictive means reasonably available to achieve its purpose

In my opinion, there are no less restrictive means reasonably available to achieve the purpose of the limitation.

For the reasons set out above, I consider that the limitation on the right not to testify against oneself is demonstrably justifiable in a free and democratic society. The limitation is necessary to ensure the proper enforcement of the regulatory regime and by doing so to protect the best interests of children. It only applies in very limited circumstances. I therefore consider that part 9 is compatible with section 24 and section 25(2)(k) of the charter.

Requirement to notify

As noted above, clause 174(1) provides that approved providers of education and care services must notify the regulatory authority of a range of matters, including any serious incidents at the service and any complaints alleging that the safety, health or wellbeing of a child is being compromised while that child is attending the service, or that the national law is being contravened. This provision may engage the right to privilege against self-incrimination in section 25(2)(k) of the charter. However, as above, I note that the privilege has not previously been extended to the type of mandatory reporting required under these provisions. Accordingly, I consider that the right not to incriminate oneself is not limited by clause 174(1). However, if I am wrong, I consider that the importance of ensuring children are protected from harm means that any limitation imposed by this clause is reasonably justifiable in a free and democratic society.

Conclusion

I consider that the bill is compatible with the charter.

John Lenders, MLC
Treasurer

Second reading

Ordered that second-reading speech be incorporated into *Hansard* on motion of Mr LENDERS (Treasurer).

Mr LENDERS (Treasurer) — I move:

That the bill be now read a second time.

Incorporated speech as follows:

This bill will provide for new nationally consistent standards to ensure high-quality children's services across Australia.

The Education and Care Services National Law Bill is a significant milestone in achieving national standards in the provision of quality early education and care in long day care, family day care, preschool and outside school hours care.

In December 2009 the Council of Australian Governments agreed to the national partnership agreement on the National Quality Agenda for Early Childhood Education and Care.

The major element of the agreement was the establishment of a jointly governed unified national quality framework (NQF) for early education and care and school-aged care which replaces existing separate licensing and quality assurance processes.

The new national quality framework will become operational from 1 January 2012 and will provide for improved staff-to-child ratios, higher staff qualifications, the introduction of a quality ratings system based on a national quality standard, the establishment of a new national body and the establishment of a national licensing system.

It is vital that children's services are of a consistently high quality in a time when more children are spending more time in education and care services across Australia.

The Brumby government has been committed to the process of national reform for many years and has been a key driver for change through the COAG process.

Victoria's plan to improve outcomes in early childhood, released in 2007, identified the economic and social benefits of a quality early education and care experience for children.

Research has demonstrated the importance of the early years in a child's brain development and on their future intellectual and social potential.

The lifelong benefits of quality early childhood education and care are well documented and have created an obligation on all of us to ensure children are given the best possible start in life.

It has been identified in numerous studies that children who have positive early childhood experiences in stimulating, nurturing environments have better outcomes throughout their life.

It has also been demonstrated that quality early education will have a positive impact on developing better self-esteem, better educational outcomes and fewer health and social problems.

Population growth and modern workforce participation patterns, including more women working more hours, mean more children are attending education and care services than ever before.

There has been a significant increase in women's workforce participation, with more than 60 per cent of mothers with dependent children now in paid jobs compared to 40 per cent in 1985.

Across Australia, the proportion of children using formal child care has increased from 14 per cent in 1996 to 23 per cent in 2009.

The average time children are spending in care has also increased. In 2004 children attending long day care did so for an average of 19 hours per week. This has increased to an average of 26 hours in 2009.

This bill represents our government's continuing commitment to ensure that Victorian children are given the best opportunity to reach their full potential.

The introduction of a single national quality standard for children's services will ensure the same high-quality standards are met across Australia.

Increased staff-to-child ratios will give each child more individual care and attention, and higher staff qualifications will ensure staff have the skills to lead activities that help children learn and develop.

The introduction of a new national and transparent ratings system will allow families to have access to information relating to the quality of early childhood education and care services so they can make informed choices about their child's care.

The establishment of a new national body will ensure the national quality standard is applied across the country and a more streamlined regulatory approach will reduce the regulatory burden for services.

The national law has been developed in cooperation with every state and territory and the commonwealth under the auspices of the Ministerial Council for Education, Early Childhood Development and Youth Affairs.

It has considered submissions from key stakeholders including representatives of long day care, preschool and out of school hours care providers, parents, employees and child health experts.

The commitment of all parties to these reforms and the collaborative manner of the development of the law is the reason that we have before us a bill that will produce real benefits for children, parents and service providers across Australia.

The national law also continues the approach implemented in Victoria with the amendments to the Children's Services Act in 2008 and the Children's Services Regulations 2009.

Key features of the national law include:

Improving quality and providing access to information

The primary focus of the national law is on ensuring the safety, health and wellbeing of children and providing the optimal conditions at the beginning of their educational and developmental journey.

Long day care, preschool, outside school hours care and family day care providers across Australia are required to be licensed to provide education and care for the children attending their services.

The national law integrates both education and care into early childhood services and establishes a public rating system for services, based on the new national quality standard.

The new national quality standard will contain seven quality areas that will be defined in the associated regulations:

> educational program and practice, including the development of programs based on an approved learning framework and taking into account each child's strengths, capabilities, culture, interests and experiences;
>
> children's health and safety;
>
> physical environment;
>
> staffing arrangements, including mandated educator-to-child ratios and qualifications;
>
> relationships with children;
>
> collaborative partnerships with families and communities; and
>
> leadership and service management.

Services will receive a rating for each quality area and an overall rating.

These ratings will be published to inform parents and the community about how well services are providing education and care to children.

Compliance with this law

The bill provides for a strong set of compliance and enforcement tools that vary according to the nature of the issue.

This includes a range of powers for the regulatory authority to prosecute for prescribed offences, issue penalty notices and compliance notices, negotiate enforceable undertakings, suspend or cancel approvals and certifications and undertake emergency actions such as closing or evacuating services.

This range of compliance options ensures the most appropriate and proportional response to any issue that may arise.

The right to internal and external review of decisions of the regulator guarantee the principles of natural justice apply at the same time as ensuring the safety, health and wellbeing of children.

Eliminating duplication and reducing the regulatory burden

A key objective of the national law is to reduce the significant duplication that exists under the current national and state or territory-based regulatory, licensing and approval systems. It will introduce a system of nationally consistent approval processes for providers and services.

The current overlapping functions of the National Childcare Accreditation Council and state or territory regulatory authorities will be streamlined into a two-tier administrative and regulatory system overseen by the ministerial council, which will have overall responsibility for the system.

The new Australian Children's Education and Care Quality Authority will be responsible for the implementation and ongoing administration of the national quality framework and will have a key role in monitoring and promoting its consistent application across Australia.

The second tier of the system is the state and territory regulatory authorities. The regulatory authority remains accountable to its state or territory ministers and will continue to be the main point of contact for services through its operational responsibility for the national quality framework.

The national quality framework includes two types of approval: provider approval, by which a person is permitted to provide an education and care service; and service approval, which permits the provision of a service at a particular premises.

Under the national quality framework, an approval to provide an education and care service is valid in all participating jurisdictions. This means a person or organisation will not have to receive separate approval for each state or territory in which they wish to operate.

In regard to family day care, it is the scheme or service, and not the individual family day care educator that is subject to provider and service approval.

A certification process is also in place for supervisors of a service, whereby the holder of a supervisor certificate is deemed fit and proper to manage the day-to-day operation of a service. Like approved providers, these supervisors will have their certification recognised nationwide, which is an important reform as Australia's workforce becomes ever more mobile.

A nationally consistent approval process for services and supervisors ensures the same minimum requirements must be met across Australia.

Provision is also made for the different circumstances under which service providers operate across Australia with a system of waivers that will allow providers to continue to operate and deliver services to their communities under strictly controlled conditions.

Services that are not currently under the scope of the national quality framework, such as occasional care, three-year-old activity groups and limited hours services at sport and leisure services will continue to be fully or partially regulated under the Children's Services Act 1996.

For those providers that operate services that fall within the national quality framework as well as services that are to remain within the state and territory regulatory regime, such as occasional care, approvals will also be streamlined.

As an example, a provider that operates a long day care service and an occasional care service at the same premises will not be required to seek separate approvals.

To further reduce regulatory burden, existing approved providers and services and certified supervisors will be moved over in a seamless transition from the old system to the new.

Regulations

The regulations to accompany this law are currently being developed and will be subject to consultation in the near future.

These regulations will provide further detail on the national quality standard, the assessment and rating system, staff to child ratios and fees associated with the national quality framework.

Further bills

A further bill will be considered by Parliament next year that will address the consequential amendments to the Children's Services Act 1996 and consequential amendments to Victoria's statute books, and to provide for the associated children's services licences under the new national law.

Conclusion

It is vital that high-quality education and care services are available to children and their families.

This bill provides for a new national approach to the regulation, assessment and quality improvement for education and care services.

It provides the right balance between quality and affordability of children's services by focusing on improving the quality of education and care services, providing greater access to information about the quality of services, and reducing the regulatory burden on services.

The cooperative approach to the development of this national law creates a shared responsibility for improving children's educational and developmental outcomes.

In Victoria we have a proud record of commitment to high-quality, safe, affordable children's services and in hosting this national law, we are demonstrating our ongoing commitment to ensuring children and families benefit from this important national reform.

I commend this bill to the house.

Debate adjourned on motion of Ms LOVELL (Northern Victoria).

Debate adjourned until Thursday, 23 September.

ROAD SAFETY AMENDMENT (HOON DRIVING) BILL

Statement of compatibility

Hon. M. P. PAKULA (Minister for Public Transport) 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 Road Safety Amendment (Hoon Driving) Bill 2010.

In my opinion the Road Safety Amendment (Hoon Driving) 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:

a) extends the vehicle impoundment, immobilisation and forfeiture scheme in part 6A of the Road Safety Act 1986 to the following offences:

   i. driving with a blood or breath alcohol content of 0.10 or higher (for the second or subsequent time) contrary to sections 49(1)(b), (f) or (g) of the Road Safety Act 1986; and

   ii. driving with drugs present in blood or oral fluid (for the second or subsequent time) contrary to sections 49(1)(bb), (h) or (i) of the Road Safety Act 1986; and

   iii. unlicensed driving (for the second or subsequent time) contrary to section 18(1) of the Road Safety Act 1986 (except in circumstances where the person merely failed to renew their driver licence or permit);

b) strengthens the way the motor vehicle impoundment, immobilisation and forfeiture scheme in part 6A of the Road Safety Act 1986 operates with respect to the following offences:

   i. disqualified driving (for the second or subsequent time) contrary to section 30(1) of the Road Safety Act 1986; and

   ii. driving at 70 kilometres per hour or more over the applicable speed limit (or 170 kilometres per hour or more where the speed limit is 110 kilometres per hour) contrary to rule 20 of the road rules or section 65B of the Road Safety Act 1986; and

   iii. dangerous driving under section 64(1) of the Road Safety Act 1986 in circumstances where a vehicle is driven at 70 kilometres per hour or more over the applicable speed limit (or 170 kilometres per hour or more if the speed limit is 110 kilometres per hour);

c) enables police under part 6A of the Road Safety Act 1986 to immediately immobilise or impound a motor vehicle for seven days upon detection of a tier 1 relevant offence or a tier 2 relevant offence;

d) provides that, under part 6A of the Road Safety Act 1986, on a finding of guilt for:

   i. a second or subsequent 'tier 2 relevant offence'; or

   ii. any 'tier 1 relevant offence' —

   the court must, on the application of the police, order immobilisation or impoundment of the relevant motor vehicle for 28 days;

e) facilitates the use of steering wheel locks as a new method of motor vehicle immobilisation;

f) provides police with additional powers to search premises for the purposes of locating and accessing a motor vehicle that is to be impounded, immobilised or forfeited;

g) provides that when an impoundment or immobilisation order or a forfeiture order is sought with respect to a motor vehicle, the police may concurrently apply for a search warrant to facilitate access to the vehicle;

h) provides police with power to question adult persons as to the whereabouts of a motor vehicle to facilitate the impoundment, immobilisation or forfeiture of that vehicle;

i) facilitates the sale or disposal of forfeited motor vehicles and uncollected impounded motor vehicles by extinguishing third-party interests;

j) ensures that applications for 'exceptional hardship' to avoid orders for the immobilisation, impoundment or forfeiture of a motor vehicle are granted only in appropriate cases; and

k) amends the Melbourne City Link Act 1995 to provide the minister administering that act with power to revoke, in whole or in part, a road declaration made under that act.

Human rights issues

Section 12 — Freedom of movement

Section 12 of the charter 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.

Extension of vehicle impoundment, immobilisation and forfeiture scheme to certain drink-driving, drug-driving and unlicensed-driving offences

The bill provides that part 6A of the Road Safety Act 1986 will apply to three new categories of offences which were not previously subject to vehicle impoundment, immobilisation or forfeiture. These include:

a) driving with a blood or breath alcohol content of 0.10 or higher (for the second or subsequent time) contrary to sections 49(1)(b), (f) or (g) of the Road Safety Act 1986;

b) driving with drugs present in blood or oral fluid (for the second or subsequent time) contrary to sections 49(1)(bb), (h) or (i) of the Road Safety Act 1986; and

c) unlicensed driving (for the second or subsequent time) contrary to section 18(1) of the Road Safety

Act 1986 (except in circumstances where the person merely failed to renew their driver licence or permit).

The imposition of impoundment, immobilisation or forfeiture sanctions with respect to a motor vehicle restricts the use of that vehicle for transport purposes and therefore engages the right to freedom of movement.

However, the right to freedom of movement is not limited because the affected person(s) are free to use other forms of transport such as walking, cycling and public transport. In addition, if an affected person continues to hold a driver licence or permit, then that person is free to drive an alternate vehicle.

It is noted that in many cases the imposition of an impoundment or immobilisation sanction will not directly affect the offender's ability to drive a vehicle because that person is already prohibited from driving a motor vehicle. The person may be unlicensed (and disqualified from applying for a licence) or may have had his or her licence or permit suspended. For example, in the case of repeat drink and drug-driving offences, the offender's licence or permit will be suspended or cancelled under part 5 or part 7 of the Road Safety Act 1986.

It is also noted that it is generally possible for persons substantially affected by the imposition of vehicle immobilisation, impoundment or forfeiture sanctions to make an application on the grounds of 'exceptional hardship' for either the release of the relevant vehicle or to prevent the immobilisation, impoundment or forfeiture of the vehicle from occurring. If a successful application is made, then the vehicle can continue to be used for transport purposes.

Revocation of road declarations

The insertion of a power in the Melbourne City Link Act 1995 to revoke a road declaration engages the right to freedom of movement because the revocation or partial revocation of a road declaration means that the affected land will cease to be a public highway and therefore public rights of access to the land will be altered. In the present case, the power to revoke a road declaration or part of a road declaration is restricted to areas of land that are surplus to the requirements of CityLink. The act of revoking road declarations that apply to surplus land will allow that land to be used for alternative purposes. The altering of rights of public access to certain parcels of surplus land does not limit the right to freedom of movement because the public will still be able to move freely within Victoria, including travel along CityLink and adjacent roadways.

Section 13(a) — 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.

Extension of vehicle impoundment, immobilisation and forfeiture scheme to certain drink-driving, drug-driving and unlicensed-driving offences

The bill provides that certain drink-driving, drug-driving and unlicensed-driving offences are to become subject to the motor vehicle impoundment, immobilisation and forfeiture scheme in part 6A of the Road Safety Act 1986.

If a vehicle is to be impounded, immobilised or forfeited due to the commission of one of these offences, then the search and seizure powers set out in division 2 of part 6A (search and seizure without a warrant) and division 4 of part 6A (search and seizure with a warrant) will apply. The exercise of search and seizure powers engages the right to privacy.

However, the exercise of the abovementioned search and seizure powers are authorised by law and, for the reasons given below, are not exercised in an arbitrary manner. Therefore the right to privacy is not limited by this reform.

The exercise of the search and seizure powers are confined to those circumstances where there is a reasonable belief that a vehicle of interest is located at particular premises. Furthermore, a number of safeguards are in place to ensure that the search and seizure powers are exercised appropriately. Where a vehicle is seized under division 2 of part 6A (without a search warrant), a senior police officer must review the circumstances of the impoundment or immobilisation within 48 hours, to ensure that there were reasonable grounds for impounding or immobilising the vehicle. Also, appeal rights are available to persons whose interests are substantially affected by the impoundment or immobilisation and they may apply to the Magistrates Court for an order that the motor vehicle be released on the ground that the impoundment or immobilisation is causing, or will cause, exceptional hardship to the applicant or another person.

Where a search is conducted under a search warrant issued under division 4 of part 6A, an application for the search warrant must be made to the Magistrates Court and may only be made where the police believe on reasonable grounds that the motor vehicle of interest is or may be in or on specified premises within the next 72 hours. The person that executes the warrant must report back to the Magistrates Court as to the outcome of the execution of the warrant.

Expanded search powers

The bill provides police officers with additional powers to search premises without a search warrant. These include the ability:

a) to enter a motor vehicle for the purpose of affixing a steering wheel lock immobilisation device; and

b) solely for the immobilisation, impoundment or forfeiture of a vehicle under part 6A of the Road Safety Act 1986:

    i. to enter on land and enter any part of a building where vehicles are stored (excluding parts of buildings or dwellings used for residential purposes);

    ii. to open any unlocked doors or panels or open unlocked places and move (but not take away) anything that is not locked or sealed to get access to the vehicle; and

    iii. to search the premises to locate a vehicle that is reasonably believed to have been used to commit a 'tier 1 relevant offence' or

a 'tier 2 relevant offence' if the premises are:

the garage address of the vehicle; or

another premises where the vehicle is believed to be present.

The exercise of these search and entry powers engages the right to privacy. However, the exercise of these powers are authorised by law and will be exercised only in limited circumstances as described above. The powers are quite limited and carefully tailored to the purpose for which they are necessary, that is, gaining access to a vehicle in order to immobilise or impound it or to seize a vehicle that is to be forfeited to the Crown. For example, where the police exercise the abovementioned search and entry powers with respect to business premises, entry will only be permitted during business hours. Therefore the right to privacy is not limited by this reform.

Police power to question adult persons as to whereabouts of a vehicle

The police power to question adult persons as to the whereabouts of a vehicle may engage the right to privacy.

However, the exercise of that power will be authorised by law and will not be exercised in an arbitrary manner. The exercise of the power is constrained to the narrow purpose of locating a vehicle that is to be immobilised, impounded or forfeited. Furthermore, any information provided to the police cannot be used against the person providing the information in any civil or criminal proceedings (other than where it is alleged that the person has provided information to the police that is false or materially misleading). Since the questioning powers are authorised by law and, for the reasons given above, cannot be exercised arbitrarily, the right to privacy is not limited by this reform.

Section 15(2) — Freedom of expression

Section 15(2) 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 and whether orally, in writing, in print, by way of art or in another medium chosen by him or her.

Police power to question adult persons as to whereabouts of a vehicle

Given that the right to freedom of expression includes a right to not be compelled to express information, the power of police to question adult persons as to the whereabouts of a vehicle engages the right to freedom of expression.

Section 15(3) of the charter provides that the right to freedom of expression may be subject to lawful restrictions reasonably necessary to respect the rights and reputation of other persons or for the protection of national security, public order, public health or public morality.

In this case, the purpose of the limitation of the right to freedom of expression is to assist police in locating vehicles that are to be immobilised, impounded or forfeited. This is necessary to impose sanctions on offenders to prevent and discourage unsafe driving behaviour that threatens public safety on Victoria's road network. Therefore, the restriction of the right to freedom of expression is appropriately limited on 'public order' grounds in accordance with section 15(3) of the charter. The reasonableness of that restriction is further considered below.

(a) the nature of the right being limited

The right to be limited is the right to not be compelled to express information. Information is required to be provided if the person is an adult and if they have relevant knowledge as to the whereabouts of the relevant vehicle.

(b) the importance of the purpose of the limitation

The limitation is very important because it will assist police to locate vehicles for the purpose of vehicle impoundment, immobilisation and forfeiture when confronted with uncooperative persons who are concealing or are complicit in the concealment of the location of the relevant vehicle and are thereby thwarting the imposition of an important road safety sanction.

(c) the nature and extent of the limitation

The limitation of the right to freedom of expression is confined to requiring the expression of information as to the whereabouts of a specified vehicle. This is therefore a very narrow limitation. Furthermore, the use of the information that is provided is tightly controlled. That information cannot be used in any civil or criminal proceedings against the person who provided the information (other than where it is alleged that the person has provided information to the police that is false or misleading in a material respect).

(d) the relationship between the limitation and its purpose

The limitation is directly linked to its purpose which is to protect public safety.

(e) any less restrictive means reasonably available to achieve its purpose

The proposed measure has become necessary because police have repeatedly been frustrated by offenders who deliberately conceal the location of relevant vehicles to prevent the imposition of immobilisation, impoundment and forfeiture sanctions. There are no less restrictive means of achieving the stated purpose.

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.

Extension of vehicle impoundment, immobilisation and forfeiture scheme to certain drink-driving, drug-driving and unlicensed-driving offences

The bill provides that certain drink-driving, drug-driving and unlicensed-driving offences will become subject to the vehicle impoundment, immobilisation and forfeiture scheme in part 6A of the Road Safety Act 1986, and therefore the search and seizure powers set out in divisions 2 and 4 of part 6A of the Road Safety Act 1986 will apply with respect to vehicles used in the commission of those offences (or a substitute vehicle). Furthermore, the restrictions on the sale, disposal, registration and transfer of registration of a vehicle set out in division 3 of part 6A will apply to the relevant

vehicle. Both the exercise of search and seizure powers and the sale, disposal and registration restrictions engage the right to property.

However, the right to property is not unlawfully or arbitrarily interfered with. The limitations placed on the sale, disposal, registration and transfer of registration of a vehicle are authorised by law and are only imposed in narrow circumstances where certain serious road safety offences are alleged to have been committed.

Expanded search powers

The bill provides police with additional powers to search premises without a search warrant. These include the ability:

a) to enter a motor vehicle for the purpose of affixing a steering wheel lock immobilisation device; and

b) solely for the immobilisation, impoundment or forfeiture of a vehicle under part 6A of the Road Safety Act 1986:

   i. to enter on land and enter any part of a building where vehicles are stored (excluding parts of buildings or dwellings used for residential purposes);

   ii. to open any unlocked doors or panels or open unlocked places and move (but not take away) anything that is not locked or sealed to get access to the vehicle;

   iii. to search the premises to locate a vehicle that is reasonably believed to have been used to commit a 'tier 1 relevant offence' or a 'tier 2 relevant offence' if the premises are:

      the garage address of the vehicle; or

      another premises where the vehicle is believed to be present.

The exercise of these search and entry powers engages the right to property. However, the exercise of those search and entry powers are authorised by law and will not be exercised in an arbitrary manner. For example, where the police exercise the abovementioned search and entry powers with respect to business premises, entry will only be permitted during business hours. Therefore the right to privacy is not limited by this reform.

Extinguishing security interests to facilitate the sale or disposal of a forfeited or uncollected impounded vehicle

The bill provides that security interests in forfeited vehicles and uncollected impounded vehicles will be extinguished to facilitate the sale or disposal of those vehicles. The extinguishment of a security interest engages the right to property. However, the right to property is not limited because the extinguishment of the security interests is authorised by law and only occurs in narrow circumstances where a vehicle has been forfeited to the Crown or where a vehicle has been impounded but not collected by the registered operator. Furthermore, although security interests will be extinguished, the persons holding those interests will, where the vehicle is fit for sale, still be eligible to have their interests paid out when the proceeds of sale are distributed according to the current priority order set out in section 84ZS of the Road Safety Act 1986.

Section 24(1) — Fair hearing

Section 24(1) of the charter provides that a person charged with a criminal offence or a party to a civil proceeding has the right to have the charge or proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing.

Seven-day impoundment or immobilisation of vehicles upon detection of an offence

The imposition of vehicle impoundment or immobilisation for seven days (rather than the current 48-hour period) by a police officer limits the right to a fair hearing since a form of punishment is being imposed for alleged criminal behaviour before any finding of guilt by an independent tribunal such as a court.

It is submitted however, that, for the reasons given below, the limitation is reasonable and demonstrably justified in a free and democratic society.

(a) the nature of the right being limited

The right to a fair hearing implicitly requires that no punishment for criminal behaviour be imposed unless charges are brought and they are determined by a competent, independent and impartial court or tribunal after a fair and public hearing. The imposition of a vehicle impoundment or immobilisation sanction for seven days under division 2 of part 6A of the act occurs prior to any finding of guilt by a court and therefore limits the right to a fair hearing.

(b) the importance of the purpose of the limitation

During the period from January 2003 to November 2004, hoon driving behaviour contributed to 41 serious collisions in which 28 people were killed. This revelation was a significant impetus for the creation of the Victorian vehicle impoundment scheme. It has been acknowledged since the commencement of the scheme that immediate sanctions for hoon driving offences play a critical role in discouraging unsafe driving behaviour.

The imposition of vehicle impoundment or immobilisation for seven days upon the detection of a 'tier 1 relevant offence' or a 'tier 2 relevant offence' by police allows for the immediate removal of an unsafe driver from the road and also provides a significant deterrent to that person and other drivers from engaging in unsafe driving behaviour.

(c) the nature and extent of the limitation

The limitation of the right to a fair hearing is constrained by a number of safeguards to ensure that it is not imposed inappropriately. Firstly, section 84M of the act provides that any decision to impose a seven day impoundment or immobilisation sanction must be reviewed by a senior police officer within 48 hours of the impoundment or immobilisation being imposed.

Secondly, appeal rights exist under section 84O of the act where a person substantially affected by the seven-day impoundment or immobilisation sanction can seek the

release of the vehicle on exceptional hardship grounds. It is acknowledged that even if an urgent appeal application was submitted to the Magistrates Court immediately after the imposition of the impoundment or immobilisation, it would be unlikely that the court would hear and determine the appeal immediately. Therefore a successful appeal would most likely result in a shortening of the seven-day impoundment or immobilisation rather than complete avoidance of the sanction.

Thirdly, section 84R of the act provides that in the event that a person is found not guilty of the alleged offence (or any other 'tier 1 relevant offence' or 'tier 2 relevant offence' arising out of the same single set of circumstances) or where charges are not proceeded with, the Crown is liable to refund any designated costs paid by any person and the motor vehicle (if not already recovered by the registered operator or any other person entitled to the possession of it) must be immediately released without any designated costs payable by the person seeking recovery of the vehicle.

(d) the relationship between the limitation and its purpose

The limitation of the right to a fair hearing is directly linked with its primary purpose which is to protect the public from unsafe drivers.

(e) any less restrictive means reasonably available to achieve its purpose

It would be possible to factor in some delay period before the impoundment or immobilisation could take effect to ensure that the right to appeal under section 84O could be exercised prior to the sanction taking effect. However this would reduce the effectiveness of the legislation in deterring unsafe driving practices.

Section 25(1) — Right to be presumed innocent

Section 25(1) of the charter provides that a person charged with a criminal offence has the right to be presumed innocent until proved guilty according to law.

Seven-day impoundment or immobilisation of vehicles upon detection of an offence

The imposition of vehicle impoundment or immobilisation for seven days (rather than the current 48-hour period) prior to any finding of guilt by a court engages and also limits the right to be presumed innocent since a sanction is being imposed by police officers for alleged criminal behaviour without any formal finding of guilt.

It is submitted however, that, for the reasons given below, the limitation is reasonable and demonstrably justified in a free and democratic society.

(a) the nature of the right being limited

The right to be presumed innocent implicitly requires that no punishment for alleged criminal behaviour be imposed until a person is proven guilty according to law. The imposition of a vehicle impoundment or immobilisation sanction for seven days under division 2 of part 6A of the act occurs prior to any finding of guilt by a court and therefore limits the right to be presumed innocent.

(b) the importance of the purpose of the limitation

The imposition of vehicle impoundment or immobilisation for seven days upon the detection of either a 'tier 1 relevant offence' or a 'tier 2 relevant offence' by police allows for the immediate removal of an unsafe driver from the road and also provides a significant deterrent to that person and other drivers from engaging in unsafe driving behaviour.

(c) the nature and extent of the limitation

The limitation of the right to be presumed innocent is constrained by a number of safeguards. Firstly, section 84M of the act provides that any decision to impose a seven-day impoundment or immobilisation must be reviewed by a senior police officer within 48 hours of the impoundment or immobilisation being imposed.

Secondly, appeal rights exist under section 84O of the act where a person substantially affected by the seven-day impoundment or immobilisation sanction can seek the release of the vehicle on exceptional hardship grounds. It is acknowledged that even if an urgent appeal application was submitted to the Magistrates Court immediately after the imposition of the impoundment or immobilisation sanction, it would be unlikely that the court would hear and determine the appeal straight away. Therefore a successful appeal would most likely result in a shortening of the seven-day impoundment or immobilisation rather than complete avoidance of the sanction.

Thirdly, section 84R of the act provides that in the event that a person is found not guilty of the alleged offence (or any other 'tier 1 relevant offence' or 'tier 2 relevant offence' arising out of the same single set of circumstances) or where charges are not proceeded with, the Crown is liable to refund any designated costs paid by any person and the motor vehicle (if not already recovered by the registered operator or any other person entitled to the possession of it) must be immediately released without any designated costs payable by the person seeking recovery of the vehicle.

(d) the relationship between the limitation and its purpose

The limitation of the right to be presumed innocent is directly linked with its primary purpose which is to protect the public from unsafe drivers.

(e) any less restrictive means reasonably available to achieve its purpose

It would be possible to factor in some delay period before the impoundment or immobilisation could take effect to ensure that the right to appeal under section 84O could be exercised prior to the sanction taking effect. However this would reduce the effectiveness of the legislation in deterring unsafe driving practices. It is important that persons that disregard public safety by committing serious traffic offences are removed from the roads as quickly as possible.

Section 25(2)(k) — Right to not be compelled to incriminate oneself

Section 25(2)(k) of the charter provides that a person charged with a criminal offence is entitled not to be compelled to testify against oneself or to confess guilt.

Police power to question adult persons as to whereabouts of a vehicle

The bill provides police with power to question adult persons as to the whereabouts of a vehicle. This coercive power engages the right to not be compelled to testify against himself or herself or to confess guilt.

However because the bill also provides an immunity whereby any evidence provided by the questioned individual cannot be used in any civil or criminal proceedings against that person (other than in proceedings where the person is being charged with providing false or materially misleading information) it is submitted that the right to not be compelled to incriminate oneself is not limited.

Conclusion

I consider that the bill is compatible with the Charter of Human Rights and Responsibilities. Provisions of the bill engage with, but do not limit, rights conferred by sections 12, 13(a), 20 and 25(2)(k) of the charter. The provisions of the bill that limit human rights under sections 15(2), 24(1) and 25(1) of the charter are reasonable and proportionate.

Martin Pakula, MP
Minister for Public Transport

Second reading

Ordered that second-reading speech be incorporated into *Hansard* on motion of Hon. M. P. PAKULA (Minister for Public Transport).

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

That the bill be now read a second time.

Incorporated speech as follows:

This bill makes a number of amendments to further enhance the vehicle impoundment scheme set out in part 6A of the Road Safety Act 1986 that commenced operation on 1 July 2006. That scheme was introduced by the government to deal with the menace of 'hoon' driving.

The scheme provides for the imposition of vehicle impoundment, immobilisation or forfeiture sanctions. Those sanctions may be imposed for a number of serious road safety offences which currently include:

dangerous driving;

careless driving;

speeding offences where a vehicle is driven at more than 45 kilometres per hour or more over the applicable speed limit (or 145 kilometres per hour or more if the speed limit is 110 kilometres per hour);

deliberately losing traction;

street racing offences;

deliberately or recklessly entering a level crossing when a train is approaching;

refusing to stop when directed by police;

making unnecessary noise or smoke;

not having proper control of a vehicle; and

driving while disqualified (for a second or subsequent time).

The scheme relies on graduated sanctions to punish and deter hoon drivers. A first offence may result in the impoundment or immobilisation of a vehicle for 48 hours. A second offence may, in addition to an initial 48-hour impoundment or immobilisation sanction, result in a further court-imposed impoundment or immobilisation sanction of up to three months in total. A third offence can, in addition to an initial 48-hour sanction, result in the court ordering the forfeiture of the vehicle.

Since the scheme commenced operation, over 11 400 motor vehicles have been impounded and 17 vehicles have been forfeited to the Crown. The imposition of vehicle impoundment, immobilisation and forfeiture sanctions for hoon driving offences has proven to be effective in discouraging dangerous driving behaviour. Up to 15 April 2010, 94 per cent of detections of hoon driving offences were in relation to first-time offenders, 5 per cent of detections related to second-time offenders and 1 per cent of detections related to third-time offenders.

The Road Safety Amendment (Hoon Driving) Bill 2010 will further enhance the vehicle impoundment scheme and extend the road safety benefits that it provides to all Victorians.

One of the key reforms contained in the bill is the extension of the vehicle impoundment scheme to drink and drug-driving offences.

Drink driving and drug driving continue to be a significant threat to safety on our roads. Drink driving contributes to around 20 per cent to 30 per cent of driver deaths on Victoria's roads each year. Drug driving, where one or more illicit drugs are present, is found in approximately 40 per cent of driver deaths each year.

The government's Arrive Alive 2008–2017 road safety strategy contained a commitment to examine tougher sanctions for recidivist drink drivers, including extension of the vehicle impoundment scheme to those offenders.

The first action plan 2008–10 of Arrive Alive included a commitment to review penalties for drink and drug-driving offenders to appropriately reflect the risk to the community and ensure that penalties are aimed at, and are recognised by the community as, achieving improved road safety.

That review has determined that penalties for drink and drug driving are currently inadequate and that the vehicle impoundment scheme should be extended to recidivist drink-driving and drug-driving offenders.

The bill therefore provides that vehicle impoundment sanctions will be available in those cases where a driver is detected with a blood or breath alcohol concentration of 0.10 or higher for a second or subsequent time or where a

driver is detected with drugs present in his or her system for a second or subsequent time. The offence of driving unlicensed for a second or subsequent time will also become subject to the vehicle impoundment scheme.

The operation of the vehicle impoundment scheme with respect to these new offences will be altered slightly from the usual graduated approach described in my earlier remarks. A first offence will not result in any vehicle impoundment sanctions because they are already subject to heavy financial and licence loss penalties, and the focus of these impoundment reforms is on recidivist offenders. However, as with other offences already covered by the vehicle impoundment scheme, a second offence may, in addition to short-term immediate roadside impoundment or immobilisation, result in up to three months vehicle impoundment or immobilisation. A third offence may lead to forfeiture of the vehicle to the Crown.

Speeding is another menace on our roads that needs to be tackled with firm action. Speeding and inappropriate travel speeds directly contribute to at least 30 per cent of deaths on Victoria's roads each year. More can be done to further discourage this high-risk behaviour.

The first action plan 2008–10 of Arrive Alive included a commitment to review penalties for speeding to ensure that they more accurately reflect the risk to the community and ensure that the sole objective of these penalties is aimed at, and is recognised by the community as, achieving improved road safety.

That review has determined that tougher sanctions are required for extreme speeding offences. The bill therefore provides that where a driver is detected driving at 70 kilometres per hour or more over the applicable speed limit or at a speed of 170 kilometres per hour or more in a 110-kilometres-per-hour speed zone, that driver will face vehicle impoundment or immobilisation sanctions for up to three months for a first offence. Such a sanction is normally reserved for a second offence under the vehicle impoundment scheme. Also, for a second extreme speeding offence, the court will be empowered to order the forfeiture of the vehicle. That sanction is normally reserved for a third offence under the vehicle impoundment scheme.

Driving while disqualified or suspended remains prevalent and a serious threat to road safety. Studies in Victoria have found that disqualified or suspended drivers are overrepresented in high-severity crashes causing injury. For the years 2005–06 to 2007–08, the average number of persons sentenced in the Magistrates Court for driving while disqualified was 2685 and an average of nearly 5000 persons were sentenced for driving while their drivers licence was suspended. The Sentencing Advisory Council's April 2009 report on driving while disqualified or suspended noted that these offences were the most commonly proved in the Magistrates Court after theft.

Accordingly, the bill will toughen the vehicle impoundment and forfeiture sanctions for disqualified driving offences. It provides that a second offence may result in up to three months vehicle impoundment or immobilisation and a third offence may result in forfeiture of the vehicle. This differs from the current scheme which treats disqualified driving in a more lenient fashion than other vehicle impoundment offences. The current scheme requires a third offence before three months vehicle impoundment or immobilisation can be imposed and requires a fourth offence before forfeiture sanctions are imposed.

As discussed earlier, the current graduated impoundment scheme sanctions start with the imposition of impoundment or immobilisation of the vehicle by the police for a period of 48 hours. The bill provides that this initial impoundment or immobilisation period will be increased across the board to seven days. This change will apply to all offences to which the vehicle impoundment scheme applies. Increasing the initial impoundment or immobilisation sanction to seven days is expected to further deter dangerous driving behaviour as the immediate negative consequences of that behaviour mount up. In addition, offenders are less likely to be able to conceal the sanction (and need to make alternative transport arrangements) from their families and friends who have the potential to intervene and so reduce further offending.

In addition, the bill provides that in all cases where a person appears before the court for an offence for which a three-month impoundment or immobilisation sanction may be imposed, the court will be required, upon a finding of guilt and upon the application of the police, to impose a vehicle impoundment or immobilisation sanction for at least 28 days. This will ensure that strong sanctions are imposed sending a strong message to road users that hoon driving behaviour has serious consequences.

The bill streamlines court processes by allowing the police to apply for a search warrant to facilitate access to the vehicle at the same time that the court imposes an impoundment, immobilisation or forfeiture sanction.

The bill also provides the police with limited powers to search premises without a search warrant for the purposes of locating and accessing a vehicle for the purposes of impoundment, immobilisation or forfeiture of the vehicle.

In recent years, the police have encountered attempts by persons to conceal the location of vehicles to prevent them from being impounded, immobilised or forfeited to the Crown. Such behaviour threatens to frustrate the operation of the scheme and also threatens the important road safety outcomes that the scheme provides. The bill therefore provides police with limited powers to question adult persons as to the whereabouts of a vehicle for the specific purpose of locating a vehicle of interest so that it can be impounded, immobilised or forfeited to the Crown.

The information provided by questioned persons will be kept in the strictest confidence and protections will be enshrined in the legislation to ensure that the information provided during police questioning cannot be used to the detriment of the questioned person in any civil or criminal proceedings (except where the person has provided false or materially misleading information). This reform will allow the police to do their work more effectively and help to prevent persons from thwarting the law by actively concealing the location of vehicles or refusing to cooperate with the police.

The bill also provides for a new form of vehicle immobilisation that involves the use of a specially designed steering wheel lock that is placed over the steering wheel of the vehicle. The act already provides for vehicle immobilisation with wheel clamps but vehicles immobilised with wheel clamps are difficult to move with a tow truck.

The new steering wheel lock immobilisation method will provide greater flexibility as it has the benefit of allowing an immobilised vehicle to be towed to an alternative location. This may be necessary if, for example, the immobilised vehicle is creating a hazard to road users.

In order to facilitate the use of steering wheel locks for the purpose of immobilising vehicles, the bill provides police with power to enter a vehicle to install the immobilisation device. It also provides that at the end of the immobilisation period, the steering wheel lock must be returned to a designated police station. Steering wheel lock immobilisation is already widely practised in Tasmania and is reported to be working very well.

The bill also contains a number of measures aimed at speeding up the process of selling or disposing of forfeited cars or vehicles that have been impounded but remain uncollected by the owner for an extended period of time. The act currently provides a clear process for the sale or disposal of these vehicles but delays often arise where a security interest is held over the vehicle. The practice has been to seek the consent of each security interest holder prior to the sale or disposal of the vehicle and this often results in significant delays to the sale process. Where a vehicle has been impounded, storage costs tend to build up over time, and this diminishes the amount of funds that are available to be paid to security interest holders if a vehicle is eventually sold.

In those cases where a vehicle is fit for sale, the act sets out a clear priority system for the distribution of the proceeds of that sale. Government costs associated with the sale, immobilisation and impoundment of a vehicle are paid first. Next, persons that have a security interest in the vehicle are paid. If any proceeds of sale remain, then, in the case of an uncollected impounded vehicle, the proceeds of sale are paid to the owner of the vehicle. In the case of a forfeited vehicle, the remaining proceeds of sale are paid into the Consolidated Fund.

In order to facilitate the efficient sale or disposal of vehicles, the bill provides that security interests in vehicles that are to be sold or disposed of will be extinguished. This extinguishment is not absolute, because if the vehicle is sold, the former security interest holders will still be entitled to payments from the distribution of funds according to the usual priority system that I have just described. That is, once government costs are paid, they will be next in line. The speedy sale of vehicles will enable Victoria Police to clear vehicles from impoundment areas more quickly. It will also benefit security interest holders, because speedy sale will mean that the cost of vehicle immobilisation and impoundment will be minimised as far as possible. More funds will therefore remain for payment to those persons.

As stated earlier, surplus funds from the sale of forfeited vehicles are paid into the Consolidated Fund once all government costs are paid and all payments to security interest holders have been made. It is the government's intention that in the future, any surplus funds that make their way into the Consolidated Fund will be used to assist victims of crime in accordance with the provisions of the Victims of Crime Assistance Act 1996. This assistance plan will be delivered through an administrative arrangement where appropriations for the purpose of assisting victims of crime will be increased by an amount equal to the value of the surplus funds generated. No specific legislative amendments are required for this arrangement to be implemented.

The bill limits the circumstances where an impoundment or forfeiture sanction can be avoided by an offender on 'exceptional hardship' grounds. The bill provides that applications by offenders to retain their vehicles or for the early release of their vehicles on 'exceptional hardship' grounds will not be considered in those cases where the offender has already been disqualified from driving or has had his or her driver licence or permit suspended due to the severity of the offences that were committed. Also, the bill clarifies the circumstances in which arguments relating to travelling for employment purposes can satisfy the 'exceptional hardship' test.

The bill also amends the Melbourne City Link Act 1995 to provide the responsible minister with power to revoke a road declaration made under that act, in whole or in part, in relation to land that is not required for CityLink. This will enable surplus land that is not required for CityLink to be used for non-road purposes.

The measures in this bill will contribute to the effective and efficient operation of the vehicle impoundment scheme. The passage of this legislation will play an important role in the deterrence of unsafe driving behaviour and will help to make Victorian roads safer for everyone.

I commend the bill to the house.

Debate adjourned on motion of Mr KOCH (Western Victoria).

Debate adjourned until Thursday, 23 September.

TRANSPORT ACCIDENT AND ACCIDENT COMPENSATION LEGISLATION AMENDMENT BILL

Statement of compatibility

Hon. M. P. PAKULA (Minister for Public Transport) 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 Transport Accident and Accident Compensation Legislation Amendment Bill 2010.

In my opinion, the Transport Accident and Accident Compensation Legislation 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 Accident Compensation Act 1985 and the Accident Compensation (WorkCover Insurance) Act 1993 in response to recommendations made by Mr Peter Hanks, QC, in the Accident Compensation Act review. Building upon

significant reforms already introduced by the Accident Compensation Amendment Act 2010, the bill:

> refines and clarifies a range of definitions;
>
> improves the method of assessing pre-injury average weekly earnings;
>
> clarifies the status of specific categories of worker, including students, contractors and outworkers;
>
> provides that appeals from County Court proceedings under the act should be heard by the Court of Appeal; and
>
> contains a range of miscellaneous technical amendments which consolidate and clarify the existing provisions of the act.

The bill also amends the Transport Accident Act 1986 to:

> limit the transport accident compensation available to persons whose use of illicit drugs contributed to a transport accident;
>
> provide for a deemed impairment of zero per cent where no impairment assessment has been undertaken or applied for within six years of a transport accident;
>
> provide a new method for redeeming impairment benefit annuities for persons injured prior to the commencement of the act;
>
> ensure that a domestic partner of a pregnant woman who dies as the result of a traffic accident may be compensated for child-care costs;
>
> extinguish any right to bring proceedings regarding the loss of the services of a person who is injured or dies as the result of a transport accident; and
>
> limit the 'Harman rule' as it applies to transport accident proceedings.

Human rights issues

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

Right to a fair hearing

Section 24(1) of the charter provides that a person charged with a criminal offence or a party to a civil proceeding has the right to have the charge or proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing. A relevant aspect of this right is the right to access to the courts.

Clause 5

The Transport Accident Act 1986 provides that people injured in a transport accident have six years from the date of the accident or the date the injury first manifests itself to request an impairment assessment by the Transport Accident Commission (TAC). Clause 5 of the bill amends section 46A of the act to provide that where no assessment has been undertaken by the TAC or applied for by the injured person within six years of the accident or the date that the injury first manifests itself, the injured person is deemed to have received an impairment assessment of zero per cent.

The deemed zero per cent assessment is not reviewable by the Victorian Civil and Administrative Tribunal because it does not create a right to payment of part 3 compensation. This engages the right to a fair hearing, one of the components of which is the right to access to a court.

However, the right to access the courts is not absolute, and may legitimately be limited by the needs and resources of the community and individuals (*Kay v. Attorney-General* (Unreported, Court of Appeal, 3726/2009, 19 May 2009)). In my view, clause 5 does not unreasonably restrict the right of access to courts. Judicial review will still be available to ensure that the deemed impairment assessment is made in accordance with law. Further, the deemed impairment assessment will make it possible for an individual to make application to a court to seek leave to recover common-law damages for serious injury in accordance with part 6 of the act. Claimants are unable to pursue such damages unless the TAC has made a determination regarding impairment. In this way, the deeming provision improves access to the courts. I therefore consider this clause to be compatible with the right to a fair hearing under section 24(1) of the charter.

Clause 9

This clause engages the right to a fair hearing by amending section 68(3) of the Transport Accident Act 1986 to provide that if a person is involved in a transport accident before he or she reaches the age of 18 years, and their parent or guardian fails to lodge a claim on their behalf within three years of the accident, then that person may make a compensation claim in their own right under part 3 of the act at any time before turning 21. This clause extends the existing statutory limit, which currently provides that a person must bring a claim within one year after turning 18. Section 68 of the act, as interpreted by the Supreme Court in *Locastro v. TAC* [1995] 1 VR 289, does not otherwise enable the TAC to accept a claim after three years.

The right to a fair hearing is engaged because even though clause 9 extends the existing time period, it nonetheless retains a time limit which restricts the circumstances in which a person can access the courts. However, I consider that the time limit imposed by this clause is reasonable and does not limit the right to a fair hearing. The time limitation is necessary to ensure certainty in the administration of the transport accident scheme, and as discussed above, serves the important purpose of ensuring decisions are not based on evidence which may be unreliable and incomplete due to the passage of time. Further, the practical effect of this clause is to improve access to the courts by extending the time in which a person injured as a minor may bring a claim. It is therefore compatible with section 24(1) of the charter.

Clause 44

The right to a fair hearing is engaged by clause 44 of the bill, which amends section 39 of the Accident Compensation Act 1985 to provide that there is no right to bring legal proceedings in relation to decisions of the authority under certain provisions of the act. The relevant provisions relate to the exercise of the authority's discretion to consent to a worker bringing proceedings which would otherwise be unable to be brought due to the operation of

the act. These provisions provide some leeway for a worker to bring a proceeding if the authority is satisfied that the failure to comply with the usual process is not the fault of the worker, or where the defence has not been prejudiced.

The effect of this clause is that the authority's decision to refuse to consent to the bringing of proceedings under the relevant provisions cannot be challenged in court. However, I consider that this clause does not limit the right to fair hearing. There are already extensive procedural protections afforded to an aggrieved person who wishes to bring proceedings claiming compensation, including rights of appeal or other review at other stages of the process. The decisions of the authority to which this clause relates provide an additional procedural protection, but are not in themselves decisions about the substance of a complaint. I therefore consider this clause to be compatible with the right to a fair hearing under section 24(1) of the charter.

Clause 80

Clause 80 inserts a new section 99 into the Accident Compensation Act 1985. Subsection 99(10) provides that a court is not to entertain an action, suit or other proceeding against workers, their representatives or dependants where that proceeding relates to:

> the recovery of any costs which the authority, self-insurer or employer is liable to pay under that section; or
>
> a notice, determination or order referred to in sections 249AA, 249AB, 249B or 249BA. These notices and determinations relate to circumstances where the authority or self-insurer does not have to pay a service provider (for example, where the service provider has committed a relevant offence under the Accident Compensation Act 1985).

I consider that these provisions do not limit the right to a fair hearing. A person seeking to recover costs or dispute a notice or determination retains the ability to bring a proceeding against the authority, self-insurer or employer, who is the appropriate defendant in such a proceeding. I therefore consider this clause to be compatible with the right to a fair hearing under section 24(1) of the charter.

Clause 99

Clause 99 inserts new sections 134AGA and 134AGB into the Accident Compensation Act 1985. The proposed new sections provide that the Governor in Council may make orders specifying the legal costs that may be recovered from the authority, self-insurers or workers in respect of any claim, application or proceeding under sections 134AB, 135, 135A or 135B. Litigated legal costs must only be recovered in accordance with such an order, which has the effect of limiting the court's usual jurisdiction with regard to costs.

The purpose of the clause is to provide for the ongoing financial viability of the accident compensation scheme by ensuring that costs associated with litigating matters under the scheme remain reasonable. Controlling WorkCover's costs is particularly important, as it ensures that Victoria is able to have a fully funded scheme that combines adequate compensation to injured workers with low employer premiums. To ensure equality of arms between parties to such proceedings, the clause also allows for an order to be made which controls the costs recoverable from the claimant, although I note that in practice WorkCover generally does not seek to recover costs from claimants unless their claim involves fraud or misrepresentation, or is particularly speculative in nature. Similarly, it is rare for self-insurers to seek to recover costs from a claimant.

It is arguable that, if the amount of recoverable legal costs that may be recovered by a claimant is set significantly lower than the actual legal costs likely to be incurred in a proceeding, law firms could be deterred from taking on matters that will be expensive to litigate. This could affect the right to a fair hearing, as the United Nations Human Rights Committee (the committee), in its general comment no. 32, has said that the availability or absence of legal assistance often determines whether or not a person can access or meaningfully participate in legal proceedings.

Likewise, an order which results in excessive legal costs being recoverable from a claimant in the event of an unsuccessful claim may inhibit the claimant's access to a court. The committee has acknowledged that a rigid rule relating to costs may have a deterrent effect on the ability of litigants to pursue claims in the courts (*Äärelä and Näkkäläjärvi v. Finland*, communication no. 779/1997 (4 February 1997)).

However, in practice, the provisions will not operate so as to inhibit access to legal representation or access to the court. Any order made under these provisions must be made in accordance with the charter, and must ensure that the right to a fair hearing (which guarantees both access to the courts and equality of arms) is not unreasonably restricted. Consultation will be undertaken to ensure that recoverable costs are fixed at realistic price points that do not inhibit access to the courts or impose prohibitive costs on claimants, and which are sufficiently flexible to take account of more complex matters. Further, any order under these provisions will be subject to regular review to ensure it continues to reflect current conditions. The purpose of orders under these provisions is to allow workers to recover their reasonable costs, while at the same time ensuring that the financial sustainability of the accident compensation scheme is not jeopardised by escalating legal costs.

I therefore consider that this clause is compatible with the right to a fair hearing under section 24(1) of the charter.

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. The secrecy of personal information lies at the heart of the privacy right because of its direct relevance to the choices or circumstances of an individual's personal life over which he or she is responsible and autonomous. The protection of privacy through confidentiality of documents is not, however, absolute. Disclosures that are authorised by law and not arbitrary are permissible under the charter.

Clause 12

Clause 12 engages the right to privacy by providing that documents or information obtained in the course of a claim or proceeding under the Transport Accident Act 1986 or at common law may be used in and for the purposes of managing any claim, procedure or payment under the act.

Generally, the 'Harman rule' holds that certain documents or information produced under compulsion and received by another party in the course of legal proceedings should not be used for any purpose outside the context of that particular legal proceeding. However, a rigid application of this rule is too narrow in the context of transport accident compensation claims, where it is necessary for the TAC to use such documents or information to carry out its objectives and properly exercise its statutory functions. The TAC often has an ongoing relationship with claimants in relation to the management and funding of their compensation benefits, and during the period of this relationship certain aspects of a claim may be litigated or reviewed by a court or a tribunal. The strict operation of the Harman rule would prevent the TAC from accessing relevant documents or information provided during such proceedings in order to carry out its objectives and functions under the act. For example, such documents or information could include, or relate to, medical or financial reports which are necessary for the ongoing management of a compensation claim.

Clause 12 therefore clarifies that it is appropriate for the TAC to use documents in the specified circumstances. I consider that any interference with the right to privacy occasioned by this provision is neither unlawful nor arbitrary. The use of information or documents obtained is strictly limited to purposes related to claims, proceedings or payments under the act. There is a further protection in the secrecy provisions contained in section 131 of the act, which limits the use of personal information obtained under the act. These protections ensure that any private information or documents acquired may only be used for legitimate purposes under the act. Penalty sanctions apply where there is a breach of the secrecy provisions. In my view, clause 12 is therefore compatible with the right to privacy in section 13(a) of the charter.

Clauses 111 and 116

These clauses require or enable the sharing of certain information under the act. Clause 111 inserts a new section 198A into the Accident Compensation Act 1985, which requires that employers notify the authority if workers receiving certain payments under the act return to work or where there is a change in their weekly earnings. Clause 116 amends section 243 of the Accident Compensation Act 1985 to provide that persons who are or have been members of the board, appointed for the purposes of the act, employed by the authority, or authorised to perform or exercise any function or power of the authority (or on behalf of the authority) may produce or divulge documents and information in limited circumstances. Information cannot be divulged or communicated except to the extent necessary to perform official duties or exercise functions or powers of the authority (or on behalf of the authority). The provisions do not affect the operation of the Information Privacy Act 2000 or the Health Records Act 2001.

In my opinion any interference with the right to privacy entailed by these provisions will be neither arbitrary nor unlawful. I note that injured workers voluntarily bring themselves within the regime established by the act by making a claim for their injuries. They do so on the understanding that all matters relevant to legal entitlement, including particulars of their injury, incapacity for work and rehabilitation progress are to be scrutinised and assessed. The uses of personal information, especially information that goes to the worker's medical condition and earning capacity, is necessary to assess entitlement and to ensure the proper administration of the scheme. There is no suggestion that personal information collected in accordance with the bill will be put to ulterior purposes unrelated to the operation of the scheme.

Clause 115

Clause 115 amends section 240A of the Accident Compensation Act 1985 to provide that a magistrate may grant a search warrant where the authority has reasonable grounds to suspect that there are on particular premises any books that are relevant to determining whether there has been a contravention of any provisions of the Accident Compensation Act 1985 or the Accident Compensation (WorkCover) Insurance Act 1993. A warrant authorises a member of the police force or a person named in the warrant to enter and search premises, to take possession of relevant books, and to deliver those books to the authority or an authorised person.

I consider that any interference with the right to privacy resulting from this provision will be neither unlawful nor arbitrary. The bill defines the limited circumstances in which warrants may be granted and includes a requirement that there are reasonable grounds for suspecting that there is relevant evidence on the premises. Further, the scheme is subject to oversight by the Magistrates Court. Any interference with the right to privacy serves the legitimate objective of ensuring that contraventions of the act can be properly investigated. For these reasons, I consider that this clause does not limit the right to privacy under section 13 of the charter.

Equality before the law

Section 8 of the charter provides that every person is equal before the law and is entitled to the equal protection of the law without discrimination. 'Discrimination' for the purposes of the equality right means discrimination within the meaning of the Equal Opportunity Act 2010. Under the Equal Opportunity Act, 'direct' discrimination occurs where a person treats someone with an attribute less favourably than the person treats someone without that attribute, or with a different attribute, in the same or similar circumstances. This right is engaged by three clauses of the bill.

Clause 9

As discussed above, clause 9 allows for persons who are injured in a transport accident before they reach the age of 18 to bring a claim for compensation under part 3 of the Transport Accident Act 1986 before they reach 21 years of age where their parent or guardian had failed to lodge a claim on their behalf within three years of the accident.

The effect is that persons who are injured as minors, before reaching 18 years of age, have a longer period in which they can lodge a claim for compensation than adults who must bring a claim within three years of the accident.

The relevant category of 'attribute' here is age, as the legislation treats minors under 18 years differently (and more favourably) than adults. However, in my view, for the purposes of the transport accident compensation scheme, persons who are over 18 are not in 'the same or similar circumstances' as minors.

A person who is injured as a minor is at law dependent on his or her parent or guardian to lodge a claim for compensation on their behalf within three years of the accident or injury manifestation. A parent may fail to make a claim on a child's behalf, whether by omission, ignorance or negligently, within three years. Clause 9 remedies this problem by ensuring that persons injured when they are under 18 will have three years from the time they reach adulthood to make a claim in their own right.

I therefore consider that this clause is compatible with the right to equality under section 8 of the charter.

Clause 79

Clause 79 inserts schedule 3 into the Accident Compensation Act 1985. This schedule replaces the 'Compensation for Maims' table currently in section 98 of the act, although the substance of the table remains the same. The table in schedule 3 sets out the percentage of $100 300 in compensation for which workers who have suffered specified injuries are eligible to receive. So, for example, a person who has suffered the total loss of a leg is classified in the table as being eligible for 75 per cent of $100 300, whereas a person who suffers from the loss of binocular vision is eligible for 40 per cent of $100 300. This system of assessing injuries only applies to workers injured prior to 12 November 1999 (prior to the introduction of the new scheme for accident compensation).

The category of 'attribute' which is relevant here is 'impairment'. The Equal Opportunity Act 2010 defines 'impairment' to mean a range of total or partial physical or mental disabilities such as loss of a bodily function or part; the presence in the body of organisms that may cause disease; loss of a part of the body; malfunction of a part of the body, including mental disease or disorder; or malformation or disfigurement.

Although this table differentiates between particular types of impairment in determining what level of compensation will be granted, I do not consider that this differentiation limits the right to equality. The differentiation reflects an assessment of the degree to which particular injuries are likely to interfere with quality of life. There is no discrimination against particular types of injury in the table, as persons who have suffered one type of injury are not in 'similar circumstances' as those who have suffered a different type of injury. I therefore consider that schedule 3 is compatible with section 8 of the charter.

Clause 80

Clause 80 inserts a new subsection 99 into the Accident Compensation Act 1985. The proposed new subsection 99(11) provides that the authority, a self-insurer or employer is not liable to pay compensation for the cost of a range of specified items. These items reflect the ordinary costs of daily living which a worker is likely to incur even without an injury (for example, the cost of accommodation, food, household or personal items).

However, under section 99(12), the restriction in subsection 99(11) does not apply to persons who are under 18 years of age and who as a result of their injury are unable to reside at the place they lived in before the injury. The effect is that such persons will be eligible to be compensated for the costs of daily living, whereas persons 18 and over will not.

The category of 'attribute' which is relevant here is age, as the legislation treats minors under 18 years differently (and more favourably) than adults. However, in my view, for the purposes of this provision, persons who are over 18 are not in 'the same or similar circumstances' as persons under 18 years of age. The relevant costs to which the provision relates are the ordinary costs of daily living, which most adults would be responsible for whether or not they were injured. In general, however, persons under 18 will be living with a parent or guardian, and will not be personally responsible for the majority of their daily living expenses. They are in a qualitatively different situation from persons over 18. It is therefore appropriate for the authority, self-insurer or employer to cover the daily living costs of persons under 18 where, because of the injury, they cannot continue to live in their previous place of residence.

For the above reasons, in my opinion this provision does not discriminate against persons over 18 years of age and so does not limit the right to equality.

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 the law.

Clause 4 provides that compensation is not payable at all or is reduced where a person is convicted in respect of a serious drink or drug-driving-related offence under certain provisions of the Road Safety Act 1986, or a corresponding law. It is possible that the deprivation or reduction of otherwise payable compensation could be considered a deprivation of property under section 20 of the charter.

It is also possible that clause 11 of the bill, which inserts a new section 93A in the Transport Accident Act 1986 to clarify that proceedings cannot be brought in respect of the loss of the services of a person who is injured or dies as a result of a transport accident, may result in the deprivation of property. This will be so if any existing common-law rights which are extinguished by this provision are 'property' for the purposes of the charter. The recent Court of Appeal decision in *Doughty v. Martino Developments Pty Ltd* [2010] VSCA 121 determined that the action per quod servitium amisit was abolished by the introduction of the act in 1986. There is consequently no reasonable expectation of recovery of damages.

However, even if such rights were considered property, in my view clauses 4 and 11 would be compatible with section 20, as any deprivation of property occasioned by these clauses would be in accordance with the law.

Conclusion

I consider that the bill does not limit any human rights and is therefore compatible with the charter.

John Lenders, MP
Treasurer

Second reading

Hon. M. P. PAKULA (Minister for Public Transport) — I wish to advise the house that minor amendments were made to the legislation by the Legislative Assembly. A summary of those amendments is as follows.

In regard to clause 2(2) there was a correction to allow clause 159, which did not previously have a commencement date, to commence on royal assent. Clause 159 inserts the words 'accordance with' to clarify the drafting of the transitional provision for the section 134AB amendments made by the amending act, the Accident Compensation Amendment Act 2010.

There is a correction to make clause 160 commence on 5 April 2010 not 17 June 2009. Clause 160 inserts a reference to 'section 138(6)' in the transitional provision for the section 138 amendments made by the previous amending act. As section 138(6) did not commence until 5 April 2010, the commencement of the correction should align with this date. This will ensure that the transitional provision operates as intended — that is, that WorkSafe Victoria will be able to claim indemnity from a third party on an employer's behalf under section 138 in respect of both unfinalised claims as at 5 April 2010 and new claims after that date.

In regard to clause 21, there has been clarification to ensure that the new pre-injury average weekly earnings provisions operate as intended and factor in an injured worker's earnings enhancement — that is, an amount reflecting pre-injury overtime or shift allowances for the relevant 52-week period.

In regard to clause 83, there has been a correction of a drafting error in the description of factor A in the formula in section 100B to ensure that indexation applies not only to the amount specified in column 2 — that is, the original amount — but to that amount as it was last varied by indexation.

In regard to clause 99, amendment has been made to allow a litigated legal costs order made under new section 134AGA to provide for indexation in accordance with the consumer price index of the amounts of costs specified in the order.

In regard to clause 123, there has been a correction of reference to sections '134AGA(4) and 134AG8(4)' to '134AGA(6) and 134AGB(5)'. The latter are the provisions that restrict judicial review of legal costs order decisions. This correction will ensure that they operate as intended.

I move:

> That the second-reading speech, except for the statement under section 85(5) of the Constitution Act, be incorporated into *Hansard*.

Motion agreed to.

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

> That the bill be now read a second time.

Incorporated speech as follows:

> The purpose of this bill is to make a number of unrelated amendments to the Transport Accident Act 1986 and the Accident Compensation Act 1985.
>
> An internal review by the Transport Accident Commission (TAC) to improve the effectiveness and efficiency of the scheme has identified a number of improvements in the delivery of benefits to those injured in transport accidents.
>
> The bill will enable those who are currently receiving weekly annuity payments for injury suffered as a consequence of a transport accident which occurred prior to 16 December 2004 the option to instead receive a lump sum payment.
>
> There has been a longstanding reduction in compensation as a result of convictions for certain drink-driving offences and for culpable driving. The bill addresses an anomaly in relation to drug driving when compared with other offences that already result in a restriction of benefits to align with changes in the law in relation to driving under the influence of drugs and dangerous driving causing death.
>
> The bill also clarifies a six-year time limit for a claimant to apply to the TAC for an impairment determination which is equivalent to the statute of limitation period for common law actions.
>
> Currently, if a parent or guardian does not lodge a claim on behalf of the minor at the time of the transport accident the child cannot lodge a claim until they attain the age of 18. To address this anomaly, the bill enables a child to lodge a claim at any time before he/she reaches the age of 21.
>
> This government committed to update the Accident Compensation Act 1985 (AC act) to improve workers compensation arrangements while ensuring that Victoria's workers compensation scheme remained the national benchmark in efficiency and business competitiveness. Mr Peter Hanks, QC, was engaged to conduct an independent review into the operation of the WorkSafe scheme and on 17 June 2009, the government released its response to the Hanks report, announcing a $90 million per year reform package in direct benefit improvements for injured workers and their families.
>
> Most of these benefits were implemented by the Accident Compensation Amendment Act 2010 (2010 act). However, a number of recommendations arising from the review that were supported by the government remained outstanding.
>
> This bill therefore amends the AC act to implement the outstanding reforms approved by the government, together

with the related changes to the Transport Accident Act 1986.

The key AC act changes include:

> streamlining the provision that sets out the calculation of pre-injury average weekly earnings (PIAWE);
>
> codification of WorkSafe's current policies relating to the calculation of pre-injury average weekly earnings (PIAWE) and the recognition of salary packaging and injury prior to taking up a promotion on PIAWE;
>
> restructuring and streamlining of the provisions that govern coverage of certain workers and contractors.

Further, a number of new proposals have also been included in the bill aimed at enhancing the useability of the AC act, the effective management of the WorkSafe scheme and its ongoing sustainability.

This bill restructures, simplifies and streamlines the provisions in the AC act that determine how to calculate a worker's pre-injury average weekly earnings. For example, many of the lengthy and complicated provisions relating to the calculation of pre-injury average weekly earnings have been consolidated into a schedule, which provides a quick and useful reference as to how pre-injury average weekly earnings are to be calculated for various workers. This will assist both workers and employers in determining how an injured worker's pre-injury average weekly earnings should be calculated.

For the first time, workers who are in receipt of particular non-pecuniary benefits (those benefits which are commonly included in a worker's salary package) are to have their value included in the calculation of pre-injury average weekly earnings. Such benefits will include non-compulsory superannuation payments, residential accommodation, the use of a motor vehicle, health insurance and education fees.

The explicit inclusion of these benefits will ensure that the calculation of pre-injury average weekly earnings keeps up to date with modern methods of paying workers.

The bill also sets out how to calculate the value of the particular non-pecuniary benefits. This will involve using a formula based on fringe benefits tax, with which the majority of employers and many workers are already familiar.

Where an injured worker retains the use or benefit of the non-pecuniary benefit, the value of the retained benefit will be reduced from any weekly compensation payments to which the worker may be entitled. Similarly, the value of any non-pecuniary benefit that the worker was not in receipt of prior to their injury, but which the worker begins receiving while in receipt of weekly payments, is to be deducted from any entitlement of the worker to weekly compensation.

The bill will also ensure that the calculation of pre-injury average weekly earnings keeps pace with modern remuneration practices, by clarifying that a worker's pre-injury average weekly earnings are to include piece rates and commissions (but not bonuses or incentive payments) paid or payable to the worker.

The bill also clarifies that a worker's 'current weekly earnings' (which are to be deducted from any weekly compensation payments received by a worker) are, for parity with the calculation of pre-injury average weekly earnings, to include overtime and shift allowances, piece rates and commissions paid or payable to the worker during the relevant week, in addition to the worker's base rate of pay.

Determining who is a worker and who is an employer is fundamental to the scheme. This is because a person who is a worker has a right to coverage for work-related injuries under the scheme. Correspondingly, a person who is an employer has premium and other obligations.

As the Hanks report noted, those provisions in the AC act that make the fundamental determination of who is a worker and who is an employer for the purpose of the scheme are complex and difficult to use, particularly those in relation to contractors.

The bill therefore updates, streamlines and consolidates the provisions that deem an employment relationship in a number of special work arrangements. These include work experience arrangements, religious work, cooperative society arrangements, sharefarming and Crown and police employment.

The bill also simplifies the contractor provisions — which the Hanks report concluded were overly complex and duplicitous — with a more straightforward provision based on a three-limbed test. The new simpler test will make it easier for contracting businesses to determine their status as an employer or worker under the scheme, and reduce administrative burden. However, the improved contractor provisions also strengthen deterrence of the use of sham arrangements to avoid premium obligations or worker claims.

The bill also introduces a new provision in the AC act to prevent WorkSafe from collecting a double premium in contract arrangements where there is deemed employment — that is, one amount of premium from the principal and a second amount from the contractor. The provision will place the premium obligation on the principal only, not the contractor. This will remove a current inequity in the system and minimise premium costs on business.

The government seeks to ensure that workplace safety is better integrated into all aspects of Victoria's WorkSafe scheme, which will assist in supporting the work carried out by the organisation in the community. This bill will therefore amend the AC act to effect a legal name change for the organisation from the Victorian WorkCover Authority to WorkSafe Victoria. The government considers this change is important in order to give the full legal effect to the rebranding of the organisation to build and maintain a strong, respected brand.

Following the Labor government's restoration of common-law rights in October 1999, a range of procedures were introduced to help ensure the common-law scheme remained financially sustainable.

Currently, the AC act contains an enabling provision that allows for an order to be made in relation to prelitigated plaintiff legal costs. The utilisation of this costs order has assisted in ensuring the financial sustainability of the

WorkSafe common-law scheme. To promote this objective further, this bill introduces a further enabling provision to permit the making of a legal costs order that would enable the introduction of a fixed cost model in relation to certain plaintiff litigated costs.

This is a prudent and financially responsible measure, which balances the sustainability of the common-law scheme while ensuring access to common-law damages continues to be provided for the most seriously injured workers.

To ensure that this change does not unfairly disadvantage workers and there is scope to address any further increase in lawyers' professional fees, the bill also enables the amount of defendants' costs that may be recovered to be fixed.

The bill also gives effect to the government's intention to ensure that 'hold harmless' clauses will not be a mechanism to enable employers to escape their obligations under the AC act. It ensures that 'hold harmless' clauses are not only unenforceable for recovery proceedings under the AC act but are also void for the purposes of any contribution proceedings, under the Wrongs Act, between a third party and the employer of an injured worker.

The 2010 act introduced a formal ability for employers to object to a decision by WorkSafe or its agents to accept a claim for compensation. Where a decision to accept a claim is overturned on the grounds that a worker was not a worker or not a worker of that employer, an injured worker is currently only entitled to a notice period of 14 days. This bill introduces a 28-day notice period prior to ceasing a worker's entitlement and is consistent with similar notice periods elsewhere in the act.

The amendments also clarify an injured worker's right to access existing dispute resolution mechanisms (including the ACCS and the courts) in relation to claims that have been overturned.

A related anomaly that would have allowed an injured worker, who had inadvertently lodged a claim against the wrong employer, to receive compensation from two employers for the same injury will also be resolved. Similarly, where compensation has been paid by the wrong employer, the employer will be prevented from recovering their 'excess' amount from the injured worker, and instead WorkSafe will be required to reimburse the employer.

This bill introduces greater alignment between the calculation of severely injured workers' entitlements in relation to lump sum benefits and under common law.

Claims for compensation for lump sum benefits in relation to injuries with a whole person impairment (WPI) of 71 per cent and above (both physical and psychiatric impairments), will be calculated as at the date on which the compensation is determined, rather than the date of injury. This will align with the approach taken to assessing damages at common law.

The 2010 act increased the maximum amount of lump sum benefits payable (for workers with a whole person impairment of greater than 80 per cent) to align with the maximum amount of common-law damages payable for pain and suffering. Lump sum benefits for workers with impairments of 71 per cent or greater were increased proportionately.

The alignment between the date of compensation for calculating impairments and common-law damages will enhance the intended effect of the 2010 act, as the date that compensation is determined will usually be a year or several years after the date of injury.

A range of other amendments relating to lump sum benefits are primarily aimed at resolving anomalies in the AC act.

The bill also makes amendments to the provisions which govern self-insurance to clarify the intended application of particular provisions or address anomalies. New flexibility is also being introduced for self-insurers by introducing discretion for WorkSafe to transfer, in limited circumstances, a self-insurer's approval to a new holding company that has acquired the self-insurer. The circumstances are limited to where WorkSafe is satisfied that no substantive change has occurred or is likely to occur in the operation or management of the acquired self-insurer, as the result of the acquisition.

Further to the flexibility introduced by the 2010 act to allow self-insurers that acquire a body corporate to assume the liability for and management of the body corporate's 'tail claims' (claims for injuries incurred by the employees of the body corporate prior to the body corporate being acquired by the self-insurer), the bill provides further clarity in relation to the management of the 'tail claims' during the period between the date a self-insurer wholly acquires a scheme-insured body corporate and the 'transfer date'. The bill provides that WorkSafe retains the right and authority to manage and make decisions in relation to claims during this period.

The main section of the AC act that imposes a liability on WorkSafe and self-insurers to pay the reasonable cost of medical expenses incurred by an injured worker has been the subject of ad hoc and incremental amendments over the years. This has resulted in a provision which is long, poorly structured and convoluted. The successive amendments to the section have meant that one long and complex section deals with several aspects of several different types of compensation payment.

As part of the government's commitment to simplify the AC act, this bill restructures the provision in a new division 2B in part IV of the AC act, to clarify its meaning and application, and improve its usability. While the main liability provision for medical and like services is retained, it is more closely aligned with the weekly payment provisions and the remaining 40-odd subsections are restructured thematically into separate sections and reworded to improve its usability.

The Hanks review of the accident compensation legislation recommended streamlining and resolving anomalies in the information sharing and coercive powers under the AC act. This bill makes amendments to resolve a number of anomalies and modernises these provisions.

Finally, the bill will correct anomalies that have arisen from amendments inserted by the 2010 act. These amendments will ensure the legislation accurately reflects Parliament's intention. Other amendments will remove obsolete provisions.

Section 85 of the Constitution Act

Hon. M. P. PAKULA — I make the following statement under section 85 of the Constitution Act 1975 of the reasons why it is the intention of a number of clauses in the bill to alter or vary section 85 of the Constitution Act 1975.

Clause 11 inserts a new section 93A into the Transport Accident Act 1986, which confirms the abolition of actions for damages by an employer for the loss of services of an injured employee under the act. As a result it is the intention of clause 13 to alter or vary section 85 of the Constitution Act 1975.

Clause 44 substitutes section 39(1A) of the Accident Compensation Act 1985 to clarify that a determination by WorkSafe regarding an extension of the period of time within which either a serious injury application may be made or proceedings for the determination of a serious injury may be brought pursuant to section 134AB and section 135A, is not reviewable. It is the intention of this clause to alter or vary section 85 of the Constitution Act 1975.

Section 39(1) of the Accident Compensation Act 1985 establishes the exclusive jurisdiction of the County Court to hear and determine any question or matter arising from, inter alia, any decision of WorkSafe or a self insurer. New section 39(1A) clarifies the intention of old section 39(1A) to exclude review of any WorkSafe decision to exercise its discretion to extend mandatory time limitations imposed under sections 134AB and 135A of the Accident Compensation Act 1985. This discretion continues to operate to limit the jurisdiction of the Supreme Court, as previously provided for by section 252C. These provisions provide some leeway for a worker to bring a proceeding if WorkSafe is satisfied that the failure to comply with the usual process is not the fault of the worker, or where the defence has not been prejudiced. The decisions of the authority to which this clause relates provide an additional procedural protection, but are not in themselves decisions about the substance of a claim.

Clause 80 re-enacts section 99(10) of the Accident Compensation Act 1985 to continue to provide that a court is not to entertain an action, suit or other proceeding against workers, their representatives or dependants where that proceeding relates to:

> the recovery of any costs which WorkSafe, self-insurer or employer is liable to pay under that section; or
>
> a notice, determination or order referred to in sections 249AA, 249AB, 249B or 249BA. These notices and determinations relate to circumstances where WorkSafe or the self-insurer does not have to pay a service provider (for example, where the service provider has committed a relevant offence under the Accident Compensation Act 1985).

A person seeking to recover costs or dispute a notice or determination retains the ability to bring a proceeding against WorkSafe, self-insurer or employer, whoever is the appropriate defendant in such a proceeding. Accordingly there remains appropriate provision for recovery rights for service providers as previously existed under the section.

Clause 98 amends section 134AG of the Accident Compensation Act 1985 to confirm that legal costs in respect of any claim, application or proceeding under sections 134AB, 135, 135A or 135B, must only be recovered in accordance with an order made under section 134AG. This is to preserve the intention of section 252D, which similarly provided for an intention to vary the jurisdiction of the Supreme Court in the introduction of section 134AG into the act in 2000. Accordingly, clause 98 preserves this intention.

Clause 99 inserts new sections 134AGA and 134AGB into the Accident Compensation Act 1985. The proposed new sections provide that the Governor in Council may make orders specifying the legal costs that may be recovered from WorkSafe, self-insurers or workers in respect of any claim, application or proceeding under sections 134AB, 135, 135A or 135B. Litigated legal costs must only be recovered in accordance with such an order, which has the effect of limiting the court's jurisdiction with regards to costs.

The limitation of the court's jurisdiction is necessary because the enabling provision will allow for the making of orders that fix legal costs that may be recovered in connection with litigated serious injury claims. This is a different approach to costs recovery, which is currently determined under court scales and by its nature requires limitation of the jurisdiction of the courts to award such costs. The fixing of legal costs under these new provisions will be limited to serious injury claims and not claims for the recovery of damages at common law.

This bill improves the effectiveness and efficiency of the TAC scheme in delivering benefits to those injured in transport accidents.

This bill completes the implementation of the government's policy response to the review of

accident compensation legislation undertaken by Peter Hanks, QC.

The amendments further improve the administrative efficiency of the WorkSafe scheme while promoting its long-term sustainability.

I commend the bill to the house.

Debate adjourned on motion of Mr RICH-PHILLIPS (South Eastern Metropolitan).

Debate adjourned until Thursday, 23 September.

JUDICIAL COMMISSION OF VICTORIA BILL

Statement of compatibility

For Hon. J. M. MADDEN (Minister for Planning), Hon. M. P. Pakula 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 Judicial Commission of Victoria Bill 2010.

In my opinion, the Judicial Commission of Victoria 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 Judicial Commission of Victoria Bill 2010 (bill) creates the Judicial Commission of Victoria (commission), which will investigate and resolve complaints and concerns involving Victoria's judges, associate judges, magistrates, coroners, judicial registrars and VCAT members (officers).

Matters relating to both conduct and health issues may be raised in complaints from the public, or referrals made either by the heads of each court and VCAT or the Attorney-General (part 4 referral).

The bill establishes a modern approach to judicial complaints handling consistent with the need to maintain an independent judiciary.

Human rights issues

1. Right to a fair hearing — section 24(1)

A person charged with a criminal offence or a party to a civil proceeding has the right to have the charge or proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing.

Civil or criminal proceedings presided over by judges subject to the commission —

Independence

Public confidence in the judiciary is a central component of judicial independence. Only a court system which commands the public's respect in its authority to adjudicate can be effective and, through that, independent of external influence.

People who voluntarily accept public office are accountable for how they conduct themselves in the exercise of official functions. In the usual course, if improper conduct of any public office-holder results in appreciable or material harm to a member of the community, the appropriate response is to acknowledge any wrongdoing and to take remedial steps.

Under the bill, key responsibilities are held by the heads of jurisdiction, being the chief justice, the chief judge, the Chief Magistrate, the president of the Children's Court, the state coroner and the president of VCAT.

A key feature is their power to 'counsel' judicial officers regarding appropriate standards of behaviour as a means of reaching collaborative solutions to resolve inappropriate conduct.

This counselling would not involve an improper exercise of power over a judicial officer. The principal role of counselling, or other remedial steps taken under the bill, is to remind a judicial office-holder of expected standards of behaviour and to prevent further incidents from occurring. The aim is not public chastisement or reprimand.

An 'independent' tribunal embodies traditional common-law values of judicial independence. The expression refers not just to a state of mind or attitude, but an objective status or relationship to others, particularly to the executive branch of government, which guarantees an appropriate level of freedom from external control or direction.

An accepted aspect of judicial independence is the general liberty of judges to hear and determine cases free from external influence or direction, irrespective of whether such influence originates in the community, in government, or even within the judiciary itself.

This freedom from external influence has necessary and recognised limits where conduct falls short of expected standards and results in a potential misuse of the judicial role.

While the commission process involves the exertion of influence by more senior judicial officers, such influence does not fetter or direct the exercise of powers which are properly open to a judicial officer. The commission investigates whether judicial conduct meets basic threshold standards of independence, honesty, and competency. The role of the commission is not to assess whether a decision was correctly made on the merits.

The aim is therefore to ensure that an officer is capable of making decisions which meet basic community expectations of an officer, not to direct how a judicial officer, upon meeting such standards, is to act in deciding cases.

Such influence is exercised by senior judicial officers, who can be considered to act exclusively out of consideration for the interests of the court and the administration of justice generally. Their control of the complaints process removes any perception of interference by government in the internal workings of the judiciary.

Ultimately, any guidance under the bill will seek to ensure that trials conducted by a subject officer conform to charter requirements of a 'fair' trial. The requirements of an 'independent' tribunal do not protect conduct which falls so short of expected judicial standards that the conduct itself violates the charter rights of litigants to a 'fair' hearing. It is important that the judicial system can identify and address such inappropriate conduct.

The bill provides that information relating to an outcome of a complaint may be released, unless disclosure would be contrary to the public interest having regard to a range of specified factors.

The commission must have regard to the potentially adverse impacts of disclosure to a complainant (or the public at large), and assess the extent to which disclosure may adversely impact the authority of a judge and their capacity to adjudicate.

Any public acknowledgements of substandard conduct may cause short-term discomfort to both the subject officer and their judicial colleagues. However, public confidence in the judiciary as a whole may be more severely impaired by its collective silence in the face of the behaviour of one of its members which is harmful both to people before the courts and to respect for the judiciary as an institution.

In appropriate circumstances, the maintenance of public confidence in the judiciary as a whole may require the collective and public assumption of responsibility for the behaviour of individual judges.

The potential of a court or the commission publicly acknowledging instances of inappropriate conduct is also an important means of encouraging officers to act appropriately and meet the expectations of their office. If the potential of such publicity affects behaviour, it would encourage the officer to act appropriately having regard to any guidelines about standards of appropriate conduct that may be approved by the commission. This helps ensure that proceedings over which the officer presides are conducted in a fair manner that meets the requirements of the charter.

Transparency also protects the integrity of the complaints resolution process.

To protect judicial independence and to avoid unwarranted interference with the judicial process, the deliberations of the commission are necessarily confidential and are controlled by judicial officers who may be closely connected with the officers subject to investigation.

The provision of information regarding the findings of the commission is an important aspect of the 'open justice' principle. If the commission refrained from releasing information about an investigation, it could deprive litigants of material necessary to assess whether they have, or will receive, an impartial or otherwise fair hearing. Were it subsequently disclosed (say, in a future report relating to the removal of the judicial officer) that such material was known to the members of the commission, but was actively withheld, such a revelation could have a deleterious impact on the public standing of the judiciary.

The disclosure of any corrective steps taken to deal with particular conduct may, in contrast, be a ready means to rebut any apprehension of bias which may otherwise arise from conduct which, quite separately from the commission process, may already be the subject of public criticism.

In the final analysis, judicial independence has both individual and collective aspects which must both be accommodated. The bill strikes a balance between ensuring the right of judicial officers to act, think, and speak freely in the exercise of the judicial role, while acknowledging that the judiciary, collectively, has a public role in ensuring that its membership adheres to the highest standards of integrity.

Proceedings before the commission —

A 'civil proceeding'?

The bill creates a unique form of professional self-regulation designed to ensure the independence and integrity of the judiciary.

Such administrative proceedings are sui generis (that is, unique at law) and are not properly characterised as a 'civil proceeding' for the purposes of the right to a hearing by a 'fair and impartial' tribunal in 'criminal or civil proceedings'.

Nonetheless, were the investigations of the commission, investigating panel or investigator under the bill to be characterised as a 'civil proceeding', such processes would be compatible with the right to a hearing by a 'fair and impartial' tribunal under section 24(1) of the charter.

Impartiality

'Impartiality' for the purposes of section 24(1) is a state of mind or attitude relating to the issues or parties in a particular case. An 'impartial' tribunal decides matters in the absence of bias, whether actual or perceived, and whether that bias manifests through structural arrangements or is specific to the particular facts of a case.

The independence of the judiciary is maintained by the complaints process being directed by the judiciary.

The necessary corollary is that judicial officers will be investigated by their peers, with a key role for each head of jurisdiction in both initiating, deciding, and implementing recommendations regarding less serious matters, and referring for further investigation more serious matters.

While having (perhaps extensive) past dealings with a judicial officer subject to a complaint or part 4 referral, heads of jurisdiction are uniquely suited to deal with problematic judicial conduct.

Their role as coordinator of court business means that events which raise ethical issues are more likely to come to their attention, and their senior position allows them to deal with sensitive matters which may be of concern to other judicial officers.

While each head of jurisdiction may consider their own part 4 referral, and may be asked to implement a recommendation formulated following their own

involvement, commission proceedings are not adversarial litigation. A head of jurisdiction does not decide whether their own part 4 referral is 'successful' and, if 'successful', how to implement the outcome.

Instead, the commission's mandate is to ensure compliance with high judicial standards of conduct. Its role is remedial and relates to preserving public confidence in the judiciary as a whole. All participants, including the judicial officer, the complainant, and the head of jurisdiction, should be seeking the most appropriate solution to any acknowledged problems.

Heads of jurisdiction therefore do not sit under the bill as 'judge, jury, and executioner'. Their involvement at multiple stages of the complaints process in matters not involving serious misconduct is a necessary extension of their existing managerial role within each court.

Where a matter is of sufficient seriousness that, if substantiated, the matter may warrant removal, then an investigating panel (in relation to judges, associate judges, magistrates and coroners) or an investigator (in relation to judicial registrars and non-judicial VCAT members) must be appointed.

Complete impartiality is guaranteed in such cases as neither the head of jurisdiction, nor any officer from the same court, may investigate a judicial officer of their court.

Where a head of jurisdiction is subject to a complaint, neither that officer nor an alternate member of the court or tribunal over which they preside may act at any stage of the complaints investigatory process. The head of jurisdiction, if necessary, may be counselled by a senior, eminent judicial officer or retired judicial officer from another Australian jurisdiction appointed specifically for that purpose.

For these reasons, proceedings before the commission are 'impartial'.

A fair hearing

A 'fair hearing' requires 'equality of arms' — both parties should enjoy a procedurally equal position to make their case.

The bill provides a comprehensive regime which allows a judicial officer to put their case and, in relation to an investigating panel that is conducting a hearing, by legal counsel. They will be afforded an opportunity to make comments at the most significant decision points that could lead to an adverse outcome.

A complainant who is to be declared vexatious under the bill will be provided notice and given an opportunity to make submissions.

It is important to stress, however, that a member of the public who initiates a complaint is not 'prosecuting' the officer and does not have a formal role in controlling proceedings.

Such involvement would risk compromising the independence of the judiciary by exposing judges to potential harassment or intimidation by disappointed litigants, as a process controlled by complainants could lead to judges ruling in such a way as to placate 'problem' litigants in the future.

Accordingly, a complainant under the bill is best equated with a complainant in a criminal trial, who has an 'interest' in the proceedings, but whose level of involvement will be determined to maximise the commission's ability to arrive at the key facts quickly, accurately and fairly.

For these reasons, the hearing is 'fair' notwithstanding that a complainant has a necessarily limited role.

A public hearing

Where the investigating panel or an investigator conducts an inquiry into conduct which, if substantiated, could warrant removal, the panel (or investigator) would determine whether the investigation should include an oral hearing.

Hearings of an investigating panel or investigator must be conducted in private unless the investigating panel or investigator determine that a public hearing will facilitate the conduct of the investigation or it is otherwise in the public interest.

The right to a fair hearing under the charter includes the right to a 'fair and public hearing'. The exclusion of the public from the hearing is consistent with the charter where the exclusion of the public is permitted by a law which is reasonable and otherwise proportionate to securing a legitimate public policy objective.

Hearings by an investigating panel or an investigator may canvass personal information (including health information), the disclosure of which could compromise the authority of individual officers and the effective working of the courts or VCAT. It is therefore appropriate to provide that such hearings are private, unless otherwise ordered by the investigating panel or investigator.

If the investigating panel or investigator substantiate a complaint or referral and determine that facts exist that could amount to proved misbehaviour or incapacity such as to warrant consideration of the officer's removal, the report could become public. For instance, the report regarding a judicial officer is provided to the Governor in Council and would be tabled in Parliament by the Attorney-General.

The commission is also empowered to publicly disclose information where the disclosure would be in the public interest.

An investigating panel and investigator will (to the extent authorised by the commission) have the statutory powers of a royal commission, including the power to prohibit the publication of material, where satisfied that this would facilitate the conduct of the inquiry or would otherwise be in the public interest.

The power to limit the publication of material is reasonable and necessary as information disclosed in a hearing may prejudice the ongoing investigation into the matter or, in limited circumstances, may be necessary because of the potentially disruptive effects of disclosure on the judicial process.

Published reasons

Under section 24(3) of the charter, decisions and judgements of a tribunal must be public unless disclosure is authorised by law or (where relevant) confidentiality is in the best interests of the child.

A decision of an investigating panel which concludes that there are grounds for the parliamentary removal of a judicial officer must be tabled in Parliament by the Attorney-General.

Other decisions of the commission will be provided to the judicial officer, but may not be released in full to a complainant or the public generally if this would be contrary to the public interest.

The statutory limitation on the release of written reasons is necessary because of the potentially disruptive effects of disclosure on the judicial process which are more fully explained in the discussion of the right to free expression which follows.

2. Freedom of expression — section 15(2)

Every person has the right to freedom of expression, which includes the freedom to seek, receive, and impart information and ideas of all kinds.

A right to receive government information?

The right to 'receive' information may imply a right to compel the production of government-held information where an individual seeks information on a subject engaging the public interest or in which he or she has a legitimate interest. To the extent that such a right is implied by the charter, it would not be absolute and would be subject to justifiable exceptions for objective, proportionate and reasonable purposes.

To the extent that such a right is implied by the charter, the bill provides a comprehensive and targeted regime for the disclosure of materials generated by the commission process.

Internal limitations — confidentiality to maintain the integrity of the judiciary

An officer subject to a complaint or part 4 referral will be provided with reasons in relation to decisions that relate to their complaints.

As the complainant is not a 'party' but an interested person, they are advised of the final outcome of commission decisions and, except to the extent that disclosure is contrary to the public interest, information regarding the reasons for that decision.

Under the bill, preliminary investigatory steps and internal materials relating to the commission's complaints function will remain confidential, as is generally the case for material generated by investigatory and related bodies. Premature disclosure could compromise ongoing investigations and limit the participation of people of potential assistance who are willing to cooperate only on a confidential basis.

The commission will decide on disclosure having regard to a series of factors which weigh the public interest in the protection of confidentiality against the public interest in maintaining the integrity of the judicial system.

On account of this specific regime for the provision of information to the officer concerned, the complainant and the public at large, it has been necessary to exempt documents relating to the commission's complaints function from a range of Victorian legislation which would provide overlapping avenues of access.

Internal limitation under section 15(3)(a) — rights and reputations of other persons

The commission, in making decisions to authorise disclosure of material related to the complaints function, must have express regard to the privacy interests of any person.

This restriction on disclosure reflects the internal limitation of the right under section 15(3)(a).

3. Freedom from self-incrimination — sections 24(1) and 25(2)(k)

A person charged with a criminal offence cannot be compelled to testify against him or herself.

This right may also be a component of a 'fair hearing' under section 24(1) of the charter.

Direct and indirect use of compelled testimony

Commissions and boards of inquiry may compel evidence or testimony where necessary for an important public policy reason.

As with a royal commission, the commission is charged with investigating matters of wider public importance — in this case, misconduct and related matters involving senior officials in positions of public trust. Direct oral testimony may be compelled by such bodies, which has the capacity to incriminate the person making the statement (self-incrimination).

However, it has been recognised that the freedom from self-incrimination under sections 24(1) and 25(2)(k) of the charter, while allowing a statement to be compelled, may prevent both the direct use of compelled oral testimony (direct use), and also the use of material which may be acquired through subsequent investigations which are initiated by such forced disclosures (derivative use).

On this view, the right against self-incrimination prohibits the use of evidence in future criminal proceedings which could only be discovered because of compelled testimony, while still allowing:

> evidence which could have been discovered without such testimony;
>
> evidence which would, or would probably, have been discovered even without the testimony; and
>
> evidence discovered independently of the testimony.

Under the bill, an investigating panel or (to the extent that the commission permits) an investigator may exercise the powers of a royal commission under the Evidence (Miscellaneous Provisions) Act 1958.

These powers include the power to summon people and compel answers even though production may tend to incriminate the person required to provide material or give evidence.

The bill provides that any information provided, or document or thing produced through such processes will not

be admissible against that person in any subsequent civil or criminal proceedings, except for proceedings relating to perjury or the giving of false evidence.

This position is consistent with the position adopted in relation to royal commissions and reflects the current arrangements for the investigation of judicial officers for serious misconduct under part 3AA of the Constitution Act 1975.

The bill does not, however, prevent the derivative use of such material. As such, it arguably limits the freedom from self-incrimination under sections 24(1) and 25(2)(k) of the charter.

Justifiable limitations under section 7(2) — derivative use of compelled material to protect the integrity of the judicial process

To the extent that this is a limitation of sections 24(1) and 25(2)(k) of the charter, it is a reasonable limit which can be demonstrably justified in a free and democratic society based on human dignity, equality, and freedom, having regard to the following relevant factors.

(a) Nature of the right —

The freedom against self-incrimination is a common-law principle of debated historic provenance. The modern right finds justification in the need to ensure that the Crown, and not an accused, is required to gather and adduce the material necessary to establish guilt. 'Roving commissions' engaged in 'fishing trips' to compel incriminating evidence are inconsistent with common-law concepts of a fair trial.

The freedom removes the 'trilemma' of subjecting a person to immediate punishment if they fail to answer a question, subjecting them to future punishment if they truthfully answer a question, or subjecting them to punishment for perjury for giving a false answer so as to avoid a future criminal trial.

The High Court has emphasised, however, that such underlying considerations are to be weighed differently depending on the circumstances. For example, the forced compulsion of oral admissions of guilt is more intrusive than the forced production of pre-existing documents or other materials. Inquiries which incidentally generate incriminating material in order to secure a broader public policy objective (say, inquiries in relation to police or other official corruption) are to be regarded differently to processes designed to directly adduce material solely to facilitate the future criminal prosecutions of identified individuals.

The nature of the right, as understood domestically, therefore seeks to balance the need for accurate truth finding against the inherently contextual need to maintain a fair state-citizen relationship.

(b) Importance and purpose of the limitation —

The bill will allow for evidence which is compelled by an investigating panel or investigator to form the basis of subsequent criminal investigation.

Evidence which could only be discovered because of compelled testimony may be used in subsequent criminal proceedings so as to ensure that evidence of serious wrongdoing in (or in relation to) judicial office can lead, where appropriate, to subsequent criminal convictions.

The commission process may uncover evidence of serious criminal wrongdoing which may lead, ultimately, to parliamentary dismissal. As an example, the judicial officer may directly admit or, following an initial (and perjured) denial, be cross-examined to the extent necessary to admit that they have accepted a bribe.

Such an admission may be the only source available to law enforcement to initiate a criminal investigation, as the actual decision-making processes of a judge following a public hearing are, in most instances, carried out privately and in the absence of public scrutiny. Law enforcement may therefore be deprived of the opportunity to 'independently' gather material relevant to a future criminal prosecution before or after a commission hearing.

Indeed, if there was a prohibition against derivative use of self-incriminating evidence, a tactical admission of wrongdoing by a judicial officer may 'sterilise' any future criminal investigation relating to disclosed misconduct.

The risk is that the integrity of the judiciary will be fundamentally undermined if judicial officers are dismissed from office but not prosecuted for serious criminal wrongdoing which is now publicly and openly acknowledged.

It is a central tenet of the rule of law and an inherent attribute of a just and democratic society that those who administer the law are, and are seen to be, subject to that same law. To prevent future prosecutions relating to misconduct in public office on the basis of material which is now in the public domain risks undermining public confidence in the ability of the judiciary to discharge its functions competently, independently and with integrity.

Judges and other people subject to the bill exercise coercive and far-ranging powers, such as the power to imprison and to award significant monetary damages or penalties.

As with other individuals who voluntarily accept positions of public responsibility, judicial officers are subject to a necessarily higher expectation of public scrutiny. Such people must accept a greater level of accountability where they are found to have abused the responsibilities of public office or have otherwise brought that office into disrepute through improper or illegal behaviour.

(c) Nature and extent of the limitation —

The limitation on the right extends only to the use of derivative-use material.

Any actual admission of wrongdoing before the commission may not be used as admissions against the officer in subsequent criminal or civil proceedings.

The commission is not a law enforcement body. It is not set up as a parallel body to the courts designed to produce incriminating material in such a way as to circumvent protections which the same person, as a criminal defendant, would be afforded in a normal police investigation and criminal trial.

Critically, the commission will have the power to adjourn its proceedings to allow for criminal investigations and prosecutions to progress, where that is appropriate.

The bill does not require material discovered as a consequence of an inquiry conducted under the bill to be used in subsequent criminal proceedings. The use of any such evidence would be governed by the laws of evidence, which permit the exclusion of 'unfairly' obtained evidence if, in the particular circumstances, it can be demonstrated that the use of material is inappropriate.

(d) Relationship between limitation and purpose —

Having regard to the absence of less restrictive means to secure public confidence in the judiciary where evidence of criminal wrongdoing has entered the public domain, the limitation on the right proportionally reflects a legitimate public policy goal.

(e) Less restrictive measures to secure purpose —

Consistent with the need to prosecute officers on the basis of facts freely and publicly available (subject to exceptions regarding the direct use of incriminating evidence), there are no less restrictive means to secure this public policy objective.

3. Right to privacy — section 13(a)

A person has the right not to have their privacy 'unlawfully' or 'arbitrarily' interfered with.

Interference will not be 'arbitrary' if the restriction on privacy accords with the charter and is reasonable in the circumstances. Interference will not be unlawful if the law authorising the intrusion is circumscribed, precise and determined on a case-by-case basis.

Investigation of pre-judicial conduct

The bill provides for the investigation of pre-appointment conduct.

However, the commission must dismiss a complaint or part 4 referral if the conduct would not justify removal of the officer from office, or was disclosed in writing before the person's appointment.

In effect, the commission will only investigate matters which should have been disclosed at appointment which are relevant to a person's fitness to hold a position of public trust and responsibility. Any such interference with privacy relates only to a judicial officer's capacity to fulfil official duties and is therefore reasonable in the circumstances.

Investigation of extrajudicial conduct

The bill permits the commission to review conduct which takes place outside the courtroom. The commission must however dismiss a complaint or part 4 referral if such conduct could not affect the carrying out of official duties, or could not be considered to affect their suitability to hold office.

In this way, the bill ensures that any investigation into an officer's personal life is only permitted where the outcome bears on their ability to perform their official functions. Such intrusion is therefore reasonable.

Health requests

The bill will allow, subject to safeguards, for the commission to require an officer to undergo a medical examination when it considers this to be necessary and appropriate on the evidence before it. A registered medical practitioner may request that the officer provide evidence of their prior medical history in their possession as part of the examination.

There is an obligation to undergo the examination, but there is no direct lawful requirement to submit to treatment.

Other professions in positions of public trust, such as health practitioners, are similarly required to undergo health examinations to ensure that the public is not harmed by people operating at diminished capacity through medical reasons.

The human rights of the public can be interfered with when a judicial officer adjudicates at diminished capacity. For example, a person may be convicted and sentenced by a person with early onset dementia or Alzheimer's disease.

As the medical examination procedures ensure that the basic rights of the public are not violated in this manner, interference with privacy is reasonable in the circumstances.

Disclosure of commission outcomes

The bill makes provision for the potential disclosure of personal and confidential material relating to the personal affairs of an officer.

In relation to conduct which could justify removal of a judge or magistrate, such material must necessarily enter the public domain because the final decision for removal is vested in Parliament, which must necessarily be informed about all matters relevant to the officer remaining in office.

In relation to less serious misconduct, the commission may withhold confidential information if it is in the public interest.

For example, if a particular problem identified by a complainant had a medical cause, it may be appropriate for the commission to advise the complainant that their complaint had been substantiated and that the judge was addressing the underlying medical matters, without revealing detailed information regarding the medical condition.

Information would not be released to a complainant in relation to matters that are referred back to the relevant head of jurisdiction where the commission has determined that the release is contrary to the public interest.

The decision to disclose personal or confidential information will be made on a case-by-case basis following a careful analysis of competing considerations.

Warrants, compelled oral evidence, and search powers

An investigating panel or (to the extent permitted by the commission) an investigator may exercise the power under section 19E of the Evidence (Miscellaneous Provisions) Act 1958 to enter and inspect any document or thing.

These powers may only be exercised in relation to the most serious allegations which would warrant removal, and only after the commission has determined that the allegations are sufficiently credible to warrant an investigation.

The power to compel evidence, including oral testimony, is a crucial aspect of the investigatory functions of the investigatory panel or investigator and is necessary for the appropriate resolution of complaints and part 4 referrals. Any intrusion into personal privacy advances clear statutory objects which secure the public interest in the proper administration of justice and so cannot be regarded as arbitrary. The power is clear and authorised by law.

These same reasons address any concern that the right to freedom of expression is unduly limited by the power to compel forced expression during investigations.

4. Freedom from discrimination — section 8(3)

Every person is equal before law and is entitled to the equal protection of the law without discrimination and has the right to equal and effective protection against discrimination.

Recommendations for removal

The bill provides a range of situations where people may be recommended for removal where facts exist that could warrant their removal on the ground of proved incapacity.

Similarly, appointed community members may be removed from the board of the commission if they are physically or mentally incapable of satisfactorily carrying out their duties.

The bill therefore authorises less favourable treatment for people with an impairment than those without, which prima facie constitutes 'direct discrimination'.

Justifiable limitations under section 7(2) — public interest

There is a compelling public interest consideration, as with other professions of public trust such as the medical profession, in ensuring that officers are not subject to an impairment, disability, illness or condition that results in the person being unable to perform their duties.

Judicial officers are not expected to be without any impairments, disabilities, illnesses or conditions. The principal grounds of removal specified in the bill generally require the issue of incapacity to be assessed at a high threshold — being whether there is incapacity which would warrant removal.

The bill provides a framework for integrating judicial officers with an impairment, disability, illness or condition back into the courtroom, where such a judicial officer can be accommodated without compromising the key responsibilities of judicial office.

For example, a recommendation to a head of jurisdiction could involve practical recommendations to allow a courtroom to be modified so that a judge with back problems can stand at the bench.

Any difference in the treatment of people with an impairment, disability, illness or condition under the bill is therefore limited to cases where a person cannot, even with reasonable adjustments by the court and the officer, effectively discharge their functions.

The limitation is therefore demonstrably justified.

Conclusion

In my opinion, the bill is therefore compatible with the charter.

Justin Madden, MLC
Minister for Planning

Ordered that second-reading speech be incorporated into *Hansard* on motion of Hon. M. P. PAKULA (Minister for Public Transport).

Second reading

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

That the bill be now read a second time.

Incorporated speech as follows:

The Judicial Commission of Victoria Bill 2010 establishes for the first time an independent body to investigate the conduct of judicial officers in the Victorian justice system. The proposal represents a further move towards the modernisation of the administration of our courts by providing an investigation process which will deliver transparent examinations of complaints and concerns about the conduct of judicial officers.

Our community expects this approach to the administration of justice. A robust, independent and accountable judiciary is essential to the proper functioning of any democracy. While Victoria's judiciary is of the highest calibre, public confidence is naturally eroded if concerns about the conduct of any individual judicial officer are not addressed in an appropriate way.

This landmark bill therefore establishes a new independent body which has the responsibility for investigating complaints and concerns regarding judicial officers, judicial registrars and Victorian Civil and Administrative Tribunal members.

Judicial officers adjudicate disputes that have critical and sometimes life-changing outcomes for the participants involved, including disputes between a citizen and the government or even the outcome of an election. The bill therefore takes into account the need to protect judicial independence, a key element of the rule of law and a means to secure impartiality, which is a necessary condition of a fair hearing.

Our judicial officers are bound by the law and their judicial oath, as well as existing accountability measures such as public hearings, appeal processes, the need to provide reasons for decisions and, in circumstances of grave misbehaviour or incapacity, the potential to be removed from office. However, this bill addresses the absence of any formal mechanism to deal with judicial conduct that, although of concern, falls short of misbehaviour or

incapacity that would justify the removal of a judicial officer.

The bill builds on the government's vision of creating modern courts and tribunals in Victoria, recognising the increasing complexity of the law, that there is greater scrutiny of proceedings, and higher expectations from our community. The bill also implements my earlier commitment under justice statement 2 to review arrangements for handling complaints about judicial misconduct and unprofessional behaviour.

The bill draws on extensive consultations with the heads of courts, the Victorian Civil and Administrative Tribunal and the Judicial College of Victoria, following the release in November 2009 of the discussion paper *Investigating Complaints and Concerns Regarding Judicial Conduct*. These consultations provided crucial input into the development of this important reform. Participation in this process by our most senior judicial officers also demonstrates that modern judicial officers welcome open, transparent and accountable justice when examining their conduct.

Current approach in Victoria

Presently in Victoria, there are two methods for dealing with complaints and concerns about judicial conduct.

In cases where conduct may warrant removal from office, an investigating committee formed in accordance with the Constitution Act 1975 decides whether facts exist that could warrant removal. A judicial officer may be removed by the Governor upon an address of both houses of Parliament by a special majority seeking removal due to proved misbehaviour by or incapacity of the judicial officer.

In cases of less serious complaints that do not warrant removal from office, there is currently no formal complaints process. In practice, the head of jurisdiction deals with these matters.

The bill combines processes for dealing with both serious and less serious complaints, and invests them in a single complaints body, thereby modernising the system and creating a more efficient and structured approach.

Judicial Commission of Victoria

The bill establishes an independent body known as the Judicial Commission of Victoria. The commission will have two divisions. The conduct division will investigate and hear complaints and concerns about judicial officers. The education division will provide for the education and training of judicial officers, judicial registrars and VCAT members, assuming the current responsibilities of the Judicial College of Victoria.

In order to maintain the commission's own accountability, consistent with all modern statutory corporations, it must also be subject to appropriate levels of scrutiny. Accordingly, the bill contains a number of mechanisms to ensure the accountability of the commission in relation to its operations and expenditure.

The board

The bill provides that the commission will have a board of ten members. The chair is the chief justice. Six members are the heads of the five courts in Victoria and the head of VCAT. The four remaining members are people of high standing in the community and are appointed by the Governor in Council on the recommendation of the Attorney-General. The Attorney-General will make these recommendations following consultation with the chief justice. The community members will be appointed for up to five years, with a maximum of ten years total service. At least two community members must have expertise in the delivery of educational services and organisational development. This will ensure that the board has an appropriate mix of skills and qualifications to ensure it carries out its functions and achieves its objectives. The inclusion of community members is crucial and further supports the bill's modernisation of our justice system.

The chief executive officer

The bill provides for the appointment of a chief executive officer who is responsible for the administration of the commission. The CEO has a significant role in ensuring that investigations are conducted in such a way as to give confidence to complainants and the public. Accordingly, it is important that the CEO is perceived to have sufficient independence from the executive as well as the judiciary.

The independence of the CEO will be protected by a number of means:

> First, the CEO is a Governor in Council appointment that is made on the recommendation of the Attorney-General following consultation with the board.
>
> Secondly, the CEO will be taken to be an administrative office head who has, on behalf of the Crown, all the powers and duties of an employer in relation to the public servants who work for the commission. Administrative office head powers are granted to the officers who exercise independent powers, such as the Victorian government solicitor**,** the chief parliamentary counsel and the child safety commissioner. However, their offices are able to operate efficiently by using certain corporate supports from the relevant department, such as departmental financial, payroll and human resource supports.
>
> Thirdly, the commission provides an annual report that must be tabled in Parliament.
>
> Fourthly, the CEO may, but is not obliged to, report to the Attorney-General on any matter relevant to the performance of the commission's functions.

Complaints process against judicial officers

Any member of the public may make a complaint to the commission about any conduct of a judicial officer whether or not the conduct was in court.

The commission may also receive and investigate referrals from the heads of jurisdiction and the Attorney-General. It is anticipated that referrals by heads of jurisdiction would ordinarily relate to matters that have not been resolved internally by the court or are sufficiently serious to warrant investigation by the commission. Referrals by the Attorney-General could occur where concerns have been raised by his department and are such that an investigation is warranted.

The commission has a duty to investigate complaints and referrals that are made under the act unless the complainant is vexatious.

The commission does not have any role to hear appeals or determine whether a court case involved an appellable error.

A complaint or referral may be made even though the matter is or has been the subject of an investigation by police or by any other law enforcement agency or regulatory body or has been prosecuted in a court. The commission is able to consider a complaint or referral whilst other investigations are under way.

The commission will take one of four actions in response to a complaint regarding a judicial officer:

> it may dismiss the complaint on specified grounds, for example, because the complaint is frivolous or trivial or not in good faith;
>
> it may determine that there is no further action required. This could occur if there was a valid complaint that has been resolved and no further action is necessary or the complaint relates to a relatively minor matter that occurred years ago;
>
> it may refer the complaint to the relevant head of jurisdiction, with the option of making recommendations as to how the head could deal with the complaint;
>
> it may refer the complaint to an investigating panel if it appears the complaint, if substantiated, could justify consideration of removal from office by Parliament.

These measures strike the appropriate balance between establishing a robust process to address concerns about judicial officers without interfering with existing mechanisms for judicial and appellate review under Victoria's justice system. This will ensure that there is a transparent system of accountability for judicial misconduct while at the same time protecting judicial independence.

Investigating panels

The bill provides that the most serious action the commission may take is to refer a matter to an investigating panel. The investigating panel is convened on each occasion as required by the commission. The panel is an independent body, taking over the position currently held by the investigating committee under part 3AA of the Constitution Act 1975.

An investigating panel has three members appointed by the commission, one of whom must be from a pool of four people nominated by Parliament, and two members who are current or former judges or magistrates in Australia. The process for nominating the pool of potential community members is modelled on the approach in New South Wales and recognises the vital role played by the panel. The people nominated by Parliament must not include lawyers. The bill provides that neither a serving judicial officer of the same court as the judicial officer under investigation, nor a member of the board, can be a member of the investigating panel. This protects the independence and impartiality of the investigations conducted by the panel.

In conducting its investigations, the investigating panel may hold private hearings, as well as receiving written submissions from the judicial officer. In appropriate circumstances, the panel may hold public hearings. The panel determines its own procedure when conducting hearings and is not bound by formal rules of evidence.

In cases that do not justify removal, a report is made to the head of jurisdiction. This report can include recommendations as to how the head of jurisdiction may deal with the complaint or concerns.

In order for a judicial officer to be removed, the investigating panel must first find there are facts that could justify removal of the judicial officer due to proved misbehaviour or incapacity. In such cases, a report must be presented to the Governor in Council and to the Attorney-General, who must cause the report to be laid before both houses of Parliament. The matter is then considered by Parliament.

The bill amends part 3AA of the Constitution Act 1975 to replace the current reference to investigating committee with a reference to an investigating panel and sets out the new procedures for removing judicial officers.

The bill maintains the current constitutional protections for judicial officers and does not change Parliament's role as the ultimate decision-maker invested with the power to remove a judicial officer. The bill therefore does not change the grounds for removal from office set out in part 3AA of the Constitution Act 1975.

Complaints against judicial registrars and non-judicial officers at VCAT

The bill adopts a modified process for complaints against judicial registrars and non-judicial officers at VCAT (Victorian Civil and Administrative Tribunal). This ensures that there is not an excessive burden placed on the heads of jurisdiction who are all members of the board. Due to the differing roles and functions of judicial registrars and non-judicial officers as well as the large number of non-judicial officers, particularly at VCAT, the commission may delegate its functions to a committee that operates within the commission to deal with these matters. The committee will comprise the relevant head of jurisdiction (such as the president of VCAT), a judicial member and a non-judicial board member. The committee, as the delegate of the commission, could appoint the investigator and refer complaints and referrals to that investigator.

In each case, the investigator may dismiss the matter on the same grounds as the commission. If they are of the opinion that the matter or any part of it is substantiated and there are facts that could justify removal of the officer due to proved misbehaviour or incapacity, this must be reported to the Attorney-General. If the matter is substantiated in any part, but does not warrant consideration for removal, the matter must be referred to the relevant head of jurisdiction of that officer.

Powers of heads of jurisdiction

The bill also expands the powers of the heads of jurisdiction to enhance their ability to manage their courts and to respond to the recommendations of the commission. The powers include the ability to stand down an officer if grounds may exist for the removal of the officer, it is

appropriate to do so in the public interest and the commission is investigating the matter and determined that it should proceed with the investigation.

If the head of jurisdiction receives a substantiated complaint, he or she may also direct the officer to participate in professional development or continuing education or training.

Health concerns

Importantly, the bill also deals with health investigations of judicial and non-judicial officers. If the Attorney-General or head of jurisdiction is of the opinion that an officer may be suffering from an impairment, disability, illness or condition that may affect the performance of the officer's duties, the head of jurisdiction or Attorney-General may request the commission to investigate the matter. The commission may, if it considers it appropriate, request the officer to undergo a medical or psychological examination. If the officer refuses to undergo the examination, the matter may be referred to the investigating panel or investigator, which could find that the non-cooperation of the officer could justify consideration of their removal from office.

If the medical examination discloses that an officer is suffering from an impairment which affects his or her performance, but the impairment is not sufficiently serious to warrant removal from office, the commission may refer the matter back to the head of jurisdiction with recommendations as to how the matter should be dealt with.

A health issue which amounts to incapacity can be grounds for removal from office. However, health matters are only of concern if they directly impact on the ability of an officer to perform his or her duties. It is no concern of the commission if an officer has a disability or is less than perfectly physically fit, if this does not impair their performance.

Judicial education

The bill repeals the Judicial College of Victoria Act 2001 and incorporates the current functions of the Judicial College of Victoria within the commission.

In 2001, the government established the judicial college and it has since become a leader in judicial education. It continues to develop innovative programs, which it shares with other judicial education organisations in Australia and New Zealand. The education programs include a continuing professional development scheme for all Victorian judicial officers.

The strong success and reputation of the judicial college will continue as a key function of the commission in its education division. The two members of the board who must have expertise in the delivery of education services or organisational development will ensure that the conduct functions of the commission do not dilute the education functions.

This reform will enable information obtained as part of the complaints process to inform the content of education programs. It will also enable the knowledge used in education programs to assist in the investigations and decisions made by the commission about judicial complaints.

Conclusion

In conclusion, I note my appreciation for the support of the Law Institute of Victoria, the Victorian Bar and members of the judiciary for the establishment of a judicial commission and for their participation in the consultation on the 2009 discussion paper and the development of the bill.

Our judiciary is fundamental to the delivery of a fair and efficient justice system. It is essential that citizens have confidence in the justice system, as well as confidence in the judicial officer who is handling their particular case. Fortunately, the quality of Victoria's judiciary is very high. The establishment of the systematic and transparent process provided for in the bill will contribute to maintaining public confidence in our courts.

The right to a fair hearing is now enshrined in section 24 of the Charter of Human Rights and Responsibilities 2006, which provides the right to have a charge or proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing. Those who participate in our justice system, whether they are defendants, litigants, victims or witnesses, expect nothing less. It is important therefore that mechanisms are put in place to support our justice system to achieve this outcome.

The bill sets new standards to ensure the accountability of Victoria's judiciary while protecting its independence and fulfilling our vision of a modern justice system in Victoria.

I commend the bill to the house.

Debate adjourned on motion of Mr RICH-PHILLIPS (South Eastern Metropolitan).

Debate adjourned until Thursday, 23 September.

RULINGS BY THE CHAIR

Notices of motion

The PRESIDENT — Order! When notices of motion were being given earlier today Mr Viney raised a point of order suggesting that the notice given verbally by Mrs Petrovich may have differed from the written version that had been given to the Clerk. Mr Viney requested that the Chair examine the Hansard recording to ascertain whether his claim was in fact correct.

The Chair's role in considering notices of motion is to determine whether they comply with the standing orders. Under standing order 6.01(5) any notice of motion or part of a notice of motion which contains material not in accordance with the standing orders may be omitted from the notice paper by order of the President. I have examined the notice of motion given by Mrs Petrovich, and there is nothing in it which offends against the standing orders.

It is not unusual for a notice of motion which appears on the notice paper to differ in some way from that which is given verbally in the house. Sometimes notices of motion which have not been checked previously by the clerks are changed before they appear on the notice paper to comply with the standing orders and the practices of the house. In addition standing order 6.04 enables a member to alter a notice of motion after it has been given. As the notice of motion complies with the standing orders, I therefore propose to take no further action on this matter.

Business interrupted pursuant to standing orders.

ADJOURNMENT

The PRESIDENT — Order! The question is:

That the house do now adjourn.

Kindergartens: city of Greater Bendigo

Ms LOVELL (Northern Victoria) — The matter I wish to raise is for the attention of the Minister for Children and Early Childhood Development regarding the dire shortage of four-year-old kindergarten places in the city of Greater Bendigo. My request of the minister is to provide an urgent funding grant to the Loddon Mallee Preschool Association (LMPA) for the extension of Kennington Preschool to enable Airport Preschool to relocate to the Kennington site, which would protect desperately needed kindergarten places.

By way of background, Airport Preschool, which operates from Bendigo's old airport terminal, must close or relocate at the end of 2011 due to the redevelopment of Bendigo Airport. The decision to close or relocate the kindergarten has caused significant distress for the Airport Preschool committee of management and the families of children who attend the preschool. Loddon Mallee Preschool Association is the kindergarten cluster manager in the Bendigo region and has been working with Airport Preschool and other local kindergartens to come up with an alternative site for the service.

Bendigo cannot afford to lose these kindergarten places, because there is a dire shortage across the municipality, particularly in the East Bendigo area. I met with LMPA last week and was told that as things stand now at least 18 children across Greater Bendigo will miss out on a kindergarten place next year — Airport Preschool is full. This is the best case scenario that assumes that parents will travel across the city to access kindergarten places and also that two services will schedule an additional group each.

With the support of Airport Preschool and Kennington Preschool, the LMPA has submitted an application for a funding grant from the current round of Victorian government renovation and refurbishment grants. Together with its own funds and funds from Kennington and Airport preschools, LMPA intends to use the grant to extend the existing Kennington facility to allow Airport Preschool to relocate to the site at the end of 2011. There is an urgent need for this grant given the current shortage of kindergarten places across Bendigo, which is expected to escalate with the closure of the Airport Preschool site and the implementation of the Council of Australian Governments 15-hour weekly kindergarten program.

These changes have been brought about by federal Labor policy which has been foisted on the community and local government without substantial government investment in infrastructure and the training of an early childhood workforce to enable kindergartens to implement these changes. Investment in early childhood infrastructure is particularly important in Bendigo, where the population is expected to grow from more than 100 000 to 140 000 by 2031. Fifteen-hour weekly kindergarten programs will put additional pressure on Bendigo's already stretched kindergartens, and the Brumby government must act to ensure that the city's kindergarten crisis does not escalate.

This is not the first time I have raised that matters of Bendigo's kindergarten crisis and the impending closure of Airport Preschool, but this lazy Labor government has ignored Bendigo's plight and is happy to accept that — —

The PRESIDENT — Time!

Housing: Clunes

Ms HARTLAND (Western Metropolitan) — My adjournment matter tonight is for the Minister for Housing. I wish to draw his attention to the determination of the Grampians region Office of Housing to withdraw a block of units at 2 Templeton Street, Clunes, from the register of public housing. The Office of Housing has cited criteria based on factors regarding the quality of accommodation, demand within the local community and access to services and support.

I have been alerted to this situation by Steve Morse, who has questioned aspects of the determination based

upon the following considerations. Mr Morse explained that a determination based on a lack of suitability and quality overlooks the possibility that this block could either be rebuilt or have extensions made to it. He asked whether the Office of Housing had applied for federal funds through the rollout of the Nation Building economic stimulus package to do this work.

Mr Morse went on to tell me that demand within the local community for social housing is evidenced by the Clunes Caravan Park having 13 permanent long-term residents. These people, if not registered with any of the housing associations, will not show up on Office of Housing databases. The long waiting list for social housing acts as a deterrent for people to register their interest, and with 1141 applicants there is an extremely high number of applicants waiting for public housing in the Grampians. It is quite clear from what Mr Morse has told me that there is not enough public housing in the area. He does not understand why it is that the government would withdraw this block of flats from the register of public housing without even trying to see whether they can be renovated or rebuilt. The action I seek is for the minister to review this decision and also to supply more, rather than less, public housing in the Grampians area.

Portarlington: foreshore

Mr KOCH (Western Victoria) — My matter is for the Minister for Environment and Climate Change, and it relates to the continual neglect of the Portarlington foreshore. Residents of Portarlington have been in constant contact with my office regarding the lack of maintenance along what should be a beautiful and pristine foreshore.

The Point Richards boat ramp is a major recreational boat-launching facility on the Bellarine Peninsula. Despite the recent relaunch after a $1 million upgrade, the car park and road surrounding the new ramp remains severely potholed and dangerous to all motorists. Further along the foreshore near Steeles Rock, close to what should be a picturesque swimming beach and a sought-after diving location, broken concrete dumped there 40 years ago remains a constant eyesore. It is a reflection on this government that such a valuable community asset should be left to languish.

For far too long the Portarlington community has been told to be patient, as all the town's problems would be solved by the construction of the proposed safe harbour. While the construction of a safe harbour seems to have in-principle community support, many realise — as the people of Queenscliff have discovered — that the devil with these projects is in the detail.

In July a group of concerned Portarlington residents contacted the minister, expressing their concerns that no environment effects statement process had been undertaken to examine the effects of the dredging procedures required for this harbour. Major concerns remain around the submerged acidic sulphate soils becoming toxic after exposure to oxygen. Residents are also concerned about the effect of the recently built groyne at Point Richards, particularly on the eastern foreshore.

It is disappointing that the minister has chosen to ignore these genuine concerns and forward the residents' concerns to Parks Victoria, which has responded on his behalf. Although dismissive of the residents' concerns, Parks Victoria did indicate that it agreed that the timing of recent operations — during the school holidays — was poor. The agency also confirmed that all assessments for the safe harbour are a direct result of desktop-generated outcomes, made without local input. You would think that after the shortfalls encountered at Queenscliff a reliance on a removed, desktop approach would have been avoided in favour of more thorough investigations. Is it any wonder that Portarlington residents remain sceptical about the implementation of the Portarlington safe harbour master plan?

My request is for the minister to demonstrate that he is finally prepared to address the maintenance issues along the Portarlington foreshore which his government has ignored for 11 years. This should include the restoration of the Point Richards car park, an examination of what is required to remove concrete from the Steeles Rock area and clarification of what measures will be taken to ensure that sand removed from the bay at Portarlington is done so safely.

Buses: SmartBus route 903

Ms PENNICUIK (Southern Metropolitan) — My adjournment matter is for the attention of the Minister for Public Transport, and it concerns the issue of overcrowding, lengthy delays and slow journey times on the route 903 SmartBus service from Mordialloc to Heidelberg, servicing Mentone, Oakleigh and Chadstone.

The Metlink website describes route 903 as a SmartBus service featuring frequent buses and extended operating hours, but on Saturdays the

route 903 service only operates on 15, 15, 30-minute intervals each hour — that is, three buses an hour — and half-hourly on Sundays.

According to one of my constituents who is a regular user of the route 903 SmartBus service, the less frequent weekend timetable and the lack of priority bus lanes cause lengthy waiting times, slow journey times and overcrowding on the buses. He reports that passengers are frequently forced to stand and hang from the wrist straps — they are lucky they have wrist straps, because there are none on the trains, or not enough of them — on these slow, infrequent and crowded buses which often experience further delays when serving the busy, car-based and expanding Chadstone shopping centre.

Commuters travelling from Holmesglen to Oakleigh face a particularly slow journey. The distance is 3 kilometres and is scheduled to take up to 21 minutes, so passengers in effect face a travel speed of 8.57 kilometres an hour. Buses between Holmesglen and Oakleigh make only two additional stops further to the stop at Chadstone, so these delays are due to the lack of priority bus lanes, traffic light priority and travelling in and out of the congested Chadstone shopping centre.

The opportunity also exists to cut bus travel time, reduce waiting times and increase public transport modal share into the Chadstone shopping centre. This would give buses a competitive advantage over car use and reduce congestion on local roads around Chadstone.

There have also been reports of passengers being unable to board the 903 bus at Doncaster Shoppingtown due to overcrowding and of Mordialloc commuters waiting up to 45 minutes due to lengthy waiting times. The Public Transport Users Association has raised concerns regarding the overcrowded 903 buses, reporting that the services are slow and infrequent. In its media releases dated 9 August and 7 September the PTUA has called for the introduction of extra weekend services and for the creation of priority bus lanes to relieve overcrowding and cut waiting times.

The action item I request of the minister is that he consider, as a matter of urgency, the introduction of a uniform weekend timetable, upgrading to 15-minute services from Mordialloc to Heidelberg on the SmartBus route 903, along with the implementation of priority bus lanes and improved traffic light priority around Chadstone shopping centre, especially at Princes Highway and Warrigal Road, to relieve the overcrowding and cut bus journey times.

Princes Highway, Beaconsfield: speed limit

Mr O'DONOHUE (Eastern Victoria) — My matter this evening is for the attention of the Minister for Roads and Ports. It concerns the speed limit through the commercial heart of Beaconsfield along the Princes Highway.

As the minister would be aware, Beaconsfield has grown significantly in recent years, with not just the development of additional retail facilities but also the growth in enrolments at neighbouring schools, such as Beaconsfield Primary School and St Francis Xavier College. This has put increased traffic volumes through the heart of Beaconsfield and also increased pedestrian movements in and around the Beaconsfield shopping centre.

In similar locations, such as High Street, Berwick, and Main Street, Pakenham, the speed limit is 50 kilometres per hour through the commercial district. In Beaconsfield the speed limit remains at 70 kilometres per hour, and a number of traders and local residents and the Beaconsfield Progress Association are concerned that that speed limit is now too fast, given the increased traffic volumes and the number of pedestrians in and around the area.

The action I seek from the minister is that, together with VicRoads, he examine the current speed limit arrangements with a view to considering reducing the speed limit to reflect the increased traffic and pedestrian movements.

Traralgon: land valuation

Mr HALL (Eastern Victoria) — Tonight I raise a matter for the attention of the Minister for Local Government. It concerns a matter raised by my constituents Wolf and Ali Becker of Traralgon. They live at number 85 Coonoc Road, Traralgon, and they are concerned about the valuation that has been assigned to their property for the purposes of local government rates. They have made what I think are valid claims, and I am seeking from the Minister for Local Government some investigation into the criteria on which their property valuation has been made. They have objected to the property valuation, but it would be helpful if the Minister for Local Government could also look into the matter. By the way, the objection is to rates assessment no. 341065 and, as I said, the address is 85 Coonoc Road, Traralgon.

The essential point of this is it appears the valuation has been struck on a speculative assessment of what the land property might be worth — for example, properties nearby are under a different planning classification and consequently are able to be subdivided, and therefore those properties are fairly highly valued. The property on which the Beckers live is currently rated rural residential, and the valuation assigned to it is such that there is speculation that in the years to come there will be a different land classification and the Beckers will be able to subdivide their land and that it will therefore become more valuable. That is being very speculative. There is no guarantee that there will be a planning scheme change, there is no guarantee that they will ever be able to subdivide — nor would they want to — and there is no guarantee that that land is going to be reclassified. It seems to me to be premature to strike a valuation of property purely on what might happen in the future and not what can or will happen in the future.

I think the Beckers' concerns are valid, and I would like, as I said, the minister to investigate this matter to make sure he is satisfied that the way in which the valuation is being struck is both legal and proper.

Hospitals: financial management

Mr D. DAVIS (Southern Metropolitan) — My matter for the adjournment tonight is for the attention of the Minister for Health and concerns the health service annual reports that were released in this place today and some of the serious figures contained in the financial analyses in each of those reports.

It is clear that a number of our major health services face very serious financial challenges, and I will go through and look at the net result for a number of our networks and health services. Alfred Health has a deficit of $30.718 million; Austin, $22.334 million; Ballarat, $6.511 million; Barwon Health, a significant $9.384 million; Eastern Health, $28.121 million; Melbourne Health, $35.966 million; Mercy Health, $4.188 million; the Peter MacCallum Cancer Centre, $3.669 million; Southern Health, $28.865 million; and the Royal Women's Hospital, $16.311 million. Even the Royal Children's Hospital has a significant deficit of $1.194 million.

Across the major networks of the city of Melbourne and the big regional networks this adds up to well over $100 million in the negative, which is a very significant negative position for a number of our networks. Networks cannot function well when they are financially stressed. An Auditor-General's report presented in November last year looked at the financial position, and we saw his analyses that pointed to the challenges that networks face — he sought to get to the bottom of the actual position of the networks. For example, Barwon Health had five days liquidity on hand. For major networks and major health services that are trying to deliver services, make purchases and ensure that their staff are paid properly, there is no question that these negative outcomes have a real impact.

We have also seen in the last few days the terribly shocking position of the health services with respect to their performance with patients in terms of timeliness. Across the system, five of nine of the outcome measures were failures.

What I seek from the Minister for Health is an explanation to the community. I seek a full investigation into what has gone wrong financially for these networks — —

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

Responses

Hon. M. P. PAKULA (Minister for Public Transport) — Ms Lovell raised a matter for the Minister for Children and Early Childhood Development in regard to four-year-old kindergarten places in the city of Greater Bendigo and specifically sought a grant for the Loddon Mallee Preschool Association. I will convey that to the minister.

Ms Hartland raised a matter for the Minister for Housing in regard to the withdrawal from the Office of Housing list of a particular block in Clunes and sought a review of that decision, and I will convey that to the Minister for Housing.

Mr Koch raised a matter for the Minister for Environment and Climate Change in regard to maintenance of the Portarlington foreshore and sought various actions in regard to that, and I will convey that to the Minister for Environment and Climate Change.

Ms Pennicuik raised a matter for me in regard to the SmartBus route 903 service, Melbourne's most popular bus route. In fact it runs from Mordialloc to Altona, not Mordialloc to Heidelberg. She sought a whole range of actions too numerous to me to respond to tonight, but I will provide her with a comprehensive response to the matters she raised.

Mr O'Donohue raised a matter for the Minister for Roads and Ports seeking that he examine the speed

limit along the Princes Highway in Beaconsfield and potentially seeking to have that speed limit reduced, and I will convey that to the Minister for Roads and Ports.

Mr Hall raised a matter for the Minister for Local Government in regard to rate notice no. 341065 for a property at 85 Coonoc Road, Traralgon, and sought an investigation into the way in which that property was valued, and I will convey that to the Minister for Local Government.

Mr David Davis raised a matter for the Minister for Health in regard to the financial position of various health networks and sought an investigation into that, and I will convey that to the Minister for Health.

I have written responses to adjournment matters raised by Mr Kavanagh on 14 April, Mr Philip Davis on 11 August and Mr Kavanagh again on 12 August.

The PRESIDENT — Order! The house now stands adjourned.

House adjourned 10.21 p.m.