PARLIAMENT OF VICTORIA

PARLIAMENTARY DEBATES (HANSARD)

LEGISLATIVE COUNCIL

FIFTY-SIXTH PARLIAMENT

FIRST SESSION

Thursday, 29 July 2010

(Extract from book 11)

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

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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.

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

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

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

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

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

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

Heads of parliamentary departments

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

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

Parliamentary Services — Secretary: Mr P. Lochert

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FIFTY-SIXTH PARLIAMENT — FIRST SESSION

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Ms WENDY LOVELL

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Mr PETER HALL

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

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

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Thursday, 29 July 2010

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

PETITION

Following petition presented to house:

Wallan-Kilmore bypass: construction

To the Legislative Council of Victoria:

The petition of certain citizens of the state of Victoria draws to the attention of the Legislative Council that a 'link' road, containing three roundabouts, has been planned in Kilmore township to take through traffic, including heavy commercial vehicles, past three school precincts, a nursing home and residential areas without being subjected to public scrutiny and without any environmental impact study or the effects of noise, pollution, traffic volumes and dangerous goods on the schools and residents. This link will become the arterial road carrying the Northern Highway traffic in lieu of Sydney Street. This study does not include the detrimental impact of the proposed industrial developments south of Wallan and Kilmore or the unwanted Northern Highway duplication through Wallan to Kilmore.

Your petitioners therefore request that the Minister for Roads immediately abolishes this link road and the duplication and commences planning for a bypass of Wallan and Kilmore with the end of removing this traffic from these towns.

By Mrs PETROVICH (Northern Victoria) (317 signatures).

Laid on table.

VICTORIAN CHILD DEATH REVIEW COMMITTEE

Report 2010

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

Laid on table.

PAPERS

Laid on table by Clerk:

Gambling Regulation Act 2003 — Report of the Gambling and Lotteries Licence Review Panel to the Minister for Gaming in relation to the review of expressions of interest in the grant of a wagering and betting licence.

Ombudsman — Report on investigation into an allegation of improper conduct within RMIT's School of Engineering (TAFE) — Aerospace, July 2010.

TRANSPORT LEGISLATION AMENDMENT (PORTS INTEGRATION) BILL

Second reading

Mr VINEY (Eastern Victoria) — I desire to move, by leave:

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

Leave refused.

Mr VINEY gave notice of motion.

MEMBERS STATEMENTS

Bushfires: rebuilding

Mr O'DONOHUE (Eastern Victoria) — During the recent parliamentary recess I had the opportunity to meet with a number of bushfire-affected communities in the Eastern Victoria Region. In particular I spent a significant amount of time in the Jindivick-Labertouche area. It is distressing indeed that there are still people in those communities who are living in caravans and sheds with no prospect of having a house in which to live in the near future. It is now the second winter since the bushfires, and the toll this is taking on individuals, families and communities continues to grow. The cumulative effects on a family who are living in a bus or a shed without a proper shower, facilities or heating take their toll on relationships and individuals. It is incredibly distressing.

I pay tribute to Bruce and Narelle Maya, Ian Archibald and some of the other people with whom I have met, who are committed to their community and the bush where they live. They love their environment; they just need a hand. In the absence of a ministerial portfolio dedicated to bushfire response — the coalition has appointed Peter Ryan, the Leader of The Nationals in the other place, as shadow minister for bushfire response — I call on the Premier to assist people in these communities who are still struggling, fighting red tape and looking to get ahead.

Solar energy: charges

Mr HALL (Eastern Victoria) — On Tuesday I heard the Premier say on radio that the state government's move to generate 5 per cent of Victoria's

future power needs from solar power would add somewhere between $5 and $15 per year to a household electricity bill. Despite the fact that that is rather hard to believe, especially given the precedent of the extra costs on electricity bills with the introduction of smart meters, I point out to the house that many people are suffering from increases in utility charges.

This morning I read in the *Age* that in the first six months of this year the cost of utilities has gone up. Electricity costs have gone up 18 per cent, water costs have gone up 14 per cent and gas costs have gone up 10 per cent. That has been, as I said, in a period of just six months. We know that over the next few years water prices in Victoria will double.

While the Premier would claim that the cost of the move to solar power will be just a small increment in electricity costs — 'a small price to pay' were the words he used — the cumulative increases in utility charges are significant. If you are an age pensioner, unemployed, a self-funded retiree whose investments have been hit pretty hard over the past couple of years or a parent of a family, trying to raise three or four children, then every extra dollar you have to pay in utility charges makes it very difficult. I urge all members to be concerned about and show care for those on fixed incomes because of the effect of the imposition of these extra charges on them.

Zac Legge

Mr TEE (Eastern Metropolitan) — I want to congratulate and thank Zac Legge, who lives in my electorate. He is an 8-year-old kid who, when his younger brother sustained a large gash after putting his leg through a window, which was a very distressing episode, very calmly dialled 000 and made sure that emergency services were on board to ensure that his younger brother received medical treatment quickly. That was a very stressful situation for a very young child. I congratulate him.

Zac was one of 22 young Victorians across the state who carefully and appropriately dialled the 000 service and were recognised by the Minister for Police and Emergency Services, Bob Cameron, as junior 000 heroes who appropriately called the 000 emergency line. They range from people who have helped injured parents and siblings to those who have reported public disturbances. These outstanding young people are truly heroes of our community.

Hans Kueffer

Mr ATKINSON (Eastern Metropolitan) — In the first instance, I want to pass on my condolences to the family and friends and school community of Antonia Park Primary School in the electorate of Mitcham on the passing of Hans Kueffer, the school's principal. Hans was a very good educator and a very fine principal. His tragic death two weeks ago has left a community in shock, and he will certainly be missed by that community.

Jackson Irvine

Mr ATKINSON — On a brighter note, a young fellow named Jackson Irvine who was in year 12 at Knox School left at the end of term 2 to fulfil his dream of playing professional soccer. He flew to Scotland to become a member of the Celtic Football Club under-19 team. Jackson has provided an extract from a speech he made to the school assembly for the school magazine. It is an amazing piece of work in which he comments that many times he was told during his soccer career that he was not good enough and would never make it. This lad persisted. In December last year his coach organised his travel to Glasgow so he could have a 10-day trial period with the European giants, the Celtic Football Club. He was picked up by the team and will now have a very good career.

Women: local government representation

Ms PULFORD (Western Victoria) — I congratulate Cr Janine Booth, mayor, and Kaylene Conrick, CEO, of Hepburn Shire Council, on the fabulous celebration I attended on Thursday, 22 July, at the Daylesford town hall. The occasion was part of the 2010 year of women in local government celebrating and raising awareness of the need to increase female participation in local government.

The shire council has formally adopted the *Victorian Local Government Women's Charter*. As part of the marking of this year the council had a fabulous event where a great number of women were entertained and informed by Patty Kinnersley, CEO of Women's Health Grampians, and Noelene Duff, CEO of Whitehorse City Council.

Across Australia women still account for less than 30 per cent of all councillors, 20 per cent of senior managers and only 5 per cent of CEOs in local government. Raising awareness of this and continuing to ensure that this important tier of government and Australian democracy is truly representative is a most

valuable thing. Hepburn Shire Council is to be congratulated on its efforts.

Gippsland Lakes: European shore crabs

Mr P. DAVIS (Eastern Victoria) — I raise for the attention of the house a matter of great concern especially to recreational fishermen in Gippsland and anybody who is interested in the natural environment of the Gippsland Lakes.

The European shore crabs are multiplying at an exponential rate and are now clogging the lakes. There is a massive colony of the crabs: the colony is up to a metre in depth and more than a kilometre long and is moving in a westerly direction toward Loch Sport. There is an urgent need for the government to act to arrange with commercial fishermen for some form of bulk catch and dumping program to protect the Gippsland Lakes environment. This mass has been estimated by fishermen to be in the order of in excess of 22 000 tonnes. Unfortunately there is no commercial market incentive to catch these crabs presently because they are selling for only 77 cents a kilogram while freight costs are around 57 cents a kilogram.

A full-scale catching program would reduce numbers and curb the rapid spread of the crabs up to the lakes. They are now approaching Lake Wellington and could potentially ruin another major fish spawning ground, put the commercial fishing industry of the Gippsland Lakes at risk and jeopardise recreational fishing, which is a most important tourism drawcard.

The latest statistics show a very serious decline in fish stocks and a progressive decline in the targeted black bream fishery. It is evident the Minister for Agriculture needs to act urgently to deal with this matter.

Inglewood and Bridgewater: men's shed

Ms BROAD (Northern Victoria) — Last Friday I visited Inglewood to officially open the new Inglewood and Bridgewater men's shed on behalf of the Minister for Senior Victorians, Lisa Neville.

In 2008 I had the pleasure of announcing the maximum grant amount of $50 000 from the Brumby government to the Inglewood and Districts Health Service to help the community with the cost of constructing this men's shed. This project was one of 25 men's shed projects to be funded in the first round of funding through the Brumby government's men's shed program. The program has been expanded since that first round to 76 men's sheds because of their popularity in communities across Victoria and because the men's shed program is one way the Brumby government is making sure that older Victorian men get local facilities and services they need most.

In the case of Inglewood and Bridgewater, the Brumby government knew that a men's shed was a priority for these communities as a result of community consultation that occurred as part of a community-building partnership between the government and Loddon Shire Council. A men's shed was identified as a priority because they are a great way to get older men active and involved in their local community and they are a great way to improve men's health in community settings.

I wish to commend Mike Parker, Mary Evans and all the staff and committee members from the Inglewood and Districts Health Service for their support and assistance with the project. The co-location of the men's shed next to the hostel and nursing home provides wonderful opportunities for residents of these facilities to take advantage of the men's shed.

Casey Hospital: emergency department

Mr D. DAVIS (Southern Metropolitan) — Today I want to talk about Casey Hospital, a very important hospital in the south-eastern growth corridor of Melbourne. Casey Hospital turned five years old last year, and the health minister, Daniel Andrews, went out there to visit and put out a news release saying, 'Smiles all round for Casey Hospital'. It is a very important hospital, as I said, and it is all very well for the minister to be grinning at a five-year celebration, but the truth is that the emergency department at Casey has serious problems and there has recently been a spate of disgraceful, terrible cases where people have been put at risk at that emergency department.

I hasten to add that the staff do the best they can with the resources Premier John Brumby has given them, but it is very clear that with the growth in that area it is a challenge for the hospital to manage the many cases that come forward. A woman with a life-threatening ectopic pregnancy was turned away; a father of three suffered a serious stroke just two weeks after the hospital refused to believe he was having a mini-stroke; a 13-year-old was sent home in pain with a broken wrist five weeks ago after being told nothing was wrong; and the hospital failed to diagnose a father with cellulitis. This series of cases shows there is a real problem with the hospital.

The minister needs to investigate this and make sure it is dealt with. It is not good enough. There have been 11 years of John Brumby, 11 years of failure and 11 years of failure to fix our health system.

Liberal Party: Chifley federal candidate

Mr SOMYUREK (South Eastern Metropolitan) — I commend the leader of the federal Liberal Party, Tony Abbott, on promptly acting to dispose of rogue Liberal candidate for the federal seat of Chifley, David Barker, who claimed amongst other things that electing his Muslim opponent to Parliament would bring Australia 'closer to the hands of a Muslim country'.

As a member of the Victorian Parliament for the past seven and half years and as a person of Turkish Muslim heritage, I find it disappointing that Mr Barker believes that a fellow Australian's loyalty to this country should come under question due to his or her faith and heritage. Throughout my career in this place I have consistently called on the Australian Muslim community to weed out preachers of hate and isolation within that community, I have consistently called on the disparate Australian Muslim community to integrate into Australian society and I have used my elevation into Parliament as a powerful symbol of how institutional discrimination does not exist against the Australian Muslim community.

I had the pleasure of meeting Mr Husic, the Labor candidate for Chifley, a couple of years ago, and I can assure the Australian people that he is the antithesis of the Islamic radical type that I have condemned over the years.

Mr Barker refers to himself as being a strong Christian as though that were almost a justification for his views about Ed Husic. I invite Mr Barker to examine my voting record in this place and decide for himself whether the divide between the monotheistic faiths on key issues is as deep as he believes it to be. As a strong Christian, Mr Barker may have a lot more common ground with Muslims than he cares to admit.

Housing: homelessness strategy

Ms LOVELL (Northern Victoria) — Last October the government released its *Homelessness 2020 Strategy* discussion paper. Page 2 of that document states that a draft Homelessness 2020 strategy will be released for consultation in early 2010 and the final Homelessness 2020 strategy will be released in May 2010. We are now at the end of July, and as yet the government has not even released a draft strategy, let alone the final strategy promised for May. Unfortunately the lazy Labor housing minister failed to meet either of the deadlines, which he set for himself, and we have not heard a thing from him about the status of this strategy. This shows a complete lack of commitment to assisting vulnerable Victorian families and addressing Victoria's housing crisis.

The most recent figures available, from 2006, suggest that 20 511 people were homeless in Victoria on census night. Another 2789 vulnerable Victorians were also classified as marginal residents of caravan parks at the time of the 2006 census, bringing the total to 23 300 Victorians who were homeless or at real risk of homelessness.

A reflection of the Brumby government's housing crisis is the rapidly increasing public housing waiting list. An incredible 1013 families joined the waiting list in the March 2010 quarter, taking the total to 39 794 families — and the minister seems reluctant to release the June figures.

The Brumby government's failure to produce a new homelessness strategy makes a mockery of the Council of Australian Governments' commitment to halve homelessness by 2020 — —

The PRESIDENT — Time!

Agapi Care: supported accommodation

Mr BARBER (Northern Metropolitan) — During the sitting break I was able to pay a visit to the beautiful new seven-bedroom permanent accommodation house for people with disabilities that the Greek community has totally funded through Agapi Care. I know that Ms Mikakos and Mr Guy have also been through the house and have had the same tour that I had. Many families in my electorate are in desperate need of this sort of facility in addition to some of the other respite services that Agapi offers.

I understand representations have been made to the relevant minister, Ms Neville, the Minister for Community Services, and the administration side of the Agapi program is now being worked through. But I am sure Mr Guy and Ms Mikakos will join me — they have joined me — in calling for that process to be sped up so that this wonderful new facility, which meets a demonstrated need, can be up and working as soon as possible.

City of Kingston: petition

Mrs PEULICH (South Eastern Metropolitan) — I express serious concern at the manner in which a petition tabled in the City of Kingston has recently been used. If there is an issue in relation to this petition, I call on the Attorney-General to review the purpose of petitions. A petition was initiated by the member for Carrum in the Assembly in relation to Patterson Lakes

water quality calling on the council to ignore the fact that the government is responsible for maintaining water quality and to provide rate concessions to residents. Unfortunately that petition, though tabled by Labor mayor, Steve Staikos, was never made available to other elected representatives, including the ward representative attacked yesterday, Cr Donna Bauer, the deputy mayor of Kingston.

I find it extraordinary that if signatures are sought for petitions, those petitions and the names of the signatories are not available. It was reported in a newspaper that this petition is now being kept secret on the grounds of legal advice supposedly received on the basis of the privacy laws. I call on the Attorney-General to review the laws, if that is the reason this petition has been kept secret, because I think people who sign petitions expect them to be tabled publicly and in good faith. Otherwise, how do we know that the petitions have not been somehow manipulated or contrived? If there is an issue, the Attorney-General needs to resolve it; he needs to change the laws or to clarify the protocols that apply to petitions. The public expects public petitions to be just that — public — not secret documents.

STATEMENTS ON REPORTS AND PAPERS

Commissioner for environmental sustainability: report 2008–09

Mrs PETROVICH (Northern Victoria) — The timber industry in Victoria is a truly sustainable resource. I would like to draw the attention of members to the hypocrisy surrounding the government's mismanagement of what could be, if managed correctly, a truly sustainable industry that would greatly benefit the environment, and the impact this mismanagement has had on our forest environment.

I refer to a headline in the *Sunday Age* of early December 2007: 'How to turn $99 million worth of trees into a $17 000 loss', which exposed VicForests as incompetent economic managers of our public forests. Even after many millions of dollars in grants from the Bracks and Brumby governments to establish and operate VicForests, not much has changed. Five years on we have an appalling result: a loss in 2009 of $7.466 million after receipt of income and grants from government departments and before interest and taxes.

The 2007 annual report shows that an area of native forest the size of just under 5 000 football fields sold for almost $100 million, with VicForests still unable to make ends meet. However, the then Treasurer, John Brumby, said this corporatised arm of the state government would provide a reasonable result for Victorians. Add all of this together and you have the debacle of closing down almost an entire regional industry with many hundreds of jobs lost, the waste of millions of dollars in regional forest agreements and consultancies that the government did not adhere to, the payout of $80 million from the state government to buy back licences and pay out workers from industry, and the loss of substantial value chain businesses along the way.

When we look at where the profit is, we need to note that the Premier has allowed VicForests to sell pulpwood for woodchipping for paper production, mostly overseas, at around $8 a tonne. Woodchips then sell for about $80 a tonne. After they are pulped, the yield is about $1 000 a tonne. Why does VicForests lose money, given that there is an opportunity to increase prices paid by the three big mills that buy this product? They should be able to make their own substantial profits.

It is appalling that in this provision for impaired receivables, which has a nominal value of $72.87 million, $65.64 million for bad debts is recorded. The 2009 VicForests annual report states:

> It was assessed that a portion of the receivables is expected to be recovered.

One would hope so, considering that we all understood that assessments of credit risk were so tight that many small and medium businesses could not manage the added impost of the bank guarantees they were required to provide and which were waived for the larger companies.

The chief executive officer of VicForests, David Pollard, notes in the report:

> As discussed in the notes to the accounts, we are currently attempting to resolve a pricing dispute with a major customer, which has had a significant impact on the year's performance.

One would hope this matter has been resolved, but I am not confident, and we will see the outcome when we report on the 2010 annual report. I have been told by some pretty reliable sources that bushfires affected this result. I note that little of the forest asset provided for this is written off and that the asset impairment notes in the accounts state that:

> All assets are assessed annually for indicators of impairment, except for …

among others, inventories. I have to ask why is that so?

Commissioner for environmental sustainability: report 2008–09

Mr EIDEH (Western Metropolitan) — I rise to speak on the commissioner for environmental sustainability's annual report 2008–09. The role of commissioner was established by the Labor government in 2003 and is evidence of the commitment of the Labor government to realisable sustainability. I thank Dr Ian McPhail, the inaugural commissioner, for his inspirational leadership up until he retired in mid-2009. Dr McPhail is an outstanding Victorian, and this state is indebted to him. In thanking him I must also express support for his successor, Dr Kate Auty. In the short time she has been in the role she has proved to be more than worthy.

It would be fair to describe the role of the commissioner as the 'Auditor-General of environmental sustainability', and we should all note that the position and the office are about achieving real progress in the area and ensuring that everyone who falls under their jurisdiction plays their part. The Minister for Environment and Climate Change, Mr Gavin Jennings, has proven to be a fine minister who works well with all aspects of his ministry, including this particular area. I congratulate him on his leadership and his passion for environmental sustainability.

There is no need for me to remind honourable members of the powers and jurisdiction of the commissioner. Suffice it to say that the commissioner plays a key role in working with a variety of stakeholders, including industry peak bodies, metropolitan and regional councils, catchment management authorities, water authorities, waste management groups and companies, environmental consultants, academics and environmental non-government organisations. I must also refer to the reference group, which has some very well-known names, including but not limited to Mr Alex Arbuthnot of the Victorian Farmers Federation, Ms Kelly O'Shannassy of Environment Victoria, Ms Sue Hendy of the Council on the Ageing Victoria, the highly regarded Mr Rob Gell, who wears many hats, and others who are there to advise and support the office of the commissioner. A younger member of the reference group is Ms Linh Do, who went to school in my electorate and who lives there. Having younger people on such bodies is another example of the commitment of this government and this minister.

During the period covered by this report the commissioner published the inaugural *State of the Environment Report* — a landmark document given that Victoria is alone among the states to have a commissioner for environmental sustainability. This is yet another example of where our state leads the nation and where this government is proactive rather than reactive. In addition to this report, which drew attention from across Australia and overseas, the commissioner published an extensive series of information or fact sheets. These fact sheets have been taken up by groups and people across the state. In particular I would like to highlight municipal councils such as the City of Moonee Valley which use the fact sheets as a basis to prepare their own fact sheets. I was informed about this by Mr Rob Gell at a recent sustainability event held in that municipality.

While I know that some will argue that we could and should be achieving far more in environmental sustainability, there are those who would argue for less or even nothing. This government must draw a balance between the key issues in working towards environmental sustainability and the economic prosperity of the state. It is not easy, but we are committed to doing and achieving more. I commend the report to all honourable members in this house.

Auditor-General: *Access to Social Housing*

Mrs COOTE (Southern Metropolitan) — I would like to speak on the Victorian Auditor-General's report *Access to Social Housing*. Firstly, I refer to page 2, which talks about the structure of housing in this state. There are two parts to this structure. The first is the director. The report states that:

> The director works in partnership with other stakeholders to increase housing options for those on low incomes.

The major roles of the director are policy development, funding and leasing, and service delivery.

Then there is the registrar. The report states that:

> The registrar, supported by the housing registrar unit of the DHS, registers the community-based organisations that provide affordable housing.

I will come back to that in a moment as a methodology, because that is what I would like to speak to this morning. There needs to be some structural change to the way in which housing and social housing is approached in this state.

It is not working. There are hundreds of thousands of people who need appropriate housing — both short term and long term — and it is just not happening. It is an indictment of this government. The government needs to go back and undertake some major structural reform so that this system works more smoothly for those in our community who need social housing as a

matter of urgency. It is an indictment of this government and of us as a community that we cannot provide for the most needy among us. The recommendations reinforce that.

Recommendation 3 states:

> The Department of Human Services should revise the governance structure as a priority to strengthen the autonomy of the Registrar of Housing Agencies.

Recommendation 4 is, in part, that:

> The Registrar of Housing Agencies should:
>
> > strengthen oversight through focused monitoring and inspections, particularly of associations that have failed to provide information or take corrective action when requested …

The majority of the Victorian community would expect that this was already happening. To hear from the Auditor-General that in fact this is not the case should send major shock waves through the department and the rest of the government. I suggest that there has been this ad hoc approach to social housing because of the financial sweetener from the federal government under former Prime Minister, Mr Rudd — I am not sure how it is going to go now! The reality is that there was a sudden influx of funding and a major scurrying around to ensure that social housing sites would be put into various places on land that was frequently inappropriate.

I have spoken in this chamber on many occasions about the inappropriate social housing complex that is being put in behind the Kingston town hall, adjacent to the Moorabbin railway station on South Road. I do not have a problem with social housing. My issue is that it has to be the best that we can provide, and this is not going to be the best that can be provided. Supposedly this is going to be housing for women who have come out of the correctional services and their children. I had occasion to visit the Dame Phyllis Frost Centre recently, and the women in there have all said that housing will be a real issue for them when they are released from prison. We want to make certain that they are given a proper framework to integrate back into the community, that their children can be dealt with appropriately and that they have secure and appropriate housing into the long term.

You can understand why this has been rushed through: because the department is in disarray. As the Auditor-General has outlined, it is an indictment that the community is now waking up to.

I would like to bring to the attention of the chamber an article that appeared in the 'Domain' section of the *Age* newspaper last weekend. It talks about an American model which is called the Common Ground model. It has been piloted in New York and is now going to be in Victoria, in Elizabeth Street, Melbourne. It is a methodology for integration of social housing with private housing. In the complex there is a whole range of apartments and support services for people who have previously been homeless or have not had continuity of housing. This seems to be a good model. I would like to see the department get itself organised into seeing how this could be rolled out across Victoria. If it can organise and restructure itself, this would be a good model to follow.

National Environment Protection Council: report 2008–09

Mr MURPHY (Northern Metropolitan) — The National Environment Protection Council annual report 2008–09 commits to preparing Australia's first comprehensive report on resource recovery and waste management as well as pollution reduction strategies. Today I wish to address these pollution reduction strategies, particularly for the prevention and reduction of pollution contained in our marine systems.

We have all watched with growing concern, shock and horror the monumental disaster that has been unfolding in the Gulf of Mexico since 20 April, with millions of barrels of oil spilling out of a runaway well on the bottom of the gulf. It is a triple bottom-line disaster: a disaster on every front — economically, ecologically and socially. It highlights the fact that our insatiable demand for oil is pushing our economies, our environment and our society to the limit.

No doubt the chiefs of BP thought highly of themselves as they drilled down 7 miles into the earth's crust with a block-size structure that now sits on the sea floor in the pursuit of black gold. That level of high regard for themselves will never match the low regard in which millions of people around the world now hold this organisation. I am sure the families of the 11 men burnt beyond recognition following the explosion of the rig now hold the BP chiefs in low regard, as would the shrimp farmers, small business owners and workers and their families who as communities now face economic, environmental and social devastation. It will take years, perhaps decades, to truly understand the carnage that is unfolding before our eyes in the waters of the Gulf of Mexico.

For what we see on the surface of these waters in terms of an oil slick is nothing compared to what is likely to be happening beneath the surface, where oil is flowing with the currents enveloping the larvae and newborn of

snapper, dolphins, lobsters, billfish and bluefin tuna. Since 20 April thus far thousands of birds, hundreds of turtles, scores of dolphins and one sperm whale have been found dead. Oil inhaled or ingested can cause brain lesions, pneumonia, kidney damage, stress and death. Far less is known about the effects of dispersants, either by themselves or mixed with oil. I note that thus far almost 2 million gallons of the chemicals have been used in the BP spill.

It is clear on every level that this catastrophe demonstrates the vulnerability of economies, ecologies and societies around the world when it comes to the greed of a few, who, when the damage is done, sail off into the sunset — literally.

Whilst Victoria has not had to deal with such a circumstance as is occurring in the Gulf of Mexico, we must be cautious and remain vigilant to ensure that, as companies become more desperate for oil and more careless when dealing with the environment whilst drilling for oil, we maintain best practice to ensure that the triple bottom line is protected. The shock waves coming from such an event would be extremely difficult for Victoria and Australia to manage. We are not an economy big enough to absorb such an economic shock, and it would be devastating to our unique and pristine environment.

The term 'border protection' is being thrown around in the federal election campaign with reference to asylum seekers. In my book a more relevant definition of 'border protection' is: protecting our borders from irresponsible multinational corporations who care little about the local economy, environment and society. I note that in the US a bill intended to tighten environmental and safety standards for offshore drilling was introduced on Tuesday by Senate Democrats. It includes new requirements for offshore drilling and a lifting of the liability cap for oil spills. It is my strong opinion that the next federal Parliament must review our environmental and safety standards for offshore drilling in light of the events occurring in the US to ensure that we maintain best practice management.

Let us pray that we never have to deal with such an event and send our thoughts and best wishes to all affected by this oil spill — the mums and dads who have lost their jobs, livelihoods and communities over these terrible circumstances.

Auditor-General: *Taking Action on Problem Gambling*

Mrs PEULICH (South Eastern Metropolitan) — I am pleased to make a few remarks on the Auditor-General's report *Taking Action on Problem Gambling* of July 2010, which was tabled yesterday. It is ironic that the title of this report should be *Taking Action on Problem Gambling*, because its central finding is that, whilst certain things have been done, there has been an absence of an evaluation framework, so one cannot really find out how effective that action may have been. That is sad, given the category of people we are dealing with.

On previous occasions I have expressed concern about the use of the term 'problem gambling', because it is a broad one. What really ought to be done does not mean denying services to problem gamblers; it means targeting those who are most in need. I would urge the responsible minister — in this instance Minister Robinson, the Minister for Gaming, at the Department of Justice — to consider how better to assist compulsive gamblers.

Compulsive gamblers are a smaller subset of problem gamblers. They are the ones whose lives and whose families lives are ruined. It is an addiction; they have addictive behaviours. Previously I have spoken about how the term 'problem gamblers' is very much a sociological concept, whereas the concept of compulsive gamblers is used by psychologists and psychiatrists, particularly psychologists. It is related to addictive behaviours. Currently the services do not give sufficient priority to the needs of compulsive gamblers. That is the reason why there is an absence of information, of empirical data, on which to evaluate the strategy and assess how effectively the money has been spent. That is sad, because every single compulsive gambler has a tragic tale to tell about its effects, particularly on their children, spouses and extended family members.

I believe we have dropped the ball on problem gambling. Despite a $500 million increase in gambling taxes over the forward estimates period compared with the 2009–10 budget, the most recent budget failed to announce any new initiatives to deal with problem gambling. At the same time as raking in record levels of gaming taxes the state government has overseen the dropping of the ball on problem gambling services. Between 2008 and 2009 problem gambling advertising was cut by 35 per cent throughout the South Eastern Metropolitan Region.

One of the problems faced by problem gamblers who are willing to seek assistance is a very long wait to see a counsellor. They pick up the phone and are told, 'You can have an appointment in six to eight weeks'. We know that when someone reaches out they need to be able to receive help then and not six or eight weeks

later. Cuts to services came at the same time. Four out of the five municipalities throughout the south-east are having substantial increases in gaming expenditure. Gaming expenditure in the south-east has risen by nearly 15 per cent over four years because of failures by the government, and now those people who cry out for help are getting left behind.

The Minister for Gaming, Tony Robinson, told the 2008–09 Public Accounts and Estimates Committee that advertising is a key component of the suite of problem gambling measures. That is interesting to hear, given the cuts that have occurred to services in the south-east. I am optimistic that a future Ted Baillieu Victorian coalition is committed to new initiatives to tackle problem gambling as a result of the agreements secured by the coalition as part of the Crown Casino gaming machine taxation arrangements. This includes a commitment of $700 000 out of $2.1 million to the Melbourne and Monash universities' Problem Gambling Research and Treatment Centre for world-leading research into risk and protective factors associated with problem gambling as well as the randomised control trials of treatment for problem gambling.

There will also be a minimum of $1.4 million — or more as required — this year to fund 20 new Gambler's Help positions to train gaming venue staff in identifying and assisting problem gamblers. These positions are to be funded for three years. The sum of $500 000 this year — or $1.5 million in total — has been committed to establish the office of the Community Advocate of Gambling to assist local communities with gambling issues and policy matters affecting them. As well there will be a restoration this year of $1.5 million of funding cut by Labor to the problem gambling communication campaign to make it easier for problem gamblers to get the assistance they need to work on dealing with their addiction.

It is very sad that the time of the Attorney-General as the senior minister overseeing the Department of Justice is not better spent resolving the issues that face our society rather than navel gazing and contemplating what cheese he is going to find and how he is going to entrap the members of the opposition. Perhaps he should give further thought to developing policy rather than just attacking members of the opposition who are actually coming up with new initiatives.

Economic Development and Infrastructure Committee: manufacturing in Victoria

Ms PULFORD (Western Victoria) — I would like to make a few comments about the Economic Development and Infrastructure Committee's inquiry into manufacturing in Victoria. I note that manufacturing is the largest employing sector in Victoria, accounting for around 29 per cent of all manufacturing employment in Australia. As members may well be aware, food product manufacturing is Victoria's largest manufacturing industry. Many of the brands with which we are very familiar and many of the items in our fridges and on our shelves account for 20 per cent of the overall sector's sales and services and 19 per cent of its employment.

Other significant areas of manufacturing in Victoria are automotive and transport equipment, textiles, clothing and footwear, chemicals, pharmaceuticals and aluminium. Other industries the report also indicates as emerging industries include aerospace, advanced manufacturing and defence. This has been an important case of work undertaken by this committee. Manufacturing is crucial to the Victorian economy, as it employs more than 1 in 10 Victorian workers.

The report makes 45 recommendations, including some suggestions about the way the Victorian industry participation policy might continue to evolve and about the need for some nationally consistent manufacturing strategies and a number of other measures that committee members concluded can work to enhance and further develop and support our manufacturing industries.

The committee had a busy time. It received 65 written submissions, conducted public hearings with 68 witnesses and had meetings with key organisations in the UK, France, Belgium and Germany. What the committee's report highlights is the importance of targeted programs and assistance from manufacturers. The Victorian government certainly has a strong record in providing support to our manufacturers.

Since we have been in government, the Brumby Labor government has facilitated $12.3 billion of new investment in manufacturing resulting in the creation of a 27 000 new direct jobs. The Victorian economy, like the Australian global economy, has experienced significant challenges in recent times with the global economic downturn — the greatest downturn since the Great Depression. Programs like the Industry Transition Fund (ITF) have played an important role in protecting jobs through this period of great uncertainty for many Victorian workers.

Earlier this month Tim Piper from the Australian Industry Group was quoted in the *Australian Financial Review* as saying that if we had not had the ITF, a number of those companies would not be in existence

any more. I imagine Mr Piper spends much of his time, day in day out, talking with our manufacturers about the challenges they face and the things they need from their industry group and also from state and federal governments to ensure that they are able to compete in a global economy.

Our support for the vehicle industry, including backing the Toyota hybrid Camry, helped to save 3000 local jobs that may otherwise have gone offshore. The opposition thought that was a bit iffy, that Toyota's investment in the Camry was 'shaky' and that this was a 'failed' initiative, but I think the proof of the pudding is in the eating. I am sure the more than 3000 workers in Altona are pleased that Toyota and this government have backed their work in helping to make car fleets more sustainable and in supporting the transition needed in automotive manufacturing as we move to a carbon-constrained economy.

The Victorian industry participation policy has also played an important part in supporting local industries. Recent reforms to it have made it easier for local firms to get work on significant state government contracts, including the $1 billion Parkville Comprehensive Cancer Centre project and the $1 billion tram tender.

Auditor-General: *Taking Action on Problem Gambling*

Mr O'DONOHUE (Eastern Victoria) — Like Mrs Peulich I am pleased to make some comments on the Auditor-General's report *Taking Action on Problem Gambling* that was tabled in Parliament yesterday. The report makes for concerning reading. The Auditor-General says that:

> In 2008–09 Victorians lost $5.1 billion gambling, and more than $2.7 billion of this was lost on EGMs.

Or what are colloquially known as pokies.

> Three-quarters of gamblers with problems who used Gambler's Help services in 2007–08 reported EGMs as their primary gambling activity.
>
> …
>
> … an estimated 29 000 adults are problem gamblers and a further 97 000 are moderate-risk gamblers. The consequences of problem gambling include financial harm, crime, family dysfunction and domestic violence.

We know that as a result of the recent tender process the number of EGMs (electronic gaming machines) has been locked in by the government for the next decade. We have spoken previously in this place about the poor return the taxpayer has received for those licences. On previous occasions I have asked the Treasurer, who is sitting in the chamber today, how many police will not be employed, how many schools will not be refurbished and how many nurses will not be employed as a result of the government's failure to get a proper return for the taxpayer. The government loves to say that the opposition says this, that and the other thing, but the Treasurer has failed to say what the consequences are for the Victorian community of the bungling by the government and the Minister for Gaming, Mr Robinson, in failing to get an adequate return for EGM licences. It is a disgrace. Victorian taxpayers and the Victorian community have been sold down the river by this government through its absolute incompetence.

Speaking to participants involved in the auction revealed they could not believe the way the process was undertaken. Some of them could not believe how little they had to pay for their licences. Good for them; they are working in the commercial world, so it is fair enough for them. However, it is an absolute disgrace that the Victorian taxpayer and the Victorian community got such a small return for those licences. The Treasurer should explain to the house the consequences for the Victorian community and the budget going forward. How many police, how many nurses, how many teachers will not be employed as a result of this absolute mess by the state government?

In the chamber last night I raised the issue of approval for new EGMs to be located in Beaconsfield. This is very concerning and distressing for the Beaconsfield community. After this application was first made, together with two others for the township of Officer, the Shire of Cardinia conducted a survey of the local community. The overwhelming response by local community members was that they did not want additional pokies in their community.

Notwithstanding the clear direction from the Shire of Cardinia and the clear representations from the community, as well as the opposition to the approval from the member for Gembrook in the Assembly — which shows how much weight she has with the government! — the Victorian Commission for Gambling Regulation went ahead and approved this facility. It approved the facility of a sound-proof area for children; you can play the pokies while your children are in the play centre and you will not be able to hear them. They will be screaming and crying and upset, but that will not interrupt you — you will be able to keep on playing. Keep on playing those pokies so that the government gets the tax dollars from these EGMs it is addicted to — it is addicted because of its inability to control its spending — and the tax dollars will keep on flowing from the punters.

This report from the Auditor-General is very worthwhile. I commend it to the house. It again highlights what a serious problem gambling is for the Victorian community.

Auditor-General: *Access to Social Housing*

Ms BROAD (Northern Victoria) — I also rise to make remarks on the Auditor-General's 2010 report *Access to Social Housing*. The Brumby Labor government believes all Victorians, no matter who they are, where they live or what their circumstances are, deserve access to safe, affordable housing. For that reason the government has welcomed the Auditor-General's report, which confirms that housing associations have contributed to an increased supply of social housing in Victoria. The report also confirms that housing associations are on track to meet their targets for growth and are delivering housing at a very competitive cost to government. I also note that the report highlights a high level of tenant satisfaction with the quality of housing, client services and security, which is welcome news indeed.

I put on record that the Auditor-General makes several recommendations in his report to improve the performance of housing associations, and the Victorian government has readily accepted those recommendations because we want to see housing associations grow and improve, as do the housing associations themselves.

Unlike the opposition, the Brumby Labor government is getting on with the job of implementing our record investment in public and social housing to deliver some 6500 new homes in the next couple of years. That is in contrast to the opposition, with its grand plan of investing some $5 million in total for new homes for low-income Victorians, which was its commitment at the last election. It has not moved from that position.

It is all very well for Mrs Coote to come into the chamber and criticise the government, but the government accepts that we need more affordable housing for Victorians on low incomes, and that is the reason we are investing more, including investing in partnership with housing associations. We are getting on with the job of making that investment. The fact is that despite all Mrs Coote's criticisms, she has not put forward any alternative plans, and neither has her leader nor the opposition spokesperson.

I return to the government's performance. The government is very pleased that housing associations are performing very well in this area. Housing associations are an initiative of the Brumby Labor government and have a very important role to play in increasing the supply of affordable housing for Victorians who need access to it, especially in a tight rental market such as we have at the current time.

Yesterday the Minister for Housing, Richard Wynne, updated the Parliament on the performance of the government and in that update made reference to the very first housing association created by a Labor initiative in this area, Loddon Mallee Housing Services, a tremendous housing association in my electorate of Northern Victoria Region. It is based in Bendigo, but it delivers housing right across northern Victoria, and its efforts are not restricted to northern Victoria. I am pleased to say that in addition it is helping to deliver, in partnership with the Brumby Labor government, a 98-unit project in Doncaster called Doncaster Hill. That project is powering ahead with the support of Manningham City Council.

Auditor-General: *Portfolio Departments — Interim Results of the 2009–10 Audits*

Mr D. DAVIS (Southern Metropolitan) — I am pleased to make a contribution on the *Portfolio Departments — Interim Results of the 2009–2010 Audits* report tabled in this place yesterday. In this regard I make the point that the Auditor-General, as he has done in a number of other areas, has added significantly to the public debate on these matters. He has made a number of very significant points, and I want to note some of his recommendations. It is surprising when he puts his examination torch to some of these areas of government — and I am not necessarily being critical per se of this government but am rather making a broader point — that there are what you would imagine at first glance to be obvious points that are not well taken care of by the current arrangements and current rules.

The recommendations include:

1. Portfolio departments should assess their policies and procedures against the commonly identified internal control weaknesses …

2. Portfolio departments should establish a consolidated conflicts of interest policy.

It is quite interesting that there would not be broad conflict of interest policies in each and every department, but a varied set of arrangements was uncovered by the Auditor-General in this review.

The recommendations continue:

> Portfolio departments should provide regular refresher training to all staff about their responsibilities to identify and declare conflicts, and the consequence for failing to do so.

Again, this is interesting because of the lack of a broadbased independent commission against corruption in Victoria. When you talk to people in other states you hear that one of the key roles of a broadbased commission against corruption is to educate and lift the understanding of areas of the government, statutory authorities and departments on matters such as conflict of interest. The education role declared here by the Auditor-General is a valuable one.

The recommendations go on:

> Portfolio departments should take a systematic approach to gathering, recording and managing declarations of interest.

This systematic approach is entirely sensible. The Auditor-General has done us a favour by pointing to the lack of a system.

Further:

> The Victorian Government Purchasing Board should develop guidance on the criteria for identifying 'high risk', 'high value' and 'complex' procurement.

This also makes good sense. What the Auditor-General has said in the report is logical. It is clear that the ability to identify high-risk or complex procurement and put in place protections is quite varied across government. I am not trying to be overly party political, but if the Auditor-General's report leads to a tightening up of things, that is valuable.

Another recommendation is:

> The probity adviser and probity auditor functions should be conducted by different parties.

You would have thought that this is actually a reasonably logical point. Again I pay tribute to the Auditor-General for pointing out the obvious and drawing the government's attention to this point. I have no doubt that the minister and others will be moving quite quickly on a number of these points.

The next is:

> Portfolio departments should record all contract data in a register.

This is another extraordinary thing, that across different and statutory authorities, arrangements for a register appear to be quite varied. You would think that this would be baseline activity, but clearly it is not. The Auditor-General has done well to point to the simple and sensible step that could be taken.

Another recommendation is:

> Portfolio departments should undertake penetration testing of their critical IT networks at least annually.

That also seems to make reasonable sense.

The final recommendation is:

> The Department of Treasury and Finance should require all public sector entities to adopt the shortened annual reporting time frames proposed in the Public Finance and Accountability Bill for the year ending 30 June 2011.

As members are aware, earlier this week this chamber sent that bill to the Public Accounts and Estimates Committee for a short, sharp examination to ensure that its provisions are consistent with earlier commentaries and discussions on these — —

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

PLANNING: AMENDMENT VC68

Mr D. Davis — On a point of order, Acting President, the minister is not here to debate this important motion. I think the chamber is entitled to some explanation for that.

The ACTING PRESIDENT (**Mr Eideh**) — Order! He is here.

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

> That, pursuant to section 46AH of the Planning and Environment Act 1987, amendment VC68 to the Victoria Planning Provisions be ratified.

I do not wish to take up too much of the chamber's time because we have spent a lot of time on various aspects of trying to initiate the delivery of various amendments that have been brought before the Parliament in relation to the urban growth boundary and the components of that, particularly the infrastructure aspects which are part and parcel of developing Melbourne's newest sustainable communities.

Without prolonging the discussion, I want to go through just a couple of small statistical elements that this ratification will enable, and I look forward to the ratification of the amendment as quickly as possible.

Amendment VC68 secures the urban growth boundary for the future and land supply for the next 20 years or so. It brings approximately 43 600 hectares of land inside Melbourne's urban growth boundary, with most of that growth to the north and west of Melbourne. I am

very conscious of not only the fact that this will make a difference to land supply and affordability of housing over the next 20 years or so but also and particularly the prospect of economic growth in Melbourne's north and west. We have seen that growth to the south-east with a lot of development over recent years, the prospect of growth in that region and the prosperity that goes with it. In the north and the west, where traditionally there has been a lot of industry, we have seen a lagging behind in economic growth, in a sense. The changes in industry have meant that the development, economic growth and equivalent prosperity has not been as forthcoming. This amendment will provide an opportunity for that. It will provide incentives for jobs, growth in housing and all that comes with urban development across those areas of the city.

The amendment is particularly important because it will accommodate anticipated population growth over the next 20 years. As I have mentioned on a number of occasions, it is about not only population growth but also the different formation of households over the next 20 years.

Not only the urban growth boundary expansion is critical to those things, but the amendment also complements the Victorian transport plan, particularly the regional rail link, the outer metropolitan ring-road and other transport corridors. That will provide more frequent and reliable services in various forms to the new areas that will be part of the enlarged footprint of greater Melbourne.

The amendment will also protect somewhere in the order of 15 000 hectares of native grasslands in Melbourne's west.

Mr Barber interjected.

Hon. J. M. MADDEN — People should not underestimate how important this is in terms of protecting the environment. I hear criticism from members of the Greens party on the other side. This is probably the most significant protection that this area has had and will have. It will be part of an overall parkland reserve going into the future.

The package has involved significant community consultation. It has been long in its gestation and delivery. Particularly important is that approximately 2000 submissions have been received, and they have been considered in the minister's approval of the amendment.

Conscious of the discussions and negotiations that have included the opposition, we have made changes to amendment VC67. The changes to clause 12 of the Victoria Planning Provisions proposed to be implemented in VC67 have been withdrawn to enable amendment VC68 to be presented to this Parliament in a form that we believe can be ratified by both sides of the chamber.

Amendment VC68 will give certainty for land-holders and prospective homebuyers, certainty for major transport projects, certainty for the future of Victoria's remaining volcanic plains grasslands and certainty for the development and construction industries. This not only demonstrates that we have a plan and a greater plan for Melbourne and Victoria in dealing with the challenges of urban development into the future but it will also allow us to deliver complementary strategies around population growth, changing household formation and protecting Melbourne's reputation as one of the most livable and prosperous cities in the world.

It is particularly important to balance all those aspects — including livability and prosperity — with affordability, because what we know about the great cities of the world is that time and again we find they are expensive places to live. One of the great benefits of Melbourne is that it still provides some of the most affordable entry-point housing not only in this country but around the world because it is one of the world's most livable cities. I look forward to the support of members in this chamber. I encourage all parties to support the motion before the house.

Mr GUY (Northern Metropolitan) — The coalition will not oppose the passage of amendment VC68. I am not going to go through the whole detail of why we are dealing with VC68 as opposed to VC67. I think that is well documented. I will make some substantive points in connection with it.

Firstly, there is the issue of land supply. I have said a number of times in this chamber that the coalition parties are supportive of the concept of land supply being increased, particularly in growth areas and in times of population expansion at the level we have seen since the 1990s, especially in the Melbourne metropolitan area. Mr David Davis and I, Mr Baillieu — the Leader of the Opposition — and Mr Clark, the member for Box Hill in the Assembly, who have been shadow planning ministers in this period of opposition, have stated a number of times that while it is not the be-all and end-all of housing affordability issues, it is obviously a factor and a component within them. It is one we have, in our periods in government, acknowledged as an issue in terms of combating housing affordability problems in Melbourne. From our point of view it is a shame that it has taken this amount of time without a proper process

being put in place to enable industry, investors, councils and communities to understand when a boundary may be able to be moved, what the circumstances around that are and how it is going to be done properly.

Logical inclusions is one issue that has been left out of this discussion. Whether you call them logical inclusions or sensible inclusions, these are boundary inclusions that have not been looked at in the investigation areas. They are just about all in growth areas. They are areas where developments have been planned and, in many cases, approved via local government authorities. The probity checks they have gone through are probably much stronger than those put in place by the Growth Areas Authority. Those logical inclusions are close to $4 billion worth of investment in Melbourne. In terms of housing supply, getting people into homes and bringing houses to a retail end at a quicker point in time than we are seeing in growth areas, I would have thought that optimising existing infrastructure and using developments which have been put in place for some time and have gone through the probity processes of local government would mean we would look at a process for logical inclusions.

The idea of sunsetting permits for 30 months so that properties will become entirely able to be subject to the growth areas infrastructure contribution (GAIC) within that time, which would obviously give an incentive for government and the developer to bring those properties on-stream, is one possibility that I thought should have been considered by government. But we look at optimising existing infrastructure as a first point of call rather than looking at greenfield developments as the only priority for urban expansion.

In terms of logical inclusions, at least $4 billion worth of investment that could be brought on-stream fairly quickly is missing from today's package; it has been missing from the debate for some time. That is a shame, albeit one that is not going to turn everyone against the proposition.

As stated in my initial speech on the GAIC and on the original VC67 motion the coalition had issues with the E6 freeway reservation. I restate it: we have issues with this. The issue we face is that opposing the motion today will not stop it. There are other mechanisms that the government can put in place. Unfortunately, despite our view that it is unnecessary, we have a freeway — which was entirely paid for by the former Howard federal government — that exists only a couple of kilometres, 5 kilometres in some instances, from the proposed E6 route in the form of the Craigieburn bypass.

I would have thought a government seeking to get trucks from the ring-road to the Hume Highway corridor route would have looked at having dedicated truck lanes along the existing reservation rather than going through the process — whether it is through this amendment, a subsequent amendment or major project or transport bills — of looking at ways of putting a new freeway just 5 kilometres away from an existing reservation and an existing piece of freeway infrastructure. I do not think that has been properly thought out. I restate that the coalition has serious concerns with that and does not believe the case has been made for an entire new freeway. The coalition has made those points clear. We have said the case has not been made regarding the E6. We still have serious concerns about it.

There is no doubt that clause 12 of the original bill, which concerns densification issues around tram routes and bus routes, is going to define planning debate for some time in this state. The whole idea of a one-size-fits-all planning policy for the metropolitan area is one that coalition parties have opposed steadfastly from 1999 onwards during our time in opposition — a time that included the passing in this Parliament in 2002 of the Melbourne 2030 legislation, which was subsequently amended in 2003. We have opposed the one-size-fits-all policy for Melbourne because we believe Melbourne's best asset in many ways is its built form. Sydney has a topographical beauty and Brisbane has a climatic beauty; Melbourne's beauty is in its built form. It is a very pretty city.

Our suburbs have characters unto themselves — not just inner city suburbs but many outer suburban areas that have been created. They provide a terrific lifestyle, and we do not want to see that ruined by a panicked planning policy that looks at building high-rise buildings along all bus routes, providing little information and notification to the people on whom it will impact and showing little understanding of what will be the case when that policy is enacted. The coalition has remained steadfast in its opposition to the clause 12 element of the VC67 amendment, which is not featuring in amendment VC68, which we are debating today. We are obviously pleased about that, but we are concerned that the Labor Party is still very keen on pursuing this element.

I note that Mr Barber has been quoted in the newspaper as saying he wanted to be part of a cabinet with the Labor Party, so I ask him: in relation to clause 12 whose policy would apply in a Labor-Greens government? Would it be his one voice in an 18-seat cabinet or the voice of the 17 others? Whose policy

would apply on native vegetation? Whose policy would apply on urban expansion? Victorians want to know whose policies would apply if we have a Labor-Greens government — and Mr Barber is talking it up, as are some people opposite — because they need clarity and certainty. Whose policies would apply in relation to the growth areas tax? Whose policies would apply on native vegetation, as I said, urban expansion and high density development? We could go through the whole planning portfolio. Whose policies would apply in terms of logical inclusions?

Mr Barber interjected.

Mr GUY — I know I have plenty of time, Mr Barber. There is a whole range of portfolio areas I could ask about. Rather than throwing eggs, maybe Mr Barber would clarify this in his speech. Given that he wants to form a government with those opposite, he could tell us whose policies would apply. I know I would not adopt most of the failed policies of those opposite, but maybe Mr Barber could tell us which ones he will adopt.

I will make it very clear: the coalition believes high-density areas need to be better defined in and around the metropolitan area, that a greater mix of density in certain areas around Melbourne, particularly new areas of urban renewal, needs to be better defined, and that a mix of that needs to be outer urban growth-area-only expansion. That is why we are supporting the VC68 amendment, which is amendment VC67 minus clause 12. That is something on which the coalition has been resolute. We have not wavered. All the parliamentary party has been united on this, which is why we will not oppose the amendment today.

Mr BARBER (Northern Metropolitan) — A couple of weeks ago the Leader of the Opposition put out a press release detailing 66 different policies which he said the Labor Party had nicked off him in recent years.

Mr Dalla-Riva interjected.

Mr BARBER — No, Mr Dalla-Riva, I assure you the tally is up to about 66 now. The Leader of the Opposition was kind of proud of this because he thought it somehow legitimised his role as opposition leader, that he was effectively governing from opposition or that he was the ideas man. However, it occurred to me that what really indicates is either a complete lack of imagination or a complete and utter political timidity on the part of the opposition — that the only kinds of policies it would announce would be ones on which it could be pretty sure there would be no point of differentiation between it and the government by the time of polling day. That is its idea of good politics. That is the reason why the most common voting pattern in the Legislative Council is Greens on one side of the chamber and Labor and Liberal members cuddled up on the benches opposite. That is what we will shortly see again today.

It would be interesting to put out a similar list of policies that the Liberal Party first opposed and then voted on with the Labor Party. At the top of the list, in bold 20 point font with yellow underlining, would be this amendment, with the subheading 'Growth areas infrastructure contribution tax' immediately under it. We could roll through all the other issues that members on the opposition benches, in my eye line, have opposed so strongly in this place, but about which they have subsequently, while shuffling and looking down at their papers, quietly mumbled, 'You know what? We are voting for it now' — and this one is a stunner.

In his contribution the Minister for Planning said there have been over 2000 submissions on the urban growth boundary. I would like to enter into the record excerpts from a number of those submissions, not the ones from the organised groups, lobbies and so forth, but just the individual submissions. I swear to you, Acting President, these are just as they appeared on the list. I started with the very first submission and worked my way down; this is not a particularly selective list. I quote from submission 217, from Diggers Rest:

> Many of the residents have spent thousands of dollars improving soil quality, landscaping and planting trees that are maturing now. How are we being compensated for this? How is it that a bunch of pencil pushers are able to kill and destroy what residents have been building for over 10 years to make the place habitable?

I quote from submission 270:

> The urban growth boundaries changes proposed in the Melbourne @ 5 Million report will in my view seriously eroded the green wedges as it proposed to excise a further 22 855 hectares from the green wedges. The proposed land-grab contradicted the government's 2005 promise when 11 500 hectares was excised from the green wedges that it would last until 2030.

In fact one of the worst elements of this policy package is that the documents now set up criteria for further expansion after the addition of the area by the amendment we will be voting on today. Far from getting cross-partisan support for an urban boundary, what we are setting up, even before we have released this land, is a plan to release further land and further land again. The growth boundary has become what it always was — an oxymoron. What we need is an urban boundary. I quote from submission 334:

> For the purpose of experiment, you can open one estate in outer suburbs and start at least four express train services from city to that suburb — two in the morning and two in the evening during peak hours. Advertise this timetable on TV saying 'reach home in 20 minutes from city … and buy a property at XX estate'. You will see the response.

It is interesting that that issue would come up in this proposal.

I was recently reading a book about the 1890s Melbourne land boom and the bust that followed it. It is a rollicking account of all the shady characters and how they operated and also the very human tragedies that arose out of that reckless time of development. One of the wildest stories is about a developer who bought a piece of land and laid a set of railway tracks across the land simply so that he could say to prospective buyers, 'Look, there is a railway there. The government will be able to run it. Come and buy my land'. It is quite a funny story from a bygone era.

Except that the same thing happened in 2006 with VicUrban, the government's own developer, as the player. The website advertising the new estate in North Epping said, 'All houses to be within 400 metres of the railway station'. When people had already bought those blocks and even begun to move in, the government announced its transport plan saying, 'There will be no railway line going through that estate' and quietly updated the website — I still have a copy of the original. So nothing changes except that the level of shysterism seems to be getting even bigger. It has been facilitated by the internet, except that it is now the government itself that is pulling the same confidence trick.

I quote from submission 406:

> In the event council rates and other government taxes are significantly increased due to an increase in value due to rezoning, the result may mean that we will be forced to sell parts of the land to meet new charges. This may take away our option to farm as we have for the last 30 years and/or provide such a financial disincentive to make it no longer viable.

The viability of farming on the urban fringe is something that the Victorian Farmers Federation purports to care about and members of this chamber — Liberal, Nationals and others — have a lot to say about it. In fact I attended a forum of the VFF in 2006 on exactly this issue where I, as a Green, was blamed for every problem that fringe farmers seem to have. I ask members of this chamber, not just the metropolitan members but the members for Northern Victoria and Eastern Victoria regions who will have the urban growth boundary through their electorates if this proposal is passed: have you personally examined the proposed boundary? Have you Google Earthed it? Have you visited it? Can you assure yourselves that this boundary will not set up the kinds of conflicts that the VFF in 2006 was seeking to highlight?

Let us face it, I do not believe all members in this place who will be voting today have examined this documentation. There are 500 pages here of text and maps and great reams of supporting documentation.

Mr Viney — As if everyone has read every bill that comes before the house!

Mr BARBER — Can we get that one on the record?

I quote from submission 409:

> I am against the GAIC. I bought my land and built a house to live in to get away from the suburbs. I plan to retire here! … You guys are nothing but crooks, and you can dress it up with all your fancy words, but if this goes through I will never vote Labor again. Not that I believe anyone will actually look at this anyway!

I thought when I saw that that I had better make sure that at least one person looked at it, and now it is on the parliamentary record.

I quote from submission 420:

> Urban expansion cannot continue indefinitely.
>
> Developing and providing infrastructure for areas so far from Melbourne CBD is so costly that it will not help housing affordability.

This is someone who gets it! Housing affordability is not just the price of your house, it is the transport and everything that goes with it. The submitter goes on to say:

> In view of climate change and dwindling environmental resources, having green space for farming and other ecosystem services near urban areas is going to be increasingly important —

in fact it is. One of my major objections to the way this proposal has been put forward is that the Casey-Cardinia-Bunyip-Koo Wee Rup swamp food bowl in part is to be concreted over. While individual land-holders may benefit from that in terms of property values eventually, when they get to sell and after they have paid the growth areas infrastructure contribution, we as a whole do not benefit. The Melbourne fringe area is our second biggest agricultural producing region after the Goulburn Valley. It is a little known fact. We cannot afford to be concreting such a region when issues of water, climate change and transport will rise so dramatically in a short time and are already evident.

The native grassland proposal is not as the minister has characterised it. Thousands of hectares of high-quality remnants will be destroyed by the proposal to expand the urban growth boundary. What we will get in return is a public acquisition overlay signalling the intention of some future government to acquire and manage grasslands. We are not getting a new national park out of this; we are not getting a new reserve out of this. In return for the guaranteed, irreversible destruction of high-quality grasslands we are going to get a statement of intent to purchase other land and manage it.

By the way, this net gain is being demonstrated through a complicated formula which in part gives the government or the developers credit for improving the protected status of the grasslands even though the number of hectares of grasslands does not change. The government in no small part will be one of the destroyers of the grasslands with its outer-outer ring-road and E6 freeway proposal, the credits from that being used to generate resources to then manage other grasslands. Under this approach in order to protect the grasslands we literally have to first destroy the grasslands.

I quote from submission 423:

> There are regional towns suffering because of the mass move towards living in Melbourne. Why not stop development of Melbourne and instead encourage population growth in the satellite towns of Melbourne (Bendigo, Ballarat, Geelong etc)?

Another element that is going to be loosely associated with this proposal is a slight increase in the planning provisions relating to the density of dwellings per hectare in these new urban growth areas. It is interesting that with this proposal the government is effectively just marking down to where the developers themselves are now performing. The government is not attempting to lead that or create a radical new level of density in the suburbs. And with its approach on that measure, which by itself could create additional developable land and forestall this measure for years and years to come, how does the government think it is ever going to manage an increase in density in established brownfield sites? If on a greenfield site it cannot even tell the developer and exercise some planning control over densities because it simply cannot stand up to developers or does not think it can swim against the tide of market pressure, then would anybody believe the government has the ability to make a major transformation in activity centres in the established city area?

We know it has not made such strides since Melbourne 2030 began in 2002. The best it can point to is the Melbourne city area and the Docklands area, and in the case of Docklands it was almost a blank canvas for the government. The idea that the government could somehow work out how to retrofit these new central activity districts (CADs) in Footscray, Broadmeadows and Box Hill to achieve the sorts of outcomes it is holding out and tempting us with is quite unbelievable.

Submission 475 states:

> Along with many Victorians, I am deeply concerned that the proposed new growth boundary is a step in the wrong direction.
>
> In a time when Victorians are taking active measures to limit their carbon footprint this move to encroach upon protected land is demoralising.

Submission 532 states:

> This area is part of the lungs of Melbourne, and to cover the area in more bricks, mortar and bitumen is going against the laws of nature once again.
>
> This area is also one of the earliest settlements in Melbourne, complete with its own unique cemetery and an oak tree which is heritage-listed.
>
> We are going to be put in the position of sitting in the middle of an industrial development on a small parcel of land that will be useless for development.

The next time members get up and trumpet that there have been 3000 submissions, I would hope those making that claim would be able to say that they have read some of them or that they have read one of them. Above and beyond the demoralisation that these submitters describe, it is even more demoralising to have written a submission and then see it disappear into a black hole. It seems that not one of the statements made by the submitters gave the government any pause. Instead it turns around and simply labels the communities as ‘sustainable’, as if that term alone could achieve something.

I ask every member who is putting forward this proposal: how many cars will you need to own in order to live in one of these new suburbs? Is that something you can tell me? Is that an outcome you can predict as a result of the measures you are putting in place today? I think I can predict it. In the absence of any different action to what we have seen in the past, even with the suburban expansions the government has managed over its time so far, what can members point to? How many cars per dwelling does it take to live in one of the suburbs the government has created during its 11 years in office, and can members of the government tell me how it is going to be any different? Can they tell me how that fits into any kind of definition of sustainability?

The government also introduces a new planning concept in this package of measures: the polycentric city. Instead of having one big CBD, we will have some other CADs of medium size — I think there are six of them now. The government started off with 100 or so activity centres but made almost no progress in any kind of planning work to achieve any outcomes. These activity centres were meant to be walkable villages where everybody knows your name and everything is accessible. Apart from a sexy diagram and a few artists' impressions in the *Melbourne 2030* document, we have not seen any progress. The *Melbourne 2030* audit indicated that quite clearly. In fact it said the government did not even have a way to measure any progress towards that plan.

Now we are getting a new concept of regional CADs. It is interesting. I examined the jobs around these CADs, including not just the own town centres, such as the Broadmeadows town centre or those of Box Hill or Dandenong, but the entire catchment for those centres. They typically have between 15 000 and 30 000 jobs each. Meanwhile the Melbourne CBD in the census period of 2001–06 itself added 27 000 jobs. It added the equivalent of one of these additional CADs in a four-year period. That is what the market is doing. That is the way the tide is running, but the government suggests that simply by naming these things as CADs, the way it named them transit cities in the past, that something might happen to change the face of this city.

If I thought those aspects of the plan — leaving out the urban growth boundary expansion — were going to radically transform the face of this city, I would be really worried. This plan, Melbourne @ 5 Million, like Melbourne 2030, will contain a bunch of woo-woo concepts that probably will not make much difference to anything at all. Economic and social forces will have a lot more impact than anything the government might seek to achieve through a few words on a piece of paper. The expansion of the urban growth boundary and releasing many thousands of hectares of land will make a real difference, and it will not be a good one.

The remaining element to this motion is the E6 freeway, the outer-outer ring-road, which brushes out even into areas such as the Northern Victoria Region. As we stand here today I have a submission from a gentleman from up that way which says he does not yet know what impact the freeway will have on his property because the published maps on the government website do not indicate its location. Map 13PAO of the Hume planning scheme indicates the freeway moving on a certain trajectory. His property is on map 14, but it is the wrong map; it does not indicate the freeway. The government has substituted a different map on the website, the environment significance overlay map. On the other side, on map 15PAO, we see the freeway continuing.

I thought, if anything, the Liberal Party stood for property rights. This is Mrs Petrovich's local electorate. Perhaps she could make an appearance in the chamber to explain how she is voting for an amendment that affects her electorate when at the current time we do not have a map in our hands that shows what will happen to a number of properties in that area. I find that situation absolutely amazing.

The E6 freeway, or outer-outer ring-road — and I notice the Victorian Employers Chamber of Commerce and Industry is already out there calling for an outer outer outer ring-road to be planned, connecting Geelong, Ballarat, Bendigo and Shepparton; I guess that is its 'Melbourne @ 20 Million' vision — seems to represent part of the same concept that the government has of a polycentric city or, if you like, simply turning the city inside out on itself.

This arises, as far as I can tell, not from solid planning science or any kind of analysis of where the jobs will be or where the economy is going, but simply from a complete and utter failure to manage inner city transport and the sense that, 'It is all getting too hard. We cannot make the trains run. People are stuck in their cars. The congestion is unacceptable, so let's take the jobs out of the inner city, around the port area, around the industrial areas, and turn the city inside out' — like skinning a rabbit — 'and create a car and truck-based vision where everybody lives in the city, commutes outwards and then goes around the wagon wheel of the E6 freeway'.

Nowhere is there an analysis of the carbon footprint of that proposal; there is no carbon trajectory built into any of this. It would not be hard to do that. What the Labor and Liberal parties are doing here today is setting up a rod for their own back. Whoever is in government for the next term or two is going to be constantly under self-created political stress. By constantly moving people out and failing to address planning issues in the inner city a future government will be setting up conflict, poverty, and a reduction in sustainability. As submission 579 states:

> Who are you representing? Who wants the urban growth boundary extended? Not the voters.

Submission 680 states:

> The largest area of expansion will be in the west and north and will destroy significant areas of endangered grasslands and grassy woodlands, endangered in the Victorian volcanic plains and Gippsland plains bioregion. Almost 8000 hectares

> of grassland and grassy woodland will be cleared. Proposed new grassland reserves of 15 000 hectares are great news, but more needs to be done to protect the high-value areas proposed to be cleared for urban development.

Submission 748 states:

> Show some foresight with the rail extension from South Morang to Mernda and Whittlesea (even single light rail shuttle).

Submission 742 states:

> I have grave concerns regarding building over the rich growing land that exists in the south-east. The soil there is not replaceable. It is rich soil that is needed for Australians and Victorians to be able to continue to grow food to feed ourselves. I am concerned that the continued development of the area into housing plots that are not even big enough for a vegie garden to sustain one household will forever change our ability to grow good quality food for ourselves.

And so on and so forth.

You just have to wonder exactly who this proposal is for when the vast majority of the 3000 submissions that government members have trumpeted seem to have a different vision. That is all it is about. It is about, 'What is your vision?'. This is the government's vision. This is the coalition's vision. It is not the Greens' vision. It does not seem to be the vision of the citizenry. For another decade we therefore defer the essential decisions that must be taken in order to preserve the things that these citizens, through their clear, ringing voices, have spoken of but for which members of this chamber, in large part, appear to have a tin ear.

Ms MIKAKOS (Northern Metropolitan) — I am very pleased to rise to speak in support of this motion. Members are aware that this proposed planning scheme amendment has had a very lengthy gestation. I do not propose to go over a lot of background in relation to this issue because much of this was covered extensively in previous debates, particularly during the last sitting week when we debated the proposed amendment VC67.

The revised urban growth boundary and the alignments for the transport projects and grassland reserves contained in this proposed planning scheme amendment, VC68, are the same as those in amendment VC67. Amendment VC68 does not include the proposed changes to clause 12 of the Victoria Planning Provisions which were intended to translate the policy elements of Melbourne 2030 and planning update, Melbourne @ 5 Million, into planning schemes. A separate planning scheme amendment will be prepared to implement the Melbourne @ 5 Million policies.

Very briefly I would like to remind members what this planning scheme amendment is about. Fundamentally this amendment is about securing Melbourne's land supply for the next 20 years. It is about ensuring sustainability and housing affordability. It will see approximately 43 600 hectares of land brought inside the urban growth boundary, and of this approximately 24 500 hectares will be suitable for urban development. This will enable approximately 134 000 homes to be built for Victorian families and provide additional land for employment of those families. That is the critical difference between this Labor government and the Greens party. Mr Barber in his contribution said changes to the urban growth boundary will make a difference but it will not be a good one. I cannot disagree more with that statement. Securing land supply for the next 20 years will make a positive, huge and fundamental difference for Victorian working families.

The thing that galls me about the Greens political party is that it purports to support social justice policies. The Greens make statements in support of welcoming asylum seekers to this country, but at the same time they wish to deny Victorians the ability to buy into the great Australian dream — to buy their own home. The Greens oppose new development in the growth areas, but they do not support infield development either. Mr Barber continually fails to address where projected population will go. Today Mr Barber suggested that people can move to regional cities. This government has introduced many policies and measures to support the growth of our regional centres, which are supported by growth in employment opportunities for those centres. But we are a government that believes in choice. We know that some people will still want the choice to live in Melbourne, and we need to ensure that those families have the ability to afford their own home. The Greens political party needs to get serious. It needs to get honest with the Victorian public about how it will enable them to buy their own home. That is why we support this change to the urban growth boundary to ensure housing affordability continues in light of population growth into the future.

This change to the planning scheme will also provide good environmental outcomes. I remind members that 15 000 hectares of grassland reserves are provided for with this planning scheme amendment. This will cover the world's largest remaining concentration of volcanic plains grasslands as well as a range of other habitat types, including wetlands, riparian habitats and scattered open grassy woodlands. Approximately 6000 hectares of land inside the new urban growth boundary will also be declared a rural conservation zone. This is in addition to the 15 000 hectares of native grassland being protected in Melbourne's west.

Members may have received emails from a range of organisations expressing concerns about the green wedges. I want to say strongly to those people that this government remains committed to protecting Melbourne's green wedges. The capacity for further growth in the Casey-Cardinia growth area in the south-east of Melbourne is limited because of physical and environmental constraints. The focus of growth in the future will need to shift from the south-east to the north and the west, and that is what this planning scheme amendment will do. It will direct future growth to those areas. In planning Melbourne's newest communities the aim is therefore to minimise the impact of urban development and improve environmental outcomes. This government has provided approximately $1.2 million to fund the preparation of green wedge management plans.

In relation to other key aspects of this planning scheme amendment, I want to remind members that the VC68 planning scheme amendment deals with some historic changes to the Victorian transport system. It provides for the regional rail link, which is the biggest single investment in the metropolitan rail network since the city loop was built and the first major new rail line for metropolitan Melbourne in 80 years. This rail link will be a new train line running from West Werribee to Sunshine and then through to the Southern Cross station. This project will provide substantial increases in the capacity and reliability of the Geelong, Ballarat and Bendigo services and free up capacity for extra suburban services from Werribee, Sydenham and Craigieburn. This is a fantastic project that will benefit Melburnians way into the future and will benefit regional Victorians as well.

In addition, the outer metropolitan ring/E6 transport corridor will provide a future transport link for people and freight into Melbourne's west and north, creating road and transport links between Werribee, Melton, Tullamarine, Craigieburn, Mickleham, Epping and Thomastown. Once it is completed it will serve key international transport hubs, better link residential and employment growth areas to the north and west of Melbourne and provide for the development of employment corridors in Avalon, Werribee, Melton and Mickleham. Construction of this project is not expected to get under way before 2020.

We are expecting the relocation of the wholesale fruit and vegetable market to get under way in Epping. That is going to be a huge source of employment for Melbourne's north, and, as a local member that is something I am excited about. But we need to ensure that we can also plan for future transport links by securing this transport corridor for that community into the future.

The other aspect that I wish to address briefly is the issue of consultation because Mr Barber referred to this issue in his contribution. In the speech that I made during the last sitting week I went through at great length the extensive consultation process that this government has undertaken in relation to this proposed change to the urban growth boundary, and I do not wish to reiterate all of it. But I emphasise that it was an extensive community consultation process.

As we have heard, thousands of submissions were lodged with the government. The government took all of those submissions into consideration in developing the final outcome. Mr Barber came in here and selectively picked out a handful of submissions. He did not indicate exactly who the submitters were. They may in fact be members of the Greens political party for all we know. You cannot claim that all of the submissions were consistent with each other. People express different points of view, and it is important that Mr Barber acknowledges that. It is impossible to have a process where, when thousands of submissions are lodged, people expect that every one of those points of view is going to be reflected in the decision making that ultimately comes out of that process.

I want to assure Victorians that we took that consultation process seriously. People had the opportunity to express views, and those views were taken into consideration. There are changes to the alignments of the transport projects that are being proposed; there are changes to the proposed growth areas; there are a lot of changes that flowed from this consultation process. I do not accept any of the comments that Mr Barber made in seeking to disparage that consultation process.

I want to conclude by saying that this is an important change that we have before us. It is a historic change. It will deliver a package of projects that will see an integrated land use and transport plan for our state that will ensure infrastructure and essential services will be ready as communities continue to grow in those growth areas of Melbourne. I urge all members to support this motion before the house.

Motion agreed to.

BAIL AMENDMENT BILL

Introduction and first reading

For Hon. J. M. MADDEN (Minister for Planning), Hon. M. P. Pakula introduced a bill for an act to amend the Bail Act 1977 and the Magistrates' Court Act 1989 and for other purposes.

Read first time.

PERSONAL PROPERTY SECURITIES (STATUTE LAW REVISION AND IMPLEMENTATION) BILL

Introduction and first reading

For Hon. J. M. MADDEN (Minister for Planning) Hon. M. P. Pakula introduced a bill for an act to revise the statute law of Victoria as a consequence of the enactment of the Personal Property Securities (Commonwealth Powers) Act 2009, to provide for the implementation of that act and for other purposes.

Read first time.

CONTROL OF WEAPONS AMENDMENT BILL

Second reading

Debate resumed from 27 July; motion of Mr LENDERS (Treasurer).

Mr DALLA-RIVA (Eastern Metropolitan) — I believed the time for my contribution to this debate had concluded because we are approaching the death knell for question time today. I am happy to continue talking about this bill for another 3 hours or so, much to the chagrin of members opposite. I had not expected to speak again, but I am glad I have this opportunity because in the period between when I last spoke, on Tuesday, until this moment today there has been some discussion. For those who have read *Hansard* I am pleased the government has taken the opportunity to see both the shadow Minister for Police and Emergency Services and me to review what was proposed in an amendment we were looking at. Having now assessed that with the shadow police minister, I believe we are in a position to not consider any amendments to clause 6 in relation to plastic cutlery and a few other things. That is in light of what I understand was part of a Council of Australian Governments agreement and also part of some discussions with the government. I understand through Mr Tee that the government will provide some assurances that retailers will at least have some time in which to implement the necessary changes. From discussions we have had I believe retailers understand that and they also understand it is part of a national framework. We just need that assurance. Obviously we do not want to delay other aspects of the bill because of this issue, and I am sure the government will work through it how it wishes. Having said that, it is important that we move forward and get this Control of Weapons Amendment Bill passed. Even though it is 11 years late, we will get there eventually. I look forward to its speedy passage.

Ms PENNICUIK (Southern Metropolitan) — The Control of Weapons Amendment Bill before us today is completely unnecessary and unwarranted and will be an ineffective adjunct to the Control of Weapons Act 1990. The Summary Offences and Control of Weapons Acts Amendment Bill passed in this Parliament late last year has already made substantial amendments to the Control of Weapons Act — in particular, the provision to allow for the designation of planned and unplanned search areas by not only the Chief Commissioner of Police but any police officer above the rank of inspector. The legislation allows for sweeping stop and search powers in those areas, such that anybody who happened to wander into those areas, be they a child 8 years old or a person 88 years old, could be stopped and searched. That could include a metal detector search, a pat-down search and/or a strip search — all in the so-called war on knives that seems to have been declared by the government, with the opposition either cheering it on or leading it on. It is hard to know; there is so little between them in this area of the law.

On the occasion of the debate on the summary offences and control of weapons bill the Greens raised the particular concern about the ability of police to search children, including strip searches. There is no limit on the age of a child who could be strip-searched under the existing act, the Control of Weapons Act 1990, as amended by the bill last year. Many groups in the community, including Liberty Victoria, the Law Institute of Victoria and all the youth legal services and other organisations that act on behalf of youth, have opposed these laws. The Greens opposed the laws and opposed the bill that was debated in Parliament last year. It was bad enough that they are now on the statute book. But only some seven months later the bill now before us, the Control of Weapons Amendment Bill, has come into this Parliament, with plans to extend the already sweeping powers that the other legislation conferred on police.

Yesterday I moved a motion in Parliament about investigations into police shootings and deaths in custody and complaints against police for human rights abuses. Currently they are all investigated by the police. The police investigate themselves.

The government has admitted that the bill that was introduced last year, the summary offences and control of weapons bill, was incompatible with the charter of human rights, and particularly incompatible when it came to the protection of children due to their special vulnerability by virtue of being children. That bill was in contravention of the Charter of Human Rights and Responsibilities. The Greens support the Charter of Human Rights and Responsibilities and support the United Nations Convention on the Rights of the Child.

The bill now before us will extend the police powers and take away the protections for children that were in the original bill last year. Under this bill there will no longer be a requirement for an independent person to be present when a child is strip-searched by police. Members would have received some correspondence from the Law Institute of Victoria which refers to a case in the UK. Some citizens went to court under the antiterrorism laws there. There are stop and search powers under those laws. That was referred to briefly in the statement of compatibility accompanying this bill.

The interesting fact about that, which I was not aware of until I read that correspondence, was that under those antiterrorism laws it is not permissible to conduct a strip search of a person in a public place. A person can be required to remove their hat, their gloves, their coat — those sorts of outer garments — but a strip search of a person in a public place is not permissible under the antiterrorism laws in the UK. However, a strip search of any person who can walk — or maybe even a person who is not walking but who is in a wheelchair, for example — from a young child to an elderly person, can be conducted under these laws. There is no justification for it. No evidence has been put forward by the government for the requirement to extend the already sweeping powers we have under the Control of Weapons Act, which the government is bringing forward by way of this bill today.

The provisions of the bill that are of the most concern to us are those relaxing the requirement for an independent person to be present for searches of children or people with impaired intellectual functioning. I have been talking about children, but the bill also provides that anyone with an impaired intellectual function who is stopped and searched by the police can also be searched without the presence of an independent person. In the case of a child, it is without their parent or guardian or another independent person.

At my briefing with the minister's adviser and Department of Justice staff I specifically asked what was the justification for this provision. I thank them for the time and effort they put into providing me with a briefing on the bill and answering my questions and concerns. I can see them sitting in the chamber. I am sure they understand that even though I do not agree with the bill I appreciate their time and effort in briefing me on the particular provisions.

The only justification given for the provisions was that the police wanted it. The police wanted it because it would be easier, more expedient, more efficient and more effective for them to be able to search children and people with impaired intellectual functioning without having to have an independent person present. I say, as have many people who have written to the government — from Liberty Victoria, the Law Institute of Victoria, Youth Law to the legal centres that deal with youth in particular — that that is no reason. In the *Age* this morning the human rights and equal opportunity commissioner has been quoted as saying the same thing, that the police wanting an extra power and a lesser impediment on that power is no reason it to be granted to them in breach of our human rights charter and in breach of the rights of citizens to go about their business without arbitrarily being stopped and searched. There is no justification whatsoever for the extension of this particular power under the bill.

Clauses 12 and 13 of the bill relax the circumstances in which the Chief Commissioner of Police may make a planned or unplanned designated area for the purpose of enabling weapons searches to be conducted. Searches of people in those designated search areas will not require a reasonable belief. There are provisions in this bill such that the chief commissioner only needs to have a belief that there is a likelihood. It is not even a strong likelihood; it is just a likelihood. The likelihood does not have to be more likely than not; it just has to be likely. 'Likely' could be 'hardly likely' but 'more likely than not at all'. That is what it is going to mean, so any likelihood whatsoever. That is not the sort of provision we should be introducing into our statutes.

Usually the law is qualified by there needing to be a reasonable belief or reasonable grounds or reasonable suspicion for any action to be taken by a police officer against a citizen, but this bill and the bill introduced in late 2009 are going to further water down those requirements for the designation of a planned or an unplanned area. As I mentioned with regard to the unplanned area, clause 14 does

what the Greens advocated at the last outing on this particular issue — —

Mr Tee interjected.

Ms PENNICUIK — It is good to know Mr Tee is listening. A designation of the search area should not be a responsibility devolved below the decision of the assistant commissioner. It is pleasing to see under clause 14 that this has been taken up. Only the chief commissioner or assistant commissioner can designate a search area.

I might say to Mr Tee, while he is smiling at me, that I was sorely tempted to move an amendment to this bill such that all clauses of the bill be deleted except clause 14. Clause 14 is the only worthwhile clause in the bill. Every other clause is offensive to human rights and to maintaining a reasonable balance in the law. It is completely unwarranted and unnecessary. Only seven months have passed, but if you look at the figures — and that is not counting the figures for the search that was conducted at Footscray railway station this week, but they are statistics that we have found in the literature — you see that 1300 searches have been conducted and 65 weapons have been confiscated, although most of those were pocketknives and key-chain knives.

There has been no great cache of lethal weapons being carried around by people who have been stopped and searched by the police at railway stations, which have been the main venues where this has occurred. Nothing has been found to warrant an extension of these powers. No formal review has been conducted by the Department of Justice or Victoria Police in a public way with an analysis of whether the extension of these laws justifies the cost and time of the police conducting these searches in designated areas and stopping everybody who happens to wander into them. Of course the people who happen to be going about their business trying to get onto a train or returning from their shopping have no idea that they are going to be stopped and searched to see if they are carrying a prohibited or controlled weapon — which very few of them have been doing.

There has been no formal review by the Department of Justice or Victoria Police of these laws to show that the extension of these powers under the Control of Weapons Amendment Bill 2010 is warranted. No evidence at all has been provided by the government for their extension. These powers have been in operation for seven months, and it can already be seen from the figures I have quoted that their extension is unwarranted. On a cursory judgement of those figures it is clear that the powers are not warranted, and if the government is going to breach its own charter of human rights in such a gross manner and introduce such draconian laws to the Victorian statute book, it should have some compelling evidence as to why that is necessary. None has been provided.

Business interrupted pursuant to sessional orders.

QUESTIONS WITHOUT NOTICE

Electricity: charges

Mr D. DAVIS (Southern Metropolitan) — I refer the Treasurer to the Australian Bureau of Statistics data that shows a punishing 60 per cent increase in electricity prices since the 2006 election and an increase of 53.4 per cent in the period of his stewardship from 2007 to June 2010. I ask: does the Treasurer accept responsibility for the crippling increases in electricity prices in Victoria under his stewardship and does he accept that the frightening increase over which he has presided is a slug that will hurt struggling Victorian families?

Mr LENDERS (Treasurer) — I thank Mr David Davis for asking Mr Wells's question. Obviously the puppet master is pulling the strings and watching. The fundamental premise of the question is interesting. If I recall my history correctly, the electricity companies in Victoria were privatised and put out to a private market. They were privatised by legislation in this Parliament for which Mr David Davis voted. When you have a market where government has privatised the electricity industry and those who voted for that seek to monitor prices and hold somebody else accountable for their acts of privatisation, I find it an interesting premise. I wait with great interest for the supplementary question, which Mr Davis will undoubtedly read — and from this distance it looks like it is in Mr Wells's handwriting.

Supplementary question

Mr D. DAVIS (Southern Metropolitan) — The Treasurer will be interested to know it is not in anyone's handwriting and I have made some modifications in light of his disappointing response.

Mr Jennings — You are not telling us your supplementary question is typed?

Honourable members interjecting.

Mr D. DAVIS — The Treasurer may well think that these electricity price issues are funny, and he may arrogantly want to dismiss them, but it is 11 years — —

Mr Leane — Come on; man up, Princess!

The PRESIDENT — Order! Mr Leane's comment is unacceptable. I ask him to withdraw it.

Mr LEANE — I withdraw it.

Mr D. DAVIS — Does the Treasurer's refusal to take full responsibility for the punishing impact of electricity price increases not show that the government has become arrogant and out of touch with the needs of the vulnerable in the Victorian community?

Mr LENDERS (Treasurer) — Getting to your feet and asserting with vigour something that you listened to a couple of days ago in a focus group does not make it right. Mr David Davis gets up here and asserts that the state government needs to take responsibility for electricity prices going up. If he were to seek a debate about policies that might affect electricity prices — a legitimate debate to have at a time of carbon pollution reduction scheme discussions or similar debates — that would be a legitimate debate for him to seek. However, for a member of Parliament who voted for the Kennett government's privatisation of the electricity industry without any particular safeguards — the only safeguards for that industry were provided by this Labor government, which, when elected, gave the Essential Services Commission some powers above and beyond the feeble effort of the last government, which gave untrammelled authority to privatised electricity companies to charge what they liked — is extraordinarily ignorant, at best.

If we are talking about the cost of living for ordinary Victorian families, what Mr Davis's party and the shadow Treasurer, Mr Wells, have basically done at the moment is put before the Victorian community something of the order of $4 billion a year in uncosted promises. They would then undoubtedly slash and burn in the public sector as they did when they were last in government, as they did when they were in government the time before that, as they did in government federally and as they are doing in government in Western Australia today. If Mr David Davis had one skerrick of empathy with working families he would reflect on WorkChoices, he would reflect on what he has done in welfare and he might even reflect on what heartless activity his government undertook, which can best be symbolised by what it did to the Grey Sisters — a disgrace!

Buses: south-eastern suburbs

Mr SOMYUREK (South Eastern Metropolitan) — My question is to the Minister for Public Transport, Martin Pakula. Can the minister inform the house about what the Brumby Labor government is doing to improve bus services in Melbourne's south-eastern suburbs?

Hon. M. P. PAKULA (Minister for Public Transport) — I thank Mr Somyurek for his question. Residents in Melbourne's south-east are about to benefit from another $4.8 million boost to the local bus services. I was pleased last week to announce the outcomes of the Cardinia-Casey and Casey-Greater Dandenong bus reviews with the member for Gembrook in the other place, Tammy Lobato. As a result of that bus review the government is going to deliver six new bus routes and improvements to another 10 existing routes in the south-eastern suburbs — —

Mrs Peulich interjected.

Hon. M. P. PAKULA — Mrs Peulich has shown her commitment to buses in her electorate by opposing the bus lanes in Dingley.

As members would know, many of the existing bus routes in the south-east date back to when the area had a much smaller population. We have seen enormous growth around places like Pakenham, Officer, Beaconsfield, Berwick and a number of the communities in that part of Melbourne. In the coming months we will be introducing new and improved bus routes to cater for the transport needs of an area that has changed and grown significantly in the last few years. These changes will simplify and improve bus services in a whole range of established suburbs, and they will also introduce services for the first time in new and developing areas.

In particular, the growing communities of Beaconsfield north, Narre Warren North, Narre Warren South, Lynbrook South, Cranbourne East, Pakenham and Pakenham South will benefit from new bus routes, meaning that a whole range of families in those parts of Melbourne will have access to public transport for the first time. In addition the established communities of Berwick South, Cranbourne West, Hampton Park and Hallam will also have access to improved bus routes that operate more frequently and for longer hours. All those additions and improvements come out of the Victorian transport plan in which we have committed — —

Mrs Peulich — Starting in 2011? Starting after the election!

Hon. M. P. PAKULA — No, in fact, they will be starting in the next month or so.

Under the Victorian transport plan the government has committed $500 million to improving local bus services across Melbourne with a focus on boosting bus services into those growth areas as they develop.

Mrs Peulich — How many to the hills — two a day?

Hon. M. P. PAKULA — As they develop, and if Mrs Peulich had been in Officer or Beaconsfield or some parts of Pakenham in recent times she would know that in many of the areas of these communities 11 years ago there were no homes. These are quite recent developments for which we are now catering. The six new routes which will begin in 2010 are route 846, Eden Rise to Berwick station via Bryn Mawr Boulevard; route 847, Casey Central to Berwick station via Glasscocks Road and Berwick Springs; route 891, Lynbrook to Fountain Gate via Hampton Park, Hallam station and Hallam Gardens; route 898, Cranbourne station to Archersfield Drive; route 924, Sandalwood to Pakenham station; and route 925, Botanic Drive, Lakeside to Pakenham station via Balmoral Way and John Street in Pakenham North.

Those are a range of fantastic new services. As I have indicated, they will be augmented by extension in both time and destination on a further 10 routes in the area. That is great news for the communities of Melbourne's south-east.

Environment: greenhouse gas emissions

Mr DRUM (Northern Victoria) — My question is for the Minister for Environment and Climate Change, Gavin Jennings. I note the government's announcement on 12 July of a 20 per cent target for reductions in greenhouse gas emissions by 2020 and I also note that prior to the 2006 election the government made commitments of a 10 per cent reduction by 2010 and a 60 per cent reduction by 2050, as well as, prior to the 2002 election, promising greenhouse gas emission cuts. Is the minister able to provide the house with the data that would show how Victoria is progressing towards these previously set targets?

Mr JENNINGS (Minister for Environment and Climate Change) — I thank Mr Drum for his question. Obviously there has been a conversion by The Nationals, because his colleague from the Latrobe Valley, the member for Morwell in the other place, Mr Northe, is very supportive of our announcements this week in relation to the transition of the electricity generation sector. Obviously Mr Drum is now joining that enthusiasm and wanting to have confidence that we are tracking well in our commitments to reduce greenhouse gases in Victoria. Mr Drum has reminded me, has reminded the chamber, and I am very happy for him to remind the Victorian community that, yes, as far back as 2002 we were committed as a party and in turn when we were again elected as a government to reducing greenhouse gas emissions by something of the order of 7 per cent of our emission levels. Seven per cent of our emission levels during the course of this decade is in the order of 8 million tonnes of CO_2, and in fact — —

Mr D. Davis — But they went up.

Mr JENNINGS — Mr Davis, regardless of the facts, regardless of how the story unrolls, continues to want to interrupt the flow of logic, of science, of the politics of this matter. What we are talking about is the target of 8 million tonnes of abatement through policies introduced by our government. The policies introduced by our government during the last six years have indeed delivered the cumulative effect of at least 8 million tonnes of CO_2 abatement of emissions into the atmosphere.

Mr D. Davis — You know it is a whopper.

Mr JENNINGS — There are three or four programs in Victoria that have delivered those greenhouse gas savings. The largest of them is clearly the scheme that was established by the authority of legislation passed by this chamber, the VEET (Victorian energy efficiency target) scheme.

Mr Drum — Are we talking about total emissions?

Mr JENNINGS — Yes, that is what I am talking about. We are in the same ballpark. During the course of this decade greenhouse gas emissions have been hovering at around 120 million tonnes of CO_2 released from all Victorian sources into the atmosphere. I am about to outline — if people stop interrupting — programs that by now deliver 8 million tonnes of greenhouse gas abatement, which is in accordance with the target that we set.

Those programs are the VEET scheme, which in its own right delivers somewhere of the order of 2.5 million tonnes a year. It is a scheme that was ratified by legislation passed in this Parliament, and it has driven great efficiencies in Victorian households through generators and distributors of electricity being obliged to purchase greenhouse gas offsets. We have also achieved more that 1 million tonnes of abatement through the early introduction of the Victorian renewable energy target, so more than 1 million tonnes of CO_2 has been abated because of the cumulative

effect of introducing renewable energy into Victoria, which was the first state to introduce such a scheme.

About 1.2 million tonnes of abatement has been driven through the combination of the industry greenhouse program and now the environment and resource efficiency plan program of the Environment Protection Authority. They deliver somewhere in the order of 1.2 million tonnes a year. This has had the great effect of actually driving down the emissions profile of Victorian businesses.

About 2.8 million tonnes has been delivered through the minimum energy performance standards program, which has been a momentum led nationally to make sure that appliances ultimately purchased by Victorian citizens are labelled to enable our consumers to recognise them on the basis of understanding the value of having energy-efficient appliances. Not only does that lead to greenhouse gas abatement, it also reduces their household costs. That program has been very successful.

The introduction of a 5-star rating for housing in Victoria has led to somewhere in the order of half a million tonnes of abatement in its own right, with more efficient houses being designed and built in Victoria. Every year for the past four years more than 40 000 households have been built on the basis of 5-star ratings. Part of the announcement that is included with our commitments going forward is to move next year to a 6-star rating for houses in Victoria and to retrofit the Victorian housing stock to achieve an average of a 5-star rating by 2020. We are not standing still on this agenda.

The last program that I would indicate shows how we cumulatively add up to 8 million tonnes of emissions, and that is the black balloons campaign, which has been recognised as a world-leading campaign in inspiring citizens to identify with greenhouse gas emissions that come from aspects of their daily life. They can see that emissions can come from activities around their home. We estimate that somewhere in the order of 300 000 tonnes of CO_2 is abated due to the effect of that campaign.

As Mr Drum can see, we are on target. We think we are doing pretty well. We are going to use that not only to actually stop the growth in emissions but also and very importantly to reduce the profile of the emissions and achieve our 2020 target in accordance with the action plan the Premier and the government have outlined this week.

Supplementary question

Mr DRUM (Northern Victoria) — Could the minister inform the house of how these emissions are in fact measured? Who audits these figures, and how can Victorians maintain an awareness of how we as a state are going in relation to the government's targets that the minister has just outlined?

Honourable members interjecting.

Mr JENNINGS (Minister for Environment and Climate Change) — It is a fantastic question. It is a very good question, because in fact the community does need to have confidence about these matters. Some of the measures have already been verified by the Australian Greenhouse Office on a national level through the national accounting framework and some of them have been audited independently in the operations of the Victorian Environment Protection Authority.

Mr Drum interjected.

Mr JENNINGS — They can be independently audited.

Mr Drum interjected.

Mr JENNINGS — Mr Drum should listen to the idea: you can actually have national frameworks and independent auditing. In fact the bill that has been introduced in the other place by the Premier today requires the Victorian government to establish in the prism of the climate change bill an obligation to in the future report to our citizens in a way that builds community confidence, which is exactly in accordance with the question Mr Drum has asked me — so he is right up with the agenda.

Women: workplace rights

Ms BROAD (Northern Victoria) — My question is to the Minister for Industrial Relations, Martin Pakula. Can the minister update the house on what the Brumby Labor government is doing to inform working women of their rights and responsibilities about pregnancy and the workplace?

Hon. M. P. PAKULA (Minister for Industrial Relations) — I thank Ms Broad for her question and acknowledge her lifelong commitment to the rights of working women. Last week I was at the Myer head office, where I was joined by Myer executives and also by that fantastic Victorian entrepreneur Carolyn Creswell from Carman's Fine Foods, an organisation that has been recognised by the Governor in the

Governor of Victoria export awards and is a leader in rights for pregnant workers.

I was there to launch the Time to Deliver toolkit, which is a resource that has been developed by the Victorian Equal Opportunity and Human Rights Commission and provides employers and employees with an A to Z, if you like, of their rights and responsibilities in regard to pregnancy and the workplace.

We as a government have demonstrated a strong commitment to protecting the rights and entitlements of working women. We are proud that we amended the Equal Opportunity Act in 2008 to make it unlawful for employers to unreasonably refuse to provide work arrangements that suit workers with family responsibilities. For the past two years the Working Families Council, which was previously chaired by Jill Hennessy but is now ably chaired by Ilona Charles, has also offered the fair and flexible employer recognition awards to those employers who have demonstrated a commitment to improving work-life and work-family balance and pay equity. The council has recently updated its extremely well-received pregnancy and work guides that assist both employers and employees. These guides have gone a long way towards enlightening both employers and employees about their respective rights and responsibilities surrounding what can often be the very vexed area of parental leave.

The Time to Deliver toolkit that was launched provides workers and their employers with very clear and concise information and an all-important list of frequently asked questions to help employers and employees to achieve balance, fairness and compliance in workplaces right around the state. Importantly for industry, the toolkit includes a self-audit tool. It gives employers the information they need to determine how they are progressing against best practice and what they can do to improve. It comes with a pregnancy and work policy that employers can adapt and apply to help them comply with the law. Importantly also, it comes with a checklist for managers so that employers, human resource managers and warehouse managers — any manager who has to deal with employees in this situation — have the information they need when an employee first notifies of pregnancy, goes on parental leave or comes to them and asks for an additional 12 months leave, as well as when they return to work and when they request flexible working arrangements upon their return to work.

It is a toolkit that provides advice on how to support staff during their pregnancy and while they are on parental leave. There is clear evidence now that employees who feel supported through their pregnancy and their parental leave are much more likely to be more productive when they return to work, they are more likely to return to work in a positive frame of mind and they are more likely to stay with that employer.

The toolkit also contains our guide for employees and employers called *Pregnancy and Work — Your Rights and Obligations*. It is a fully comprehensive overview for employers and employees of how to achieve and retain best practice when combining pregnancy, children and work. All employers and employees across this state now have at their fingertips all the information they require about pregnancy and the workplace to help them to deliver their responsibilities and assist employees to know their rights.

Utilities: charges

Mr RICH-PHILLIPS (South Eastern Metropolitan) — My question is to the Treasurer. Will he explain how Victoria is the best place to live, work and raise a family when Melbourne electricity prices have increased by more than 60 per cent, Melbourne gas prices have increased by more than 32 per cent and Melbourne water prices have increased by more than 45 per cent, all since the last election?

Mr LENDERS (Treasurer) — I thank Mr Rich-Phillips for his question. It was very well read; I am sure the author would be proud of him. The question was better coming from Mr Rich-Phillips than Mr David Davis. Mr Rich-Phillips was not in the house when the then Kennett-McNamara Liberal-National party government — —

Mr Finn interjected.

Mr LENDERS — Mr Finn was part of that government and did vote for the privatisation of electricity. He did vote for the privatisation of gas, but he did not have a chance to vote for the privatisation of water because the Kennett government was thrown out before it did that bill — —

Honourable members interjecting.

The PRESIDENT — Order! If Mr Finn and Mr Madden want to converse, they should do it outside.

Mr LENDERS — This is obviously a segue from the question I received before from Mr David Davis. Let us treat this as a serious question from the opposition that is not just something it wants to put into a press release or a TV advertisement to accuse the government of being heartless in some way or another about its responsibility. Firstly, I would say any

politician who in the current market would go out and say to communities that they can control prices is lying.

Opposition members cannot seriously think they, the people who voted to privatise all these bodies and remove government control, can now come into this chamber and say that this state government should take responsibility for what is a worldwide phenomenon of energy prices going up, because as my colleague Mr Jennings was saying, climate change is real. And climate change being real, across the planet prices are going up as electricity utilities deal with things as fundamental as the water that is required to cool down power stations, things as fundamental as the exploration that is required for new resources and things as fundamental as improving and maintaining the infrastructure we have. Prices across the world are changing.

What Mr Rich-Phillips would find interesting if he actually went through the Australian Bureau of Statistics (ABS) consumer price index figures of yesterday and looked at the component parts — he would be quite surprised to find it — is that electricity went down in Victoria on those statistics. He is trying to use statistics, but if he wanted to go through the figures for the last 11 years, which is a period of time which those opposite often get very excited about looking at, he would find that most energy prices in Victoria during that period have gone up by about 2 per cent per year less than in the rest of the country.

We are all absolutely aware that working families are finding it tough meeting the rising costs of living; there is no rocket science to that. It is obvious to anybody who goes into communities and engages with people that there are challenges as to how this can be met. You can measure a government by asking a gotcha question in question time based on no facts other than a very selective interpretation of a period of time, no relativity to other jurisdictions and no relativity to where things are going, or you can say, 'How do we deal with this issue?'. You deal with the issue of dealing with supply, where you try to build up reliable supply. This government has a strong track record in trying to build up alternative energy sources and alternative renewable sources that will be there for the long term. But what do we get? We get opposition members who ridicule every single individual decision for a wind farm. Every time my colleague the Minister for Planning tries to assist one, they ridicule it. For every single proposal they have a reason why it is not worth doing, but they have no plan for alternative energy resources and they have no plan for reliable energy resources. They simply argue at every single juncture why we should not do things and then they go to another community and say, 'You should build up infrastructure'.

When working families and vulnerable citizens are affected by this, we have a very targeted program of energy concession assistance to health-care card holders and others. In this budget that assistance was again increased to try to target and assist those most affected by this. Also of course these things go in partnership with the commonwealth government where we try to work and assist in these areas.

I say to Mr Rich-Phillips that it would do him a great deal more credit not to rely so much on Mr Wells, the member for Scoresby in the Assembly, in these matters but to look at the ABS statistics himself. His question would have had a lot more credibility if it had asked the house to note what happened in the ABS figures yesterday on pricing. If he had referred to any of the Essential Services Commission's determinations of just two or three weeks ago, he would have seen that some areas saw a reduction in energy prices in Victoria, unlike anywhere else in the country. That is why the Victorian Essential Services Commission was set up by this Labor government, to fill the gap created under the then Office of the Regulator-General, which was set up by the Kennett-McNamara coalition government when it privatised the energy assets.

We can have an informed debate about climate change, we can have an informed debate about energy prices, we can have an informed debate about the supply of energy, the reliability of energy and the maintenance of infrastructure or we can have a populist, rabblerousing, uninformed statement, which again does no credit to Mr Rich-Phillips. I would hope that he would vet the questions Mr Wells asks him to put, rather than falling for them hook, line and sinker.

Mr Viney — On a point of order, President, during the course of the Leader of the Government's answer Mr Guy interjected, accusing the Prime Minister of Australia of lying, and I think he should be required to withdraw.

Honourable members interjecting.

The PRESIDENT — Order! First, I remind the house that interjections in themselves are disorderly. Second, we try to maintain a particular standard in here. I have, while sitting on the government benches, raised this very point about prime ministers being referred to in any form lower than their actual standing. Their standing in society is one that we should all highly respect. I did not hear the interjection, but I remind members that members of other places should be

treated with a certain amount of respect. Whilst I understand that on occasion people get a little heated and make reference to others, the term 'lying' is unacceptable. I advise members that if they feel it necessary to interject, they should use terminology that is acceptable. I would like Mr Guy to reflect on that.

Supplementary question

Mr RICH-PHILLIPS (South Eastern Metropolitan) — I thank the Treasurer for his answer. I am happy to tell the Treasurer that I am more than capable of writing my own questions and reading ABS statistics. While the Treasurer is happy to talk about determinations of the Essential Services Commission, it does not alter the fact that from the September 2006 quarter to June 2010, as reported by the ABS yesterday, electricity prices went up by 60 per cent, gas prices went up by 32 per cent and water prices went up by 45 per cent. In his substantive answer the Treasurer sought to distance the government from the capacity to influence prices. However, I refer to the *ALP 2006 Platform* document. In chapter 11, titled 'Strengthening justice and democracy', on page 186, under the heading 'Energy pricing' item 11.35 says:

> Labor will ensure energy supplies are affordable …

Given the government's previous commitment, I now ask the Treasurer why he has failed to deliver on this basic pricing commitment.

Mr D. Davis interjected.

Mr LENDERS (Treasurer) — When Mr David Davis goes on about how question time should be about answering questions on government administration I hope he reflects on Mr Rich-Phillips referring to a Labor Party policy document. If the new rule of the Legislative Council is that you can ask the other side questions about their policy documents and whether they can or will deliver on them, it is an interesting new perspective. Mr Madden will be disappointed, because he will think they have no policies, but nevertheless that is an interesting new development in the Legislative Council if we are entitled to refer to each other's policy documents.

Having said that, what I will say to Mr Rich-Phillips is this: I do not retract one iota of the comments I made about where the market works, the roles of government and the ability to do it. Mr Rich-Phillips talked about water pricing. I also do not for one moment move away from the fact that this government openly and transparently went to the Victorian people in 2006 with a water plan that said to fund the water plan — —

Honourable members interjecting.

Mr LENDERS — Pavlov would be very excited, because his theory has been proven correct. Pavlov's theory is absolutely correct: you say the word, and the barking commences! We have a water plan that says as part of providing reliable water supplies we would require — —

Honourable members interjecting.

The PRESIDENT — Order! Mr Guy and Minister Madden!

Mr LENDERS — Thank you, President. The excitement of the debate is getting a bit much for me at the moment.

Honourable members interjecting.

The PRESIDENT — Order! This is the third time I have had to talk to Mr Guy about interjecting across the chamber, and it will be the last time.

Mr LENDERS — Mr Rich-Phillips mentioned gas, electricity and water. As I said, the coalition privatised gas and electricity and made it more market free. This government brought in the Essential Services Commission to enhance consumer protection and to protect consumers more than they had been protected under the Office of the Regulator-General set in place by former Treasurer Alan Stockdale.

I now refer to what Mr Rich-Phillips has said; it is quite fascinating. The opposition is saying we should be doing more to provide reliable infrastructure. This government went to the people in 2006 with a water plan, saying up front that we would need to increase the price of water to fund infrastructure to make water supply reliable. We went forward — —

Honourable members interjecting.

Mr LENDERS — This is an amazing cacophony. We have Mrs Petrovich making some comment, as she obviously hates the residents of the southern 40 per cent of her electorate and does not want them to have water; Mr Drum is getting incredibly excited — and I am almost getting inspired to again tell him about Elwood Mead and the State Rivers and Water Supply Commission; and Mr Koch is saying we are pinching their policies. One says it is outrageous and the government is Satan personified, the second says we have pinched their policies and the third blabbers. It is truly an extraordinary cacophony — —

Honourable members interjecting.

Mr LENDERS — It is like the three bears. Anyway, I will ignore that and go back to Mr Rich-Phillips's question. I gather that Mr Rich-Phillips is saying that there is something outrageous about governments investing in infrastructure. This government was up-front in saying that it would need to invest in water infrastructure. We were up-front with water consumers in saying that that would involve a greater investment. Clearly there is something wrong, dastardly, devious and cunning about a government being courageous and going out and saying prices that will go up to fund infrastructure. There is something wrong about that.

Mr Leane interjected.

Mr LENDERS — Mr Leane is correct. There has been a 10-year drought and you have to deal with it.

We will now go to where all this is coming from about pressures on families. The opposition is not willing to look at how Victoria has gone vis-a-vis other jurisdictions. It is not willing to look at the Labor Party policy about looking after families, which has dealt with targeted concessions for the most vulnerable, dealt with an Essential Services Commission which brought down a determination that reduced some energy prices last week, unlike other jurisdictions, and dealt with probably the most fundamental thing about working families, which is jobs. Working families have been given more job opportunities in Victoria than in any other Australian jurisdiction — without getting into hyperbole, probably in most other jurisdictions in the world, but certainly in the Australian-New Zealand landscape.

If Mr Rich-Phillips wants to get statistics and selectively manipulate them and use one period to compare with another — we can all use statistics — he can go back and say, 'Here is a 60 per cent increase'. I can go back and say the Essential Services Commission last week cut prices, and we can argue statistics. But I would say to him: if he is seeking to be objective and match apples with apples and lemons with lemons, he should go back and look at those figures and go forward from there.

Next I would say to him that working families expect governments to have plans for the future, to do the important things like delivering services reliably, efficiently and into the future, and to deliver jobs. This government has delivered jobs, which is the most effective thing it can possibly do for working families.

In response to Mr Rich-Phillips, and undoubtedly the other questions that Mr Wells will be helpfully suggesting from afar be asked in this chamber, I say we have worked in this area. We have inherited a situation; we have made improvements to it. We are investing in infrastructure and reliability and ultimate sources going forward, because we are a government that looks to the future and these decisions make it a better place to live, work, invest and raise a family.

Regional and rural Victoria: employment

Ms DARVENIZA (Northern Victoria) — My question is to the Treasurer, John Lenders, and I ask: can the Treasurer update the house on how the Brumby Labor government is continuing to drive job growth in regional Victoria with specific reference to the partial relocation of State Trustees to Bendigo?

Mr LENDERS (Treasurer) — I would be delighted to update the house. I thank Ms Darveniza for her question and her interest in jobs in regional Victoria and her interest in innovative government policy that helps move jobs from the centre of Melbourne to the regions of Melbourne and the regions of Victoria, which is what the State Trustees decision is all about.

We have a strong record in government in taking the hard decisions for the future in relocating jobs to regional Victoria. My colleague Ms Broad was one of the architects of the Office of Housing setting up a centre in Moe to move jobs there to service Victoria from a regional centre, which that centre does very well. My colleague the Premier, when he was Treasurer, saw the Rural Finance Corporation move from the centre of Melbourne to Bendigo, creating jobs and job opportunities in regional Victoria. The Premier, again when he was Treasurer, saw the moving of the State Revenue Office from the centre of Melbourne to Ballarat to create jobs and opportunities in Ballarat in the financial services sector.

I was delighted as the Minister for WorkCover and the Transport Accident Commission in this government to be part of moving the Transport Accident Commission from the centre of Melbourne to Geelong to generate jobs in regional Victoria, offer job opportunities in allied health and financial services in Geelong and do it in a sensible transition which assisted people in that community to get the benefit of jobs which had been located in the centre of Melbourne. That is what the Brumby Labor government is about: offering job opportunities across all of Victoria and making sensible, informed, long-term decisions that breed those opportunities in regional centres.

Ms Darveniza has asked for an update on the State Trustees relocation. State Trustees is an organisation

that has served Victoria particularly well for seven decades. It had a building in the centre of Melbourne with 600 people in it, and I have already informed the house in response to a question from Mr Somyurek some weeks ago that 100 people who had worked in the city and lived in Dandenong were given an offer. They have now moved back to Dandenong, and those people no longer commute into the city every day and their clients do not follow them; they go to Dandenong where they can deliver the service.

In Bendigo I have had the pleasure of making an announcement with my colleague, Jacinta Allan, the Minister for Regional and Rural Development, who is not just a particularly passionate advocate for Bendigo but an extremely effective advocate for Bendigo as well. The only confusion in government is who is the most passionate advocate for Bendigo: we have the Premier, the Minister for Police and Emergency Services and the Minister for Regional and Rural Development. They are the best team to look after that city that I can think of in the history of Victoria.

What we have are 100 new jobs going to Bendigo with the State Trustees in its move. An office of the State Trustees is already open in Pall Mall in Bendigo. It is welcomed by the Bendigo business community, the Bendigo community groups and people in Bendigo who see jobs in Bendigo. There are 100 jobs in Bendigo that build on the Rural Finance Corporation, which has moved to Bendigo, and build on that great private sector operator in Bendigo, the Bendigo Bank, which in its own right has 1000 finance sector jobs in Bendigo at its national headquarters.

Hon. J. M. Madden interjected.

Mr LENDERS — No, Mr Madden. Some are more focused on 200 000, but I am delighted that there are 1000 jobs in Bendigo with the Bendigo Bank.

We will continue to work, and the regional blueprint of my colleague Jacinta Allan is clear evidence of that. We will continue to work with regional communities to assist in the creation of jobs right across Victoria, and do so by government action, particularly in regional Victoria where these jobs are appreciated and create opportunities for communities that help make those communities even better places to live, to work and to raise a family.

Utilities: charges

Mr RICH-PHILLIPS (South Eastern Metropolitan) — My question is again to the Treasurer. I refer to a further policy commitment the government made in 2006 entitled 'Meeting Victoria's energy challenges', which states:

> Over the next four years, a re-elected Bracks government will … work with electricity retailers to ensure they provide competitive pricing structures …

As the Treasurer wants apples with apples comparisons, I will say that since that promise was made electricity prices have increased at six times the general rate of inflation. So I ask: why has the government failed to deliver that competitive pricing structure for Victorian families?

Mr LENDERS (Treasurer) — My response to Mr Rich-Phillips is exactly the same as my response to the last question Mr Wells wrote for him.

Supplementary question

Mr RICH-PHILLIPS (South Eastern Metropolitan) — Taking into account the Treasurer's answer, I ask him about the increases as shown in yesterday's consumer price index data in categories that the Victorian government has influence over — water, electricity, gas, primary education, secondary education, health — all of which show increases in prices over this period of office, 2006 to date, far in excess of the general rate of inflation. I ask: why has the government not had any regard to the cost of living pressures on families in areas it can influence?

Mr LENDERS (Treasurer) — I award Mr Rich-Phillips 5 out of 10 for trying and 1 out of 10 for content. I could go on for days in this unlimited question time about what the Victorian government is doing for families in areas where, as he said, we have some control. Let us briefly go through the key areas where state government has some control over costs for families. If we take the one-third of families in Victoria who have children at school at the moment — or roughly that figure; we will take that as a large group of families with children at school in Victoria — firstly, what we have been doing is providing education services to them that do not put costs on families. What we have done, unlike our predecessors whom those opposite supported, is to take action to bring down fees charged at government schools. We have actions in place and have provided record support for non-government schools.

We deliver; others pontificate and then welsh every time they make a promise. We deliver and have delivered record support for government and non-government schools. If we then talk about — —

Mr Drum — No, you don't!

Mr LENDERS — Mr Drum says, 'No, you don't!'. He may say that 5000 times and believe himself, but he should start looking at who is delivering services in schools. When we are in government we build them; when Mr Drum's party was in government the president of the Liberal Party sold 300 schools! So let's start talking about delivering services for families that need them. We deliver services for families. The opposition cut teacher numbers, sold schools and put up fees in government schools, so let's work out who is delivering services.

If you are talking of the pressures on working families going into schools, we are bringing in integrated children's centres at schools: a one-stop shop where you have the kindergarten, the child-care centre and the school. These have to be phased in over a period of time. Part of the portfolio brief of my colleague Maxine Morand, the Minister for Children and Early Childhood Development — my gosh; the first government ever to focus on that particular area! — is all about integrating school, preschool, child-care and other services in partnership with the community sector and the commonwealth. Are we taking the pressure off families? Are we acting? I would think any objective observer would say we are doing that.

Moving to the next area where the government is taking pressure off families, my colleague Mr Pakula, of whom opposition members are too gutless to ask a question, is the Minister for Public Transport. What has been done in public transport? There has been a 10 per cent patronage increase for four years in a row, which is taking pressure off the environment, taking social pressure off communities and taking economic pressure off families by enabling them to get public transport to work and to activities. We are going forward on that.

Going to the health system, we are taking costs and pressure off families. We are treating more than 1.5 million patients per year in our health system, taking pressure off families. We have a commitment to a public health system families can go to for support, assistance and treatment, rather than the situation with those opposite, who sell off hospitals — flog them off — and say, 'If you want the treatment, pay for it!'. That was the approach of the opposition to supporting families in this particular area.

We can go through this government's achievements: it has invested more money in police for family and community safety, whereas the philosophy of those opposite was to cut the police force and get people to hire security guards. If Mr Rich-Phillips wants to ask me about pressures on families and what is in this government's control to move forward, we have delivered greater education services and greater health services. Unlike our opponents, who believe that poor Victorians, those on low incomes, should pay, we provide the basic universal service. We have delivered greater services in transport. Further, we have the view that the state should take some responsibility for its security rather than watch the growth of the private security sector, which was the philosophy of the opposition.

If Mr Rich-Phillips wants to have a debate about which side of politics is trying to assist families with costs, this government acts, this government has plans and this government has delivered. There is more to be done, but I am absolutely confident that those in this house more likely to do more are those with a plan for the future, those who make the hard decisions and do not seek to be all things for all people. Those actions have validity, and they are the hard work that makes Victoria a better place.

Mr Rich-Phillips asked a series of questions. There is one more question that may be coming from Mr Wells, the member for Scoresby in the Assembly, and I look forward to that one as well. We care about working families. That is why we have acted in health, education, transport, community safety and costs to assist communities. Those opposite did not know how, never did it and could not care.

Economy: winter exhibitions and festivals

Mr TEE (Eastern Metropolitan) — My question is to the Minister for Innovation, Mr Jennings. Can the minister inform the house of how the Brumby Labor government is supporting nation-leading winter festivals as part of the government's commitment to innovation, culture and economic development in Victoria?

Mr JENNINGS (Minister for Innovation) — I thank Mr Tee for his lengthily worded question. In fact it was not long enough; my ears were still ringing, and I did not hear the beginning of it; but I did catch the end of it. I want to take up his question to encourage members of this chamber to get out more. They could probably broaden their minds on a whole range of fronts, but today I am encouraging them to get out more to immerse themselves in culture and immerse themselves in an appreciation of what is happening in the real world experienced by other people around the world and showcased in Melbourne as we speak.

There are opportunities to get out more; there are opportunities to become a bit more involved with the citizenry of Melbourne and Victoria as they broaden

their knowledge, as they engage in community activities and as they certainly bring economic wellbeing to the state of Victoria. Those opportunities come through the winter exhibitions and festivals that have been taking place during the month of July. They will keep going on into August, so there is a chance even for the ones who are not with the program, the ones who want to bury their heads in the sand about a whole range of things in life.

They can immerse themselves in the Melbourne International Film Festival, which runs until 5 August; they can immerse themselves in the European masters down at the National Gallery of Victoria or the Tim Burton exhibition at the Australian Centre for the Moving Image. They have missed their opportunity to attend the State of Design Festival, which ran in July, but they may have seen thousands of Victorians lining up in the streets over weekends to get into the open house venues. That was a very popular part of the State of Design Festival. They might not have understood why people were queuing around the block in a number of locations around the city to get in to see some of the best designed and most architecturally significant buildings in Melbourne. That is a very popular part of the State of Design Festival.

Importantly at that time we would have seen around the Royal Exhibition Building some of our artisans who through their small and medium size enterprises not only have a design approach to their products and services but are also very creative and are achieving better markets for their work. The exhibition building was home to the Design Made Trade exhibition, which saw many of our smaller manufacturers and creative people coming together in a great marketplace.

Members might have heard about the Premier's design awards, which recognise great design and the importance that design plays not only in the quality of our life in terms of our creativity and artistic expression but also in terms of developing goods and services that have international markets and opportunities for our designers. In fact the winner of the Premier's Design Award was the Whizkid Games project, which was created by the National eTherapy Centre and Swinburne University of Technology. It is a computer-based educational tool for children with autism and is an engaging interactive program that will not only play a very supportive role for young people here but also potentially around the world, because it can be easily translated into other languages and picked up through a web-based system. This is world-leading technology, designed and created in Victoria.

Creativity is being showcased at the Melbourne International Film Festival (MIFF) at the moment. More than 226 feature films and 50 short films from countries around the world will be showcased at the festival. Of the 11 feature films that will premiere at the festival, 5 have been funded through the Melbourne International Film Festival Premiere Fund, which was established through our government's support for the festival. We will see five Victorian-based films premiering at the festival. In fact the opening night film, *The Wedding Party*, directed by Amanda Jane and produced by Nicole Minchin — —

Mrs Coote — Peter Batchelor invites us to things. You never ask us to anything.

Mr JENNINGS — There was the odd conservative there; maybe they just were not representing you. Many people actually buy tickets to go to these things. In fact the vast majority of people buy tickets, because they are interested in the world. They want to gain a bit of knowledge and education. But beyond the opening night of the festival — —

Mr Finn — How many tickets have you bought?

Mr JENNINGS — That is a very good question. I have an opportunity to buy tickets between now and 5 August, and I guarantee Mr Finn that I will — he should have no doubt about that. Tonight *Matching Jack*, a film produced and directed by Nadia Tass and David Parker, will be screening. There will be more MIFF premiere fund films screening between now and the end of the festival. In fact more than 190 000 Victorians come and immerse themselves in the festival. The festival brings more than $8 million worth of economic activity.

To show how successful the film industry is in Victoria, more than $233 million was invested in the productions that occurred here during the last year. When you think about some of the success of our products, you see that of the top 10 Australian films produced last year 5 were supported by Film Victoria and 46 per cent of the Australian box office was supported by Film Victoria films. It is a great testament to the effectiveness of our programs, the creativity of the people who work in the screen industry and the responsiveness of Australian audiences.

Regardless of the lack of responsiveness by the people on the other side of the chamber, I can assure the house that the community is keen to support Australian products. We have had great results through the festivals that I have described to the house today.

Planning: Shire of Moyne

Mr KAVANAGH (Western Victoria) — My question is for the Minister for Planning, Mr Madden. It relates to a planning permit that was given by Moyne Shire Council to Ace Radio to build a broadcast tower. This matter was also raised by Mr Vogels last year. A permit was granted to build the tower 200 metres from the home of Purnim resident Mr John Howard. On the basis of the distance from his house, Mr Howard withdrew his original objection. However, on his return from a trip away Mr Howard discovered that the foundations for the tower had been built directly opposite his home because the location for which the permit had been granted was too rocky. Mr Howard complained to the Moyne Shire Council. The council sent a representative, who agreed that the foundations were not in accordance with the planning permit but who then decided to orally amend the permit, which allowed the construction to continue. Mr Howard has spent the last several years fighting the tower.

In spite of the minister's assurances to Mr Vogels in response to his adjournment matter that, firstly, planning permits cannot be retrospectively amended and, secondly, that changes to permits cannot be made verbally, the Victorian Civil and Administrative Tribunal has found against Mr Howard twice and, incredibly, awarded costs against him. He has now been offered an amount by Moyne Shire Council which does not represent his losses. His property has been devalued by $660 000. He has costs to pay. His health has been endangered by the extreme electromagnetic radiation next to his house. The question is: what are the deficiencies in the planning system in Victoria that allow this kind of injustice to be done to a Victorian — indeed, a western Victorian?

Hon. J. M. MADDEN (Minister for Planning) — I welcome Mr Kavanagh's interest in this matter. I am conscious of these matters, given that Mr Vogels raised them some time ago. I also understand my department has responded to Mr Howard in relation to these matters.

In relation more specifically to the issues which Mr Kavanagh raised in terms of Mr Howard's predicament, Mr Kavanagh is correct in saying that permits are not able to be adjusted retrospectively. There is no ability for an officer to adjust a permit verbally either. The advice I have received from my department is that the Victorian Civil and Administrative Tribunal in making its decision made a point to the planning authority, the Moyne Shire Council, about its lack of rigour in ensuring that it complied with its own requirements in relation to administering planning permits. I also understand VCAT did allow the project to continue to stand as it was and the permit to stand. I recognise that the independent umpire — in this instance VCAT — has made its decision, and its decision stands unless, of course, Mr Howard seeks to have that appealed in any other way which he might feel is relevant.

I recognise that the Moyne Shire Council has been identified by VCAT as not having provided the rigour in its system that it should have in this instance. In relation to that, the Moyne shire has taken action to ensure that it puts appropriate rigour into its planning system to ensure that this does not happen again in the way it might have happened on this occasion.

In relation to any matter where somebody might feel that local government has not covered itself in glory in its own administrative role, I would encourage them to take it up with the Minister for Local Government, or, if they feel more strongly, there are other avenues to appeal administrative decisions. I encourage Mr Howard, if he still feels strongly about these matters, to use those avenues of appeal if he believes they are justified.

Supplementary question

Mr KAVANAGH (Western Victoria) — I would like to assure the minister that, having met Mr Howard, I am sure he feels very strongly about this matter, as would every one of us here if they had a similar experience. The minister referred to action that should be taken by Moyne Shire Council, and I ask: what plans does the government have for rectifying deficiencies in Victoria's planning scheme to prevent such things happening in the future?

Hon. J. M. MADDEN (Minister for Planning) — We are always committed as a government to continuous improvement in the planning system, particularly in relation to policy and also in relation to the application of the planning system and the processes by which the planning system operates. We are continually committed to improving that across the board.

Ninety-five per cent of planning decisions are made by local government authorities. We recognise that with authoritative decisions being made with great regularity across the system there will be glitches from time to time. That is not to justify their existence, but it is particularly important that local governments continue to guarantee quality assurance in the delivery of the planning system.

I note that the Auditor-General released a report in relation to the operation of the planning system and where improvements can be made, particularly in instances like this where local government authorities have erred in the administration of the planning system. It is important that local councils continue to commit resources and continually improve the system and also ensure that the qualifications and the rigour in the system are appropriate for the needs of their local communities. We are committed to that. We continue to commit to that through resources to local government and improving the planning process. Local councils must also account for their own quality assurance around these matters. If they do not comply, then there is the right of appeal.

I understand that not everybody will be happy with the planning system 100 per cent of the time. I also recognise that VCAT is the independent umpire.

Honourable members interjecting.

Hon. J. M. MADDEN — The opposition seems to be vocal in this space, but I remind the opposition that — —

Mrs Peulich interjected.

Hon. J. M. MADDEN — It is funny that when a minister intervenes the opposition is highly critical of it, but when VCAT, the independent umpire, makes an independent decision the opposition is also critical of that independent decision. We are reminded by the unruly interjections from the opposition of its inconsistency when it comes to either planning policy or planning process. The opposition is not entirely clear about when there should be intervention and when there should be independence. In this instance, whilst it is certainly an unfortunate situation for the land-holder to whom Mr Kavanagh referred, the independent umpire has made its decision. I certainly have a great deal of sympathy for this land-holder's circumstances, but in this instance, where VCAT has made its decision — —

Honourable members interjecting.

Hon. J. M. MADDEN — As I have twice been reminded by Mr Atkinson, in that instance the decision of the independent umpire stands. I recognise that that is an appropriate avenue that the land-holder has used. If the land-holder feels there have been omissions in terms of administration, he can take up further rights of appeal.

Respect agenda: government initiatives

Mr VINEY (Eastern Victoria) — My question is to the Minister for the Respect Agenda, Justin Madden.

Honourable members interjecting.

Mr VINEY — There is obviously not much respect around this place. I ask the minister to update the house on recent action undertaken in the respect agenda portfolio, including initiatives in regional Victoria.

Hon. J. M. MADDEN (Minister for the Respect Agenda) — I thank Mr Viney and welcome his enthusiasm for the respect agenda portfolio shown by his initiating and asking that question. I know he has a high regard for the work this government is keen on doing in this space. That stands in stark contrast to the scepticism and cynicism we see from others in relation to this agenda. The respect agenda portfolio is about addressing actions around antisocial behaviour, particularly about stemming alcohol-fuelled or alcohol-related violence, reducing bullying or cyberbullying and preventing violence against women.

Honourable members interjecting.

Hon. J. M. MADDEN — I find the unruly interjections of opposition members about such a significant aspect of what this government is doing to be incredibly hypocritical.

The portfolio also extends to actions to support respectful behaviour: promoting diversity, helping parents build self-respect in their children and getting people involved in the community.

I have three particular priorities in this portfolio. The first is to raise the issue of respect in the community. The second is to initiate and support innovative work that builds respect in partnership with the community. The third is to coordinate work across government that builds respect.

I am continuing to engage with groups across Victoria on their views on building respect. Last week I was at a community cabinet in the Eltham electorate where I was able to attend the third youth round table at the Eltham High School. With my colleague the Minister for Sport, Recreation and Youth Affairs I participated in a lively discussion about a range of issues affecting young people. One of the most interesting issues that face young people and is different in terms of the consciousness of the community is about Facebook, which particularly affects young people. This gave them a forum to explore their ideas in relation to these new issues. We need to be mindful that the world in

which many people have operated is different to the world in which many young people now operate, and we need to work with young people — and also older people, of course — in relation to these issues.

We also held round tables in Geelong and Yarra Glen in conjunction with other community cabinets and discussions with students at Footscray as part of the launch of the Respect in Schools strategy. I am also pleased to advise the house that I have commenced rolling out some extremely innovative projects aimed at building respect in partnership with many community groups.

Mr Viney — On a point of order, President, I refer you to standing order 12.20 in terms of imputing improper motives to members. I put to you that Mrs Peulich's constant interjections about fraud are imputing an improper motive to the government and to the minister in particular as he is answering the question. She should be asked to withdraw those comments.

The PRESIDENT — Order! Mr Viney correctly points out that Mrs Peulich has constantly interjected and made comments regarding corruption, corrupt practices, fraud et cetera. But she has related them constantly to the Labor Party. Therefore I have to say that a member cannot offend the Labor Party or the Liberal Party; they must make those comments to an individual to be in breach of the standing orders. Because Mrs Peulich referred to the Labor Party, I have to say she is not in breach, but her constant interjections are disruptive and I would suggest to her that we have had just about enough.

Hon. J. M. MADDEN — Thank you, President. Recently I had the great pleasure of announcing some extremely innovative partnership projects in building respect across the community.

I launched the first of these, Building Respect, on Tuesday, 13 July. This is a particularly impressive program in partnership with Mission Australia and a number of building industry group partners, including the Master Builders Association, Bunnings and AVJennings. It is designed to assist disadvantaged young people to take up apprenticeships in the building industry. These young people are at the vulnerable end because they may not have succeeded academically and may have other influences in their lives that do not necessarily support them in their ambitions. What is innovative about this project is that through this training assistance and support we are helping these young people build self-respect, confidence and self-esteem as well as raising awareness of issues and how they can overcome the negative impacts of things like bullying or alcohol-related violence.

This will give these young people an opportunity to work in a group, in a collective, and develop sufficient skills and enthusiasm for them to move into apprenticeships, with continued support from the likes of Mission Australia. This is particularly impressive, not only because it is a great outcome for young people but also because of the sorts of organisations that have partnered in the approach to deliver this project. It will deliver huge benefits not only for these young people and each of these organisations but also for industry because of the need to overcome the skills shortage in this space.

As well as that, on Saturday, 17 July, I announced the second of the partnerships — that is, Club Respect. It is a joint project of the South Barwon Football and Netball Club and Leisure Networks. This builds on South Barwon's existing leadership program known as the Swans community leadership program by extending it to four other community clubs in the region. It champions respect and leadership qualities through workshops with young club members.

This program will not necessarily be directed at football and netball clubs alone. As has been mentioned by Leisure Networks, it is looking to partner with other sports organisations in the region. That could well be the likes of tennis clubs, surf clubs — many of the sporting clubs in these areas where we are seeing a lot of growth, not only in the population but also in the number of young people as a cohort of that population. The program will deliver key messages about respect and the importance of respecting yourself and others in your community, and up to about 1000 people aged between 14 and 18 will be involved in it. This is another example of an innovative respect project in partnership with the community.

These initiatives build on a large number of other government programs across key portfolio areas of the respect agenda. They include *Victoria's Alcohol Action Plan 2008–2013*; *A Right to Respect — Victoria's Plan to Prevent Violence against Women 2010–2020*; the Respect in Schools strategy; *Victoria's Volunteering Strategy 2009*; and the Victorian Code of Conduct for Community Sport. As you can see, a range of initiatives are flowing through to the community. As I have said on many occasions, the cultural changes that will be advanced through these programs will not happen immediately — they will not happen today — but they will happen, and this government is particularly committed to partnering with communities to see this delivered.

This shows our enthusiasm for working in partnership with people right across the community on those priorities which have great meaning for our community and which contribute to Melbourne's and Victoria's livability. It would be easy to be sceptical and cynical, as we see from others in this chamber today. But when there is a need to roll up your sleeves and work in partnership with the community, this government has the bona fides and is committed to doing that. Whether it is for Melbourne, regional Victoria or smaller towns or communities right across Victoria, this government is committed to maintaining and improving livability to make sure we make Victoria the best place to live, work and raise a family.

Sitting suspended 1.19 p.m. until 2.23 p.m.

CONTROL OF WEAPONS AMENDMENT BILL

Second reading

Debate resumed.

Ms PENNICUIK (Southern Metropolitan) — Before the lunch break I was mentioning how the Control of Weapons Amendment Bill is in breach of the Victorian Charter of Human Rights and Responsibilities. This is reflected in statements made by Minister Cameron in his statement of compatibility — or in this case his statement of incompatibility — with the Victorian Charter of Human Rights and Responsibilities. On page 3 of the statement the minister says:

> I concluded last year that the scheme governing the exercise of such powers, as introduced, was incompatible with s 13(a) of the charter. It follows that the further amendments contained in the bill, by relaxing the constraints on the use of the scheme, exacerbate this incompatibility.

Further on page 3 he says:

> This government nevertheless wishes to proceed with the amendments.
>
> Whilst the random search powers introduced in late 2009, as used in planned designated areas, have been effective in the detection of offenders and in deterring others from offending —

the minister provides no evidence for this statement; there is no public evidence that these search powers have been effective in the detection of offenders or in deterring others from offending; that is just an assertion by the minister —

> the community's concern about the level of violence involving the use of knives and other weapons in public places has not abated.

Again there is no evidence. I would say, too, that the concern about the level of violence involving knives and other weapons in public places is a concern that is often whipped up in the media by the government and other members of Parliament. The level of concern is above the hazard that actually exists in the community. The minister continues:

> It is necessary to ensure that police are empowered to do everything that they need to do to prevent and deter weapons-related offending. Whilst the amendments in this bill will not alleviate the incompatibility of the existing provisions, they are necessary to ensure the operational effectiveness of these critical police powers.

That is the crux of it. That is why these provisions have been put forward. It is to ensure the operational effectiveness of police powers. For the operational effectiveness of police powers the citizens of Victoria are going to have more of their basic human rights and personal freedoms infringed upon, which has been a theme of this government. Since I have been in this place I have been faced with bills that incrementally, bit by bit, have chipped away at the personal freedoms and rights of Victorians for very little reason. We live in a democracy, and people in other places fight to keep these rights that are being chipped away, bit by bit, by the government bills that are put before us.

Obviously, along with any other person in the community, members of the Greens are concerned whenever somebody uses a knife against somebody else. It is not a new thing; knives have been used in crime ever since there were knives, I presume. It is a concern whenever that happens. Our point of view has been that prior to 2009, under the Control of Weapons Act 1990, the Crimes Act and other associated acts, the police had powers to deal with that issue. Those powers involved being able to search people with or without a warrant when there was a reasonable suspicion. We believe, and we contended to this effect, that those powers are all that are needed by the police and that the law that was brought in last year and the extension of that law proposed by this bill are not warranted — no evidence has been put forward to demonstrate that they are.

There has been some correspondence received and comments have been made in the media about the bill. One comment I will quote is from the privacy commissioner, who made a submission to the Scrutiny of Acts and Regulations Committee in relation to this bill. I have already mentioned that the statement of compatibility concedes that provisions of the bill are

incompatible with the charter. You have to ask why we have a charter of rights and responsibilities if we do not adhere to it, especially if we do not adhere to it for no good reason. The summary of conclusions by the privacy commissioner, written in June of this year, states:

> The bill exacerbates and aggravates the intrusion of the substantive act on privacy rights of Victorians, in breach of charter rights;
>
> The bill relaxes constraints on police discretion to declare 'designated areas' which permits arbitrary searches of individuals within such areas. This reduces the already inadequate constraints in the act. It is unclear how the existing provisions in the act are failing to meet the requirements of Victoria Police, particularly given the short existence of the provisions. Judicial or other oversight should be required to designate areas where arbitrary weapons searches will occur.
>
> The bill reduces protections afforded to children and individuals with impaired intellectual functioning, and will permit strip searches of those individuals without the presence of an independent person in certain circumstances.
>
> The bill provides for inadequate accountability, oversight and review of administrative decisions to designate an area, and inadequate reporting requirements to enable proper review of the scheme.

I agree with those remarks of the privacy commissioner. In my experience, the privacy commissioner does not come out and comment on many bills that come before the Parliament, and even when members of Parliament like me seek to find out their views on certain bills before the Parliament they are often not forthcoming, so for the privacy commissioner to make such a strong statement about this bill is something that I think should give the government pause.

The Law Institute of Victoria has written to all members with concerns about the bill. The bottom line of what the law institute is saying in its last paragraph is that the bill should not be passed in its current form. It bemoans the lack of consultation on this bill, which I point out too — there has been no consultation regarding the provisions of this bill with the people who work on the ground in this area. It asks that the government engage in a consultative process to ensure that the real reasons for knife carriage and knife violence are addressed in a way that ensures the protection of the human rights of all Victorians.

I mentioned before lunch, and it is worth repeating, the judgement of the European Court of Human Rights in *Gillan and Quinton v. United Kingdom* (2009) ECHR 28, which considered section 44 of the Terrorism Act 2000 of the UK, which basically governs the stop and search powers for a vehicle or pedestrian in a specified and authorised area. It is very similar to the provisions in this bill, but that is the UK Terrorism Act, so it is about preventing terrorism and not about carrying knives. It is important to say that that particular regime does not allow a constable to require a person to remove any clothing in public, except their headgear, footwear, an outer coat, jacket or gloves, yet under our provisions — and under the provisions of this bill, which the Greens are obviously opposing — not only can a person of any age, including children and intellectually impaired people, be strip searched but under the provisions to be introduced in this bill that can be without a parent or guardian in the case of a child, or in the case of a person with an intellectual disability, without an independent person. I find that offensive and completely unnecessary, and the only reason given is police expedience. That is what the European court has found rendered the UK act of Parliament in breach of human rights.

There is also the claim that knife crime is on the rise. In one article Assistant Commissioner Walsh of Victoria Police says that robberies involving knives have increased 9.4 per cent in the past year. The Law Institute of Victoria takes issue with that and says:

> Victoria Police statistics do not show an increase in knife violence over the last decade when adjusted for population increase. In fact they indicate that robberies with knives have dropped.

The submission from Youthlaw also makes the point:

> Putting aside media report and anecdotes, there is little evidence suggesting that knife usage is increasing. In relation to knife violence Victoria Police … show that adults, not children are overwhelmingly responsible for drunken violence and knife crimes with … increase in adult violent crime, and a 3.3 per cent decrease youth violent crime.

We do not necessarily have a clear picture about what is going on with crimes involving knives in the community. As I mentioned, Youthlaw's submission says:

> Over the past six months Victoria Police have searched more than 1300 people. Thirty-five weapons were found and nine charges were laid.

It is not as if this was a spectacular finding of weapons. The submission goes on to say:

> Media coverage suggested large caches of frightening weapons found; however, independent persons present observed that most knives were pocket and key chain-type knives.

They were not the prohibited and controlled weapons that are the subject of this legislation. The submission goes on:

> There is ongoing debate and considerable difference of opinion in the community about the extent of knife carrying and usage.
>
> It is extremely important that searches undertaken by police are documented in sufficient detail for the public and government to be properly informed about this important issue.
>
> Youthlaw strongly urges amendment to the bill to require detailed records be kept of all searches including all weapons found and the age of the person searched.

That is the problem with this bill, because it will reduce the reporting required by police on searches conducted in planned or unplanned designated areas. At the moment I can quote statistics about how many people were searched, how many knives were found and how many charges were laid, because the police are required under the current act to collect that information, but under this bill police will only be required to report if a strip search has been conducted.

Again I ask the department why we are doing that. This is a law that infringes on people's rights and is incompatible with the charter of human rights, albeit the government is complaining that there is a need for this bill, yet under the provisions of the bill there will be less data collected about how many searches take place, what weapons are found and whether charges are laid. Only strip searches will be recorded for the unplanned designated areas.

There is also a provision in the bill which relaxes the naming of unplanned designated areas and for the provisions regarding independent persons and collecting data in that scenario to sunset in three years to allow for a review. It is one of the small mercies in the bill that this provision will have a sunset clause attached to it with the view that the government will conduct a review. I want to know how the government can conduct a review if it is not going to be collecting any data about who is being searched under the provisions, how many people are being searched, what has been found, what has been the result and whether people have been charged and convicted of any crime. If the government cannot collect the data, what is the point of having a review? How can it conduct a review without that data?

I mentioned earlier that the human rights commissioner has also raised concerns about this bill and has said that it gives police excessive powers and is an unreasonable incursion on individual rights. The commissioner questions another provision of the bill which will enable first time offenders aged 16 or over to be issued with a $1000 on-the-spot fine for carrying a knife without lawful excuse. As I have said, we do not support people carrying knives without lawful excuse, but it is about how the law deals with that in a balanced way. Our contention is that this law is completely unbalanced. The human rights commissioner, Dr Szoke, is quoted as having said:

> Harsher laws and tougher penalties will not eliminate knife crime …

That was also said by every other submitter, including the Privacy Commissioner, the Law Institute Victoria, Youthlaw and others who have made submissions on this bill, have. These people have made the point to the government that stop and search powers have not been found to eliminate knife crime.

In the debate on the Summary Offences and Control of Weapons Acts Amendment Bill, which came before the house late last year, I mentioned what the New South Wales shadow Attorney-General, Mr Greg Smith, stated in the New South Wales Bar Association journal regarding law and order in elections and the escalating law and order auction that both major parties seem to want to engage in around election times. Bearing in mind that, as shadow Attorney-General, Mr Smith is a member of the Liberal Party, he has made the point that harsher sentences have made the law more complex and error-prone and have fuelled the current above-average rate of reoffending in New South Wales, with the state being unable to afford to send people to jail.

In relation to these laws that are coming forward an *Age* article this week reports that, Liberty Victoria president, Michael Pearce, said that it is:

> … ironic that a NSW Liberal had slammed the process of trying to win votes by being tough on crime when Victorian Liberals are driving it with Labor in tow.

The article quotes him as having said:

> It's regrettable because in Victoria we have relatively low crime rates … but now we are in this auction which is unduly whipping up public anxiety and resulting in policies that will now effectively deal with the underlying causes of crime.

I agree with the comments made by Mr Smith that not only is the bill flawed in its basic assumptions but also the amendments it makes to the Control of Weapons Act would make the act messy and some provisions are difficult to follow. As Mr Smith said, when the amendments are made, the act will be error-prone and confusing. In its two attempts at amending the Control of Weapons Act 1990 the government will have succeeded in making the act more confusing as well as more draconian.

In addition to the clauses which allow for the strip-searching of children and people with an intellectual disability without an independent person present, under clause 5 the bill also singles out children as persons who must not purchase a prohibited or controlled weapon and assigns penalty units to those offences. It has been brought to my attention that the penalties assigned under clauses 5 and 6 to children purchasing a prohibited weapon are higher than the penalties that can be awarded in the Children's Court.

It is already illegal under the act for anyone to purchase a prohibited or controlled weapon without a lawful excuse, and that includes a child. Under the act a child would be dealt with in the Children's Court where they could not receive the level of fines imposed under this bill. I understand that this is about the government saying that children are not allowed to purchase prohibited or controlled weapons. As I said, as the law stands it is already illegal to do so.

In his statement of compatibility the minister concedes that this is an infringement of the rights of children under the charter over and above the rights of adults. The bill targets children above adults even though they are not overrepresented in violence or knife crime — in fact it is adults who are — so there is not even any reason for this targeting.

Clause 15 provides for the issuing of infringement notices for being found in possession of a controlled weapon. That has also been attacked from various quarters: the law institute, the privacy commissioner and the human rights commissioner. The government cannot on one hand say that possessing a knife is a very serious offence and then on the other hand say that it is not a serious offence, but it is the sort of offence for which you hand out an infringement notice like a parking ticket or one for a traffic violation for which an infringement notice can be issued.

Mr Tee interjected.

Ms PENNICUIK — What I am saying is that infringement notices should not be issued for this offence if it is a serious offence.

A certain demographic of the community, people aged between 16 and 18 years, seem to be targeted by clause 15. Everywhere else the bill refers to a child being someone under 18, but under this clause if you are between the ages of 16 and 18 you can be served with an infringement notice as if you were an adult. It provides that an infringement notice can be served only on a person who is over 16, so people between 16 and 18 are somehow being targeted by this clause.

Mr Tee interjected.

Ms PENNICUIK — They are not adults.

Mr Tee interjected.

Ms PENNICUIK — The rest of the bill treats everybody under 18 as a child except for this particular clause, which effectively treats people over 16 as adults.

What I have outlined are the Greens main concerns with the bill. I have many amendments to the bill. Earlier I said I was toying with the idea of the amendments being that all clauses except clause 14, which seems to be the only worthy clause in the bill, be removed from the bill.

I have also prepared a reasoned amendment, because the Greens do not support the bill at all. We do not believe the government has supplied any evidence of the need for the bill, and there has really not been any time to evaluate the operation of the act that was amended just seven months ago. From the Greens point of view even those amendments were not needed. Therefore I move:

> That all the words after 'That' be omitted with the view of inserting in their place 'this house refuses to read this bill a second time until an independent and public review of the existing provisions established under the Summary Offences and Control of Weapons Acts Amendment Act 2009 is undertaken, and reliable evidence shows that further amendments to the act are required.'

With those remarks, I look forward to the committee stage of the bill.

Mr TEE (Eastern Metropolitan) — I welcome the opportunity to talk about the Control of Weapons Amendment Bill. In doing so and in continuing the debate we had yesterday, it is important to remember and acknowledge that we in Victoria are in a very fortunate position where we continue to see the crime rates fall. We now have the lowest crime rates in a generation, and Victoria leads the way nationally, with the lowest crime rates in the country. This is an outcome that we all welcome. It ensures that Victoria is a great place to live, and we need to maintain that outcome.

In my time in this place we have seen a number of bills introduced and we have worked through a number of ways of delivering outcomes, diversion being a key one. We have also seen the establishment of Koori courts, drug courts and mental health courts. The government has taken a number of very important

initiatives to ensure that crime decreases and that the community is safe.

We cannot be complacent, and government must act when trends or issues emerge that affect the livability of Victoria. Recently we have seen the beginning of the unfortunate development of a knife culture in Victoria. If left unchecked, this culture will spread. It can cause significant and untold personal damage to individuals, and it is rightfully of concern to the public.

The government has acted quickly and effectively in response to this development. We have all seen the community education campaign that warns of the dangers of carrying knives and of the lifelong scarring that may occur because of them. The government has reinforced that opposition to knife culture by ensuring that police have sufficient powers to investigate and stop the carrying of weapons. This bill continues that. It builds on the framework of powers that are available to the police. The changes to the laws are about encouraging a change in attitudes to carrying weapons, such as knives. It is a tool the government is utilising as part of its campaign around crime. It is about identifying a particular problem and working to address that problem.

The bill sends a clear message that it is not appropriate to carry weapons in public places. It is not appropriate to carry knives as weapons, and it is not appropriate to carry what may be a weapon. Knives and weapons should be left at home, unless there is a legitimate reason for carrying them.

I turn to the details of the bill. The bill makes it harder to access weapons. It creates a new offence prohibiting the selling of a prohibited weapon to a child under 18 years of age. This builds on existing restrictions in relation to the sale of prohibited weapons to children aged under 18. Prohibited weapons are the most serious types of weapons, such as flick knives, swords and daggers. On most occasions there is no legitimate need for a prohibited weapon like a flick knife, sword or dagger to be carried by anyone, including children aged under 18.

The bill deals with the existing requirements in relation to the selling of prohibited weapons. Currently there is a requirement for an exemption or approval under the Control of Weapons Act. The bill provides that the seller of weapons must examine the purchaser's ID and must reasonably believe the purchaser has a relevant exemption or approval under the act to purchase the weapon. The new provisions add a requirement that a seller cannot sell to a person under 18 years.

In addition to these changes to prohibited weapons, the bill also deals with controlled weapons — that is, knives and other assorted implements that are not prohibited weapons, including kitchen knives, pocketknives and weapons of that ilk. The bill makes it an offence to knowingly sell a controlled weapon to a child. This is about ending the circulation of knives as weapons in our community. It is about curbing knife culture amongst children aged under 18 years; it is about stopping what becomes a cycle of children carrying knives sometimes because they know or suspect that others are carrying knives. It is about stopping that cycle and stopping that culture in its tracks. The intent of the legislation is to stop a culture emerging where it becomes fashionable for young people, including 16, 17 and 18-year-olds, to carry knives because of the fear that other people are carrying knives.

A number of protections are in place to ensure that the legitimate use of knives by young people can continue, including allowing a child to obtain or possess a prohibited weapon where they have an exemption or approval under the act or possessing or using a controlled weapon where they have a lawful excuse.

The focus of the bill is not the possession of a weapon by a child in terms of these provisions; it is more about the sale of a weapon to a child. It is about trying to ensure some sort of parental or guardian oversight; it is about ensuring that we do not have a culture like this but that we allow children to possess a knife. We want to encourage them to use a knife for sporting, recreational, professional or other purposes. There is no infringement on the legitimate use of knives, but there is a prohibition on the sale of those knives. There are also provisions which ensure that children can continue to handle controlled weapons if they are required to do so as part of their employment, such as if they handle knives at work or deal with knives as sales assistants or cashiers.

There are some provisions in the bill which deal with changes to planned and unplanned searches. Probably the most significant change to planned designations is the extension of the capacity to have a planned search for more than 12 hours. What the bill does is extend that maximum search period. This is to pick up on the fact that Victoria has a number of festivals or events that run over a number of days, so it is appropriate to have a planned search over the period of the event. Again there are protections in place. The searches can only occur during the hours of operation of the event, and there are a number of notification requirements in relation to planned searches that also make sure that the balance is right.

In relation to unplanned searches, these can occur where the Chief Commissioner of Police is satisfied that more than one incident of unlawful possession, carriage or use of a weapon, or violence or disorder involving weapons, has occurred. There is an extension of the grounds on which unplanned searches can occur, provided that the chief commissioner is satisfied that there has been the requisite degree of usage or carriage of weapons in that particular area.

As Ms Pennicuik has indicated, there is a requirement for these designations to be made by very senior levels of police, being at least at assistant commissioner level rather than the current minimum level of inspector. This will ensure that these powers are used sparingly and responsibly.

There are also sunset provisions for the part of the bill dealing with the test for the chief commissioner in making unplanned designations. They sunset after three years, which is appropriate. This provides a suitable amount of time to judge the effectiveness of the changes. The effectiveness of the changes will be reviewed by a parliamentary committee, which will report to Parliament six months before the expiration of the sunset period. So the provisions will be in place for some two years, the parliamentary committee will review the effectiveness of those provisions and then the committee will report to Parliament to give Parliament an opportunity to consider how well the provisions have worked, whether they ought to continue and, if so, in what form.

In summary, the bill provides a clear deterrent to stop people carrying knives and other controlled weapons unlawfully. It is about nipping an emerging ugly culture in the bud before it becomes the norm, before it becomes acceptable behaviour and before it becomes fashionable. It is about reassuring Victorians that the government is taking action to make sure that their communities continue to be the safest in Australia. It is about assuring communities that their friends, children and other family members can go out and have a good time without the threat of knife-related crime. I commend the bill to the house.

I want to address an issue that Mr Dalla-Riva raised. He indicated that the opposition had some concerns in relation to plastic knives and was considering moving some amendments. As he indicated, there have been some discussions about the difficulties that emerge when you try to exclude plastic knives. A number of kinds of hardened plastic are used to make weapons. It would have been irresponsible to try to move to exempt plastic knives, because all that would do is create a market for the sale and advertising of plastic weapons. We are not talking about picnic knives here; we are talking about hardened plastic, which can be turned into lethal weapons.

The other issue Mr Dalla-Riva raised was that of retailers wanting more notice to ensure that they can comply with these provisions. There is already a high benchmark test for retailers selling controlled weapons to children. They must know they are doing so; that is a reasonably high threshold test. However, we have spoken to retailers and assured them that we will give them time to adjust to the changes. We do not expect them to remove knives from their shelves. There is no requirement for them to do so, there is no expectation that they will do so and there is no expectation that they will keep knives in particular areas. However, there is an expectation that their staff will be properly trained. They have asked for time in which to do this training, and we have undertaken to provide it. In relation to our discussions with retailers and the opposition we have undertaken that the provisions dealing with retailers will not take effect until January 2011. I understand that this addresses the opposition's concerns in relation to the time that retailers need to adjust to these provisions.

I will also briefly address the reasoned amendment moved by Ms Pennicuik, which would effectively defer this bill. Ms Pennicuik has indicated that she opposes the bill and thinks it ought to be deferred — I suspect indefinitely. We certainly will not support the reasoned amendment.

The bill provides additional changes, but we say these are incremental and that there should not be any further delay. The community wants action. The changes we have already put in place have been part of a campaign which has seen a diminution in the sorts of violence that have been of concern. I think it would be irresponsible to delay these further incremental changes — these improvements — which are successful in sending a clear message about the inappropriateness of knife-related crime.

We need to act now. The community expects us to act now. I think the community would be disappointed if we did not continue to move to ensure we limit the control of weapons. For that reason we will be supporting the bill and opposing the reasoned amendment moved by Ms Pennicuik.

House divided on amendment:

Ayes, 4

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

Noes, 35

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

Amendment negatived.

Motion agreed to.

Read second time.

Committed.

Committee

Clause 1

The DEPUTY PRESIDENT — Order! The committee has been asked to consider the Control of Weapons Amendment Bill 2010, a bill for an act to amend the Control of Weapons Act 1990 and for other purposes. I have been given a series of amendments and new clauses to be proposed by Ms Pennicuik. They just about cover the bill, so I am sure the opposition will be able to fit in with this as well.

We will start with clause 1, the purposes clause. Ms Pennicuik has an amendment in respect of clause 1, and that proposes the omission of clause 1(b) relating to offences for a child. In my view it is a test for consequential amendments 5 to 12 and 22 to 28. This is a significant amendment in terms of Ms Pennicuik's proposals to the committee. I invite Ms Pennicuik to formally move amendment 1, and I indicate to members of the committee that there is an opportunity here to discuss that amendment as well as the purposes clause itself. I understand Mr Tee will be assisting the committee in some respects today as well.

Ms PENNICUIK (Southern Metropolitan) — I move:

1. Clause 1, lines 7 to 9, omit all words and expressions on these lines.

This would remove subclause (b), which provides for separate offences for a child to buy a controlled weapon or a prohibited weapon. As the Chair has pointed out to me, this appears to be a test for a great number of other amendments, of which I was not aware until this moment. Could I clarify with the Chair whether I can canvass my amendments to clauses 5, 8, 9 and the other clauses tested by this amendment, clauses 15 and 16?

The DEPUTY PRESIDENT — Order! It tests amendments 10, 11 and 12 and then amendments 22 to 28.

Ms PENNICUIK — Yes, which relate to clauses 15 and 16. It has put me at a slight disadvantage that the Chair has all this information and I have only just received it now. I wanted to ask whether I was able to go to those clauses or whether I should stick to clause 1 and discuss the other clauses later, even though my amendments may have been tested? That is what I am trying to clarify.

The DEPUTY PRESIDENT — Order! Because I regard this as a test, I will allow Ms Pennicuik to canvass any substantive matters in later clauses, provided they are still contingent upon amendment 1. In other words, they are linked amendments for my purposes, and I will let Ms Pennicuik touch on the subject matter in those other clauses as part of her argument to establish why amendment 1 ought to be accepted by the committee.

Ms PENNICUIK — Thanks very much, Chair. As I said earlier, my amendment to clause 1 would remove subclause (b), which is to provide for separate offences for a child to buy a prohibited weapon. I have a question for the minister: what is the reason for this purpose of the bill — that is, to provide separate offences for children — when the minister has said the ban on children purchasing prohibited and controlled weapons would result in persons of a given age being treated less favourably than persons aged 18 or over who are in the same or similar circumstances? Although it is already an offence under the existing act for any person to purchase a prohibited weapon, the act does not specify which person this applies to. Why has the government chosen to single out children in this way under this clause as a purpose of the bill?

Mr TEE (Eastern Metropolitan) — As I understand the nature of the question, particularly in terms of

prohibited weapons but even in relation to controlled weapons, the aim of the bill is to prevent them being sold to children. That is a new offence. If the question is why that offence does not apply to people over 18, the answer is obviously that we want them to continue to be able to purchase weapons. The purpose of the bill is not targeted at the possession or use of weapons by children for their usual legitimate purposes; it is about trying to provide some parental or guardian oversight in relation to the sale of weapons. The bill is targeted at retailers and provides retailers with penalties for the sale of weapons, but on occasion there is a requirement for offences and penalties to apply to children who purchase those weapons or knives.

Ms PENNICUIK (Southern Metropolitan) — It is already an offence under the act for any person to bring into Victoria, or cause to be brought into or sent into Victoria, or manufacture, sell or purchase, or display or advertise for sale, or possess, use or carry a prohibited weapon without an exemption. My question is: why is the bill confusing and breaking that up when it is already quite clear under the existing act that it is already an offence?

Mr TEE (Eastern Metropolitan) — In relation to the issue of prohibited weapons Ms Pennicuik has correctly indicated that — and I do not have the provisions in front of me, but it is in relation to the importation of weapons — the Control of Weapons (Amendment) Act provides certain exemptions and authorisations, so whether it is daggers, swords or flick-knives, you can, if you have an appropriate exemption, possess and indeed sell them. The addition to this law will mean you cannot sell a prohibited weapon to someone under 18. Before this bill you could; after this bill is passed you will not be able to do that. Currently, someone who is 17 could be sold a prohibited weapon provided the seller has the appropriate exemption and the purchaser has the appropriate exemption; but after this bill is enacted a person who is under 18 cannot do so.

Ms PENNICUIK (Southern Metropolitan) — Does that mean that it is still okay for a person to possess a prohibited weapon with an exemption, they just cannot purchase one? Is it the case that the effect of this will be that other people will purchase those weapons for children?

Mr TEE (Eastern Metropolitan) — Yes, that is right. The aim is to ensure that there is appropriate adult oversight, ideally from a parent or guardian.

Ms PENNICUIK (Southern Metropolitan) — But it does not say that.

Mr TEE (Eastern Metropolitan) — No.

Ms PENNICUIK (Southern Metropolitan) — I would like to go to the penalties under clauses 5(1AD) and 6(1AA) — 25 penalty units in respect of the former and 12 penalty units in respect of the latter, which are quite hefty penalties. I have been advised that the maximum penalty fine under the Children's Court is 5 penalty units. My question is: how has the government arrived at this particular formulation of penalty units for those new offences?

Mr TEE (Eastern Metropolitan) — The 25 penalty units applies in relation to prohibited weapons and the 12 penalty units applies in relation to controlled weapons. But clause 6, which has the 12 penalty units for a controlled weapon, would need to go to the Children's Court. I do not think these are the infringement provisions. What would happen is that you have got a maximum penalty of 12 penalty units. Initially the process would be that police would treat it by way of caution, but if that does not work, then there are a couple of options. The first thing is the police will treat it with caution, and if you are under 16, you will go to the Children's Court, where you will be referred to a number of the diversionary programs. It is a maximum penalty.

Ms PENNICUIK (Southern Metropolitan) — As I understand it, the maximum penalty is 5 penalty units in the Children's Court or a fine will be imposed. I am asking whether this bill is in contradiction to what is applicable in the Children's Court.

Mr TEE (Eastern Metropolitan) — For these offences this bill provides the Children's Court with a jurisdiction of up to 12 penalty units.

Ms PENNICUIK (Southern Metropolitan) — Yes. I hear what Mr Tee is saying, but I have been advised by lawyers that there is no power in the Children's Court to apply a penalty of over 5 penalty units. That is my question.

Mr TEE (Eastern Metropolitan) — In terms of the current position, the Children's Court has jurisdiction for a range of matters and can sentence children to lengthy detention periods, so it has an extensive jurisdiction in those areas. In relation to the penalty units, I understand this will be the top end of its jurisdiction.

Ms PENNICUIK (Southern Metropolitan) — If I could go to what Mr Tee said before, which was that he is expecting that in the case of a child purchasing a prohibited weapon or a controlled weapon they would

receive a caution in the first instance. Is that what Mr Tee said?

Mr TEE (Eastern Metropolitan) — The usual police practice is to issue cautions, yes.

Ms PENNICUIK (Southern Metropolitan) — If I could then go to clause 15, which is also caught up in this amendment — —

The DEPUTY PRESIDENT — Order! In terms of going to clause 15, are these questions that are relevant to amendment 1 or are they questions about the operation of clause 15?

Ms PENNICUIK (Southern Metropolitan) — Clause 15 has been caught up into clause 1, so the amendments I would like to make to clause 15 are related to the purposes clause, clause 1.

The DEPUTY PRESIDENT — Order! That is okay, but we need to be a bit confined. In other words, it is not a broad question-and-answer period on clause 15. The only questions that ought to be asked at this point, when we are on clause 1, are things that are absolutely relevant to the passage of amendment 1. What I am asking Ms Pennicuik to do is to substantiate the clause 1 proposition with any discussion or questions that she has on clause 15, but not to open up the ambit of clause 15.

Ms PENNICUIK (Southern Metropolitan) — As you say that, Chair, it does make me look again at clause 15, which does not go only to the separate offence of a child buying a controlled or prohibited weapon; it also talks about the issuing of infringement notices, including to adults. I wonder whether we could have a reconsideration of that because if I am to be restricted in my ability to move my amendment to clause 15, it does not necessarily relate to a child purchasing a weapon.

The DEPUTY PRESIDENT — Order! Ms Pennicuik will have the opportunity to ask the broader questions on clause 15 when we get to clause 15. At the moment I want to only entertain questions that are pertinent to the proposed amendment to clause 15 in the context that Ms Pennicuik is trying to substantiate a case for the amendment to clause 1.

Ms PENNICUIK (Southern Metropolitan) — There is one part of clause 15 which goes to that, which I will go to now.

The DEPUTY PRESIDENT — Order! Yes, but Ms Pennicuik will have the opportunity to ask the broader questions on clause 15 subsequently.

Ms PENNICUIK (Southern Metropolitan) — Thank you, Chair, for that assistance. I refer the committee and Mr Tee to clause 15. In relation to new section 11B(2), which I mentioned during my second-reading contribution, the offence under section 6(1AA), for which an infringement notice may be issued, applies to a person not less than 16 years of age, whereas in the rest of the bill a child is defined as a person under 18. I am wondering why in this case, but nowhere else in the bill, an infringement notice is able to be served on a child between the ages of 16 and 18.

Mr TEE (Eastern Metropolitan) — As a general rule, we do not issue infringement notices to children under 16. If you are under 16, there is no option for the police to issue you with an infringement notice; you go to the Children's Court and get picked up through the mechanisms in place there. It is not appropriate for us to serve those notices to children under 16, and that is what we do across the board. But for 17-year-olds and 18-year-olds and older, yes, there are provisions for the issue of infringement notices. We think that is appropriate. But to be absolutely clear: police do not issue infringement notices as the first option; they would rather issue a caution, and then, if need be, issue an infringement notice for subsequent offences.

Ms PENNICUIK (Southern Metropolitan) — There is a $1400 maximum penalty for an offence under new section 6(1AA). New section 11B(2) provides for a 2 penalty unit infringement notice. Why is the government choosing to issue infringement notices of two penalty units for a child purchasing a controlled weapon when 12 penalty units can be imposed if a matter goes to court?

Mr TEE (Eastern Metropolitan) — It is not an unusual precedent in terms of the way we use infringement notices. Infringement notices are part of the armoury that is available to police. Police can issue an infringement notice, but where the offence does not warrant an infringement notice because it is serious or because it is not the first offence or because of other circumstances the matter can go to court. You would expect and hope our courts would have a much greater discretion because they are obviously independent of the police. They have a greater discretion to take into account all the circumstances and hear all the evidence. It might be that the courts decide that a penalty of around two penalty units is right, but they have a much greater discretion to take into account all of the circumstances. We would prefer the courts to have a greater discretion and for the police to have a limited discretion and limited capacity to fine individuals.

Ms PENNICUIK (Southern Metropolitan) — Does the government have any evidence that the issuing of infringement notices on 16-year-olds and 17-year-olds would be effective?

Mr TEE (Eastern Metropolitan) — The government believes it will be. In our view it is often a better alternative for the individual to receive an infringement notice. If the individual has gone through the cautioning process and there is no alternative, it is probably a better option for them to get an infringement notice than to go through the court process, which might involve them getting a record and other consequences of having gone through the court processes, which are often not ideal for individuals. We think it is a better alternative, which will hopefully ensure that we do not expand the entrapment of young people into our justice system.

Ms PENNICUIK (Southern Metropolitan) — Under clause 1(d), which deals with the changes to records and reports of searches that occur under this bill, fewer records will be required to be kept than is currently the case under the act, and they will be limited to strip searches, and that is just in an unplanned designated area; the member might like to correct me on that. My question is: given that the department in my briefing assured me that, given the sunset clause, there will be a evaluation of how all of this has worked, how can that be done if records on the full extent of searches carried out under the act and the consequences of those searches are not kept?

Mr TEE (Eastern Metropolitan) — To be clear, I indicate that the bill provides that if an individual is charged, not even if they are convicted, that information will be recorded, including the age group and gender of the individual and where the offence occurred. Information will be recorded, and that information, in the broad, will be made public. If we have a process in a planned search area, which might involve hundreds of individuals walking to an event, we do not necessarily want to record all the information as there might be a number of individuals who are carrying weapons. There might be a chef carrying a knife, or a farmer and other groups that have a legitimate reason for carrying a weapon. What we do not want to do is necessarily record their details because it would increase the catchment of information for police. We are not of a mind to increase the amount of information collected by police about people who have a legitimate purpose for carrying a knife.

Ms PENNICUIK (Southern Metropolitan) — I am not necessarily suggesting that the police should take the name and address of every person who goes through a metal detector — and it probably does not happen at an airport, for example. But will there be provision for persons who want to have a record that that has happened to them? Will the police provide a record for people — for example, 'You went through this search and here is a receipt to say you went through it today'.? Will there be just a count of how many people were searched that day, how many weapons were found, what weapons were found and how many charges were laid? That is the sort of statistic we already have. I want to know about those statistics which are not necessarily identifying the people but just keeping a record by stating that on such and such a day so many people were searched by the metal detector and so many were patted down. They are the sorts of records on the searches that I am concerned should be kept.

Mr TEE (Eastern Metropolitan) — It is slightly different to your analogy with airports in the sense that sometimes individuals going through will be carrying knives and will continue to carry knives having gone through the search, and we will not be recording those individuals' details. On the question in terms of the numbers of people, in a more generic sense, and whether or not that will be recorded, I might just take a moment to see what the position is there.

As I said, details of individuals who are legitimately carrying knives will not be recorded. In a broad sense, police do and will continue to regularly update the community about the number of people who have gone through searches. That is information that will be made publicly available.

Ms PENNICUIK (Southern Metropolitan) — This point needs to be clarified because on my reading of the bill — and you might like to take advice so that this is clarified — and certainly on what other people have said, in the unplanned designated area the only record that will be kept will be of people who are strip searched, and not of any other type of search. That will be the only record of the number.

Mr TEE (Eastern Metropolitan) — The information will focus on where charges are laid, and we will record where charges are laid. We will record information in relation to strip searches, yes, that is right; we do record offences where there are charges. I am not saying for a moment that that is reflected in the bill, but police are required under their legislation, when they charge an individual, to record and make public information about where the offence occurs, the gender of the person and their age. They do not record that they had 10 people who were 18, but within a particular bracket they

record the number of people who were charged for a particular offence.

Ms PENNICUIK (Southern Metropolitan) — I am finding it very hard to get a straight answer on this. I think you are affirming to me that people who will be charged will be counted?

Mr TEE (Eastern Metropolitan) — Yes.

Ms PENNICUIK (Southern Metropolitan) — What I want to know is, because this bill is about arbitrarily searching people going about their business in a designated area — unplanned, unnotified to the public — is the bill removing the requirement that exists in the current act for the police to record every search? That is the current requirement. Is this bill changing that requirement and limiting it to strip searches carried out in an unplanned designated area? Is that a clear question?

Mr TEE (Eastern Metropolitan) — If the question is: if an individual is patted down, is that required to be counted; is everybody who is wanded counted; and is everybody who walks through a metal detector counted? — there is no requirement to do so. But there is an assurance that in a broad sense police will keep that information. There is not a requirement to identify exactly the numbers, but in a broad sense there will be, and that information will be made publicly available. That is the way police currently operate and will continue to do so. But under the express requirements of the bill, no, there is no requirement to identify the number of people who have been wanded through, patted down or gone through the metal detector.

Ms PENNICUIK (Southern Metropolitan) — Given it is the case now that those people are counted and statistics are kept, why is that being removed from the bill?

Mr TEE (Eastern Metropolitan) — I have had an opportunity to clarify that, and in terms of the requirement to count each individual, which is the current requirement, that requirement is not in the amendments to the bill.

Ms PENNICUIK (Southern Metropolitan) — Yes, and the second part of that question is: why?

Mr TEE (Eastern Metropolitan) — Again, because what the police have found is that the, I suppose, informal nature of some of the searches means that it is impractical or difficult for them to count and keep a record of each individual going through. It is unnecessary. They are not required to, but they will continue to provide broad estimates in terms of the sorts of numbers, but they will not be required under the bill to count each individual. It is a logistics exercise; it is the difficulty that the police have encountered in the requirements that are currently in place.

The DEPUTY PRESIDENT — Order! Mr Tee, in terms of the recording of the searches, it would be my understanding that the recording would form some sort of protection for the police as well, insomuch as they would have a record and if there was a complaint subsequently the police could fall back on that record. In these circumstances that you have been describing to Ms Pennicuik in answer to her line of questioning, does the absence of that record have implications for the police in the event that there is some complaint by somebody?

Hon. J. M. MADDEN (Minister for Planning) — In most instances you would find these searches would be conducted within range of CCT (closed-circuit television) footage. In terms of the accountability mechanisms for the police there would be the ability to undertake those searches in those sorts of circumstances.

Mr Tee has mentioned the fact that basically because of the logistics of some of these exercises there is not necessarily going to be a free hand to write down all the details as these searches are being conducted. I would anticipate that the vast majority of these searches will be conducted within some sort of location where there is normally some CCT footage.

Ms PENNICUIK (Southern Metropolitan) — I have to say that I am not reassured at all. In fact, I am more concerned now that I hear that. Now I have fears about the meaning or the purpose under clause 1(d)(ii). I will give the committee an example. If people are going through an airport to catch an aeroplane, they know they are going to go through a metal detector. They know they may have an explosives test done on them. In fact every single time I have flown in an aeroplane in the last two years I have had one of those tests. That is something people know. Even in a planned designated area, where the police say, 'Next week we are going to set up a search outside the MCG and we have given everybody a week's notice, and everyone knows about', I still in principle have a problem. But with an unplanned designated area, where nobody knows they are actually going into an area, these statistics are not going to be kept. I think this is a very dangerous clause in the bill.

Mr TEE (Eastern Metropolitan) — I agree there is some common ground in that it is an unusual provision where people unexpectedly, because they are not going

to the airport and it is not a planned designated area, are able to be searched. But I think the requirements under the bill provide a degree of protection. For instance, it is an area that has been designated by a very senior member of the Victorian police force. It is an area that has been designated because there has been violence or there has been disorder which have involved the carrying or use of unlawful weapons. It is not a random situation; it is a situation which occurs in a series of steps. For the individual concerned the first port of call is for the police to pass an electronic wand over a person or ask for a bit of clothing to be removed — that is, if there is a jacket and there is a concern — or there is a pat-down. There are a number of graduated steps that occur. It is only if the police have an ongoing suspicion that is not met once people have gone through the electronic wand, or had the pat-down or had the jacket removed, that there is a move to some of the more draconian aspects. With those number of steps before you get to an intrusion in terms of privacy, I think the bill has got it right.

Hon. J. M. MADDEN (Minister for Planning) — I would like to make the point, too, about how a wanding search would happen. A wanding search is waving the electronic wand over somebody, identifying a potential metal object and then asking for that individual to locate the metal object and display it, and then wanding the person again, as it happens where you walk through the security surveillance at an airport and your belt or your shoes or some metal component sets off the detector.

In the instance where wanding occurs — and Mr Tee has described the threshold test each time — it is only when a person fails to remove the metal object from their apparel that, as Mr Tee has suggested, the law enforcement officers are then required to move to the next stage of checking for that potential weapon. There is an onus on the individual to identify the metal object that is on their person and is triggering the electronic wand. It is not as if you are going to go straight to a pat-down or a strip search because an object has been identified by an electronic wand. After there has been some indication that there are metal objects on a person there is an opportunity for that individual to reveal to police what those objects are. It is for the individual to explain that they might have a plate in their leg or something like that. There are many opportunities for an individual to express, explain and reveal what those objects might be that are causing the metal detector to be set off.

Ms PENNICUIK (Southern Metropolitan) — I thank the minister for that explanation. I did understand that, but we are talking here about people who are just going about their business. They are not expecting to be stopped and searched by the police or expecting to go through a metal detector as they may be if they are going to an airport. In those circumstances they should not have a metal object on them. They already know that.

The problem here is that we have an arbitrary stop and search power, and we have no statistics being kept about it, because, from what I can glean from what Mr Tee has said and what the department and minister's adviser told me in the briefing, the police found it inconvenient to do so. If the police are going to identify the area and search everybody in that area, and they are telling us this is warranted and necessary, and they are going to evaluate this after three years to see how it has worked, and they have not kept any statistics, I cannot see how they can do that. I just cannot see how they can evaluate it if they have not kept any figures whatsoever on who has been searched. They are required to under the act at the moment, and that provision is being removed by this bill. That is my concern. How is evaluation of this project to be carried out without the figures?

Hon. J. M. MADDEN (Minister for Planning) — I know Ms Pennicuik would want every individual who might be detained or requested or involved in any search to be identified and accounted for. That is a very noble and appreciated form of administration and accounting for a logistical undertaking the police might conduct. I am sure it would not surprise Ms Pennicuik that in some of these instances where police are undertaking searches of this nature they do not undertake a search because they feel like it; they undertake it because an area has been identified as an area where it is considered that there may be weapons on persons and a threat to personal safety.

Appreciating the workplace of police officers and those around them and the way they have to operate in these circumstances, whilst they might want to be able to draw a pad and pen out of their pocket and identify every search that is undertaken, in the circumstances they are in at that time they also have to be very mindful of their own personal security, because in that circumstance where an area has been identified as a place of potential risk, they are also potentially at risk in their workplace. I look at Mr Dalla-Riva, who, whilst not nodding, I am sure can appreciate that the police are also potentially at risk in that circumstance. Whilst they would want to note every person with pad and paper, tick the number, put four down and then put a cross or any of those sorts of things, they are not necessarily — —

Mr Barber — The police are at risk when a citizen — —

The DEPUTY PRESIDENT — Order! Mr Barber is not in his place.

Hon. J. M. MADDEN — You have got to appreciate that in their workplace they might feel that they could be at risk in the circumstance where they are being asked to undertake a search of people who may have weapons in a particular area. They are concentrating on the search, their own environment and the environment of others around them whom they are seeking to protect. They are not necessarily going to be in a position to note down every single search. It is a logistical exercise. Whilst I appreciate Ms Pennicuik's view that she would want every one of those counted and identified, that is another logistical, administrative exercise in its own right and you would almost need another individual to stand alongside the police to identify that. That has resource implications — we recognise that — but at the end of the day we all want to have police involved in more law enforcement rather than more administration and paperwork. I recognise Ms Pennicuik's interest and her desire to have every individual who may be searched or checked accounted for, but in an operational sense that may not be practically possible.

Ms PENNICUIK (Southern Metropolitan) — I am not necessarily asking for what the minister is describing. For a start, I understand that most people will be searched with a wand or even, as the department has told me, by taking out those portable arches so people can walk through them. It would be my understanding that this is electronic equipment and the number of people who passed through it can easily be registered electronically. Then if someone has to proceed to a pat-down or a strip search, that could be accounted for — and it should be, for the benefit of the police as well as the person who has undergone the search. Under the act anyway a person can request that the officer tell them who they are et cetera, so that they have that information. That is a safeguard for the person and for the police, but what this bill is doing is removing even the basic statistics of how many people have actually been searched.

I cannot see why the police cannot have another person there who records pat-downs and strip searches and why the electronic searches cannot be recorded electronically. It does not necessarily go to the minister's point; it is about this particular regime of arbitrary stop and search powers that is being put in place which the government says it needs and which it is claiming is effective in deterring knife carrying and knife crime. However, those in the legal profession and other areas are saying that that is not the case and that is not the evidence everywhere else. The government is saying it is going to evaluate it. How can it evaluate it if it does not collect the data? That is the point.

Hon. J. M. MADDEN (Minister for Planning) — I think Ms Pennicuik has also failed to appreciate the point I was making about the way the operation would be undertaken. Much of it would be done with a wand search. With a wand search, in a sense you do not really have a free hand if you are a police officer. The other police officer who may be beside you also has to be conscious of the surrounding environment, so in an instance where there would be two police officers who might normally be on the beat Ms Pennicuik is asking for three police officers and one to take down notes. I appreciate that in the best of all possible worlds that would be desirable, but logistically in a resource sense that is going to put a very significant administrative burden on what could be a simple operation, turning it into something far more resource intensive. It could undermine the ability to carry out such an exercise.

Ms PENNICUIK (Southern Metropolitan) — I am not going to go on for much longer. I am just going to say that if you are going to bring in these arbitrary powers, you cannot do it without some accountability on the police. That has been taken out of this bill, and that is the problem. I would rather that these stop and search powers — powers for unplanned, undesignated areas with no suspicion — were not there at all, so that the police could be out on the beat. That is what I think, but I do not want to go around and around on this point any further.

Hon. J. M. MADDEN (Minister for Planning) — I would just like to make a point to the Greens political party on this matter. It is recognised that where you have any instance of policing of this sort with individuals being potentially at risk in a public environment and you have to, in a sense, make a request of individuals to be part of that exercise, you are trying to balance the liberties of individuals specifically and the collective liberties of the people. You are trying to do justice to ensure the personal safety of the collective in a particular environment, and that might mean only a slight imposition, a slight delay — you are held up while you are requested to have a wand waved over you or you walk through a gateway. There is a very slight imposition on individuals to ensure that collectively and individually people feel confidence in their safety but also to act as a deterrent to those who may have been or wanted to be in that area with a knife or a weapon on their person. I do recognise that there is

a slight imposition on an individual's liberty and a slight inconvenience.

We recognise that, but in terms of policing and giving confidence to the community and ensuring that this acts as a deterrent, a relatively minor imposition that might delay you for a few seconds or a little longer if you are not carrying a controlled weapon is of benefit to the broader community — and that is why the government has made this decision. We recognise that the Greens would like that to be done slightly differently, but we disagree on the way in which they would seek to implement it. Hence we have the bill here. We can spend a lot of time arguing about the detail of whether the Greens want it, like it — —

Mr Barber interjected.

Hon. J. M. MADDEN — From your place, Mr Barber. If Mr Barber had been in this chamber at the time he wanted to be earlier today he might not be as cranky as he is now.

Mr Barber interjected.

Hon. J. M. MADDEN — I make the point that we recognise that Mr Barber may want to do it differently, we recognise that he would like to see it done differently but we differ on that, and hence we have an opportunity to vote on this clause.

Ms PENNICUIK (Southern Metropolitan) — Even if I was to accept the minister's argument — if for argument's sake I was to accept that this is all fine — the minister has said this will be put in place to deter people from carrying knives. We are not going to know whether it has deterred people from carrying knives if we do not keep any statistics on the searches. We are only going to keep statistics on people who have undergone strip searches, which are highly offensive and should not happen at all under this bill.

The DEPUTY PRESIDENT — Order! To prevent this running on, because it is going around in circles on the same issue, I think what Ms Pennicuik is basically saying to the government is that perhaps the government ought to consider having small metal counters used for each preliminary involvement so that there is a base level of statistics against which the incidence of moving on to a more advanced search, be it by the wand or whatever, can be measured so that at some point in the future the government is able to say, as for drink driving, that 1000 people were tested and three of them had knives.

Ms Pennicuik is suggesting to the government that perhaps it ought to consider that as distinct from having a second body with each police person — notwithstanding that they usually are in pairs at any rate, for their own safety — a fairly simple device could be used, as I understand it. That truncates that particular line of questioning. As there are no other questions with regard to clause 1 on any other matter, we will proceed to the amendment.

Committee divided on amendment:

Ayes, 4

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

Noes, 34

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

Amendment negatived.

Clause agreed to.

Clause 2

The DEPUTY PRESIDENT — Order! This is a commencement clause and it could be affected by a subsequent amendment which involves renumbering.

Clause postponed; clauses 3 to 5 agreed to.

Clause 6

Mr DALLA-RIVA (Eastern Metropolitan) — In the debate I referred to the issue of definitional matters relating to weapons. I seek some clarification from either the minister or Mr Tee, given that we have had representations from the government on the proposed amendment and now the matter before the committee. I understand that this is a result of a broader issue at a Council of Australian Governments level. Perhaps the minister or Mr Tee might explain that very briefly. There were some issues in retail and various industry groups. I seek clarification also about how the government will deal with the application and some of the start dates, given the concerns that we have raised.

Mr TEE (Eastern Metropolitan) — As I understand the issues in discussions that the government has had with retailers, there have been some concerns about the need for retailers to explain the new provisions and to train their staff to make sure that they are aware of the new requirements relating to the sale of knives to children, in the same way as retailers have restrictions on the sale of alcohol or tobacco. These provisions are different in the sense that the provisions relating to alcohol require it to be kept in a particular area, and that is not the case here. In those discussions and the discussions with Mr Dalla-Riva and in response to concerns that have been raised, the provisions relating to retail will not be given effect until January 2011. We have given that assurance to the retailers and we give it to the opposition. That will allow retailers to train their staff on the provisions, and that has provided a degree of comfort.

The other issues that Mr Dalla-Riva raised go more to a national approach, they go to what has been raised by customs through to police forces across the country. They deal with the difficulties we have in stopping the import and therefore sale and distribution of some prohibited weapons that are made of plastic where there is a trend emerging. We are working through those issues but it is fair to say that there are difficulties where there are weapons made of hardened plastic materials. For those reasons, and consistent with national discussions, we are keen to leave the bill in its current form.

Mr DALLA-RIVA (Eastern Metropolitan) — I thank Mr Tee for the response and the government for listening to the industry groups.

Clause agreed to; clauses 7 to 9 agreed to.

Clause 10

Ms PENNICUIK (Southern Metropolitan) — I have had a lot of questions about clause 10, which provides for the duty to make records concerning searches, on which we have gone to and fro. We are not very enamoured of the clause.

Committee divided on clause:

Ayes, 34

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

Noes, 4

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

Clause agreed to.

Clause 11

The DEPUTY PRESIDENT — Order!
Ms Pennicuik has an amendment to propose to the committee. In my view it is a test for her further amendments 14 to 17. It relates to the insertion of a new provision in clause 11 dealing with the age, sex and postcode of each person on whom a weapon or dangerous article is found.

Ms PENNICUIK (Southern Metropolitan) — I move:

13. Clause 11, page 9, after line 1 insert —

> '"(ba) the age, sex and postcode of each person on whom a weapon or dangerous article was found during a search referred to in paragraph (a) or (ab); and'.

It would insert a new provision in the principal act so that the reporting of the Chief Commissioner of Police on searches without warrants would include, for the benefit of the police and the community and information and evaluation, the age, sex and postcode of each person on whom a weapon or dangerous article was found during the search referred to in paragraphs (a) or (b). That is fairly straightforward. I suggest — and this follows on from a point I made in previous discussions — that if the government is going to continue to say these powers are required, then we should keep detailed statistics. These are just the statistics about a person upon whom a weapon or dangerous article is found. In order to get more information about the demographics of people who are in possession of weapons — if we are going to search them and find weapons — we need to collect information. It gives more information to the public. That is the purpose of this amendment.

Mr TEE (Eastern Metropolitan) — We will not be supporting this proposed amendment because it requires that people who are going about their lawful activities and who happen to be carrying a knife and have a legitimate reason to do so will have their details

recorded. We do not record those details; we do not record the age, sex or postcode of the person going about their normal business who is carrying a knife and has a legitimate reason for carrying a knife.

We will and do record details if people are carrying a dangerous article or a weapon in breach of the act. Then we record the age within bands, the gender and the place where the offence has occurred. That is only when an individual is charged. We do not think we should collate that information about people who are not committing an offence.

Ms PENNICUIK (Southern Metropolitan) — It is good that the statistics Mr Tee has referred to are collected, but in order for us to evaluate this whole regime, which the government says it will evaluate, we need to find out detailed information. This information would only be about people on whom a weapon is found; I am not suggesting the collection of information on the age, sex and postcode of every person who is searched if nothing is found on them. This would enable the government to tell the community whether this process is working and to identify who is carrying knives. All the evidence I quoted during the second-reading debate points to the fact that we do not know much about who is carrying knives, and this would be one way of finding out.

Mr TEE (Eastern Metropolitan) — Without relitigating the debate about the nature of the information, we think it an unnecessary intrusion to keep such information on people who have legitimate reasons to carry knives.

An honourable member interjected.

Mr TEE — The suggestion is that we just count the numbers, but that is not the requirement in the amendment. The amendment requires us to identify their age, their sex and where they live. There is currently no requirement on them to give us that information, and this amendment would impose such a requirement.

Ms PENNICUIK (Southern Metropolitan) — I have to make a comment. Searching a person in the first place does not infringe their rights, but we cannot collect this information to support, or not support, the regime of arbitrary stop and search! Mr Tee is suggesting it is okay to arbitrarily stop and search people, but it is not okay to collect the information that we need to see whether the regime is working.

Amendment negatived.

The DEPUTY PRESIDENT — Order! Ms Pennicuik's further amendments 14 to 17 have been tested, in my view, by amendment 13. However, Ms Pennicuik has another amendment that is relevant to this clause that is still a live amendment dealing with a different issue — that is, amendment 18. I regard that as a test for amendment 19. It relates to the insertion of a further new provision in clause 11 dealing with the number of offences in a financial year. I invite Ms Pennicuik to move that amendment and make her remarks in support of it.

Ms PENNICUIK (Southern Metropolitan) — I move:

18. Clause 11, page 9, line 29, omit 'and".' and insert "and".

This is a consequential amendment that relates to amendment 19, the substantive amendment, which is to insert a new provision into clause 11 of the bill, which inserts new provisions after section 10B(b) of the principal act. New section 10B(bf) would mean that the Chief Commissioner of Police would report on the number of offences against the act with which persons who have been served infringement notices under section 11B are charged during that financial year. The reason for this is that we need to know how many people have actually been served with infringement notices under the act. It is the same reason I talked about regarding previous clauses — that is, to keep statistics on how this new regime of infringement notices is actually working.

Mr TEE (Eastern Metropolitan) — We will be keeping and are required to keep a record of the number of infringement notices that are issued, and we make this publicly available, as we are also required to do.

Ms PENNICUIK (Southern Metropolitan) — I thank Mr Tee. I had a further question from reading the bill and the explanatory memorandum, seeing references to the Financial Management Act and looking at the provisions of that act. I wanted Mr Tee or the minister to clarify whether, under the provisions that refer to the Financial Management Act, statistics provided to the minister would appear in the annual report and so be reported to Parliament. That is my question.

Mr TEE (Eastern Metropolitan) — In terms of the reporting of this, there are requirements under the legislation that Ms Pennicuik has identified, but I think the easier way to find the information would be through the annual report that police provide to Parliament, which reports on the number of infringement notices that have been issued. That is also put on the police website.

Amendment negatived; clause agreed to.

Clause 12

The DEPUTY PRESIDENT — Order! Ms Pennicuik's amendment 20 proposes the omission of clause 12(1). I consider this to be a test for her amendment 21.

Ms PENNICUIK (Southern Metropolitan) — I move:

20. Clause 12, lines 2 to 8, omit all words and expressions on these lines.

This amendment is to remove clause 12(1) from the bill. The Chair has advised that this amendment is a test for amendment 21, which would remove clause 13(1)(1). Both these clauses talk about the Chief Commissioner of Police or, by delegation, an assistant commissioner deeming that there is a likelihood of violence or disorder involving the use of weapons, and that is that the likelihood is 'less than more likely than not'.

On my reading of that and from the advice we have received — and we have referred to this in another bill in the Parliament at an earlier time — that is meant to mean that the likelihood does not have to be more than 50 per cent. However, it also means that the likelihood could be as low as 10 per cent. I have thought about this and given that the bill itself and the existing act as amended in 2009 give quite sweeping powers as it is, in particular with respect to unplanned designated search areas to which clause 13 applies, the chief commissioner would need to have a reasonable suspicion and feel that there is a high likelihood rather than just any old likelihood that there needs to be a search, particularly an unplanned search.

Also in light of the other safeguards that will be removed by this bill in terms of unplanned searches — that is, no requirement to keep statistics except for strip searches and the removal of the independent person when children and people with an impairment are searched — there has to be some requirement for the chief commissioner to have a strong view that this is necessary and not just any old likelihood that might be happening, which is what this clause allows for. While it might look okay sitting on its own, in the general context of what this bill is going to allow I think it just relaxes the reasons by which the chief commissioner would designate a planned or an unplanned search area. As I have said, in terms of an unplanned search area, that is even worse given the other safeguards that will be removed under the bill.

Mr TEE (Eastern Metropolitan) — I will speak briefly on the amendment. We will be opposing the amendment. The way the bill operates in conjunction with the act is that you need violence or you need disorder which involves unlawful weapons being used or carried. That is the circumstance that has happened in the past. There is then the test that it is likely that that violence or disorder involving the use of weapons will recur. In our view the test of being likely is a sufficiently high threshold. It is something which is a sufficiently high threshold and we support it on that basis.

Committee divided on amendment:

Ayes, 3

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

Noes, 34

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

Amendment negatived.

Clause agreed to; clauses 13 and 14 agreed to.

Clause 15

The DEPUTY PRESIDENT — Order! We have already tested amendments to clause 15. Does Ms Pennicuik have any further questions?

Ms PENNICUIK (Southern Metropolitan) — Yes. Various people in the community and the Law Institute of Victoria have queried the whole point of clause 15, which is the issuing of infringement notices with a penalty of $1000 for a person carrying, using or possessing a controlled weapon, or $2000 if found doing that in or near a licensed premises. I would like the government to provide the rationale for this particular provision of the bill.

Mr TEE (Eastern Metropolitan) — Infringement notices are a helpful tool for police. They can be issued

on the spot so the offender immediately knows the consequences. The difficulty with charging an individual and then requiring them to go through a court process is that it is both an impost on the individual, in terms of delays, but there are also the consequences for the individual having to go through the court system and then potentially get a record. Particularly for young people, an infringement is a better option; it addresses an immediate issue, but it also stops people unnecessarily going through our justice system process.

Ms PENNICUIK (Southern Metropolitan) — I presume this is just another assertion by the government. The issuing of an infringement notice can apply to anybody over the age of 16, which we have talked about before. Is the government confident that a person aged between 16 and 18 who is served with an infringement penalty of $1000 or $2000 under proposed section 11C will be able to pay that, bearing in mind that people aged between 16 and 18 are particularly singled out in this clause, because elsewhere in the bill a child is someone aged under 18?

Mr TEE (Eastern Metropolitan) — I need to confirm the matter, but in the case of serving an infringement against a child, the penalty is 2 penalty units. Are you asserting something different?

Ms PENNICUIK (Southern Metropolitan) — I am just reading from clause 15(2), which says:

> An infringement notice in respect of an offence against section 6(1), (1AA) or (1A) must not be served on a person who is under 16 years of age …

That is the only qualification, so infringement notices for 6(1), 6(1AA) and 6(1A) can be served on anybody over 16 years of age. My question is: how is it appropriate to serve one of those types of infringement notices on children?

Mr TEE (Eastern Metropolitan) — I have received clarification from the advisers in relation to the various offences. The starting point is that the way the police operate is to first issue a caution and not an infringement notice; but in circumstances where a person is older than 16 years an infringement notice might be appropriate. Alternatively they may be required to go to court. In terms then of the purchasing of a knife, the penalty on the individual is 2 penalty units. If they are carrying a knife unlawfully in and around a licensed premises, there is a $2000 penalty, which would be unlikely to apply to a young person — but it might be applied. The first offence is for a breach of the act — that is, the unlawful carrying of a controlled weapon under the act.

In terms of an individual's capacity to pay, firstly, the police have discretion to issue a caution; secondly, the government has incapacity-to-pay provisions in place elsewhere in relation to infringement notices. These are high penalties that are designed to send a clear message, and the government does not walk away from that.

Ms PENNICUIK (Southern Metropolitan) — Given that most 16 to 17-year-olds are not going to be employed — if they are employed they are probably employed as an apprentice or something like that — and most of them are going to be in school, I do not believe it is appropriate to be serving infringement notices. There are concerns about the whole infringement regime being applied to the control of weapons. On the one hand the government is saying, 'It is so bad that we have to have arbitrary searches', and on the other hand it says, 'It is not that bad because we will just issue a parking ticket, even though it is an expensive parking ticket'. The parking ticket is a metaphor for an infringement notice because that is the type of thing that is usually dealt with under an infringement notice. I suppose my concern is with the rationale of the regime that is being established, which I suppose Mr Tee has answered.

Mr TEE (Eastern Metropolitan) — These are not parking tickets. These are lethal weapons, where an individual has got no lawful reason for carrying a knife.

Ms PENNICUIK (Southern Metropolitan) — I would like to just clarify that; that is my point. We are not in favour of people carrying knives, but we are also not in favour of the police just issuing a ticket, or for the particular singling out of people between the ages of 16 and 18 years under this bill. The bill should say that the infringement notice cannot be issued to a child. That is what it should say if you are going to go down the path of infringement notices. It is confusing and makes the whole legislation more complicated. This has been pointed out by various commentators and by people who have made submissions on the bill, which I am sure Mr Tee has read.

We will end up with a much more complicated act than we had before, with the non-plan, the plan, the searches here, the searches there, the records kept here, the records not kept here, some people getting infringement notices, other people not getting them, the different penalties. It is turning into a huge mess that is not going to solve the problem that it is designed to solve.

Committee divided on clause:

Ayes, 34

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

Noes, 4

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

Clause agreed to.

Clause 16

The DEPUTY PRESIDENT — Order! Ms Pennicuik's amendments 27 and 28 are consequential amendments, which have been tested by her amendment 1. Does Ms Pennicuik wish to proceed with amendments 29 and 30 as well?

Ms PENNICUIK (Southern Metropolitan) — No, I do not want to proceed with amendments 29 and 30.

The DEPUTY PRESIDENT — Order! Those amendments would have involved renumbering of provisions and were dependent on a proposed new clause to be inserted by the committee.

Ms PENNICUIK (Southern Metropolitan) — That is what I was trying to clarify.

The DEPUTY PRESIDENT — Order! Does Ms Pennicuik wish to proceed with the amendment inserting the new clause?

Ms PENNICUIK (Southern Metropolitan) — That is what I was clarifying with you, Chair.

The DEPUTY PRESIDENT — Order! Ms Pennicuik still wants to proceed with the amendment to insert the new clause?

Ms PENNICUIK (Southern Metropolitan) — I do, yes. I thought the Chair just told me that amendments 29 and 30 had been tested.

The DEPUTY PRESIDENT — Order! No, I said amendments 27 and 28 had been tested. In that case the further amendments 29 and 30 are about renumbering in terms of the proposition that the new clause will be inserted by way of the amendment Ms Pennicuik will move shortly. Because the committee is not to know about the new clause yet I will put the question that clause 16 stand postponed.

Clause postponed; clauses 17 and 18 agreed to.

Clause 19

Ms PENNICUIK (Southern Metropolitan) — Clause 19 deals with the rules for searches of children. In an unplanned designated search area the search of a child could be conducted in the presence of a parent or a guardian of the child being searched, or, if it is not practicable in the circumstances for a parent or guardian of the child to be present, in the presence of any person, including a member of the police force other than the member of the police force who is conducting the search. For all intents and purposes, if it is not practicable for the police to find the parent or guardian of that child — and remembering that the bill refers to 'any child' so it could be a child of 6, 7, 8 or 10; anyone under the age of 18, including young children — that child can be searched in an unplanned search area, which is an arbitrary and not a notified search area, by the police without the parent or guardian being present.

If the police find that inconvenient or if it is going to take them too long to get the parent or guardian there, they can use another person, any person, whether or not that person is a member of the police force. That means that person can be a member of the police force, which of course means the child can be searched by a policeman in the presence of another policeman or policewoman — police person. I would like the government to explain why it has removed the protections for children to have a parent or guardian present when they are searched by the police.

Hon. J. M. MADDEN (Minister for Planning) — In relation to the operation of this clause I want to provide a bit of clarification, as I did in respect of one of the other clauses. We appreciate that there will be instances where people under the age of 16 may be in a public place late at night or early in the morning — in a sense, during extreme hours — when there might be a suspicion that there could be carriage of weapons. Again we are in that space Mr Tee mentioned where you do not go straight into a weapons search, a pat-down or a strip search.

However, what is important here is that if you have an individual under the age of 16 on the street in some remote location and they are wanded by the police, if it is suspected that the person has a weapon, because the metal detector goes off, then there is a request made by the officer, who would say, 'What is making that noise? Would you empty your pockets? Would you declare what might be on your person?' It is only at that point in time that you would need to have an independent person involved, if you are elevating the search to some other sort of search. What you are facing in such a circumstance, as I mentioned previously, is that you might have a degree of resistance from the individual to declare what is on their person that is triggering the wand to identify that there might be some metal object on the person of that individual. It is not as if the officer would be approaching the individual asking for the search straightaway.

Ms Pennicuik — Can we call the individual a child?

Hon. J. M. MADDEN — I know these are very sensitive matters, but again appreciating that you might have a circumstance, and it is often the case where you have a minor under the age of 16 — —

Ms Pennicuik — Eighteen.

Hon. J. M. MADDEN — It is often the case that you have a minor under the age of 18 on the street at an early hour in the morning at a location where it is considered there is the potential for the carriage of weapons, under which these circumstances take place. I suspect the issue Ms Pennicuik will have is with the ability to find an independent person to be involved in that search. It is the intention that that should be the case in almost all cases, but if you appreciate that in some instances there will be an individual — a child, a minor, somebody under the age of 18 — who is in a location early in the morning, in such circumstances it may not be practically possible to find an independent person who can be dragged out of the house next door. What that will mean is that officers will have to locate a social worker or somebody of that nature who might be the independent person, find that person at 2, 3 or 4 o'clock in the morning and then bring them to the location as the independent person. That being the case, there is then the ability for officers to use an alternative officer who is not involved in the operation as somebody who, as an officer, is an independent person.

But I do realise that this is not without some sensitivity and am conscious that that is no doubt one of the points of concern for Ms Pennicuik. This has been considered and deemed appropriate only after the search that was suggested has elevated to the point where there is a degree of resistance to reveal what object is triggering the sensor that might be on a person and that person is not prepared to present that to the officers conducting the operation.

Ms PENNICUIK (Southern Metropolitan) — Unfortunately the minister's answer did not reassure me whatsoever. Firstly, children are individuals, but saying 'individuals' does imply individuals as in adult individuals. We should talk about this clause in respect of children, because it refers only to children. It is a clause specifically written to take away protections from children. We should always recognise that children have special vulnerability and have special protections under the law, under our human rights charter and under the international covenant on the rights of children.

The minister has said we are talking about a case where a metal detector has indicated there may be a metal object on the child and the child may not be cooperating. Remembering that a child is a vulnerable person, is not an adult and is probably frightened by the situation they are in — and we are talking about an unplanned designated area; it is not that they had any idea that they were walking into a place where they could be searched — there may be any number of reasons why they may not be cooperating, and the police have decided to elevate the search. This is exactly the situation where a parent or guardian must be there. Whether or not that is inconvenient for the police is no concern of mine. My concern is for the child in that situation.

The minister said, 'It might not be practicable for the police to locate a social worker or an independent person'. If they cannot have a social worker and independent people on hand when they are going out on a foray in an unplanned designated search area, then that is bad planning on their part. They should make sure they have a social worker with them to deal with such a situation. But even that is by far second best to having the parent or guardian there. It should be incumbent on the police to find the parent or guardian or to have a truly independent person.

Given everything I said yesterday about the police and their independence, another police person is not an independent person. Nobody could possibly think that another police person is an independent person to the police. This is just too hard for me to fathom, as it is for many other people who I know have written to the government about this issue. It appears to me — and this is what I was told at the briefing — that the police have requested this because it is more practical for them

to do it. That is not an excuse or good enough for the protection of children.

Committee divided on clause:

Ayes, 34

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

Noes, 3

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

Clause agreed to.

Clause 20

Ms PENNICUIK (Southern Metropolitan) — Clause 20 of the bill also refers to schedule 1 of the principal act and goes to the rules for searches of persons with impaired intellectual functioning. This clause is really a mirror of clause 19, the previous clause, in that it would remove protections that exist in the current act for persons with impaired intellectual functioning, such that in a search other than a unplanned designated search, a person who has impaired intellectual functioning must, if practicable in the circumstances, be conducted in the presence of a parent or guardian of that person being searched or, if it is not practicable in the circumstances for a parent or guardian of the person to be present, any person, whether or not he or she is a member of the police force, other than the member of the police force who is conducting the search.

This clause makes possible an unplanned, designated search — that is, at a place where people do not have any idea they are walking into an area where they can be stopped and searched — of a person with impaired intellectual functioning. If their parent or guardian is not at the ready and there is no independent person there to supervise the search that is undertaken by the police officer, the police can then use another police officer to be that other person. As I have mentioned before with regard to children, another police officer is not an independent person; it is another police officer.

One could imagine that a person with impaired intellectual functioning could be very stressed about being stopped by the police and may not entirely understand what is going on. This bill removes the only protection they have, which is that a parent or guardian be present. They would be the most appropriate people for a person in this circumstance — someone who is known to them and who could reassure them, given the situation they are in. Of course most people would not like it. However, that protection is being removed by this bill. I ask the government under what rationale it is removing this protection.

Hon. J. M. MADDEN (Minister for Planning) — My comments are consistent with my last comments in relation to children, and they extend to this as well. It would only end up in the circumstance if the search was elevated to a point where the individual was not prepared to identify what articles they have on their person and when that individual was not prepared to identify a significant person who could be contacted at that hour. If they cannot locate their parent or guardian at that time of the day or morning or whatever it might be — and given, as I mentioned before, it could be 2 o'clock, 3 o'clock or 4 o'clock in the morning and you would have to drag somebody out of bed or into service to attend such a search — it could take some time to find or locate any such person. My comments in relation to that are consistent with my last series of comments.

Ms PENNICUIK (Southern Metropolitan) — I could sum that up in a nutshell by saying it could be inconvenient for some people to find an independent person to protect the rights of a person with an intellectual impairment who is being searched by the police, as the minister has said, where the situation is elevated and the person is not prepared to identify what it is that has been found by the metal detector. 'Not prepared' is a bit of a sweeping statement when you are talking about someone with impaired intellectual functioning. It could be they do not understand what is going on, not that they are just wilfully not providing the information. The minister then described the situation where the whole search procedure is elevated. I think the minister is using an unusual circumstance of 4 o'clock in the morning when the intellectually impaired person is being caught up in this stop and search in an unplanned designated area and that it is inconvenient for the police to find an independent person to protect the rights of that intellectually impaired person.

We live in a democratic society where we are supposed to look after the rights of those who are most vulnerable in the community. There is only one reason that I have had proffered to me by the department, in my briefing and by the minister today for why we are removing these very important protections for vulnerable people in our community who are being arbitrarily stopped and searched by police for nothing they have done. There is no suspicion that they are committing any crime or doing anything wrong. They just happen to be in a particular area. This bill will remove protections for them to have an independent person present because it is inconvenient for the police to do so. That is outrageous. Anyone in this chamber today who thinks that that is a reasonable proposition really needs to think again about it, because it is not. My question to the minister is: how are the police going to ascertain which people have impaired intellectual facilities?

Hon. J. M. MADDEN (Minister for Planning) — As I have mentioned before, in relation to any individual who is in a circumstance where there has been a request for them to identify what might be on their person if they have been wanded, it is not necessarily possible that someone could determine the level of specific intellectual impairment, but there is some training provided to police in terms of what might qualify as intellectual impairment of some significance. I think Ms Pennicuik is making generalisations in relation to the most vulnerable intellectually impaired persons who might be in this situation. If the intellectual impairment were of such gravity as Ms Pennicuik is making out, it would be unlikely — and I would find it surprising — for that individual to be on the street on their own at a time and place where they would be unaccompanied by somebody who would be of some support to them. That would be unusual.

That being the case, the police would no doubt in those circumstances have a reasonable understanding of the type of person who might qualify for this category. They may not be able to identify that because the impairment might be so subtle, but the search would only be undertaken if somebody has been wanded, the wand has signalled that there is a metal object on that person and the person has been asked to identify what that object is, present it or take it from their article of clothing.

Again, the point I make is that it would need to elevate to a particular point, and it would not be elevated unless there was reasonable concern by either the officers or the circumstances to justify the police pursuing either the search — should that individual not want to present the object — or the next step. In the instance where you have identified where somebody has an impairment of sorts, then of course the police would for the sake of that individual and for their own standing need to be sensitive to those matters and follow appropriate and due procedure in relation to this, rather than, as Ms Pennicuik believes, just use strongarm tactics to elevate the situation itself.

What I am saying is that there are a number of steps by which the circumstances would need to be elevated for the police to want to undertake the search, and then they have those steps which they must undertake. Of course it is only in rare circumstances and at rare times, as I mentioned before — where they were not able to identify either a parent or guardian or if it were not practical to identify or find an appropriate independent person — that they would seek to have somebody else take on that position.

Again, I go back to my explanation for the last clause, which was the instance, and which would be a rare one, where you have a search of an individual in a location in the early hours of the morning where you do not have individuals who can be readily contacted in a short period of time to take on the independent role. Only then would you have to use another member of the police force to assist in that search. Of course the police would probably also recognise that that is not necessarily an option that they would want to use. They would want the opportunity to test and try every other alternative independent-type person before they would need to fall back into that circumstance.

Ms PENNICUIK (Southern Metropolitan) — I just have to correct something the minister said. I am not suggesting that all that the police are using strongarm tactics. I am suggesting the person is a vulnerable person who may not appreciate the situation they are in, who may not be able to respond to the police in the way the police might want them to respond because of their impaired intellectual functioning. Those types of people can be very stressed and intimidated by non-strongarm tactics, by just being asked to be searched by the police or by just having the wand raised over them. Notwithstanding what I have said previously, that the police should organise themselves and be ready to have an independent person on hand because they should anticipate they could encounter children or people of various levels of impaired intellectual functioning, if a person due to their confusion or stress does not want to reveal what the item is, the search should stop there until an independent person is found and not be elevated so as to further frighten or stress that person. Would that not be the case? I would have thought that would occur. Perhaps Mr Tee, who has been conferring

with departmental officers, can tell me what the standing operating procedures are.

Committee divided on clause:

Ayes, 34

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

Noes, 3

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

Clause agreed to.

Clauses 21 to 23 agreed to.

Postponed clause 2

The DEPUTY PRESIDENT — Order! Ms Pennicuik has chosen not to proceed with her amendment 32 for the insertion of a new clause to follow clause 14. On that basis we return to postponed clause 2.

Postponed clause agreed to; postponed clause 16 agreed to.

The DEPUTY PRESIDENT — Order! I confirm that with respect to the committee's proceedings, Mr Tee has assisted the committee with a number of answers. Given that there are civil liberties issues and so forth involved, I am happy to have Mr Tee make a contribution as he has been involved in the preparation of the legislation. However, I request the minister's confirmation that the advice given to the committee in Mr Tee's answers represents the view of the government in these matters.

Hon. J. M. MADDEN (Minister for Planning) — I confirm that Mr Tee's comments and views reflect the views of the government in relation to this legislation. I take this opportunity to thank Mr Tee for his rigorous explanations on many of the clauses in this bill, and I thank him for his work in relation to so much of this bill.

Reported to house without amendment.

Report adopted.

Third reading

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

That the bill be now read a third time.

I thank members for their contributions.

The ACTING PRESIDENT (**Ms Pulford**) — Order! The question is:

That the bill be now read a third time and that the bill do pass.

House divided on question:

Ayes, 34

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

Noes, 3

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

Question agreed to.

Read third time.

SEVERE SUBSTANCE DEPENDENCE TREATMENT BILL

Council's suggested amendments

Message from Assembly relating to Council's suggested amendments not made by Assembly referred to committee.

Committed.

Committee

Resumed from 25 May; further discussion of postponed clause 4.

Mr JENNINGS (Minister for Environment and Climate Change) — I think it is important to explain to the committee that in effect the process we will be going through is to decide whether the committee will insist on its suggested amendments to clause 4 and subsequently to clause 18 which were subject to consideration by the committee in this chamber. Those suggested amendments were not accepted by the Legislative Assembly.

The last time these matters were discussed in the committee of the Legislative Council I indicated that the government was not able to entertain suggested amendment 3 moved by Ms Hartland. It sought to be very prescriptive about the intervention of Victoria Legal Aid services by specifying that representation of a person who would be appearing before the courts should be obligatory, by having that directed by legislation.

The government is of the view that, while it is most likely that the practice would be followed in due course, it is inappropriate to specify that in legislation and for Victoria Legal Aid to be bound by that. At the time I tendered some evidence, which was a piece of correspondence that the Minister for Mental Health, Ms Neville, had received from Victoria Legal Aid indicating that it was not its desire to have suggested amendment 3 inserted into the bill. On that basis, the government continues to hold the view that amendment 3 is an inappropriate amendment and we would like to maintain clause 4 in its current form.

Ms HARTLAND (Western Metropolitan) — I thank Mr Jennings for that explanation. I always understood that it was a difficult proposition for Victoria Legal Aid, and I have also seen that correspondence. But in my negotiations with the department quite some time ago now — because it has taken some time for this bill to come back — the department did not seem able or willing to come up with a substitute such as an advocate, someone from the Office of the Public Guardian or someone along those lines. There just was not anything else offered.

Basically what the government is saying is that it is perfectly acceptable to incarcerate someone for 14 days, supposedly for their own good, and not to supply an advocate of some description, when the government is also saying that the reason this person is appearing before the magistrate is that they are incapable of managing their own life. I would really like to hear from the government what other ideas it has about making sure that people are adequately represented before they are incarcerated.

Mr JENNINGS (Minister for Environment and Climate Change) — I can understand why Ms Hartland is concerned about these matters, but it is important to understand that we have discussed this matter in committee on, I believe, two separate occasions. On those occasions a number of things were outlined. In the first instance, in relation to a hearing, it is most likely that a magistrate hearing a matter would seek to ensure some degree of representation if it were deemed to be appropriate at the time. That would be done through the auspices of Victoria Legal Aid; it may be in the form of the presence of someone from the public advocate's office.

It is highly likely that the person would be represented in the first instance. But if that were not the case, as Ms Hartland clearly understands because she knows this piece of legislation, then there is a requirement in the days following the determination to have someone placed in care. This is the intention of the government — the person is placed in care as distinct from being subject to incarceration, as Ms Hartland describes it. There is an obligation for the public advocate to make contact with the person who is being placed in care and receiving treatment and to undertake a process that reminds the patient of their rights and opportunities to take remedial action back through the courts process in accordance with the provisions of the bill.

Ms HARTLAND (Western Metropolitan) — I do not want to revisit all of this again, but the point still remains if the government is claiming that, 'Yes, it is probable; yes, there might be representation' or that the case can be adjourned to make sure that that representation occurs, that supposedly the reason this group of people is needing treatment or incarceration — whichever word we want to use — is that they may die from their addiction within a very short time. As I understand it, it is believed they may die within hours or days. The government is delaying it for 24 hours to get legal aid or an advocate when, if it is bringing a case such as this before the courts, there should be someone available on the day.

Supposedly there will be only six or eight of these cases a year, so we are not talking about a huge burden. I still do not believe it will be six or eight cases a year; I think it will be a much higher number. But this still has not been resolved: what is the government going to do for people on the day they have to appear in the court? These are people who will be brain damaged, intoxicated and supposedly incapable — this is why they need this drastic treatment — of looking after themselves, but the government is still saying it is

perfectly all right for them to appear before the magistrate without an advocate.

Mr D. DAVIS (Southern Metropolitan) — I will just make a short comment on this clause, and it also pertains to clause 18 as well. The coalition initially supported these amendments because we thought there was some significant merit to them. We note the government has determined not to accept the suggested amendments. We believe that is unfortunate. Frankly, I am not terribly persuaded by the minister's arguments.

Notwithstanding that, we recognise there are some benefits in the bill generally. In an effort to be reasonable and allow the bill to pass, we will not insist on those suggested amendments. However, I think the government's intransigence is not helpful in the spirit that this was put forward.

Committee divided on postponed clause:

Ayes, 34

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

Noes, 3

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

Postponed clause agreed to; postponed clause 18 agreed to.

Reported to house without further amendment.

Report adopted.

Third reading

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

That the bill be now read a third time.

I thank members for their speedy consideration of matters that have taken a long time to get to this journey today. I look forward to the appropriate and effective implementation of the bill.

Motion agreed to.

Read third time.

ASSOCIATIONS INCORPORATION AMENDMENT BILL

Introduction and first reading

Received from Assembly.

Read first time for Hon. J. M. MADDEN (Minister for Planning) on motion of Mr Jennings.

Statement of compatibility

For Hon. J. M. MADDEN (Minister for Planning), Mr Jennings tabled following statement in accordance with Charter of Human Rights and Responsibilities Act:

In accordance with section 28 of the Charter of Human Rights and Responsibilities, I make this statement of compatibility with respect to the Associations Incorporation Amendment Bill 2010 ('the bill').

In my opinion, the bill, 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 is the second stage of a two-stage process of reform of the Associations Incorporation Act 1981 (the AIA), following the Associations Incorporation Amendment Act 2009. The amendments seek to improve the regulatory system for incorporated associations by strengthening the not-for-profit requirements of the AIA as well as reducing the regulatory burden on community organisations. The bill will amend the AIA to:

make further provision relating to the prohibition under the AIA against the distribution of profits by an association to its members;

enhance governance arrangements for incorporated associations;

revise annual reporting requirements and audit thresholds;

repeal the limitations on trading by an incorporated association;

improve grievance and dispute resolution procedures for incorporated associations; and

introduce a number of administrative amendments.

As part of enhancing governance arrangements for incorporated associations, the bill will apply certain parts of the Corporations Act 2001 (cth) through a declaration of applied corporations legislation.

Human rights issues

The bill raises a number of human rights issues.

Examinations and information-gathering activities

Proposed section 37AI declares the text of part 5.9 of the Corporations Act 2001 to be an applied corporations legislation matter with modifications. Section 596A of part 5.9 is modified to provide for the Supreme Court to summon a person for compulsory examination about an incorporated association's examinable affairs.

Section 596A is modified to provide that the Supreme Court is to summon a relevant person for examination about an incorporated association's examinable affairs if an eligible applicant applies for the summons and the Supreme Court is satisfied that the person is or was an office-holder of an incorporated association or provisional liquidator of the association. An eligible applicant is modified to read as the registrar, a liquidator or administrator of the incorporated association or a person authorised by the registrar to make such applications. An incorporated association's examinable affairs is defined as the promotion, formation, management, administration or winding up of the incorporated association; any affairs of the incorporated association; or the business affairs of a connected entity of the incorporated association insofar as they are relevant to the incorporated association. The registrar and any other eligible applicant in relation to the incorporated association may take part in an examination.

Section 597(12) provides that a person is not excused from answering a question put to the person at an examination on the ground that the answer might tend to incriminate the person or make the person liable to a penalty. Section 597(12A) grants a person direct immunity from self-incrimination by providing that any answer which may incriminate a person is not admissible in evidence against the person in a criminal proceeding or a proceeding for the imposition of a penalty. This immunity does not extend to proceedings in respect of the falsity of an answer provided by a person during these examinations.

Also, proposed section 37AB declares that the civil penalty provisions applying to members of the committee of an incorporated association contained in the bill are applied corporations legislation matter and subject to part 9.4B of the Corporations Act 2001. As a result, section 1317R of part 9.4B is modified to apply to incorporated associations, providing that the director of Consumer Affairs Victoria may require a person to give all reasonable assistance in connection with civil penalty or criminal proceedings under both the bill and the Corporations Act 2001. Subsection (3) provides that the director can only require a person to assist in connection with criminal proceedings if they are unlikely to be a defendant themselves in the proceedings, and are an employee, agent, officer or individual of the person who is the subject of the proceedings.

Both proposed sections 37AI and 37AB engage the right to freedom of expression. Additionally, proposed section 37AI engages the right not to be compelled to testify due to the abrogation of the privilege against self-incrimination and not providing derivative immunity for compelled oral testimony.

Freedom of expression (section 15)

The compulsion to answer questions and assist with an investigation engages the right to freedom of expression under the charter. 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.

The assistance of those responsible for and familiar with the processes and operations adopted by an incorporated association is necessary to conduct investigations into whether or not the regulatory obligations on members of the committee of incorporated associations are being complied with. This duty to assist is coextensive with the other obligations undertaken by members of the committee of an incorporated association who are participating in a regulated activity. Further, people with incriminating evidence who may not be implicated in any misconduct, but operate within the incorporated association, have that knowledge because of their role or position. Unless required to provide that evidence, they may not otherwise be forthcoming with information due to concerns about their future prospects or employment, loyalty to the association and concurrent confidentiality and contractual obligations.

These provisions enable appropriate oversight and monitoring of compliance with the law governing incorporated associations and are reasonably necessary to ensure members of the committee of an incorporated association who choose to be involved in the association are meeting their obligations and responsibilities, which have been designed to protect those who deal with or have interests in the association. 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.

Right not to be compelled to testify (section 25(2)(k)) and the right to fair trial (section 24(1))

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 (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.

Part 5.9 of the Corporations Act 2001 abrogates the privilege against self-incrimination by compelling testimony but replaces it with a direct immunity through section 597(12A). This immunity is limited in that it only applies to the direct use of the compelled statement in subsequent proceedings. It 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.

The provisions in part 5.9 limit the protection against self-incrimination as a person who is compelled to be examined by the court is not protected against the indirect use of that information in future criminal proceedings. However, I am of the view that the limitation is reasonable under section 7(2) of the charter for the following reasons.

(a) The nature of the rights being limited

As outlined above, Chief Justice Warren in Major Crime held that the right not to be compelled to incriminate oneself as protected by section 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 regulator to perform its compliance and enforcement functions having regard to the difficulties faced when investigating offences against the Corporations Act 2001. It also exists to assist liquidators and administrators to discharge their duties in regards to an incorporated association. Fraudulent conduct in the corporate context may involve a tangled web of activities which can only be unravelled and understood by an extremely prolonged and meticulous journey through complex financial and other records. To allow persons who may have the necessary knowledge of these transactions to refuse to answer questions may make it impossible for investigators to understand these transactions. This may undermine the whole investigative process as well as any liquidation or administration that may also be on foot.

The availability of a derivative use immunity to counter the regulator's compulsory information-gathering powers is considered too great a forensic advantage to give to examinees. Examinees would be able to extract a considerable forensic benefit through taking part in compulsory examinations by 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 have both a 'thawing' effect on investigations, as the regulator will be reluctant to examine suspected principal offenders early (or at all) in an investigation, given the possibility of these persons attempting to make themselves prosecution proof by volunteering information during a compulsory examination. Investigations would thus be more circuitous, costly and less time efficient to avoid any possibility of immunising the key players from prosecution.

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 an examinee who had claimed derivative use immunity was not obtained either directly or indirectly from that person's examination. This would unduly complicate trials and generate separate hearings to determine just when, and from what sources, particular information was obtained.

The investigative methods that the regulator would have to employ to counter these consequences could fundamentally prejudice its ability to discharge its statutory responsibilities in an efficient, effective and timely manner for the public good.

(c) The nature and extent of the limitation

As outlined above, the provision compels a person to answer a question put to the person at an examination even if it may tend to incriminate that person. While the provision prevents an answer from being admissible in evidence against a person in criminal or civil penalty proceedings, investigators are able to use a person's answer to uncover further evidence against them that may be used in criminal or civil penalty proceedings.

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.

This abrogation of the privilege against self-incrimination is limited to prescribed situations. The Supreme Court can only summon a person for examination about an incorporated association's examinable affairs and can only summon a person who is (or was) a member of the committee or provisional liquidator of the incorporated association. The people who will be subject to this power have chosen to participate in regulated activities in which they have assumed duties and obligations.

Procedural fairness is afforded to examinees and witnesses, and the exercise of these powers by registrar must comply with the statutory preconditions and notice requirements set out in the Corporations Act 2001, and is subject to judicial review.

(d) The relationship between the limitation and its purpose

There is a close relationship between the limit and its purpose. 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 examined 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 regulator to effectively investigate and unravel the complex affairs of an association without jeopardising the success of any criminal or civil penalty proceedings which may be brought after all relevant information concerning a person's activities and dealings within an incorporated association 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 regulator's compulsory information-gathering powers, would give some examinees a forensic advantage far in excess of what was ever contemplated under the privilege against self-incrimination. Having considered the right against self-incrimination in other common law jurisdictions and under human rights instruments, both the 1991 report by the Joint Statutory Committee on Corporations and Securities considering 'Use Immunity Provisions in the Corporations Law and the Australian Securities Commission Law' and the 1997 'Review of the Derivative Use Immunity Reforms' by John Kluver concluded that direct use immunity for oral testimony was sufficient protection for individuals who have voluntarily taken on positions of responsibility and privilege in a regulated industry. Accordingly, there are no less restrictive means reasonably available to achieve the purpose of this limitation.

Offence provisions

Evidential onuses and the presumption of innocence

A number of regulatory offences within the Corporations Act 2001 impose an evidential onus on a defendant to adduce or point to evidence that goes to an exception, excuse or defence. The criminal offences in the applied corporations legislation sections 471A, 590, 597 and 597A, read in conjunction with section 72 of the Criminal Procedure Act 2009 (Vic), impose such a burden. In my view, these 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 absence of the exception raised. Furthermore, the burdens do not relate to essential elements of the offences and are only imposed on the defendant to raise facts that support the existence of an exception, defence or excuse.

Courts in other jurisdictions have generally taken the approach that an evidential onus on a defendant 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) because the defences and excuse provided relate to matters within the knowledge of the defendant.

Accordingly, I consider proposed sections 37AF and 37AI which apply the above provisions of the Corporations Act 2001 to be compatible with the right to be presumed innocent in the charter.

Conclusion

I consider that the bill is compatible with the charter because, to the extent that some provisions may limit human rights, those limitations are reasonable and demonstrably justified in a free and democratic society.

Hon. Justin Madden, MP
Minister for Planning

Second reading

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

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

That the bill be now read a second time.

Incorporated speech as follows:

The Associations Incorporation Act 1981 (the act) was established to provide a simple and inexpensive means by which unincorporated non-profit associations could obtain corporate status. The act regulates the creation, operation and dissolution of incorporated associations and is the most popular vehicle for the incorporation of community and non-profit groups in Victoria. At 30 April 2010, there were 35 915 incorporated associations on the register of incorporated associations.

The government recognises the critical importance of this act to the community, and this bill represents the second stage of an important platform of reform to ensure the act continues to meet its original aims. The first stage of reform was completed by passage in April 2009 of the Associations Incorporation Amendment Act 2009. The majority of the provisions of the 2009 amendment act have commenced operation, however part 3, which will transfer the functions of the public officer to the office of the secretary of an incorporated association, and part 4, which will introduce new matters to be included in the rules of an incorporated association, have yet to commence.

Together, these two pieces of legislation will fulfil the government's commitment to reform of the act set out in the Victorian government *Action Plan — Strengthening Community Organisations*. In parallel with the proposed reform of the act, the government has also commenced a project to revise the model rules for incorporated associations. The rules will be updated to reflect recent legislative change and the language and form improved to better reflect the largely volunteer membership of incorporated associations. It is proposed that part 3 and part 4 of the 2009 amendment act and the suite of legislative reforms introduced by this bill, will commence operation together in 2011 in conjunction with the new model rules.

I now turn to the specific reforms contained within the bill which have been the subject of wide consultation, including the public release of an exposure draft version of the bill in March 2010. This bill introduces a range of amendments to the act to:

enhance governance arrangements for incorporated associations;

revise annual reporting requirements and audit thresholds;

repeal the limitations on trading by an incorporated association;

improve grievance and dispute resolution procedures for incorporated associations; and

improve provisions relating to the winding up and external administration of incorporated associations.

The bill contains a series of amendments to improve the internal governance arrangements of incorporated associations and enhance the rights of members of incorporated associations.

To effectively service and represent their communities and be sustainable over the long term, it is critical that incorporated associations have appropriate and effective internal governance arrangements. If organisations fail, the ability of communities to identify and communicate their needs and aspirations, and to manage and control the manner in which services are delivered is likely to be severely impaired.

Effective governance provides the foundation for the appropriate management of government (and other) funds, for compliance with legislative obligations, and the operation of the entity in accordance with its rules and charter. Committee and ordinary members of associations who understand their respective rights and responsibilities are more likely to maintain a robust relationship with their organisation, to be more confident about asserting their rights and to seek external assistance only where necessary.

The bill removes the current requirement for a separate statement of purposes to accompany an application for incorporation. The purposes of an incorporated association will now be a matter that must be expressed in the rules of an incorporated association. This will simplify the process for incorporation and eliminate the need for an applicant group to file a separate form of statement of purposes as well as a copy of their proposed rules of association.

The separation of the statement of purposes and the rules reflects the former companies model, where a company had a memorandum of association (which included its name, objects and powers) and articles of association (which contained the other constituent provisions).

The schedule to the act, which lists the matters to be included in the rules of an incorporated association, will be revised by the bill to specifically include the purposes of the association as a matter that must be addressed by an incorporated association in its rules. The bill will also revise and reorder the matters in the schedule to provide additional assistance to an unincorporated group wishing to develop its own rules of association.

A transitional provision will ensure the continuing validity of rules and purposes for existing associations that currently have a statement of purposes separate from their rules of association.

The bill improves the general utility of the rules of an incorporated association for members by making it clear that the name and purposes of an incorporated association, the rights, obligations and liabilities of its members, resignation and cessation of membership and the process for appointment and termination of the association's secretary must be addressed in the rules.

The bill inserts a new definition of 'office-holder' of an incorporated association. This amendment recognises that persons other than the members of the committee of an incorporated association may hold significant responsibilities by including employees of the association who make or participate in decisions that affect the whole or a substantial part of the operations of an incorporated association within the definition. For example, employees such as the chief executive officer or the chief financial officer of a large incorporated association with significant annual revenue are likely to be captured by the definition. However, it is not intended that the definition capture ordinary employees, ordinary members, non-members or volunteer participants.

Introduction of duties and civil penalties

It is settled law that an office-holder (such as a committee member) owes a duty to their association to exercise care and diligence when carrying out their responsibilities as a committee member. However, unlike companies, where the duties owed by a director to the company have been codified under the Corporations Act 2001, no similar statutory guidance is provided to the members of a committee of an incorporated association.

To address this deficiency, the bill clarifies the duties of an office-holder of an incorporated association. These provisions are modelled upon equivalent provisions in the Corporations Act 2001 and provide for a duty of care and diligence, one of good faith and proper purpose, and a duty to avoid trading while insolvent.

In relation to the duty of care and diligence, the bill follows the Corporations Act model and adopts the 'business judgement rule'. An office-holder will be taken to have fulfilled their duty of care and diligence if they make a business judgement and:

the judgement was made in good faith and for a proper purpose; and

the office-holder does not have a material personal interest in the subject matter of the judgement; and

the office-holder informed himself or herself about the subject matter of the judgement to the extent that they reasonably believe to be appropriate; and

the office-holder rationally believes that the judgement is in the best interest of the incorporated association.

In relation to an incorporated association, a business judgement will mean a decision taken in furtherance of the purposes and operations of the incorporated association.

The bill also inserts a provision to establish the circumstances where it is reasonable for an office-holder to rely upon information or advice provided by a third party in carrying out their duties. Those circumstances will include information or advice received from employees or from professional advisers.

The bill introduces for the first time the ability for the court to impose a civil pecuniary penalty for contravention of specified provisions of the act. This is achieved by application of the civil penalty regime established under the Corporations

Act 2001. However, while the Corporations Act provisions allow for a maximum civil pecuniary penalty of up to $200 000, in applying these provisions to associated incorporations, the maximum amount has been limited to $20 000 in recognition of the not-for-profit and voluntary character of these organisations. It should also be noted that in determining the appropriate penalty, the court will take into account any remuneration of the office-holder as well as the size and complexity of the association.

The court will also have discretion to order the payment of compensation to an association for any damage suffered because of a contravention, and have the power to grant relief in civil proceedings where a person may be found to have contravened a civil penalty provision but has acted honestly and, having regard to all the circumstances of the case, the person ought fairly to be excused.

The bill provides that a contravention of the duty of care and diligence, duty of good faith and proper purpose or duty to avoid insolvent trading may expose an office-holder to a civil pecuniary penalty. Furthermore, contravention of the duty to avoid insolvent trading may also constitute an offence in circumstances where the office-holder had reason to suspect that the association is or would become insolvent, and the failure to prevent trading while insolvent was dishonest.

Section 29A of the act makes it an offence for a committee member or former committee member to knowingly or recklessly make improper use of their position or of information acquired by virtue of their position to gain a benefit or advantage for themselves or to cause detriment to the incorporated association.

The bill amends section 29A so that it will apply to both office-holders and former office-holders. It also amends section 29A to introduce civil pecuniary penalties where a person makes improper use of his or her position, or of information acquired by virtue of that position, for personal advantage or to cause detriment to the incorporated association, but without circumstances of knowledge or recklessness.

Section 29B and section 29C have been amended to ensure that these sections have a broader scope, are consistent with contemporary terminology and are analogous to equivalent Corporations Act provisions. The bill amends section 29C(1) so that a member who has a material personal interest in a matter will be prohibited from taking part in deliberations concerning that matter. The member will be required to leave the room when the matter is being considered and voted upon.

Currently, the act is silent on the issue of an indemnity for committee members. Recognising the reliance of the not-for-profit sector on the goodwill and efforts of volunteer membership, the bill provides that an association must indemnify each member of its committee for any liability incurred by them in good faith in the course of performing their duties on behalf of the association.

The bill also contains a number of measures that will enhance member control and participation and assist in reducing disputes such as:

providing that a member has a right to inspect and obtain a copy of the rules of the incorporated association;

providing that where a member requests a copy of a document the association must give the copy to a member within seven days of the request and after payment of a prescribed fee (if any);

providing that if a member has voting rights, the member must be notified of all proposed general meetings;

providing that an incorporated association must not prevent a member from attending or voting (if entitled to do so) at general meetings; and

providing that if proxies are permitted, and the committee sends out proxy forms, all voting members must be sent a proxy form.

Section 14B of the act currently provides that the grievance procedure of an incorporated association must incorporate the principles of natural justice. This section has been amended to clarify that in accordance with such principles the incorporated association must ensure that each party to a dispute has an opportunity to be heard and that the dispute must be resolved by an unbiased decision-maker. Similarly, in the case of disciplinary procedures, an incorporated association will be required to ensure that the member subject to the procedure is informed of the grounds on which the disciplinary action is proposed to be taken, has an opportunity to be heard and that any determination is made by an unbiased decision-maker.

Improving meetings

The bill makes a number of amendments to improve meeting provisions. It clarifies that a reference to a ‘general meeting’ in the act includes the annual general meeting, a special general meeting or other general meeting of the members of an incorporated association. It also provides that committee meetings and general meetings can be held in two or more venues using any technology that allows participating members to clearly and simultaneously communicate with each other participating member. This will enable members to be present at a meeting even though they may be physically remote. Finally, the bill makes a number of clarifying amendments in relation to the conduct of an annual general meeting to improve the submission of financial statements.

Filling of vacancies and removal from office

The 2009 act transferred the functions of the public officer to the secretary of the incorporated association. Currently, where the office of secretary becomes vacant, the committee of the incorporated association is required to appoint a person to fill the vacancy within 14 days. It is intended to allow incorporated associations to decide the process that they wish to adopt for the appointment and removal of their secretary, and options available to associations include appointment by the committee or election at a general meeting as a member of the committee.

Where it is not feasible to fill that vacancy within 14 days in accordance with the process under the association’s rules, the bill allows for temporary filling.

The act also provides that the secretary’s office becomes vacant if the secretary ceases to be resident in Victoria. However, it is no longer necessary to prohibit a secretary from residing in another state or territory of Australia. With current technologies, it is possible to communicate effectively

without being physically present. Accordingly, the bill provides that the office becomes vacant if the person holding that office ceases to be resident in Australia.

The bill also clarifies the removal of committee members from office, and clarifies that a committee member will cease to hold office if he or she fails to attend three consecutive committee meetings without leave. This amendment seeks to address situations where a committee is in dispute and unable to achieve a quorum because members repeatedly fail to attend meetings.

Annual reporting requirements

The bill introduces significant changes to annual reporting requirements.

The current reporting thresholds for prescribed and non-prescribed associations have not been revised for more than 10 years. Not-for-profit sector stakeholders have suggested that the current threshold of $200 000 annual revenue for prescribed associations is too low given the cost of obtaining a formal audit, which may range from $2000 to $8000. This has been a particular problem for associations that may be asset rich but revenue poor and finding it difficult to comply with this requirement. In addition, the relatively low-risk profile of some of these associations has cast doubt on the appropriateness of a requirement to have their accounts audited.

The bill also revises reporting requirements to introduce a contemporary, tailored financial reporting regime that will reduce the regulatory burden across a range of associations while ensuring that appropriate levels of financial transparency and governance are maintained.

A framework of three tiers replaces the current prescribed and non-prescribed reporting regime and aligns with a similar framework proposed for companies limited by guarantee. The tiers will be based upon total revenue with tier 1, comprising total revenue of up to $250 000, capturing the majority of incorporated associations. Tier 2 will capture those associations with revenue exceeding $250 000 and up to $1 million, while tier 3 captures all those associations with total revenue exceeding $1 million.

Tier 1 incorporated associations will continue to report to the registrar on the same annual basis as currently applies for non-prescribed associations. The major change is that tier 2 associations will no longer be required to have their accounts audited. Instead, the bill provides for their accounts to be reviewed by an accountant independent of the incorporated association. It should be noted that while a review is not a formal audit of accounts and is expected to be around one-third of the cost of a full audit, it will still be subject to compliance with standards set by the Auditing and Assurance Standards Board.

Tier 3 incorporated associations will continue to report to the registrar on the same basis as currently applies to prescribed associations. These associations will be required to have their accounts audited and to submit a copy of the audit report to members together with their financial statements at the annual general meeting.

All incorporated associations will continue to be required to submit financial statements at their annual general meeting, and the association treasurer and one other committee member will need to certify that these statements provide a true and fair view of the financial position of the association.

The bill amends the act to ensure that associations are accountable to the membership by providing that a tier 1 association must have its accounts reviewed or audited by an independent accountant if, at a general meeting of the association, a majority of members vote to do so. Similarly a tier 2 association must have its accounts audited by an independent accountant if, at a general meeting of the association, a majority of members vote to do so.

Section 53C of the act which provides qualified privilege to statements made by an auditor, statutory manager, liquidator or administrator in the course of performing their duties is extended to include an independent accountant who conducts a review of the accounts of tier 2 association.

Removal of restriction on trading

The bill repeals the prohibition on trading by an incorporated association.

Since the act first commenced in 1983, the not-for-profit sector has experienced significant changes in how it delivers services and in its relationship with government. In practice, governments, both state and federal, actively encourage many incorporated associations to take on new trading activities. For example, the contracting out of the delivery of social services to community organisations has meant that incorporated associations are increasingly engaging in trading activities as a predominant purpose and activity, potentially in breach of the existing legislative provisions.

Removing the restriction on trading will enable an incorporated association to engage in trade or trading activities in pursuance of and in support of its purposes. However, consistent with the not-for-profit character of incorporated associations, the act will continue to prohibit an incorporated association from securing pecuniary profit for its members.

Voluntary administration and winding up

The act applies various provisions of chapter 5 of the Corporations Act in respect of the voluntary administration and winding up of an incorporated association. The bill inserts a new part VIII AA into the act which sets out a more detailed scheme of the parts of chapter 5 that will apply to incorporated associations.

The bill also contains a number of other administrative amendments, transitional provisions and consequential amendments. For example, one administrative amendment that is being made seeks to address the high levels of new associations among Victoria's migrant and refugee communities that are being formed. Cognisant of this, the bill authorises an incorporated association to keep its records in any language, provided a copy in English can be produced upon request.

This bill forms an important part of the Victorian government's ongoing commitment to developing and supporting our community, voluntary and not-for-profit organisations.

I commend the bill to the house.

Debate adjourned for Mr GUY (Northern Metropolitan) on motion of Mr Koch.

Debate adjourned until Thursday, 5 August.

CIVIL PROCEDURE BILL

Introduction and first reading

Received from Assembly.

Read first time for Hon. J. M. MADDEN (Minister for Planning) on motion of Mr Jennings.

Statement of compatibility

For Hon. J. M. MADDEN (Minister for Planning), Mr Jennings tabled following statement in accordance with Charter of Human Rights and Responsibilities Act:

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

In my opinion, the Civil Procedure 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 Civil Procedure Bill 2010 (the bill) reforms and modernises the laws, practice, procedure and processes for the resolution of civil disputes that may lead to legal proceedings and for the initiation and conduct of civil proceedings and appeals.

Its main innovations are:

Introducing overarching obligations for participants in civil proceedings. These obligations are subject to the paramount duty to further the administration of justice (clause 16). The obligations are: to act honestly; to refrain from making frivolous or vexatious claims, or claims for a collateral purpose; to take only those steps necessary to resolve or determine the dispute; to cooperate in the conduct of the proceeding; to not engage in misleading or deceptive conduct; to use reasonable endeavours to resolve the dispute; to use reasonable endeavours to narrow the issues in the dispute; to ensure the costs incurred are reasonable and proportionate to the complexity or importance of the issues and amount in dispute; to minimise delay; and to disclose the existence of all critical documents as early as reasonably possible or at such other time as the court may direct (cls 17–26).

To the extent that there is an inconsistency, these obligations prevail over other obligations including a client's instructions (in the context of the lawyer-client relationship), and over other duties including duties owed to a client, except for: those duties arising under the charter (cl 6(a)); the doctrine of privilege (cl 6(b)); the paramount duty (cl 16); and a legal practitioner's duty to the court (cl 15).

Courts will have the power to sanction breaches of the obligations, including by way of ordering that a party may not take a step in the proceedings, making costs orders, or ordering compensation (cls 28–29). The court may make such orders after application by the parties or of its own motion (cl 29(2)). When commencing proceedings, parties will be required to certify that they have read and understood the obligations (cl 41). Legal practitioners (or, if unrepresented, the party) will be required to certify that any allegations or denials of fact or non-admissions have a proper basis (cl 42). However, parties will not be prevented from commencing proceedings due to a failure to comply with these certification requirements (cl 45).

Introducing prelitigation requirements for civil proceedings. Parties will be required to take reasonable steps to resolve the dispute prior to the commencement of any civil proceeding in a court, or, failing that, to clarify and narrow the issues in dispute (cl 34(1)). The prelitigation requirements will require each person to exchange appropriate prelitigation correspondence, information and documents critical to the resolution of the dispute (cl 34(2)(a)). Persons involved must also consider options for resolving the dispute without the need for legal proceedings in a court, including but not limited to resolution through genuine and reasonable negotiations or appropriate dispute resolution (cl 34(2)(b)). There is a prohibition on the use of documents or information disclosed under the prelitigation requirements for a purpose other than the resolution of the civil dispute between the persons involved, or any civil proceeding arising out of the dispute (cl 35).

The court may take non-compliance with the requirements into account in awarding costs and making procedural orders, or may make any other order that it considers appropriate (cls 38–39).

There are various circumstances in which the prelitigation requirements do not apply, where compliance with these requirements would be inappropriate (cl 32). When commencing proceedings, the parties or their legal practitioners will be required to certify as to whether they have complied with the requirements (cl 43). However, parties will not be prevented from commencing proceedings solely by reason of not having complied with the prelitigation requirements (cl 36) or the certification requirements (cl 45).

Enhancing the courts' case management powers. A court will have the power to make any orders it considers appropriate to manage the proceeding in accordance with the overarching purpose of the bill (cl 47(1)), that is, to facilitate the just, efficient, timely and cost-effective resolution of the real issues in the dispute (cl 7). These will include: giving directions to ensure the proceeding is conducted promptly and efficiently; identifying the issues at an early stage; disposing summarily of certain issues; encouraging the parties to settle or use an appropriate dispute resolution process; fixing timetables; limiting the number of witnesses and the time for examination of witnesses at

hearings; and making various orders to actively case manage proceedings (cl 47(3)).

The bill provides that the court may, in addition to any other power, make any order or direction it considers appropriate to further the overarching purpose in relation to pretrial (cl 48) and trial (cl 49) procedures.

If a party does not comply with such an order, the court may dismiss the proceeding or part of it; disallow or reject any evidence; make costs orders; or make any other order it considers appropriate (cl 51). The bill also expressly gives the court powers to strongly sanction failure to comply with, or misuse of, the discovery process, including by means of: the initiation of contempt proceedings; costs orders against parties and legal practitioners; orders preventing the party from taking any step in the proceeding; awarding compensation; and referrals to appropriate disciplinary authorities for disciplinary action against legal practitioners who aid and abet failure to comply with discovery obligations, failure to comply with orders or directions of the court, or conduct intended to delay, frustrate or avoid discovery of discoverable documents (cl 56).

Reforming the law relating to summary judgement. The bill liberalises the test for summary judgement by providing that a plaintiff or defendant may apply for summary judgement in a proceeding on the ground that the claim or defence or counterclaim has no real prospect of success (cls 60–63). The court may, however, nevertheless order that the matter proceed to trial if justice requires (cl 64).

Enhancing powers in regard to appropriate dispute processes. The bill provides courts with the power to make an order referring the proceeding to appropriate dispute resolution (cl 66(1)). Appropriate dispute resolution is defined as a resolution process attended, or participated in, by persons involved in a civil dispute or a party to a civil proceeding for the purposes of negotiating a settlement of the civil dispute or the civil proceeding or narrowing the issues in dispute and includes: mediation, early neutral evaluation, judicial resolution conference, settlement conference, references to special referees; expert determination; conciliation and arbitration (cl 3).

This power can be exercised even if the parties do not consent, but only where the outcome is to be non-binding (cl 66(2)).

Human rights issues

The bill raises charter issues in regard to the right to a fair hearing (s 24(1)) and the right to privacy (s 13).

Right to a fair hearing

Section 24(1) of the charter provides that a party to a civil proceeding has the right to have the proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing. The right has been held to include an implied right to have access to the courts (see *Kay v. Attorney-General* (No 3726 of 2009, 19 May 2009, VSCA at [11]).

In my view three elements of the bill potentially engage this implied right: the prelitigation requirements (pt 3.1); the power to order attendance at an appropriate dispute resolution process (cl 66); and the broadened power to obtain summary judgement (pt 4.4).

Prelitigation requirements limit the right

The introduction of prelitigation requirements engages this implied right in that the requirements impose preconditions on the commencement of civil proceedings (cls 33–34). Although parties are not prevented from commencing proceedings due to non-compliance with the requirements (cl 36), where a party does not comply, the party is vulnerable to sanctions, including costs orders, or any other order the court considers appropriate (cls 38–39). In light of this I am of the view that the introduction of the prelitigation requirements limit the implied right to access the courts.

Prelitigation requirements are a reasonable limitation

However, I am of the view that the limit on the implied right amounts to a reasonable limitation under s 7(2) of the charter.

(a) the nature of the right being limited

A limit on access to a hearing will not necessarily breach s 24(1). The European Court of Human Rights has held that restrictions on the implied right to access the courts are permissible if they serve a legitimate aim, and do so in a proportionate manner (*Ashingdane v. United Kingdom* (1985) 7 EHRR 528 at [57]).

(b) the importance of the purpose of the limitation

The purpose of the prelitigation requirements is to facilitate the early resolution of civil disputes without the need to proceed to litigation (cl 1(2)(b)). In my view this is a significant objective. The resolution of disputes without litigation is efficient, timely, cost-effective and likely to be durable. Where disputes are resolved without litigation, access to the courts is improved for others who are engaged in disputes that are most appropriately resolved by litigation. The prelitigation requirements also aim to encourage parties to narrow the issues in dispute, reducing costs and delays in those cases that do proceed to litigation. Accordingly, in my view the requirements serve a purpose that is sufficiently important to justify some limit on the implied right to access the courts.

(c) the nature and extent of the limitation

The limitation is of a minor nature and extent. First, it is a constructive limit only: parties must comply with the requirements (cls 33–34) and are vulnerable to sanctions if they do not (cls 38–39), but ultimately they can still proceed to litigation even if they have not complied with the requirements (cl 36). Further, the court has the power to order that one party pay another party's costs of compliance with the requirements if it is reasonable to do so (cl 38). Therefore, parties should not be discouraged from pursuing disputes by the potential costs of the new prelitigation requirements.

(d) the relationship between the limitation and its purpose

There is a rational and proportionate relationship between the limit that the requirements impose on the right to access the courts and the purpose that the requirements seek to achieve. The Victorian Law Reform Commission, in its *Civil Justice*

Review — Report, noted that the introduction of pre-action procedures in the United Kingdom, Queensland, South Australia and the Family Court had been highly successful in resolving disputes.

The VLRC concluded that the combined effect of empirical and other evidence supported the notion that pre-action requirements have a significant role to play in facilitating earlier disclosure and settlement, reducing the number of cases which go to trial, narrowing the issues in dispute in those cases that do go to trial, encouraging parties to cooperate, rather than seeing each other as adversaries, and decreasing costs and delays in the civil justice system. This suggests that the requirements are an effective way of achieving the government's purpose.

Further, the requirements are not overly broad. They are carefully tailored to their purpose in that they only require parties to take reasonable steps having regard to the person's situation and the nature of the dispute (cl 34(1)). Therefore, the sanctions will only apply where a party has acted unreasonably. And ultimately as the court will, as far as possible, have to apply the powers consistently with the charter, there is no risk of the right being unreasonably restricted.

(e) any less restrictive means reasonably available to achieve its purpose

Although pre-action requirements are not a panacea for solving the problems of cost and delay they are an increasingly commonly used tool for doing so. As I said earlier, similar requirements are present in the United Kingdom, Queensland, South Australia, and in the Family Court (see Practice Direction — Pre-Action Conduct (UK); Personal Injuries Proceedings Act 2002 (Qld); *Supreme Court Civil Rules 2006* (SA); *District Court Civil Rules 2006* (SA); schedule 1 to *Family Law Rules 2004* (cth). Although, other than in the United Kingdom, these jurisdictions do not have a human rights charter, they are nevertheless relevant examples, as the right to access the courts is also a common-law right.

In some instances, those protocols are more stringent than that provided for in the bill. For example, in Queensland, plaintiffs in personal injuries proceedings cannot proceed with a claim if they fail to comply with certain pre-action protocols, unless the respondent waives the non-compliance, or the court orders that the claim may proceed (s 18 of the *Personal Injuries Proceedings Act 2002* (Qld)). In light of these comparisons, and the safeguards in the bill outlined above, I am of the view that the requirements are reasonable and minimally impair the implied right.

Given the relatively minor extent of the limitation, the evidence that such requirements are effective, and the safeguards built into the regime, I am of the view that the prelitigation requirements amount to a reasonable limitation on the implied right to access the courts in s 24(1) of the charter.

Power to order attendance at appropriate dispute resolution

The implied right to access the courts is also engaged by the power to order attendance at non-binding appropriate dispute resolution (cl 66(1)). Although the power only applies to non-binding processes, and therefore parties retain their ultimate ability to access the courts, it may be argued that such a requirement restricts access to the courts, especially for impecunious parties, and particularly if it results in unnecessary costs and delay (see *Halsey v. Milton Keynes General NHS Trust* [2004] EWCA Civ 576 at [9] (Dyson LJ). However, I am of the view that, as the power is discretionary, and as the court is obliged to apply the power consistently with the right, there is no risk of its being used in a manner that limits the right.

Therefore I am of the view that the proposal to allow courts to order attendance at non-binding appropriate dispute resolution without consent does not limit the implied right to access the courts.

Liberalising the test for summary judgement

The power for the court to obtain summary judgement might also be thought to limit access to a fair hearing (cls 47(3)(c)(ii) and 60–63). However, I am of the view that this power does not limit the right. All systems of justice have processes for identifying unmeritorious claims. The ability for the court to do so summarily where there is no real prospect of success is not repugnant to the right. This is especially so since the court is obliged to apply the power consistently with the right. Further, such decisions are able to be appealed.

Enhanced case management powers

It might also be considered that the enhanced active case management powers (pt 4.2), including the provisions in regard to the discovery process (pt 4.3), also have the potential to limit the right to a fair hearing. However, the obligation remains to deal with cases justly, meaning the right to a fair hearing will not be limited (see *Walker v. D* [2000] EWCA Civ 508 at [24] (Lord Woolf MR)). Moreover, the court is obliged to apply the powers consistently with the right (cl 6). Therefore I do not consider that the introduction of enhanced case management powers limits the right to a fair hearing.

Conclusion on s 24(1)

For these reasons I do not consider that the bill breaches the right to a fair hearing.

Right to privacy

Section 13 of the charter provides that persons have the right not to have their privacy arbitrarily interfered with. The bill engages this right by:

> requiring, as part of the prelitigation requirements, all persons involved in a civil dispute to disclose all documents that are critical to the resolution of the dispute (cl 34(2)(a)); and
>
> imposing an overarching obligation on parties to a civil proceeding to disclose the existence of any document that they reasonably consider to be critical to the resolution of the dispute, at the earliest reasonable time after they become aware of the existence of the document (cl 26).

These requirements are in addition to the normal discovery process. However, an interference with privacy is not arbitrary where it serves a legitimate aim, and does so in a proportionate manner. These disclosure requirements serve the legitimate aim of ensuring the efficient resolution of civil disputes. They are proportionate in that the threshold is set high. They apply only to documents that are critical, which is

a higher threshold than that which applies in the discovery process. Sanctions for non-compliance with the prelitigation disclosure requirement will only apply where the non-compliance is unreasonable, taking into account the person's situation (cl 34(1)).

Likewise, in making orders sanctioning non-compliance with the overarching obligation of disclosure, the court must be satisfied that it is in the interests of justice to do so (cl 29). Finally, the disclosure requirements will not prevail over the common law doctrine of privilege (cls 6(b) and 26(3)(a)), and use of disclosed documents for purposes other than the resolution of the dispute or the proceeding is prohibited (cls 27 and 35). Therefore in my view, the interferences with privacy are not arbitrary, and accordingly, the right to privacy is not limited by the proposals.

Conclusion

For the reasons given in this statement, I consider that the bill is compatible with the charter.

Justin Madden, MLC
Minister for Planning

Second reading

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

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

That the bill be now read a second time.

Incorporated speech as follows:

The Civil Procedure Bill 2010 will reform, modernise and unify the procedure for the conduct of civil litigation. Courts play an important role in adjudicating civil disputes and procedural rights and that role should, of course, continue. But as a public resource, courts must be used responsibly. Parties should not abuse their right of access to the courts by unnecessarily tying up court resources, thereby preventing others from accessing justice. A well-resourced litigant should not be able to use their power to play tactical games and draw out litigation until the other party is forced into an unfair settlement or withdraws.

This bill will curtail such behaviour and arm the courts with the power to prevent such conduct. Parties should be encouraged to resolve their disputes by agreement, and where they require court intervention, the bill will ensure they adhere to appropriate standards of conduct. The result will be a more accessible civil justice system for those parties who need adjudication by the courts.

Very few of the cases which are lodged with the courts proceed to a final hearing. Most cases settle or are withdrawn prior to trial. However, the process to achieve resolution of civil matters that are started in the courts, including the cases that are settled before trial, is often unduly long and costly. The current cost of litigation has reached a point where access to the civil courts is beyond the reach of most Victorians. Access to justice in the civil courts is not meaningful unless there are processes in place to facilitate the quick, just and inexpensive resolution of those disputes.

The Victorian civil procedure reforms represent a generational change in the way civil litigation will be managed. The proposed changes are the first major attempt at civil law reform in Victoria in over 20 years. Following the recommendations made by Lord Woolf in the *Access to Justice Report* (1996), the United Kingdom rules of civil procedure were subjected to a major overhaul. Extensive civil reform initiatives were implemented in New South Wales and Queensland several years ago, and recently by the federal government.

The Victorian reform proposals are, therefore, an extension of the trend of civil justice reforms in Australia and in the United Kingdom, and as a package they break new ground, particularly in the areas of the prelitigation requirements and the overarching obligations.

The bill recognises that the civil litigation system has become out of balance and is increasingly unable to achieve essential goals of accessibility, affordability, proportionality, timeliness and getting to the truth quickly and easily. This bill will make these goals once again more achievable.

One of the bill's key objectives is to build a culture in which litigants are encouraged and empowered to resolve their cases without going to court. Lawyers, litigants, insurers, litigation funders, expert witnesses and the courts will be required to work together to achieve this important objective.

The prelitigation processes will provide a general framework for parties and lawyers to achieve resolution of the dispute or, if that is not possible, to narrow the issues in dispute. The bill's intention is to give real meaning to the saying that litigation should be a measure of last resort.

Once proceedings have been initiated, the role of the overarching obligations is to continue to encourage the parties and their lawyers to use reasonable endeavours to achieve early resolution of cases by agreement or to narrow the issues in dispute except where justice or judicial determination is genuinely required.

The bill also provides clear legislative guidance to judges to proactively manage cases in a manner that will promote the overarching purpose — that is, the just, efficient, timely and cost-effective resolution of the real issues in dispute. This will empower them to give clear, effective directions in cases by requiring the parties to keep to the real issues in dispute. It should reduce the number of interlocutory applications in complex litigation and could be used, for example, to limit the time taken up in oral submissions.

At the core of these reforms is the concept of proportionality. Participants in litigation will be required to use reasonable endeavours to ensure that legal and other costs spent in the proceeding are reasonable and proportionate to the complexity or importance of the issues in dispute, and the amount in dispute. The courts will also be required to deal with a civil proceeding in the same manner.

These provisions are designed to cure unnecessary expenditure on litigation and the inappropriate use of the courts as a public resource, a matter that has been highlighted in several recent decisions.

I note recent judicial statements criticising the costs charged by some lawyers as being disproportionately high in comparison to the amounts in dispute, as well as urging lawyers to focus on resolving disputes, rather than attempting to win at all costs. Under the civil procedure reforms, these kinds of behaviours will need to change.

When the courts are used by litigants and lawyers in this way, the public loses faith in the justice system and the courts are unavailable to hear meritorious claims. This package of reforms will require all participants in the civil justice system to lift the standards of conduct in civil litigation and to work together to achieve a positive change in the civil justice system.

Reform process

Reform of the civil justice system was identified as one of the priorities in the Attorney-General's first justice statement. The government gave the Victorian Law Reform Commission a reference in September 2006 to undertake a review of the civil justice system and the commission presented its report in March 2008.

The commission's work was led by Peter Cashman and the report contains a comprehensive range of recommendations for reform of the civil justice system. The commission set strategic objectives for various reforms of the civil procedure rules, substantive law and case management. These objectives, now reflected in the bill, seek not only to change the formal rules for the conduct of proceedings, but to change litigation culture itself.

Justice statement 2 in October 2008 restated the government's commitment to reforming civil justice using the VLRC report as a guide.

The government recognised that long-term change was not possible without first securing the agreement of the courts and the profession. Therefore, I established a civil procedure advisory group in November 2008 to consider the commission's recommendations. The advisory group is chaired by the chief justice of the Supreme Court and has representatives from the Supreme, County and Magistrates courts, VCAT, the Victorian Bar, the Law Institute of Victoria, the Federation of Community Legal Centres and the Department of Justice.

The results of the advisory group's deliberations are now proposed for inclusion in the Civil Procedure Bill and comprise the fundamental architecture for reform of the civil justice system.

I would like to thank the chief justice for her leadership of the advisory group and the members for their significant commitment of time and expertise. The reforms contained in the bill are proceeding with a high degree of support from these important stakeholders. The bill represents an outstanding achievement in collaborative law reform.

The bill is the first part of a major reform program that will continue until 2013, and is likely to involve at least one further piece of substantial amending legislation implementing the remaining recommendations of the commission's report to be agreed to by the government. The second phase will emphasise reviewing the costs rules for litigation, but will also include a review of the role of expert witnesses.

Summary of key reforms

The reforms will apply to civil proceedings in the three mainstream Victorian courts: the Supreme Court, the County Court and the Magistrates Court. VCAT is designed to offer flexible and cost-effective practices for determining specific types of disputes, and is not currently included within the scope of these general reforms.

With the exception of the prelitigation requirements, the bill will apply in a civil proceeding where a civil penalty is sought under a civil penalty provision. The bill will not apply to criminal or quasi-criminal proceedings, for example proceedings for contempt of court, or to the acts listed in clause 4.

Overarching purpose and duties of the courts

The bill will introduce a uniform statutory statement to define the overarching purpose of the courts, which is to facilitate the just, efficient, timely and cost-effective resolution of the real issues in dispute.

This might be achieved by determination of the proceeding by the court, agreement between the parties or any appropriate dispute resolution process agreed to by the parties or ordered by the court.

A similar provision introduced in the United Kingdom at the time of the Woolf reforms has been used as the driving force for cultural change in the United Kingdom civil justice system.

The courts will be required to give effect to the overarching purpose when exercising powers or interpreting their powers. When giving effect to the overarching purpose, a court must have regard to a broad range of objects. I have already mentioned proportionality, but other objects include the public interest in the early settlement of disputes by agreement between the parties and the efficient conduct of the business of the court.

The court may also have regard to the extent to which the parties have complied with the prelitigation requirements under this bill or any other prelitigation processes. This means that what the parties and their lawyers do before a proceeding commences may come under the scrutiny of the court later on, if it turns out that they have failed to take reasonable steps to resolve the dispute.

Overarching obligations — standards of conduct for parties

The bill contains new provisions prescribing standards of conduct in civil proceedings.

The overarching obligations will apply to parties, legal practitioners or other representatives of parties, law practices, any person who provides financial or other assistance to any party insofar as they exercise direct or indirect control, or any influence over the conduct of the proceeding or a party, for example, insurers and litigation funders. They will also apply, where relevant, to expert witnesses, but will not apply to lay witnesses.

The prelitigation requirements apply up until the commencement of proceedings. The overarching obligations commence as soon as a party files its first document in a proceeding and apply to all aspects of a civil proceeding,

including appropriate dispute resolution processes, interlocutory proceedings and appeals.

'Appropriate dispute resolution' is defined in the bill. The government prefers this expression to 'alternative dispute resolution', as 'ADR' should become the appropriate vehicle for dispute resolution, not an alternative to 'mainstream' litigation. In the future, as a result of these reforms, litigation in the courts should be the last resort when all other options are exhausted, or where the interests of justice require it.

The bill provides that each person to whom the overarching obligations applies has a duty to the court to further the administration of justice. There are 10 overarching obligations that are components of the paramount duty.

Some of these obligations are very familiar to lawyers, and include duties to:

act honestly;

not make any claims or responses that are frivolous, vexatious or do not have, on the material available, a proper legal and factual basis; and

act promptly and minimise delay.

Others are completely new and draw upon good dispute resolution practice and promote the cultural change that is at the centre of these reforms. They include duties to:

cooperate with the parties and the court in connection with the conduct of a civil proceeding;

use reasonable endeavours to resolve the dispute by agreement or using ADR processes, unless it is not in the interests of justice to do so, or the dispute is of such a nature that only judicial determination is appropriate; and

as I mentioned earlier, to ensure that the legal and other costs incurred in connection with the proceeding are reasonable and proportionate to the complexity or importance of the issues and the amount in dispute.

In relation to the duty to ensure costs are reasonable and proportionate, an example of a possible breach may be the practice of briefing two barristers (senior counsel and junior counsel) where the complexity of the case does not warrant it. I note that the obligation is worded so that resources are not unreasonably constrained for cases that might in themselves be for a small amount, but that have significant precedent or public interest value.

The bill clarifies any potential conflict that a person who carries the overarching obligations may have with other legal, contractual or other obligations that person may have. It provides that the overarching obligations will prevail to the extent of any inconsistency. However, this provision does not override the lawyer's special duty to the court, which is paramount.

Imposing equivalent duties on participants in litigation will address the conduct of some parties who sometimes are invisible to the court, but by their decisions inappropriately use the courts, to further their own interests.

Parties will be required to certify in their pleadings that they have read and understood the obligations and their lawyers will have to certify that the allegations they make have a proper basis.

There are examples in the United Kingdom, and interstate, such as in the Federal Court and in NSW, of overriding or overarching purposes for the courts. Victoria will be the first Australian jurisdiction to implement statutory conduct obligations that apply not only to lawyers, but to all participants who have the power to influence the course of civil litigation.

The chief justice has recently drawn attention to the ethical challenges faced by lawyers in light of the ever-increasing commercialisation of legal practice. This bill makes clear the fundamental ethical obligations of lawyers in conducting litigation, especially their duties to the court. It will assist them in resolving tensions between such duties and the demands of overzealous clients by also bringing clients and those who fund litigation within the orbit of the overarching obligations.

The court will be able to impose penalties for breach of the overarching obligations. In deciding if a sanction for non-compliance is appropriate, the court will be required to take into account whether or not a party has had legal representation.

A lawyer may be required to personally bear any costs order made by the court for breach of the obligations, and an order may be made that those costs are payable immediately and enforceable immediately.

General prelitigation requirements — background

The bill will introduce mandatory general prelitigation requirements for parties to use reasonable endeavours to resolve the dispute by agreement, or to clarify and narrow the issues in dispute in the event that civil proceedings are commenced.

The prelitigation requirements signify an important cultural turning point for the legal profession and potential litigants in that they will require persons involved in civil disputes to take reasonable steps, having regard to their situation and the nature of the dispute:

to resolve the dispute by agreement; or

to clarify and narrow the issues in dispute in the event that civil proceedings are commenced.

Each person involved in a civil dispute must exchange appropriate prelitigation correspondence, information and documents critical to the resolution of the dispute.

Each person involved in a civil dispute must also consider options for resolving the dispute without the need for civil proceedings in a court, including, but not limited to, resolution through genuine and reasonable negotiations or appropriate dispute resolution.

This bill does not make ADR compulsory, but persons involved in a civil dispute must not unreasonably refuse to participate in genuine and reasonable negotiations or appropriate dispute resolution.

Parties or their legal representatives will be required to certify that they have complied with the prelitigation requirements,

and if they have not, to set out the reasons for such non-compliance.

It is at this stage that a party, if it regards that it would be unreasonable for it to comply with the prelitigation requirements, would set out the reasons why they have not. Examples might include where property is at risk of dissipation or destruction if advance notice of proceedings were given; where a party is terminally ill; where a limitation period is about to expire and a cause of action would be statute barred if legal proceedings were not commenced immediately.

A court may not prevent the commencement of civil proceedings in the court merely because of non-compliance with the prelitigation requirements, but where a party has failed to meet those requirements, they are at risk of adverse costs orders being made against them once they get to court.

Examples of a failure to comply might include an unreasonable refusal to participate in mediation or other ADR, or an unreasonable refusal to consider a reasonable offer of settlement.

The prelitigation requirements are less prescriptive than the general pre-action protocol recommended by the commission. The advisory group has given much consideration to achieving the right balance between providing enough guidance to the parties in the prelitigation stage, and avoiding creating a system that inadvertently builds in further layers of cost and delay.

The aim is to ensure that disputants have taken the opportunity to understand what is in dispute and to consider whether it can be resolved without resorting to litigation. In doing so, the prelitigation requirements only reflect current good practice.

It is recognised that there will be some disputes where it would be unreasonable to require the parties to go through a prelitigation process. There may be an urgent time limit that must be met, or the case is one in which only a judicial direction or decision will suffice. It is hoped that these types of cases will be adequately allowed for by the courts in considering the reasonableness of the parties' actions in individual cases where the prelitigation process has not been adopted.

To provide some guidance around what matters do not need to follow this process, there are some limited statutory exceptions, including appeals, proceedings under the Charter of Human Rights and Responsibilities, and proceedings in which civil penalties are sought. The bill contains an exemption for Corporations Law matters in recognition of the prescriptive nature of many such proceedings (for example, chapter 5 liquidation proceedings), but this exemption may be reviewed in the light of any developments at the commonwealth level. The existence of prelitigation protocols for claims under the Accident Compensation Act 1985 and the Transport Accident Act 1986 also qualify those claims for an exemption.

It is anticipated that most cases for which the prelitigation requirements would be inappropriate would be covered by the test in clause 34, which only requires reasonable prelitigation steps to be taken, having regard to the disputants' situation and the nature of the dispute. However, the bill also provides the courts with a general power to exempt civil proceedings or classes of civil proceeding from compliance with the prelitigation requirements. This will allow the courts to make rules that more clearly identify the classes of disputant who are not required to take the steps envisaged by clause 34 where the courts think that such clarification is necessary.

In addition, the bill provides the courts with a rule-making power to design specific prelitigation processes for certain types of cases. The experience in the United Kingdom of the use of specific pre-action protocols has been very positive, according to Lord Justice Jackson in his recent final report on civil litigation costs.

It is expected that the development of any exceptions and specific protocols will occur in the consultative spirit that has characterised the reform process to date. The operation of the prelitigation requirements and any rules made to clarify their operation will be reviewed by the government to ensure that this new and innovative reform achieves its objectives.

Costs of compliance

Generally, there will be a presumption that each person involved in a civil dispute or party to a civil proceeding is to bear that person's or party's own costs of compliance with the prelitigation requirements, subject to the rules of court.

This presumption may be displaced where a court is satisfied that it is reasonable to do so, having regard to furthering the overarching purpose. A court may order that a representative of a party to a civil proceeding, rather than the party, pay some or all of another party's cost of compliance with the prelitigation requirements if the court is satisfied that, by the representative's conduct in relation to compliance with the prelitigation requirements, another party has unnecessarily incurred costs in complying with the prelitigation requirements.

Despite the general rule that each party will bear their own costs, where a party fails to comply with the prelitigation requirements, the court will be able take this into account in determining costs in respect of civil proceedings which are issued in respect of that civil dispute, or in making other orders.

Claims for personal injury under the Transport Accident Act 1986

Claims for personal injury under part 6 of the Transport Accident Act 1986 may be conducted in accordance with a voluntary prelitigation process. There are currently no sanctions for breach of the Transport Accident Commission's voluntary prelitigation scheme. The sanctions for breach of the prelitigation requirements under this bill will also be applicable to claims conducted pursuant to the voluntary pre-action process under the Transport Accident Commission regime. The bill will not, however, interfere with the fixed costs regime that applies to compliance with the TAC prelitigation regime.

For transport accident claims that are not conducted in accordance with the voluntary prelitigation process, those claims will be governed by this bill — that is, they are civil proceedings as defined in the bill and must comply with the prelitigation requirements.

Express case management powers for judges and magistrates

The courts already have broad, inherent discretion to manage their own proceedings. The primary objective of the case management reforms is to make it clear that the courts have express power to make appropriate orders and impose reasonable limits to enable them to better or actively manage the conduct of proceedings, thereby reducing costs and delay.

The bill provides clear legislative guidance to judges to proactively manage cases in a manner that will promote the overarching purpose — that is, the just, efficient, timely and cost-effective resolution of the real issues in dispute.

The bill provides that for the purpose of ensuring that a civil proceeding is managed and conducted in accordance with the overarching purpose, the court may give any direction or make any order it considers appropriate. This might include ensuring that the proceeding is conducted promptly and efficiently or encouraging the parties to cooperate with each other in the conduct of the civil proceedings, to settle the proceeding or to use ADR, or limiting the time for the hearing including the number of witnesses and the time taken for examination or cross-examination of witnesses.

The bill further provides that a court may make any order or give any direction it considers appropriate in relation to pretrial procedures. This is an important power. The bill gives judges and magistrates powers to make orders in relation to setting timetables, time limits and time frames for completion of a proceeding and the use of ADR to assist in the conduct and resolution of all or part of the proceeding.

Further, the bill empowers judges and magistrates to make orders in relation to the conduct of the hearing in a civil proceeding, including: limiting the time to be taken in leading evidence, cross-examining or re-examining, not allowing cross-examination of witnesses or limiting the number of witnesses including expert witnesses and limiting the length of written and oral submissions.

Sanctions apply for breach of the case management orders or directions made by a judge or magistrate. These include costs orders, dismissal of the civil proceeding, striking out of parts of a claim or any other order that the court considers appropriate.

Liberalising the test for summary judgement

The bill reforms the procedure for the earlier determination of disputes, including liberalising the test for the summary disposal of unmeritorious claims and defences. This will help the courts to remove at an early stage cases where a party has no real prospect of success.

Improving appropriate dispute resolution

The bill provides that a court may make an order referring a civil proceeding, or part of a civil proceeding, to appropriate dispute resolution to resolve or settle the proceeding.

The provisions will be essentially facilitative and complement the legislation passed in 2009 in respect of judicial dispute resolution (the Courts Legislation Amendment (Judicial Resolution Conference) Act 2009). The courts are already empowered under their rules and legislation to make orders of this kind, but the purpose of the provision and the extensive definition of ADR is to encourage the courts to make more use of the variety of ADR processes that are available to litigants for resolving their disputes.

The bill also enhances the capacity of the courts to order that parties participate in non-binding ADR, with or without their consent.

There is an expectation that the courts will become, as the Supreme Court's Commercial Court has named itself, a true litigation laboratory and get some runs on the board, encouraging and in some cases requiring parties to engage with appropriate dispute resolution processes to achieve an early settlement of their dispute.

Narrowing the test of discovery

The commission recommended reform of the procedure for the compulsory production of documents in civil proceedings. The discovery procedure is a critical element of fact-finding in litigation and has become a very contested and costly process.

The main concerns with discovery revolve around issues of expense, scale and delay, as well as abuse of discovery obligations. It is identified by stakeholders as the most expensive aspect of the civil justice system. For example, it was reported that in one Supreme Court case, a party spent $40 million on the discovery process alone, and that 120 legal professionals worked on the discovery process.

At present, the respective courts' rules require the disclosure of all documents that are directly or indirectly relevant to issues in a case. In the United Kingdom and some other Australian jurisdictions, the discovery test has been narrowed to remove the requirement of indirect relevance. The advisory group recommended that the test in Victoria be similarly narrowed and the government understands that the courts are currently considering adoption of a test similar to that applied by the Federal Court.

The bill implements the commission's recommendations with respect to case management reforms and sanctions for discovery abuse. As with the case management reforms, it clarifies that a court may make any order in relation to discovery that it considers necessary or appropriate, including limiting or expanding a party's obligation to make discovery.

Further, the bill clarifies that a court may make any order or give any directions it considers appropriate if the court finds that there has been:

a failure to comply with discovery obligations;

a failure to comply with any order or direction of the court in relation to discovery; or

conduct intended to delay, frustrate or avoid discovery of discoverable documents.

Conclusion

This bill is a landmark reform in the way that civil disputes in Victoria are managed and resolved. It will strengthen the changes that are already occurring to develop a less adversarial approach to dispute resolution. It will promote a culture that focuses on achieving the best outcomes in a timely and cost-effective way for disputants, whether they are global corporations or individuals going about their daily lives. This government has already made great strides in

promoting ADR. Now it is complementing those initiatives with a bill that provides the foundations for the comprehensive overhaul of civil litigation in Victoria.

I commend the bill to the house.

Debate adjourned for Mr RICH-PHILLIPS (South Eastern Metropolitan) on motion of Mr Koch.

Debate adjourned until Thursday, 5 August.

ENERGY AND RESOURCES LEGISLATION AMENDMENT BILL

Introduction and first reading

Received from Assembly.

Read first time for Hon. M. P. PAKULA (Minister for Public Transport) on motion of Mr Jennings.

Statement of compatibility

For Hon. M. P. PAKULA (Minister for Public Transport), Mr Jennings tabled following statement in accordance with Charter of Human Rights and Responsibilities Act:

In accordance with section 28 of the Charter of Human Rights and Responsibilities, I make this statement of compatibility with respect to the Energy and Resources Legislation Amendment Bill 2010.

In my opinion, the Energy and Resources 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 purposes of this bill are to:

amend the Electricity Industry Act 2000 to extend the application of provisions of the act designed to facilitate cost sharing between small electricity generators for suitably sized and designed augmentations to distribution networks, to require the Essential Services Commission to have regard to a ministerial direction given under part 6 of that act before revoking a licence, and to make further provision for the rollout of advanced metering infrastructure;

amend provisions of the Electricity Safety Act 1998 relating to the functions and powers of Energy Safe Victoria, the clearance of vegetation around electric powerlines, bushfire mitigation plans and electricity safety management schemes;

amend the National Electricity (Victoria) Act 2005 to disapply the smart meter rollout provisions under the National Electricity Law to prevent an overlap with the arrangements under the Electricity Industry Act 2000 and to provide for an economic incentive scheme with respect to fire starts to be established and administered by the Australian Energy Regulator in respect of electricity distribution companies operating in Victoria;

amend the Energy Safe Victoria Act 2005 in relation to Energy Safe Victoria's corporate governance arrangements;

amend the Mineral Resources (Sustainable Development) Act 1990 to improve the operation of that act;

to amend the Petroleum Act 1998 to improve the operation of that act;

repeal the Mines Act 1958;

amend the Gas Industry Act 2001 to require the Essential Services Commission to have regard to any ministerial direction under part 9 of that act before revoking a licence;

amend the Aboriginal Heritage Act 2006 to make further provision in relation to the interrelationship between cultural heritage management plans and area work plans under the Mineral Resources (Sustainable Development) Act 1990; and

make miscellaneous amendments to the Geothermal Energy Resources Act 2005; the Greenhouse Gas Geological Sequestration Act 2008; the Offshore Petroleum and Greenhouse Gas Storage Act 2010; the Pipelines Act 2005; the Victorian Energy Efficiency Target Act 2007; the Victorian Renewable Energy Act 2006; and the Energy and Resources Legislation Amendment Act 2009.

Human rights issues

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

The bill raises a number of human rights issues.

The right to be presumed innocent (section 25(1))

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 17 (which will insert the new sections 83B and 83BB into the Electricity Safety Act 1998), clause 23 (which will insert a new paragraph (c) into section 98 of the Electricity Safety Act 1998) and clause 26 (which will insert the new section 113C into the Electricity Safety Act 1998) create a number of new offences in the Electricity Safety Act 1998 which potentially, when read in conjunction with section 72 of the Criminal Procedure Act 2009, impose evidential onuses on a defendant to adduce or point to evidence that goes to an exception, excuse or defence (however, I note that section 25(1) would only be relevant in relation to these offences to the extent that they applied to an individual — section 25(1) of the charter would not arise if a corporation was a defendant to such a charge).

Courts in other jurisdictions have generally taken the approach that an evidential onus on a defendant to raise a defence does not limit the presumption of innocence.

Additionally, in my view, these provisions do not inappropriately transfer the burden of proof to a defendant in breach of section 25(1) of the charter, because once a defendant has adduced or pointed to some evidence, the burden is on the prosecution to prove beyond reasonable doubt the absence of the exception or defence raised. Furthermore, the burdens do not relate to essential elements of the offences and are only imposed on the defendant to raise facts that support the existence of an exception, defence or excuse.

However, even if these provisions did 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) because the defences and exceptions provided relate to matters within the knowledge of the defendant.

Accordingly, I consider that the new sections 83B, 83BB, 98(c) and 113C are compatible with section 25(1) of the charter.

Freedom of expression (section 15) and the right against self-incrimination (section 25(2)(k))

Clause 31 will insert a new section 141AB into the Electricity Safety Act 1998 which provides that the director of energy safety, by written notice, may require a person to give the director information in the person's possession that the director reasonably requires for the purpose of preparing the annual report in relation to the performance of distribution companies.

Section 141AB(3) provides that a person who is given notice must comply with the notice unless the person has a lawful excuse.

Section 141AB(4) provides that a person cannot be compelled to give information if the information might tend to incriminate the person of an offence.

Section 141AB(5) provides that the section does not require the person to give information that is the subject of legal professional privilege or client legal privilege.

To the extent that it applies to an individual as opposed to a corporation, section 141AB engages the right to freedom of expression. However, as section 141AB does not abrogate the common law privilege against self-incrimination, section 25(2)(k) of the charter is not engaged.

Additionally, clause 17 and clause 19 will amend the Electricity Safety Act 1998 to insert the new sections 83BD, 83BJ, 83BK, 90B and 90C. Section 83BD provides that Energy Safe Victoria may require a specified operator to provide any additional information that Energy Safe Victoria thinks fit in relation to a bushfire mitigation plan submitted by the operator under section 83BA. Section 83BJ requires specified operators to obtain independent audits of the operators' compliance with its accepted bushfire mitigation plan and to provide a copy of the audit report to Energy Safe Victoria. Section 83BK provides that Energy Safe Victoria may conduct, or cause to be conducted, an audit to determine whether or not a specified operator is satisfactorily complying with its accepted bushfire mitigation plan. Sections 90B and 90C mirror the requirements of sections 83BJ and 83BK, but apply in respect of audits for compliance by a 'responsible person' with an approved management plan relating to compliance with the code of practice for electric line clearance. These sections will also engage section 15 of the charter to the extent that they apply to individuals.

Clause 50 will amend the Mineral Resources (Sustainable Development) Act 1990 to insert a new section 77KA, which provides that the holder of an extractive industry work authority who carries out an extractive industry at a quarry must report a reportable event to the chief inspector in accordance with the regulations. However, as the obligation is placed on the holder of an authority, which will be a business rather than an individual, this clause will not engage section 15 of the charter.

Freedom of expression (section 15)

The compulsion to provide information engages the right to freedom of expression under the charter. 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.

To the extent that the information-gathering power in section 141AB imposes any restrictions on the freedom of expression of an individual (as opposed to a corporation), the powers are reasonably necessary for the protection of public order under section 15(3) of the charter because electricity is considered to be an essential service. The ability to acquire information through section 141AB will provide the director with an effective and transparent mechanism to gather the information required to prepare his or her annual report on the performance of distribution companies. This is an important aspect of ensuring electricity safety, particularly in respect of monitoring potential bushfire risks. For these reasons, I consider that section 141AB is compatible with section 15 of the charter.

Similarly, the information-gathering powers in sections 83BD, 83BJ, 83BK, 90B and 90C are also necessary for the protection of public order given that the powers relate to public safety. The ability to obtain information regarding bushfire mitigation plans and electric line clearance management plans will enable Energy Safe Victoria to ensure that the plans submitted are appropriate, so that Energy Safe Victoria can better address the risks posed by bushfires in Victoria. Therefore, sections 83BD, 83BJ, 83BK, 90B and 90C are compatible with section 15 of the charter.

Right not to be compelled to testify (section 25(2)(k)) and the right to fair trial (section 24(1))

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.

As section 141AB does not abrogate the common law privilege against self-incrimination, section 141AB is compatible with section 25(2)(k) of the charter.

The right to a fair hearing (section 24(1))

Section 24 of the charter provides that a party to a civil proceeding has the right to have the proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing. This right has been broadly interpreted to encompass proceedings which are determinative of private rights and interests, which includes proceedings of an administrative character. 'Proceeding' is a word of wide connotation which can encompass both the initiation of a legal process and steps taken in their continuance. As a non-acceptance by Energy Safe Victoria of a bushfire mitigation plan can potentially lead to the imposition of penalties on natural persons, it is possible that the right to a fair hearing is engaged by clause 17, which will insert a new section 83BG into the Electricity Safety Act 1998. The right may also be engaged by the new section 83BH, which provides that Energy Safe Victoria may determine the bushfire mitigation plan which is to apply in relation to a specified operator's at-risk electric lines.

Sections 83BG and 83BH will apply to 'specified operators'. The new section 83A defines 'specified operator' as the operator of an at-risk electric line. An 'at-risk electric line' means an electric line, other than a private electric line, that is above the surface of the land and in a hazardous bushfire risk area. The exclusion of private electric lines from the definitions means that most private individuals, such as farmers, will not fall within the definition of specified operator in section 83A and so will not be subject to sections 83BG and 83BH. Section 83BG will mainly apply to electricity generation businesses, and also rail operators in certain circumstances.

The new section 113C in clause 26 will also apply these provisions to major electricity companies in respect of any part of a major electricity company's supply network that is an 'at-risk supply network'. The penalties for major electricity companies can theoretically also apply to natural persons.

Section 83BG contains a variety of procedural protections, including the requirement for Energy Safe Victoria to notify a specified operator of the non-acceptance and giving the operator an opportunity to modify and re-submit the bushfire mitigation plan. Additionally, Energy Safe Victoria must provide a statement of reasons for its decision. Section 83BH also contains a safeguard, as it provides that Energy Safe Victoria must provide notice to a specified operator in writing if it determines the bushfire mitigation plan that is to apply. Additionally, specified operators are not prevented from submitting their own bushfire mitigation plans for acceptance under section 83BA.

A person would also be able to seek judicial review of such decisions.

Section 24(1) of the charter does not require the principal decision-maker to be independent and impartial or that a public hearing must be granted at first instance, rather, the whole decision-making process, including reviews and appeals, must be considered in its entirety.

In light of the limited application of the new sections 83BG and 83BH, and given the procedural safeguards and right to seek judicial review of any decisions made under these sections, in my view sections 83BG and 83BH are compatible with section 24(1) of the charter.

The right to privacy (section 13)

Section 13 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.

Clause 18 will insert a new section 86A in the Electricity Safety Act 1998 which will provide that, if Energy Safe Victoria is satisfied that it is necessary to do so in order to prevent future unsafe electrical situations, Energy Safe Victoria may, in writing, direct a specified person to restrict or cease the planting of a tree in the immediate area around an electric line, to clear trees from the immediate area around an electric line or to do any other thing necessary to minimise or prevent growth of trees in the immediate area around an electric line.

Section 86A(2) will provide that any such directions must be reasonable.

Given that directions will be issued for the purpose of preventing future unsafe electrical situations, and that the directions must be reasonable, the new section 86A is compatible with section 13 of the charter.

Additionally, clause 26 will insert a new section 113F into the Electricity Safety Act 1998, which provides that a major electricity company must cause an inspection to be carried out of private electric lines. The relevant company must provide notice to the occupier of the land in the prescribed form before such an inspection is carried out. The purpose of such inspections is to ensure electrical safety. Accordingly, the inspections will not constitute an arbitrary or unreasonable interference with privacy. Consequently, section 113F is also compatible with section 13 of the charter.

Conclusion

I consider that the bill is compatible with the charter, as none of the clauses in the bill limit the rights in the charter.

Martin Pakula, MLC
Minister for Public Transport

Second reading

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

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

That the bill be now read a second time.

Incorporated speech as follows:

The government is committed to ensuring a safe, efficient and secure energy system and reliable delivery of energy services and to improved public safety, safety of infrastructure and protection of the environment, in relation to mining and quarry operations.

This bill will further those commitments. It will amend a number of acts and contains some significant reforms,

together with changes of a more technical or statute law revision nature.

In particular, the bill includes the amendments foreshadowed in the government's response to the submissions of counsel assisting the 2009 Victorian Bushfire Royal Commission with respect to the electricity sector. The bill will amend the Electricity Safety Act 1998 to expand the role of the technical safety regulator — Energy Safe Victoria — in overseeing the mitigation and management of bushfire risks by the electricity industry. The bill will also amend the Energy Safe Victoria Act 2005 to enhance the independence of the director of Energy Safe Victoria.

The bushfire mitigation regime that applies to electricity businesses will be strengthened. Importantly, there will be an explicit duty to minimise bushfire danger, to which a substantial penalty will apply. The bill will also introduce a new penalty on electricity businesses that fail to have an approved bushfire mitigation plan in place by 1 November each year.

In addition to these improvements to the electricity safety regime, the bill will introduce an economic incentive scheme for reducing the number of fires started by electrical infrastructure. This scheme will form part of the economic regulatory framework managed by the Australian Energy Regulator. It will provide incentives for distribution businesses to minimise bushfire risks associated with their electricity assets.

The bill will make other changes in the electricity sector. It will amend the Electricity Industry Act 1998 to expand cost-sharing provisions that support efficient expansion of the electricity distribution network. It will also make further provision with respect to advanced metering: to regulate the transition of customers to time-of-use pricing structures; to disapply the national regime which is inconsistent with Victoria's scheme; and to clarify the grounds for appeal against cost-recovery determinations made by the Australian Energy Regulator.

The bill will also amend the Victorian Energy Efficiency Target Act 2007 to allow rounding to the nearest whole number in the creation of certificates under the Victorian energy efficiency target scheme. This will ensure appropriate incentives are available to create certificates for undertaking low-cost energy efficiency activities under the scheme.

The bill will make changes in the resources sector as well. It will amend the Mineral Resources (Sustainable Development) Act 1990 to make further provision in relation to the implementation of the government's response to the mining warden's Yallourn mine batter failure inquiry report. Holders of extractive industry work authorities for declared quarries will be required to include additional information in their work plans detailing how they will identify and treat stability risks for their operations. The bill will also require the holder of a mining licence or extractive industry work authority to notify the chief inspector of events that present a risk to the hydrogeological or geotechnical stability of the mine or quarry. The chief inspector will be empowered to request a detailed report into such events.

The bill will make consequential amendments to the Mineral Resources (Sustainable Development) Act 1990; the Geothermal Energy Resources Act 2005; the Greenhouse Gas Geological Sequestration Act 2008; the Offshore Petroleum and Greenhouse Gas Storage Act 2010; and the Petroleum Act 1998 to achieve consistency with the Occupational Health and Safety Act 2004.

The bill will make other changes in the resources sector to promote consistency in the legislation. It will amend the Geothermal Energy Resources Act 2005 and Petroleum Act 1998 to clarify the minister's powers in relation to granting exploration permits; and amend the Pipelines Act 2005 to expand the list of documents that may be listed in the pipelines register.

Finally, the bill will repeal spent provisions, including the now redundant Mines Act 1958, and make other amendments of an administrative and technical nature.

I commend the bill to the house.

Debate adjourned for Mr GUY (Northern Metropolitan) on motion of Mr Koch.

Debate adjourned until Thursday, 5 August.

FIREARMS AND OTHER ACTS AMENDMENT BILL

Introduction and first reading

Received from Assembly.

Read first time for Hon. J. M. MADDEN (Minister for Planning) on motion of Mr Jennings.

Statement of compatibility

For Hon. J. M. MADDEN (Minister for Planning), Mr Jennings tabled following statement in accordance with the 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 Firearms and Other Acts Amendment Bill 2010.

In my opinion, the Firearms and Other Acts Amendment Bill, as introduced to the Legislative Council, is compatible with the human rights protected by the charter. I base my opinion on the reasons outlined in this statement.

Overview of bill

The bill makes amendments to a number of acts. The bill will:

amend the Firearms Act 1996 to make a number of technical changes to improve the operation of the scheme;

amend the Firearms Act 1996 to make residence in Victoria a precondition of holding a firearms licence and to improve the workability of residency requirements by allowing interstate residents to apply for licences for work purposes;

amend the Firearms Act 1996 and the Control of Weapons Act 1990 to remove the regulation of imitation firearms from the former and regulate them as prohibited weapons under the latter;

amend the Firearms Act 1996 and the Control of Weapons Act 1990 to provide health service workers with exemptions from elements of the regimes in those acts in situations where they take possession of a firearm or weapon from a client for public safety purposes;

amend the Graffiti Prevention Act 2007 to empower authorised transport officers to seize graffiti implements from persons on transport property who are suspected of having committed, or are able to commit, a graffiti offence, and also to allow notices relating to the removal of graffiti from private dwellings to apply on multiple occasions or until the owner-occupier withdraws consent; and

amend the Liquor Control Reform Act 1998 to allow for banning notices and exclusion orders to be issued for the offence of behaving in a disorderly manner.

Human rights issues

General discretion of chief commissioner to refuse a firearms licence

Part 2 of the bill makes a number of amendments to the Firearms Act 1996 which expand the chief commissioner's general discretion to refuse certain types of firearms licences on the grounds that the applicant is not ordinarily resident in Victoria. Accordingly, I considered whether the licensing scheme, as contained in the Firearms Act 1996, protects the right to a fair hearing in section 24 of the charter.

Section 24 — Right to fair hearing

Section 24 of the charter provides that a party to a civil proceeding has the right to have the proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing. This right has been broadly interpreted to encompass proceedings which are determinative of private rights and interests, which includes proceedings of an administrative character. 'Proceeding' is a word of wide connotation which can encompass both the initiation of a legal process and steps taken in their continuance. As the application process for a licence determines a person's proprietary rights to hold a firearms licence, the right to fair hearing is probably engaged.

However, even if section 24 does apply, it does not necessarily mean that the principal decision-maker is required to be independent and impartial or that a public hearing must be granted at first instance. The whole decision-making process, including reviews and appeals, must be considered in its entirety.

Division 8 of part 2 of the Firearms Act 1996 sets out the application process for a firearms licence. Section 33A provides that if the chief commissioner is proposing not to issue a licence, the chief commissioner must give the applicant notice and reasons of this and invite the applicant to make a written submission. Section 33B provides for the further consideration of an application by way of a hearing after submissions have been received from the applicant within the specified time frame. Section 33C prohibits the chief commissioner from refusing a licence without considering any written submissions made by the applicant within the specified time frame or any oral submissions made by the applicant at hearing. Finally, section 34 provides that an applicant can apply for review of any decision not to issue a licence. Reviews are conducted by the Firearms Appeals Committee, established under part 9 of the act, which satisfies the requirements of an independent and impartial tribunal. Accordingly, I consider that the licensing scheme contained in the act and the amendments made by this bill do not limit the right to fair hearing in the charter.

Cancellation of licence held by non-resident

Clause 15 inserts new section 46A into the Firearms Act 1996 to require the chief commissioner to cancel a firearm licence if satisfied that the holder is not ordinarily a resident in Victoria and does not require the licence for work purposes. Clause 16 inserts new section 49A into the act that allows the chief commissioner to specify a time period not exceeding 12 months for which a person cannot apply for a licence following a cancellation under new section 46A. These provisions engage the right to property under the charter.

Section 20 — Right to property

Section 20 provides that a person must not be deprived of his or her property other than in accordance with law. The right requires that the powers which authorise the deprivation of property are conferred by legislation or common law, are confined and structured rather than arbitrary or unclear, and are accessible to the public and formulated precisely.

Although 'property' may include statutory rights such as licences, the cancellation or alteration of a licence will not amount to a deprivation of property where the licence-holder did not have a reasonable expectation of the lasting nature of the licence. Division 9 of part 2 of the act makes it clear that licences are granted under the act on the basis that they can be suspended, cancelled, varied or have conditions imposed upon.

Even if it is arguable that some of these licensing decisions by the chief commissioner could result in the deprivations of property, it is clear that the process for cancelling, suspending or varying licences is precisely set out in the act and is not arbitrary in nature. Section 49 sets out the circumstances in which a licence may be cancelled. Section 47 provides that the chief commissioner must give notice to the holder of an intention to cancel a licence and give reasons. Section 48 provides for a holder to make written submissions in response to a proposal to cancel a licence and section 50 allows the holder of a cancelled licence to apply to the committee for review of the decision. Accordingly, these provisions do not limit the right to property under the charter.

Information required for an application for a licence

Clause 11 amends section 32(1) of the Firearms Act 1996 to insert subsection (1A), which provides that the chief commissioner may require a person, who is not ordinarily resident in Victoria and who applies for a longarm or handgun licence on the basis that the licence is required for work purposes, to provide evidence that the work purposes are genuine and that they require the person to hold a licence.

Section 13(1) of the charter provides that a person has the right not to have his or her privacy unlawfully or arbitrarily interfered with.

As any interference which occurs as a result of this amendment will be lawful, and also necessary and reasonable given that the purpose of the Firearms Act 1996 is to give effect to the principle that the possession of firearms is conditional on the need to ensure public safety and peace, clause 11 is compatible with section 13 of the charter.

Offences regarding serial numbers on firearms

Clause 4 of the bill inserts a new section 8A into the Firearms Act 1996 which provides that evidence that a firearm does not have a serial number, the serial number of a firearm has been erased, defaced or altered, or the serial number of a firearm is illegible is admissible to establish that the firearm is not registered and, in the absence of evidence to the contrary, is proof of that fact.

Clause 23 inserts a new section 134C into the Firearms Act 1996, which provides that it is an offence for a person to possess a firearm on which there is no serial number without reasonable excuse. The penalty for the offence is 240 penalty units or four years imprisonment. Section 134C(2) provides that in any proceeding against a person for an offence under this section, it is not necessary for the prosecution to prove that the person knew, or was aware, believed or suspected that there was no serial number on the firearm. Section 134C(3) provides that in any proceeding for an offender under this section it is a defence if the person charged had reasonable grounds for believing that there was a serial number on the firearm.

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.

In my view, clause 4 imposes an evidential onus on a defendant in relation to certain offences under the Firearms Act 1996 in which non-registration is an element of the offence, by requiring a defendant to raise evidence that a firearm is registered. I also consider that clause 23, read in conjunction with section 72 of the Criminal Procedure Act 2009 (Vic), imposes an evidential onus on a defendant to adduce or point to evidence that goes to an exception, excuse or defence. Consequently, these provisions probably 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 absence of the exception or defence raised.

Additionally, the relevant offences are part of a statutory scheme which regulates firearms, and persons who legitimately own and use firearms would be aware of the requirements of the scheme, and choose to be subject to such regulation through their firearm ownership or use.

Courts in other jurisdictions have generally taken the approach that an evidential onus on a defendant 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) because the defences and exceptions provided relate to matters within the knowledge of the defendant.

Seizure of graffiti implement

Clause 30 inserts new section 17A in the Graffiti Prevention Act 2007 which provides for the seizure of a graffiti implement by an authorised transport officer. This provision engages the right to property under the charter.

Section 20 — Right to property

As discussed above, the right permits the deprivation of property that is carried out in accordance with law that is precisely structured and not arbitrary in nature. The provision sets out that a graffiti implement may only be seized by an authorised officer who believes on reasonable grounds that the implement has been used, or will be used to commit a graffiti offence. The officer must comply with requirements under the Transport Act 1983 as well as notify and inform the person of their rights before seizure, and may only seize an implement that is fully or partially visible immediately before it is seized. Clause 31 inserts new section 25(2) into the act, which sets out the person's right to have the implement returned to them and provides for the return of seized items when no proceedings are brought. As the deprivation of property is undertaken under precise circumstances which include a right of return of the property, I consider that the right to property is not limited.

Amendment to the Liquor Control Reform Act 1998

The bill amends the Liquor Control Reform Act 1998 to include disorderly conduct under section 17A of the Summary Offences Act 1966 as an offence for the purposes of banning notices and exclusion orders under the Liquor Control Reform Act 1998. The provisions relating to banning and exclusion orders in the Liquor Control Reform Act 1998 were the subject of a previous statement of compatibility and were found to be compatible.

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, MP
Minister for Planning

Second reading

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

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

That the bill be now read a second time.

Incorporated speech as follows:

The bill makes a number of important technical amendments to Victoria's firearms regulatory scheme. In addition, the bill also makes some important amendments in relation to the prevention of graffiti and the mechanisms relating to cleaning graffiti from properties that have been attacked. Finally, the bill will add a recently created offence to those offences under liquor legislation that trigger the application of banning notices and exclusion orders.

Victoria's firearms regulatory scheme arises out of national agreements. This government believes in the importance of firearms regulation as a means to safeguarding the community from the inappropriate use of firearms. The regulatory scheme also recognises the legitimate use of firearms for a range of reasons, from hunting to sport and recreational uses.

Firearms regulation is always a case of striking the appropriate balance between the legitimate use of firearms and the community's legitimate concern that regulation be effective and recognise the potential danger that can flow from the use of a firearm.

The government is committed to engaging with the firearms community in order to seek advice and strike that appropriate balance. The Victorian Firearms Consultative Committee provides advice to me, as the minister responsible, in relation to a range of issues of importance to that committee and firearms stakeholders. I would like to thank the chairman and the committee members for their valuable contributions to the development of this bill.

This bill will make a significant amendment to the Firearms Act 1996 to make residence in Victoria a precondition of holding a firearms licence. At the same time, it will also make changes to improve the workability of residency requirements by allowing interstate residents to apply for licences for work purposes if the nature of their work requires them to use a firearm in Victoria, even though they may not be resident in Victoria. The bill adds the residence requirement to all of the different types of firearms licences and provides the Chief Commissioner of Police with the necessary power to cancel a firearms licence where the holder of that licence no longer resides in Victoria.

The purpose of the residence amendment is to clarify who is entitled to a licence and to ensure regulation of licence-holders can be carried out effectively. There are a number of interstate persons who hold a Victorian licence; they create significant difficulties for Victoria Police in enforcing the requirements of the Firearms Act and the conditions that are placed on licences. The amendment reinforces the requirement that it is only appropriate for Victorian residents or persons who might work in Victoria to hold a licence.

The bill does recognise, however, that some interstate persons might be required to work in Victoria and use a firearm as part of their duties, even though they are not resident in Victoria. It gives the chief commissioner the ability to grant a licence to a person if they can provide evidence that a licence is required for work purposes and those purposes are genuine. The bill inserts a definition of work purposes in Victoria. It includes persons required under a contract of employment or a contract for services to hold a firearm licence as well as a person who, in the normal course of business, is required to hold a firearm licence. The definition is intentionally broad so that it captures persons employed as well as persons who are self-employed (such as farmers, vets et cetera). Despite its broad terms, the discretion of the chief commissioner in assessing an application for a licence will ensure only genuine applications are approved.

Another important aspect of the bill is to remove the regulation of imitation firearms from the Firearms Act and place it in the Control of Weapons Act 1990. In simple terms, an imitation firearm is one that, when looked at, appears to be a firearm but which is not designed to fire a projectile and cannot be modified to do so. Re-enactment groups regularly use such imitation firearms for the purposes of their organisation and in the conduct of public displays. Many members of the public and the Parliament will have had direct experience of enjoying re-enactment displays on such occasions as Anzac Day.

The change in the regulation of imitation firearms results from a national agreement between all of the states and the commonwealth. Ultimately, all jurisdictions will regulate imitation firearms, based on the definition that this bill inserts into the Control of Weapons Act 1990.

Under the Control of Weapons Act 1990, imitation firearms will be treated as prohibited weapons. This means a person can only use and possess them if they have sought and obtained a specific approval from the Chief Commissioner of Police or their use and possession is subject to an exemption issued by the Governor in Council. Either way, there will still be adequate controls on the display, use and storage of such weapons.

Another important amendment in this bill is to provide health service workers with exemptions from elements of the regimes in the Firearms Act 1996 and the Control of Weapons Act 1990. Under both schemes, the possession of a firearm or weapon (whether it is controlled or prohibited) may attract a criminal penalty if a person does not have a licence (firearms), does not have a lawful excuse (controlled weapons) or is not covered by an approval or an exemption (prohibited weapon). Health service workers such as doctors, nurses and ambulance officers sometimes come across firearms or weapons when responding to persons in need of medical attention. In these situations they may take possession of a firearm or weapon for safety purposes to allow medical treatment to be delivered. They should not be at risk of criminal prosecution for doing so and this bill makes it clear that they can take possession when it is in the course of their duties at a relevant medical service. For example, if a person is brought unconscious into a medical service and staff find a firearm amongst their belongings, they will be able to take possession of it to facilitate the delivery of medical treatment. The police will be contacted and can attend to take possession of the item and return it to the person if they are entitled to its return or take other action if they are not.

The bill makes amendments to the Firearms Act 1996 in relation to prosecutions where a person is found in possession of a firearm with a defaced or altered serial number. The registration of a firearm is a key element of the regulatory scheme. Victoria Police maintains a register of firearms that records, amongst other things, the serial number of a firearm. Sections 6A, 7B and 7C of the act contain offences in relation to possessing an unregistered firearm. Section 134C of the act provides that a person must not possess a firearm on which the serial number has been defaced or altered, if the defacing or altering is not in accordance with the act. The penalty is 240 penalty units or four years imprisonment. The Office of Public Prosecutions has advised of difficulties in prosecutions because they have not been able to prove that a firearm with an altered or illegible serial number was not registered. In addition, the act does not, and never has, prescribed a method of altering or defacing a serial number. The bill makes amendments to rectify that situation by including a new section 8A which contains a rebuttable presumption that a firearm with no serial number or a serial number that has been erased, defaced, altered or which is illegible is evidence that

the firearm is not registered. Prosecutions may still require proof that the accused knew the firearm was not registered. The bill also replaces section 134C with a new section 134C that makes it an offence to possess a firearm with no serial number. The new offence contains safeguards where a person reasonably believed the firearm had a serial number.

The bill amends the Firearms Act 1996 to confer the power on the Chief Commissioner of Police to permit the use and possession of firearms by persons from interstate for a limited period of up to three months. This amendment has been designed following the experience in the aftermath of the Black Saturday bushfires when it was necessary to allow firearms users from interstate to assist in wildlife and stock destruction. The power is limited to situations where there is an emergency or a natural disaster.

The bill amends the Firearms Act 1996 to allow for a person's participation in an interstate handgun shooting match to count for the purposes of participation requirements that attach to a Victorian handgun licence. This amendment was originally sought through the Victorian Firearms Consultative Committee to end the frustration of handgun shooters who cannot have their participation in interstate matches count towards local participation requirements.

The bill also makes some technical amendments clarifying the operation of certain powers of the Chief Commissioner of Police in relation to varying a handgun licence where the holder of the licence fails to fulfil the participation requirements. The new provisions will make the scheme fairer whilst still allowing Victoria Police flexibility in responding to breaches of conditions appropriate to the seriousness of the breach. Other technical amendments will clarify that where the chief commissioner has cancelled a licence, a new licence cannot be obtained for a period of 12 months and, once that period has expired, the application for the licence is to be taken as a new application, rather than a renewal of an existing licence. Further technical amendments will require and facilitate the recording of a firearm's model or model variant. This is expected to assist in the proper recording and identification of firearms.

The bill amends the Graffiti Prevention Act 2007 to empower authorised transport officers to seize graffiti implements from persons on transport property who are suspected of having committed, or are about to commit, a graffiti offence. The provision authorises authorised officers to use reasonable force in the exercise of the power where that becomes necessary. It is important to recognise, however, that experience indicates the majority of interactions are resolved voluntarily and the use of force is rarely necessary. Nonetheless, it is important that authorised officers have sufficient powers to respond effectively in any given situation.

The powers of authorised transport officers were originally contained in the Transport Act 1983. When the Graffiti Prevention Act 2007 was enacted, bringing together graffiti-related matters in the one piece of legislation, the powers were largely reserved for police. We now know, however, that to respond to graffiti effectively and to deter those who damage public transport property, it is essential to provide authorised officers with adequate powers in addition to the police. The amendments are important given the damage that is caused to public transport property and the consequent effect that has on how safe patrons of the system feel. The amendments are a positive step towards containing and controlling vandals who choose to damage property, creating costs in repairs and clean-up, as well as affecting the operation of the public transport system.

The bill will also make amendments allowing notices relating to the removal of graffiti from private dwellings to apply on multiple occasions or until the owner-occupier withdraws consent. Whilst a technical amendment, it is nonetheless important in cases where a property is subjected to repeated graffiti attacks. The bill will do away with the need to obtain consent every time graffiti appears. Of course, an owner or occupier can always elect to provide consent on every occasion. The amendment will facilitate a more efficient and effective response to cleaning up graffiti.

Finally, the bill amends the Liquor Control Reform Act 1998 to allow for banning notices and exclusion orders to be issued for the offence of behaving in a disorderly manner. The disorderly conduct offence was inserted into the Summary Offences Act 1966 in late 2009 as part of a suite of measures to address weapon-related violence and disorder and public order concerns. Banning notices, which may be given by a police member, and exclusion orders, which may be ordered by a court, apply within an area designated by the director for liquor licensing when certain criteria are satisfied.

In particular, these notices and orders may apply where a person is suspected of committing a specified offence in the area. The Liquor Control Reform Act 1998 already contains a number of specified offences and it is now appropriate that disorderly conduct be included as a relevant offence.

I commend the bill to the house.

Debate adjourned for Mr DALLA-RIVA (Eastern Metropolitan) on motion of Mr Koch.

Debate adjourned until Thursday, 5 August.

JURIES AMENDMENT (REFORM) BILL

Introduction and first reading

Received from Assembly.

Read first time for Hon. J. M. MADDEN (Minister for Planning) on motion of Mr Jennings.

Statement of compatibility

For Hon. J. M. MADDEN (Minister for Planning), Mr Jennings tabled following statement in accordance with Charter of Human Rights and Responsibilities Act:

In accordance with section 28 of the Charter of Human Rights and Responsibilities, I make this statement of compatibility with respect to the Juries Amendment (Reform) Bill 2010.

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

Overview of Bill

The bill increases community representation on juries by amending schedule 2 of the Juries Act 2000. The bill reduces the categories of occupation groups which are ineligible for jury service and reduces the period of ineligibility for jury service. In addition, the bill is to make funding for payment of juror remuneration more secure.

The bill amends the Juries Act by changing the jury service eligibility status of lawyers and people working in the legal profession, makes all departmental secretaries ineligible for jury service and makes the legal services commissioner and Legal Services Board ineligible for jury service. In addition, the bill halves the period of ineligibility for jury service for some occupations.

Under the bill lawyers who have not engaged in legal practice in the last five years will become eligible for jury service. In addition, people working in the legal profession who do not have a close connection to legal practice, such as administrative staff, will also become eligible for jury service. This will result in an increase of up to 28 000 additional Victorian adults being eligible for jury service.

Practising lawyers, including all government lawyers, remain ineligible for jury service. People working in the legal profession who are closely connected to legal practice remain ineligible for jury service. Trainee lawyers, including articled clerks and people undertaking practical legal training, remain ineligible for jury service. The bill also makes the legal services commissioner, Legal Services Board and their staff ineligible for jury service, replacing the legal ombudsman. The bill also makes all secretaries to government departments ineligible for jury service. These measures ensure juries remain independent and impartial.

Significantly, the bill also reduces the period of ineligibility for jury service from 10 years to 5 years. This includes for people involved in the justice system. People will become eligible for jury service much sooner than was previously possible.

Nonetheless, the bill retains the existing safeguards in the Juries Act, which ensure juries remain independent and impartial, including the safeguards that prevent people from serving on juries if they have preformed views based on occupational experiences.

In addition, the bill also includes a technical amendment to the Juries Act relating to special appropriation from the consolidated fund for payment of juror remuneration and allowances.

Human Rights Issues

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

Section 24 — fair hearing

Section 24(1) 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. An 'independent and impartial court' includes a jury. Juries, for example, render verdicts in criminal trials.

The bill makes changes to the potential composition of a jury and therefore engages the right in section 24(1).

The reforms are designed to increase community representation on juries by reducing the number of ineligible occupational groups and by halving the period of ineligibility from jury service.

For example, lawyers who have not engaged in legal practice in the last five years will become eligible for jury service. Other people working in the legal profession who do not have a close connection to legal practice, such as administrative staff, will become eligible for jury service. All practising lawyers as well as government lawyers remain ineligible for jury service. Trainee lawyers remain ineligible for jury service, as do people working in the legal profession who are involved in the conduct of litigation and provision of legal advice. The juries commissioner will continue to determine whether a person is eligible for jury service.

The bill maintains the ineligibility of occupations that are part of Victoria's justice system or political system. For example, judicial officers, practising lawyers, police, bail justices and members of Parliament remain ineligible for jury service. Those occupations, and all the other occupations listed in clause 1 of schedule 2 of the Juries Act, will become eligible for jury service five years after ceasing that employment. All secretaries to government departments will become ineligible for jury service. The legal services commissioner, the Legal Services Board and their staff will also be ineligible for jury service.

The bill does not alter the existing safeguards in the Juries Act that ensure juries are independent and impartial. Safeguards against bias, including peremptory challenges based on occupational experience, continue to apply. Potential jurors retain the right to seek to be excused from jury service.

The bill increases community representation on juries while ensuring they remain independent and impartial. The bill, therefore, does not limit the right to a fair hearing under section 24 of the charter.

Finally, an amendment, which is unrelated to jury service eligibility, provides that juror remuneration and allowances be paid by special appropriation from the consolidated fund. The special appropriation for these payments is to be $3.3 million annually. This is a technical amendment and does not engage any rights under the charter.

Conclusion

I consider that this bill is compatible with the charter because this bill does not limit any human right protected by the charter.

Justin Madden, MP
Minister for Planning

Second reading

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

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

That the bill be now read a second time.

Incorporated speech as follows:

The jury system reflects the belief in Australia that there is no stronger sanction than community sanction. Broad jury service eligibility is vital to ensure that a cross-section of community members are participating in the administration of justice.

In November 2009 the Attorney-General released a public discussion paper *Jury Service Eligibility*. The paper considered ways to increase community representation on juries.

The Department of Justice consulted with key stakeholders including representatives of the Director of Public Prosecutions, the Law Institute of Victoria and the Victorian Bar and with the juries commissioner.

The Juries Amendment (Reform) Bill 2010 aims to increase community representation in two ways; firstly, by reducing the occupational groups which are ineligible for jury service and, secondly, by reducing the period of ineligibility for jury service. This will result in up to 28 000 additional Victorian adults becoming eligible for jury service. These reforms will commence on 1 January 2011.

In addition, the bill has a technical amendment, which makes funding for payment of juror remuneration and allowances more secure, commencing on 1 July 2011.

Reform of occupation groups

The bill amends the Juries Act by changing the eligibility status of the legal profession on juries, expanding the ineligibility of departmental secretaries and makes a consequential amendment due to the abolition of the office of the legal ombudsman in the Legal Profession Act 2004.

In relation to the legal profession, the bill provides that lawyers who have not practised in the last five years will become eligible for jury service. This increases community representation on juries by up to approximately 14 000 people. In all other Australian jurisdictions, except Western Australia and New South Wales, non-practising lawyers are eligible for jury service. Many people are admitted to the legal profession but do not actually go on to engage in legal practice. Similar reforms have been proposed by the Western Australian Law Reform Commission and by the New South Wales government under the Jury Amendment Bill 2010. This reform, therefore, achieves greater national consistency.

All practising lawyers, including all government lawyers, remain ineligible for jury service. Trainee lawyers, such as articled clerks and people undertaking practical legal training, remain ineligible for jury service.

In addition, the bill fixes an anomaly in the Juries Act, which renders all employees of lawyers ineligible for jury service irrespective of their connection to the legal practice. People who do not have a close connection to legal practice will become eligible for jury service. A close connection includes being involved in the conduct of litigation or provision of legal advice. This applies to people employed or engaged by practising lawyers, law firms, community legal centres, multidisciplinary partnerships, incorporated legal practices, corporate in-house counsel or by government authorities. People such as administrative staff and human resources staff will become eligible. This increases community representation on juries by up to approximately 14 000 people.

The bill also makes the legal services commissioner, Legal Services Board and their staff ineligible for jury service. This replaces the legal ombudsman, which was abolished by the Legal Profession Act.

All secretaries to government departments will become ineligible for jury service. This ensures Victoria's most senior public servants do not sit on juries.

Reducing the ineligibility period

Significantly, the bill halves from 10 years to 5 years the period of ineligibility for occupation groups listed in clause 1 of schedule 2 of the Juries Act. There is a marked variation between Australian jurisdictions about the appropriate period of ineligibility including for judicial officers, lawyers and police. The majority of submissions to the government's discussion paper *Jury Service Eligibility* supported an ineligibility period of less than 10 years. This reform means people will become eligible for jury service much sooner than was previously possible.

Maintaining the independence of the jury system

Importantly, the bill does not alter the existing safeguards in the Juries Act 2000 to ensure juries are independent and impartial. Potential jurors may still be challenged based on their past occupations or may seek to be excused on that ground.

Making funding for payment of juror remuneration more secure

Finally, the bill makes a technical amendment, which is unrelated to jury service eligibility. It provides that the juror remuneration and allowances be paid by special appropriation from the Consolidated Fund in the amount of $3.3 million annually for these payments.

Special appropriations are used to fund services that must be funded. Like judicial remuneration, juror remuneration and allowances are essential to the working of the justice system.

The special appropriation would not apply to other jury related payments and the Office of the Juries Commissioner. These continue to be funded by the department.

The amendment will have no net impact on the state's finances because annual appropriation funding for my department will be reduced by the amount of the special appropriation.

Conclusion

The community has not just a role but a duty to perform jury service. Jury service eligibility is vital to provide the opportunity to perform that civic duty. The bill broadens the jury pool by up to 28 000 people. The bill also makes funding for juror remuneration more secure.

The reforms are consistent with justice statement 2 (2008) initiatives aimed at modernising the court system. It is also consistent with the government's commitment to the independence of the jury system.

I commend the bill to the house.

Debate adjourned for Mr RICH-PHILLIPS (South Eastern Metropolitan) on motion of Mr Koch.

Debate adjourned until Thursday, 5 August.

PERSONAL SAFETY INTERVENTION ORDERS BILL

Introduction and first reading

Received from Assembly.

Read first time for Hon. J. M. MADDEN (Minister for Planning) on motion of Mr Jennings.

Statement of compatibility

Mr JENNINGS (Minister for Environment and Climate Change) — I advise the house that there has been a correction to the statement of compatibility that I am lodging for this bill from that lodged in the Legislative Assembly on 9 June 2010 at page 2219 of *Hansard*. The phrase 'family violence intervention order' has been replaced with the phrase 'personal safety intervention order'.

For Hon. J. M. MADDEN (Minister for Planning), Mr Jennings tabled following statement in accordance with Charter of Human Rights and Responsibilities Act:

In accordance with section 28 of the Charter of Human Rights and Responsibilities, I make this statement of compatibility with respect to the Personal Safety Intervention Orders Bill 2010.

In my opinion, the Personal Safety Intervention Orders 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 main purposes of the bill are to:

protect the safety of victims of assault, sexual assault, harassment, property damage or interference, stalking and serious threats;

to promote and assist in the resolution of disputes through mediation where appropriate.

The bill will repeal the Stalking Intervention Orders Act 2008.

Human rights issues

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

The bill has been developed taking into account the state's positive obligations to provide effective protection where an individual's physical security is at risk from another private individual. The bill establishes a system of intervention orders to provide additional protection than that available from the criminal law. In this way, the bill establishes a system that seeks to protect the individual's right to life (section 9 of the charter), right to protection from torture and cruel, inhuman or degrading treatment (section 10), right to freedom of movement (section 12 of the charter) and right to liberty and security of the person (section 21 of the charter) where the person has been subjected to prohibited behaviour or stalking. Limitations on the rights of those who have engaged in prohibited behaviour or stalking must therefore be considered in this context.

Human rights engaged by the bill

Section 8 — Right to recognition and equality before the law

Section 8 of the charter establishes a series of equality rights. The right to recognition as a person before the law means that the law must recognise that all people have legal rights. The right of every person to equality before the law and to the equal protection of the law without discrimination means that the government ought not to discriminate against any person, and the content of all legislation ought not be discriminatory.

However, formal equality may cause unequal outcomes, so to achieve substantive equality, differences of treatment may be necessary. To this end, section 8(4) of the charter provides that certain differential measures do not constitute discrimination, namely, measures 'taken for the purpose of assisting or advancing persons or groups of persons disadvantaged because of discrimination'.

Special provisions for children

Clause 18 engages section 8(3) of the charter, as it provides that the court cannot make a personal safety intervention order against a child under the age of 10 years, or if they do, it has no effect.

Importance of the purpose of the limitation

The limitation is designed to preserve the fundamental principle of criminal law that children under a certain age cannot be held criminally responsible. In all Australian states, including Victoria, the age of criminal responsibility is 10 years of age.

Nature and extent of the limitation

The nature and extent of the limitation is that children under 10 years of age cannot have an interim or final personal safety intervention order made against them. As a result, they cannot be found guilty of the offence of contravening a personal safety intervention order.

Relationship between the limitation and its purpose

The limitation is rational because it recognises the capabilities, maturity levels and specific rights relating to children, including the right under section 17(2) of children to

such protection as is in their best interests and needed by reason of being a child. The limitation is proportionate because it applies only to children under 10.

Any less restrictive means reasonably available

None apparent.

On balance, the limitation is reasonable and demonstrably justified in a free and democratic society.

Clause 49 engages section 8(3) of the charter, as it provides that a child who is not an applicant or a respondent to an order may only give evidence with the leave of the court. However this clause falls within section 8(4) as it constitutes a special measure taken to assist or advance children (as the court must take into account the impact of exposure to the court system and any possible harm resulting from this). In addition, the clause is consistent with section 17(2) of the charter.

Clause 71 engages section 8(3) of the charter, as this clause provides that the court must take into account different considerations when deciding whether to exclude a child respondent from the protected person's residence. However this clause falls within section 8(4) as it constitutes a special measure taken to assist or advance children. In addition, the clause is consistent with section 17(2) of the charter.

Clause 78 engages section 8(3) of the charter, as this clause provides that an order against a child respondent will usually not last longer than 12 months. However, this clause falls within section 8(4) as it constitutes a special measure taken to assist or advance children. In addition, the clause is consistent with section 17(2) of the charter.

Clause 107 engages section 8(3) of the charter, as this clause provides that a child who is the affected person or protected person or a family member of the respondent, affected person or victim may not be present in court unless the court orders otherwise. However, this clause falls within section 8(4) as it constitutes a special measure taken to assist or advance children by limiting their exposure to the court system. In addition, the clause is consistent with section 17(2) of the charter.

Clauses 15 and 85 engage and limit the right contained in section 8(3) of the charter as, under these clauses, only a child aged 14 and over may make an application for a personal safety intervention order or an application to vary, revoke or extend a personal safety intervention order with leave of the court.

Importance of the purpose of the limitation

The limitation is designed to enable children who are of an appropriate age and maturity to make their own application to the court where protection is required. The limitation recognises that children under 14 are generally less mature and therefore less capable of making such an application. In this respect, the provision is likely to be protective and consistent with the interests of children and hence consistent with section 17(2) of the charter.

Nature and extent of the limitation

The nature and extent of the limitation is such that children under 14 years of age cannot make an application on their own behalf. Nevertheless, a parent of a child, a police officer or any other person (with a parent's consent) may apply on behalf of a child, and a child may also be included in an application in respect of a parent (clause 17 of the bill). Accordingly, the nature and extent of the limitation is confined.

Relationship between the limitation and its purpose

The limitation is rational because it recognises the capabilities of children and maturity levels of children of different ages. The limitation is proportionate because it applies only to children under 14 and, in any event, others may apply on behalf of children if necessary.

Any less restrictive means reasonably available

None apparent.

On balance, the limitation is reasonable and demonstrably justified in a free and democratic society.

Section 12 — Freedom of movement and
Section 14 — Freedom of thought, conscience, religion and belief and
Section 21 — Right to liberty and security of the person

This section of the statement discusses clauses which engage the right to freedom of movement in section 12. Certain clauses also engage the rights in section 14 and section 21 which are also discussed where relevant.

Section 12 of the charter protects various rights in relation to freedom of movement. These rights include the right to move freely within Victoria, the right to choose where to live in Victoria, and the right to be free to enter and leave Victoria. The rights conferred by section 12 apply only to persons who are 'lawfully' within Victoria. As noted above, the state has a positive obligation to protect an individual's freedom of movement where the state is aware that this right is being threatened by the actions of a private individual.

Compulsion to attend court

Clause 20 and clause 59 engage and limit the right to freedom of movement as they require people to attend at court.

Clause 20 requires the respondent to attend court at a particular time and place for the hearing of an application. Clause 59 requires the author of an assessment report to attend court and give evidence, when required to do so by the person in respect of whom the report was prepared, or by a party to the proceeding (with leave of the court), or by the Children's Court.

Importance of the purpose of the limitation

The limitation in clause 20 is important to ensure the attendance and participation of a respondent in proceedings that may significantly affect them. It is also important that the court have access to the best evidence to inform its decisions.

The limitation in clause 59 is important to ensure that:

the court will have access to the best evidence when making decisions;

evidence about a person in a proceeding is able to be tested by that person and others.

Nature and extent of the limitation

Clause 20 requires a respondent to physically appear before a court to give evidence. The limitation is restricted in that it only applies to a respondent to an application for a personal safety intervention order. Non-attendance at court is not an offence; however, the court may make an order in the absence of a person and may also issue a warrant for the person's arrest (clause 21).

The limitation in clause 59 is confined to requiring the author of an assessment report to attend court and give evidence. This will only occur where a notice is issued under the clause, which will only be where they are requested to attend by the subject of the assessment report, the Children's Court, or a party (with leave of the court). The author of the assessment report will be guilty of contempt of court if they do not attend, but only if they are 'without sufficient excuse'.

Relationship between the limitation and its purpose

There is a direct relationship between the limitation and the purpose of ensuring the effective operation of the justice system. Further, in relation to clause 20 it is of benefit to the respondent to attend and participate in proceedings that may significantly affect them. In relation to clause 59, allowing the court the best available information, and allowing evidence to be tested is in the interests of justice.

Any less restrictive means reasonably available

None apparent.

On balance, the limitation is reasonable and demonstrably justified in a free and democratic society.

Arrest and detention of a person

Clauses 21, 22, 23 and 101 limit a respondent's freedom of movement under section 12 of the charter as a respondent may be arrested and detained or held in custody, or bailed in accordance with the provisions of the Bail Act 1977.

The importance of the purpose of the limitations

The limitations that these clauses create are important because they are each designed to protect people from prohibited behaviour and stalking prior to a hearing for a personal safety intervention order or charges for contravention of an order being determined by the court.

The nature and extent of the limitation

The limitation created by clause 21 is confined to empowering a police officer to arrest and detain a respondent, hold them in custody, or bail them in accordance with the provisions of the Bail Act 1977. This may only occur subsequent to the issuing of a warrant by a registrar or magistrate in situations of urgency.

In the case of clause 101, when a police officer believes on reasonable grounds that a person has breached a personal safety intervention order, they can arrest and detain that person without warrant.

The relationship between the limitation and its purpose

The limitation imposed by both clauses is rational and proportionate, given that the legitimate objective of the provisions is to protect a person from further prohibited behaviour or stalking. Rights to bail remain available to a respondent. Thus, the limitation strikes a fair balance between the rights of a respondent and the rights of a person in need of protection.

Any less restrictive means reasonably available

None apparent.

On balance, the limitation is reasonable and demonstrably justified in a free and democratic society.

Clauses 21, 50 and 101 also engage the right to liberty in section 21 of the charter which provides that a person must not be subjected to arbitrary arrest or detention, and must not be deprived of his or her liberty except on grounds and in accordance with procedures established by law. However, none of these clauses limits the right to liberty because the arrest or detention is not arbitrary and the deprivation of liberty is on grounds and in accordance with procedures established by law. Given these carefully circumscribed limits, the arrest, detention, and any court authorised extension, is not arbitrary.

Clause 50 provides that a witness who fails to appear at a hearing may be arrested. This provision does limit a witness's right to freedom of movement. Clause 202 inserts the same provision into the Family Violence Protection Act 2008 and is modelled on section 194 of the Evidence Act 2008.

The importance of the purpose of the limitation

The limitation is important because it enables a court to examine relevant, competent and compellable witnesses who may hold relevant evidence or information which may bring to light the truth of disputed facts and evidence. The ability to secure the presence of such witnesses is essential to the effective administration of the justice system and the right to a fair hearing.

The nature and extent of the limitation

Clauses 50 and 202 limit a person's freedom of movement to the extent that a person who has failed to attend proceedings may be apprehended and brought before a court.

The relationship between the limitation and its purpose

The limitation on the free movement of a person by requiring the presence of the person at court to give evidence is directly and rationally connected to the purpose of ensuring the effective administration of the justice system and the right to a fair hearing.

Less restrictive means reasonably available to achieve the purpose

None apparent.

Other relevant factors

The court's ability to issue warrants, fines or make other enforcement orders under clauses 50 and 202 is a discretionary one.

This is a reasonable limitation of the right to freedom of movement because the justice system would not be able to function if the courts did not have the power to compel persons to attend before them and give evidence.

Restricting where a person may be and who they may contact

Clause 67 engages and limits the right to freedom of movement by allowing a court to make an order that prohibits a respondent from going within a certain distance of a specified place or person or contacting a specified person.

The purpose of the limitation

The purpose of the limitation in clause 67 is to protect the protected person from prohibited behaviour or stalking.

The importance of the purpose of the limitation

The reason for the limitation is important, as it operates to protect a protected person from prohibited behaviour or stalking. The limit on the right is balanced against the protection of the right to life.

The nature and extent of the limitation

Although a respondent may be excluded from certain areas or places, or going within a distance of a certain person, a respondent can, under part 3 division 10 of the bill, apply for the variation or revocation of a personal safety intervention order.

The relationship between the limitation and its purpose

The relationship between the limitation and its purpose is both rational and proportionate, given that the legitimate objective of the provisions is to protect a protected person from a respondent by imposing conditions which restrict a respondent from coming within a certain distance of a protected person and from accessing certain places.

Any less restrictive means available

None apparent.

On balance, the limitation in each clause is reasonable and demonstrably justified in a free and democratic society.

In certain circumstances clause 67 could limit the right to freedom of thought, conscience, religion and belief (section 14). This is because the clause could result in a person being prohibited from being within a specified distance of a particular spiritual leader or religious centre.

The importance of the purpose of the limitation

The limitation is important as it operates to protect a person from prohibited behaviour and stalking. This is an important purpose that accords with the charter by promoting the right to life and liberty and security of the person, which imposes a positive obligation on public authorities to protect the lives and security of Victorians. The limit on sections 12 and 14 is balanced against the need to protect those whose physical security is at risk from another.

The nature and extent of the limitation

A magistrate may only make a final order where he or she believes on the balance of probabilities that a person has committed prohibited behaviour or stalking and is likely to do so again. A magistrate may only make an interim order where satisfied on the balance of probabilities that it is necessary to ensure the safety of an affected person or to preserve their property.

In addition, a respondent may apply for a variation or revocation of an order where circumstances have changed and may also appeal the making of an order. A final order will usually be of limited duration. Where the respondent is a student at a school, the court must consider the impact of any conditions on the respondent's schooling.

The relationship between the limitation and its purpose

The limitations imposed by these clauses are rational and proportionate, given that the legitimate objective of the provisions is to protect a person from further prohibited behaviour and stalking. The bill provides a number of procedural safeguards limiting the circumstances in which an order may be made.

Any less restrictive means reasonably available to achieve its purpose

None apparent.

On balance, the limitations are reasonable and demonstrably justified in a free and democratic society.

Section 13 — Protection of privacy and reputation

Section 13 confers a number of rights regarding privacy. Specifically, a person has a right not to have their privacy, family or home unlawfully or arbitrarily interfered with or their reputation unlawfully attacked.

Privacy encapsulates concepts of personal autonomy and human dignity. It encompasses the idea that individuals should have an area of autonomous development, interaction and liberty — a 'private sphere' free from government intervention and from excessive unsolicited intervention by other individuals. Privacy comprises bodily, territorial, communications and information privacy.

Disclosure of personal information

There are various parts of the bill that require or permit the collection or disclosure of personal information from applicants and respondents and therefore engage the right to privacy:

Clause 15 provides that a police officer may apply for an intervention order on a person's behalf, including where the person has not consented to the making of the application.

Clause 70 requires the court to ask a respondent who is excluded from the protected person's residence to provide the court with an address for service. However, there is no penalty if the respondent fails to give such an address.

Clause 75 provides that the court may request a report from the Department of Education and Early Childhood Development, which may contain information on whether certain conditions of a personal safety intervention order would interfere with the respondent's schooling.

Clause 113 requires a registrar to serve a copy of a personal safety intervention order made against a carer or the carer's employer or organisation for whom the carer provides the care to the client.

Clause 130 requires that the Secretary to the Department of Human Services be given written notice where the court makes a personal safety intervention order that is inconsistent with a child protection order.

Clause 175 provides that the court may order that a copy of a personal safety intervention order be given to the principal of a school (if the respondent or protected person is a student) if it would assist to ensure the safety of the protected person, it is necessary for the effectiveness of the order, or is otherwise necessary in the interests of justice.

Clause 181 obliges certain public sector organisations to disclose information they hold about a respondent to a police officer if that police officer applies for such information in order to serve documents.

While these provisions interfere with a person's right to privacy, they do so in a manner that is neither unlawful nor arbitrary. This is because there are proper processes through which the information is divulged and the purpose of the interference is in accordance with the provisions, aims and objectives of the charter (particularly section 9 right to life and section 21 right to liberty and security of the person).

In addition, where a proceeding involves a child there is a restriction on publication of the proceedings to ensure that the child is not identified, contained in clause 123.

Privacy of the home

Clauses 114 and 116 of the bill engage the right to privacy of the home because they allow premises to be searched for a person without warrant where the police officer believes on reasonable grounds a person is present in contravention of a personal safety intervention order or to search for firearms or weapons. Clause 116 also allows for the search of a vehicle registered in the person's name.

Clause 117 engages the right to privacy of the home because it allows for a search of third parties' premises or vehicles for firearms or weapons under warrant.

The vehicle search powers potentially engage the right to privacy because a vehicle may be part of a person's private or domestic environment, particularly if it is privately owned.

Additionally, the exclusion of a respondent from a protected person's residence may have the effect of interfering with a respondent's right to privacy of the home.

However, in each instance, the right to privacy of the home is not limited as the interference is lawful and not arbitrary. The interference is not arbitrary because it is in accordance with the provisions, aims and objectives of the charter (particularly section 9, right to life, and section 21, right to liberty and security of the person) and is reasonable in the circumstances (where the intent is to protect a person from further prohibited behaviour or stalking). Further, in relation to the provisions which provide for exclusion of a respondent from a protected person's residence, any exclusion only occurs if a court considers it necessary in the circumstances.

Section 15 — Freedom of expression

Section 15 establishes a number of rights relating to freedom of expression. It protects the right to hold an opinion without interference and the right to seek, receive and impart both information and 'ideas of all kinds' anywhere and in any form. The general right is limited by section 15(3) which contains a specific limitation on the right to freedom of expression. This invites consideration of particular matters that are identified as ones which, when satisfied, specifically justify a restriction on the right.

The application of section 15(3) involves satisfying a number of conditions. First, the relevant restriction proposed on the right to freedom of expression must be lawful. Second, the relevant restriction must be imposed for a particular purpose, either to respect the rights and reputation of other persons, or in order to protect national security, public order, public health or public morality. Third, the relevant restriction must be 'reasonably necessary' for one of these purposes.

Clause 67(2)(d) (prohibiting contact with the protected person), clause 67(2)(a) (prohibiting the respondent from committing prohibited behaviour against the protected person) and clause 165 (court declaring a person to be a vexatious litigant) engage the right to freedom of expression under section 15(2) of the charter. However, clauses 67(2)(d) and 165 constitute lawful restrictions on the right to freedom of expression because each restriction is for the purpose of public order and the effective operation of the justice system.

Clause 67(2)(a) could prohibit a course of conduct that is demeaning, derogatory or intimidating, including derogatory taunts. This is a lawful restriction on the right to freedom of expression because it is reasonably necessary to respect the rights and reputations of others. Moreover, the expression is only restricted between the respondent and protected person, and the respondent could apply to vary that condition of the order or for revocation of the order.

Evidence given by children

Clause 49 limits the right to freedom of expression, by providing that a child who is not an applicant or respondent in proceedings cannot give evidence without the leave of the court. The court must consider the desirability of protecting children from exposure to the court system and the harm that may occur if the child were to give evidence.

The importance and purpose of the limitation

The purpose of the limitation is to protect the best interests of the child, as provided for under section 17(2) of the charter.

The nature and extent of the limitation

The restriction on the giving of evidence only applies to persons aged under 18 years who are not the applicant or respondent to the order. The extent of the limitation is circumscribed because a court may grant leave for the child to give evidence, taking into account the possibility of harm to the child and the impact of exposure to the court system.

The relationship between the limitation and its purpose

There is a direct relationship between the limitation and the purpose of protecting the best interests of the child.

Any less restrictive means available

None apparent.

On balance, the limitation is reasonable and demonstrably justified in a free and democratic society.

Restriction on reports of proceedings involving children

Clause 123 of the bill restricts the reporting of personal safety intervention order proceedings involving children where the reporting includes any identifying particulars, including photographs. This restriction is included to respect the rights and reputation of children and is therefore a lawful restriction under section 15(3) of the charter.

Section 20 — Property rights

Division 7 of part 3 governs the conditions that may be made in respect of personal safety intervention orders. Several clauses engage the right to property, including:

> Clause 67 allows an order to include various conditions that may prevent the respondent from accessing their property, for example by prohibiting their presence within a specified distance of a place or person or by excluding the respondent from the protected person's residence.
>
> Clause 69 allows an order to cancel a firearms authority or weapons approval.
>
> Clauses 114, 115, 116, 117 and 120 provide for the search, seizure or surrender of firearms and other weapons where a relevant order has been made. Clauses 121 and 122 outline the consequences for the property depending on the type of order that is made by the court.

However, in each instance, any deprivation of property is not arbitrary because it has a legitimate objective, the protection of an affected person — particularly their right to life — by limiting the risk posed in certain circumstances by possession of firearms and weapons. Therefore, to the extent that these sections allow for the deprivation of property, the deprivation is in accordance with law and there is no limitation on the right.

Section 24 — Fair hearing

Section 24 guarantees the right to a fair and public hearing. The right to a fair hearing applies in both civil and criminal proceedings and in courts and tribunals. The requirement for a fair hearing applies to all stages in proceedings and applies in relation to proceedings in any Victorian court or tribunal.

The purpose of the right to a fair hearing is to ensure the proper administration of justice. This right is concerned with procedural fairness (that is, the right of a party to be heard and to respond to any allegations made against them, and the requirement that the court or tribunal be unbiased, independent and impartial) rather than the substantive fairness of a decision or judgement of a court or tribunal (that is, the merits of the decision).

Applications for interim orders

Clause 37 limits section 24 of the charter because an application for an interim order may be determined by a court whether or not a respondent has been given notice of the application and whether or not the respondent is present at the time an order is granted.

Importance of the purpose of the limitation

The purpose of the limitation is to ensure the safety of an affected person from prohibited behaviour or stalking as swiftly as possible.

This is an important limitation, recognising that the state has a positive obligation to protect those whose physical security is at risk from another (in accordance with sections 9 and 21 of the charter).

Nature and extent of the limitation

The extent of the limitation is confined because the duration of an interim order is limited. The order ceases to have effect as soon as the application is finally determined, which is likely to occur within a short period of time.

Further, there are safeguards in place. These include that a court cannot make an interim order unless it is supported by oral or affidavit evidence (clause 38) (although it can if the application is made by telephone, fax or other electronic communication); and if a respondent is not present, a court must give them a written explanation of the relevant matters set out in the order (clause 40). In addition, the bill provides scope for an application to be made for the variation or revocation of an interim personal safety intervention order (clause 85). In addition, a respondent will not be criminally liable for a breach of an interim order until it is served on the respondent.

Relationship between the limitation and its purpose

Given the importance of the context in which such orders are made, and the safeguards referred to above, the limitation is rational and proportionate to its purpose.

Any less restrictive means reasonably available

None apparent.

On balance, the limitation is reasonable and demonstrably justified in a free and democratic society.

Direction to mediation

Clause 26 provides that a magistrate may adjourn proceedings and direct a matter to mediation. This clause does not restrict a person's right to a fair hearing, as the person will still have access to the court where the matter is assessed as not suitable for mediation or where the mediation fails (for example, because one party will not engage in the mediation process). A magistrate may also make an interim order at the same time as directing a matter to mediation.

Evidence

Section 24 is engaged, but not limited, by clause 47 which provides that the court may inform itself in any way it thinks fit, despite any rules of evidence to the contrary. Clause 47 does not apply to proceedings for contraventions of personal safety intervention orders, which are criminal in nature.

A court, even if not strictly bound by the rules of evidence, must act judicially and impartially. Clause 47 specifies that in determining what evidence to admit, a court must be satisfied that it is just and equitable to admit such evidence and that the probative value of the evidence is not substantially outweighed by the danger that the evidence might be unfairly

prejudicial to a party, or misleading or confusing. Thus, while the right is engaged, it is not limited, because a person will still have the proceeding decided by a competent, independent and impartial court after a fair and public hearing.

A further safeguard is provided for in clause 48, which states that where evidence is admitted in an affidavit or sworn statement, a party to proceedings may, with leave of the court, cross-examine a person who gives evidence by way of affidavit or written statement. This power is in addition to a party's general right to cross-examine witnesses.

A public hearing

Clause 123 of the bill restricts the reporting of personal safety intervention order proceedings involving children and clause 51 enables a court to close proceedings to the public. These clauses engage the right to a fair hearing which includes the right to a public hearing.

However, sections 24(2) and (3) of the charter enable a court or tribunal to exclude persons or the general public from a hearing and to prohibit the publication of judgements or decisions made by a court. Therefore, these provisions fall within a lawful restriction on the right to a public hearing and do not limit the right.

Accessibility of the court and court processes

Clause 52 (alternative arrangements for a proceeding) and clause 49 (evidence given by children) engage the right to fair hearing to the extent that they amend the way in which evidence is presented to the court. The purpose of the sections is to allow those who may be intimidated by the court process to give the best possible evidence, and to protect children from unnecessary exposure to the court system, thus promoting values embodied in section 17 of the charter.

The clauses engage, but do not limit the right to a fair hearing because a person will still have the proceeding decided by a competent, independent and impartial court after a fair and public hearing.

Vexatious litigants

Clause 165 provides that a court may, after hearing or giving a person an opportunity to be heard, make an order declaring a person a vexatious litigant which means that that person may not make an application for a personal safety intervention order without leave of the court. A person declared a vexatious litigant will also be restricted from applying for a personal safety intervention order under the Family Violence Protection Act. The purpose of this further exclusion is to prevent a vexatious litigant seeking a similar order under the Family Violence Protection Act.

Clause 167 provides that a person who is declared to be a vexatious litigant may appeal against the order only with leave of the appeal court. Further, the person may apply to vary, set aside or revoke the order only with the leave of a magistrate of the court (clause 169).

The vexatious litigant provisions engage but do not limit the right to a fair hearing because the provisions do not restrict the person's right to a fair hearing before the court in relation to whether they are to be declared a vexatious litigant and there are a number of safeguards to ensure that the person is guaranteed a fair hearing in relation to challenging the order. The restriction on the person making applications for a personal safety intervention order does not engage the right because at the stage a person is not a party to civil proceedings in respect of the order. The provisions preserve the right of a person to seek leave to apply for a personal safety intervention order and the person will be able to do so where there is no abuse of process. This additional requirement for vexatious litigants exists to protect people from unsubstantiated claims and to ensure the effective operation of the justice system.

Right to be heard

It may be argued that clause 129 engages the right to a fair hearing because it enables the Children's Court to vary or revoke a personal safety intervention order of its own motion. However, there is no limitation on the right to a fair hearing because under clause 129(3) the court may only act on its own motion if notice is given of the court's intention and parties have the opportunity to be heard.

Conclusion

I consider that the bill is compatible with the Charter of Human Rights and Responsibilities because, to the extent that some provisions may limit human rights, those limitations are reasonable and demonstrably justified in a free and democratic society.

Justin Madden, MLC
Minister for Planning

Second reading

Ordered that second-reading speech, except for statement under section 85(5) of the Constitution Act, be incorporated into *Hansard* on motion of Mr JENNINGS (Minister for Environment and Climate Change).

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

That the bill be now read a second time.

Incorporated speech as follows:

It is vital to the functioning of any cohesive society that people are able to live together in harmony, with minimal disagreement and safety from violence. But as our state grows and we live closer together than ever before, our communities can be less connected.

Disputes that used to be resolved in conversation over the fence are appearing in our courts as applications for stalking intervention orders. These orders can prevent inappropriate behaviour, but they rarely resolve a disagreement and can ruin ongoing relationships. Disputing neighbours or schoolmates may never patch things up.

Today the government introduces a new system of personal safety intervention orders. These will replace stalking intervention orders, and ensure that people in low-level neighbourhood disputes are encouraged to use mediation to find long-lasting solutions to conflict, while people at risk from future harm are kept safe by personal safety intervention orders, enforced by police and courts.

Make no mistake — this new system will not trespass on the government's recent amendments to family violence intervention orders. This new Personal Safety Intervention Orders Bill is only for disputes that happen outside the family. Nothing in this bill derogates from our commitment to treat family violence as a serious matter, requiring the attention of, and intervention by, the police and the courts.

The Personal Safety Intervention Orders Bill arises out of a comprehensive review of stalking intervention orders conducted by the Department of Justice. Stalking intervention orders were originally introduced to protect victims of pursuit-type stalking. We are all aware of victims of stalking who are followed, watched and contacted by a perpetrator who has formed a fascination with that particular victim. The impact that this behaviour can have on victims, and in some cases their friends, work colleagues, partners and families, is immense.

This is the behaviour that stalking intervention orders were introduced to address. Stalking intervention orders are allied with the criminal offence of stalking, and can be made in addition to police laying criminal charges. Stalking intervention orders were developed to protect victims of stalking from experiencing further victimisation.

However, the stalking intervention order system has 'stretched' from this original, narrow purpose. Stalking intervention orders are now used in a range of situations that are not true 'stalking' at all — they are situations where difficult, challenging or inappropriate behaviour is being alleged. Often this occurs in neighbourhood disputes, where a dispute over a fence, a loud stereo, a barking dog or communal washing facilities can escalate into poor behaviour by one or both neighbours. Similarly, stalking intervention orders are used in school situations, to address bullying, jealousy or friendship breakdown. Sometimes neighbourhood disputes or schoolyard matters can escalate to true 'stalking' situations but often this is not the case.

So why are stalking intervention orders being used in these situations? For the large part, what may be described as 'neighbourhood disputes' or 'schoolyard disputes' often escalate because the people involved do not have the skills to resolve the matter themselves. In an increasingly dense urban environment, people are living closer together than ever before, without necessarily knowing how to get along with other members of the community. In the absence of knowing what else to do, people are increasingly turning to the court for a stalking intervention order. A broad reading of the definition of 'stalking' means that these disputes may be technically covered by the stalking intervention order system.

The Personal Safety Intervention Orders Bill 2010 has two aims:

> to better protect victims of serious inappropriate behaviour that threatens their safety where that behaviour occurs outside the family; and
>
> to refer appropriate disputes to mediation services.

Mediation is no longer an adjunct to the justice system. It is a core part of court business. Police, magistrates and registrars are increasingly advising parties to disputes about how the free, confidential mediation services provided by the Department of Justice may be able to help them. Mediation is becoming an option of first resort for interpersonal disputes where safety is not at risk. It is time to stop seeing mediation as an 'alternative' form of dispute resolution — it is now an integral part of the justice system and an 'appropriate' form of dispute resolution.

The Personal Safety Intervention Orders Bill will encourage the use of free mediation services in appropriate circumstances. The Department of Justice runs the Dispute Settlement Centre of Victoria (DSCV), which provides free, confidential and appropriate dispute resolution to Victorians. This service is being expanded into justice centres across Victoria and many Magistrates Courts and Children's Courts have DSCV staff members available at court or via the telephone. The DSCV will conduct mediation assessments and mediations under the bill.

For the first time, magistrates will have a legislative power to direct parties to try to mediate appropriate disputes. The outcomes of the mediation process, and whether or not the parties attended mediation, can be taken into account by the magistrate when deciding whether to make a final personal safety intervention order.

However, it is important to ensure that only appropriate matters go to mediation. Obviously, it would be completely inappropriate for a case of genuine stalking to go to mediation. This would only re-traumatise the victim and reward the stalker. There is no 'dispute' to mediate between a stalker and his or her victim. The victim simply needs to be protected from the stalker. However, in some cases it will not be clear as to whether a matter should be mediated. If one party sprays another with a garden hose this is technically an assault — but does it mean that mediation is not appropriate?

For this reason, all matters that are referred for mediation will be assessed by trained professionals from the DSCV. These dispute assessment officers have specialist training and experience in determining whether a matter can or should be mediated. They do this by carefully interviewing each party involved. Dispute assessment officers also stay in touch with the parties in the lead-up to mediation. It is not uncommon for a dispute assessment officer to contact each party several times to ensure that they are thoroughly prepared for mediation.

To ensure that matters are assessed for mediation against consistent and transparent principles, I will be issuing ministerial guidelines under this bill. These guidelines will set out the most significant things that a dispute settlement officer must have regard to, and will include guidance about what matters should not be mediated.

One of the most important functions of the dispute assessment officer is to examine whether any power imbalances exist between the two parties and, if so, whether these can be rectified. For example, if one of the parties has an intellectual disability, they may be aided by having a support person present. The mediation process can also be adapted to ensure that a person with a disability can fully participate in the proceedings. Similarly, if one or both of the parties is a child, it may be appropriate that they have a parent or guardian present. People with an intellectual disability and children do not need to miss out on the benefits of mediation, so long as it is assessed as appropriate and they are adequately supported. The DSCV adopts a flexible approach to mediations to ensure that they are tailored to the particular needs of the parties involved. If a power imbalance would prevent the mediation process being fair and it is not possible for the imbalance to

be rectified, mediation will not proceed. These issues will be addressed in the guidelines.

A mediation assessment is the first step of any mediation process, but the process for assessing the suitability of mediation does not end there. Mediators constantly monitor whether the mediation process is fair and appropriate. If the dynamics of the situation alter and mediation is no longer appropriate, the mediator will end the mediation, and, in the case of court-directed mediation, send the matter back to court.

This bill gives magistrates the power to send parties to mediation, but this is not the only point in the system at which people may be referred to mediation.

When someone goes to a court to seek an intervention order, the first person they talk to is often a court registrar. Registrars will be encouraged, through the bill and new practice directions, to provide parties with information about mediation when the party first contacts the court. It will then be up to the party whether they wish to pursue mediation, a personal safety intervention order or both. These changes aim to ensure that each person gets the right response to their matter — with appropriate disputes going to mediation and dangerous matters going to court.

The government wants to encourage appropriate cases to go to mediation as early in a conflict as possible. We will continue to work with police, schools and local councils, to tell them about mediation and encourage them to refer people to mediation. This will help prevent disputes from escalating and save the parties time, money and emotional distress.

We are promoting the use of mediation to solve disputes. But mediation will not be appropriate in all cases. There is a genuine need for the bill to protect the victims of stalking and other forms of threatening and frightening behaviour.

The term ‘stalking’ has become stretched to the point where it is an umbrella term for many matters. A person will still be able to apply for a personal safety intervention order if he or she is being stalked, but the grounds for an intervention order have been expanded to explicitly recognise some of the other forms of behaviour that had come to be covered by stalking intervention orders — such as harassment and property damage or interference. The aim of this is to allow stalking to revert to its natural meaning.

The bill will explicitly recognise one-off behaviours that pose a serious threat to safety — such as assault, sexual assault, and making a serious threat. This will ensure that victims of serious threatening behaviour have access to the personal safety intervention order system. The bill expressly protects persons with disabilities who may be threatened by their carer by making it clear that property damage or interference will encompass withholding access to a person’s food or medication or withholding access to a person’s wheelchair.

The bill will also address harassment that is undertaken through a third party. This may occur through both willing and unwilling third parties. For example, if a school bully teases or assaults a child once and then incites another child to tease or assault the same victim, the bully may be found to have harassed the victim and so become the respondent to a personal safety intervention order.

Although there are more types of behaviour covered by the bill, the aim is not to make the personal safety intervention orders system apply to more minor behaviour. As I have said, the aim of this bill is to divert non-dangerous behaviour to mediation in appropriate circumstances. Court hearings will be reserved, wherever possible, for serious matters that require court intervention. For this reason, final orders on the grounds of ‘prohibited behaviour’ — that is, assault, sexual assault, harassment, property damage or interference or making a serious threat — will only be made where the respondent’s prohibited behaviour would cause a reasonable person to fear for his or her safety. This will insert an element of objective risk — a person who is afraid, for example, of all people of a certain ethnic background will not be able to obtain an order simply because a person of that ethnic background keeps moving their wheelie bin. The court must agree that the behaviour is objectively frightening.

The court may also refuse to make an interim or a final personal safety intervention order if the court believes that it is not appropriate to make an order in all the circumstances of the case. For example, it may be inappropriate to make an order against a young child if the child is too young or immature to understand and comply with the order. In such cases, the magistrate may decline to make the order even if the grounds are technically made out.

This bill has a particular focus upon resolving schoolyard matters. I was concerned to hear how common intervention orders are becoming in schools. I have been told that some children and their parents are applying for intervention orders because of schoolyard disputes or friendship breakdown. In some of these cases, it is an appropriate response to bullying, but many school kids just do not know how to resolve their disputes. There must be a role for mediation in many of these cases.

Before this bill, there was no formal process to enable courts, schools and the Department of Education and Early Childhood Development to work together to manage an intervention order. Courts are making orders without always knowing what the impact of that order will be on the parties’ school education. The court is also unable to notify the school when an order is made.

The Personal Safety Intervention Orders Bill enables the courts, schools and the Department of Education and Early Childhood Development to work together. The aim is to ensure that school students can continue their education with the minimum level of disruption — while still protecting children. The bill will require the court to consider the impact of the proposed conditions of a personal safety intervention order made against a child on that child’s education or training.

In some cases, the court may form the view that the school should know that a personal safety intervention order has been made. The bill allows the court to order that a copy of the personal safety intervention order be given to a principal of the school. The courts can make these decisions on a case-by-case basis.

The Personal Safety Intervention Orders Bill completes the split between family violence and non-family violence intervention orders, as recommended by the Victorian Law Reform Commission in its *Review of Family Violence Laws — Final Report*. The bill provides that matters between family members must be heard under the Family Violence Protection Act and matters between non-family members must be heard under the Personal Safety Intervention Orders

Act. If a party applies for an order under the wrong system, the magistrate will, in some circumstances, be able to continue to hear the matter under the correct system. This is to make the process less bureaucratic for the parties.

Whilst the bill is a separate system to the Family Violence Protection Act, it adopts many of the procedural reforms of that act. The aim is to have consistent processes under both acts where appropriate.

The Personal Safety Intervention Orders Bill contains a new system of vexatious litigant orders, to mirror the system in the Family Violence Protection Act. The effect of being deemed a vexatious litigant will be that the vexatious litigant must seek leave from the court before they can make an application in relation to the person named in the order or their children in family violence intervention order or personal safety intervention order proceedings. The vexatious litigant order applies to both systems to prevent a person who is banned under one system from continuing their vexatious behaviour under the other. Meritorious applications will still be able to proceed with the leave of the court.

Section 85 of the Constitution Act

Mr JENNINGS — I wish to make a statement under section 85(5) of the Constitution Act 1975 on the reasons for altering or varying that section by this bill.

Clause 182 of the bill provides that it is the intention of clauses 95 and 97 of the bill to alter or vary section 85 of the Constitution Act.

Clause 95 provides that if the applicant for a personal safety intervention order was not the protected person and that applicant is appealing a decision, then the appeal cannot proceed unless the protected person or those with responsibility for the protected person (such as a parent or guardian) consents to the appeal. The reason for varying the Supreme Court's jurisdiction in this manner is to ensure that a protected person or a person with the responsibility for a protected person can decide what matters are appealed on their behalf or on behalf of those for whom they have responsibility. However, nothing in clause 95 prevents appeals on the grounds of jurisdictional error.

Clause 97 provides that there is no further appeal from an appeal decision of the Supreme Court. This is appropriate, as the rights of the parties in such cases have been tested in a hearing by the president of the Children's Court and the Supreme Court and further appeals could result in a proliferation of proceedings. This may result in the attendance of those subject to prohibited behaviour or stalking at numerous traumatic court hearings. If new facts and circumstances emerge, then the respondent for an order may seek a variation or revocation of the personal safety intervention order from the Magistrates Court. However, nothing in clause 97 prevents appeals on the grounds of jurisdictional error.

Incorporated speech continues:

The Personal Safety Intervention Orders Bill represents a major reform of intervention orders. This bill will do two things. It will provide protection for those who need an intervention order to protect them from a non-family member. It will also — in appropriate cases — promote the use of mediation to address whatever conflict underlies the behaviour that has led people to seek an intervention order.

Because of the substantial nature of these reforms, I have instructed my department to conduct a review of this bill two years after it commences.

This bill has a default commencement date of 1 January 2012. This is to allow time to establish the systems and processes to support this new system of law — such as regulations, court rules and training and instructions to magistrates and registrars. This date is the last possible date that the bill can commence, and it may commence earlier.

In conclusion, I would like to thank all of the stakeholders and members of the public who contributed to the review of non-family violence intervention orders. I believe that the Personal Safety Intervention Orders Bill is a much stronger, more effective and more practical piece of law reform for your contribution.

I commend the bill to the house.

Debate adjourned for Mr RICH-PHILLIPS (South Eastern Metropolitan) on motion of Mr Koch.

Debate adjourned until Thursday, 5 August.

PRIMARY INDUSTRIES LEGISLATION AMENDMENT BILL

Introduction and first reading

Received from Assembly.

Read first time for Hon. M. P. PAKULA (Minister for Public Transport) on motion of Mr Jennings.

Statement of compatibility

For Hon. M. P. PAKULA (Minister for Public Transport), Mr Jennings tabled following statement in accordance with Charter of Human Rights and Responsibilities Act:

In accordance with section 28 of the Charter of Human Rights and Responsibilities, I make this statement of compatibility with respect to the Primary Industries Legislation Amendment Bill 2010.

In my opinion, the Primary Industries 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 bill makes amendments to the Catchment and Land Protection Act 1994, the Livestock Disease Control Act 1994, the Primary Industries Legislation Amendment Act 2009 and the Veterinary Practice Act 1997.

The purpose of the amendments to the Catchment and Land Protection Act 1994 is to enable improved management of noxious weeds and pest animals.

The purpose of the amendments to the Livestock Disease Control Act 1994 is to improve the prevention of and response to the outbreak of disease in livestock and to provide for the release of specified information collected under the act for certain purposes.

The purpose of the amendments to both the Primary Industries Legislation Amendment Act 2009 and the Veterinary Practice Act 1997 is to further provide for the implementation of the national recognition of veterinary registration scheme.

Human rights issues

Catchment and Land Protection Act 1994 — entry and search provisions

The bill amends part 9 division 1 of the Catchment and Land Protection Act 1994, which provides for search and entry powers. These amendments engage the rights in the charter to privacy and property but, in my opinion, are nevertheless compatible with the charter.

Power to take photographs — right to privacy

Clauses 9 and 10 of the bill amend the powers of authorised officers to photograph (and videorecord) items seen during a search of land under sections 80 and 81 of the act respectively. Clauses 9 and 10 remove the additional requirement of consent of the occupier for such photos to be taken.

Section 13(a) of the charter relevantly protects the right of a person not to have his or her privacy, family, home or correspondence unlawfully or arbitrarily interfered with. The right to privacy concerns a person's 'private sphere', which should be free from government intervention or excessive unsolicited intervention by other individuals. An interference with privacy will not be unlawful provided it is permitted by law, is certain and is appropriately circumscribed. An interference will not be arbitrary provided that the restrictions on privacy are reasonable in the particular circumstances and are in accordance with the provisions, aims and objectives of the charter.

Case law suggests that, in the context of a search, the degree to which there exists a reasonable expectation of privacy depends on the circumstances (see *R v. Tessling* [2004] 3 SCR 432 [42]).

While the taking of photographs and videorecordings may, in some situations, result in an interference with privacy, it is not clear that such an interference can be said to be created by these provisions. That is because, although express consent is no longer a requirement before photographs can be taken, the occupier will still be entitled to refuse consent and will be informed of that right (sections 80(3)(ea) and 81(4)(ea)). In other words, the amendment removes the need for the officer to positively establish consent to the taking of the photographs but does not negate the ability of the occupier to refuse consent.

In those circumstances, it may well be incorrect to characterise the taking of photographs as an interference with privacy. Assuming that it does amount to such an interference, for the same reasons, any interference is not, in my opinion, unlawful or arbitrary.

Emergency entry — right to privacy

Clause 11 of the bill extends the power of emergency entry in section 82 of the act to circumstances where an authorised officer believes on reasonable grounds that a restricted pest animal is on the land. In such circumstances, an authorised officer is empowered to search (without a warrant), to examine land, goods and vehicles on the land and to take photographs. The amendment reflects the changing nature of pest animal management and provides the secretary with the same responsibility and powers to treat the most serious categories of pest animals as the secretary has for the most serious categories of pest weeds.

Restricted pest animals are animals which are rarely found in Victoria and which pose a threat to the state's primary production industry, ecosystems and public safety, such as dangerous boa constrictors, alligators and certain toads and turtles. Such animals usually enter Victoria through illegal trade or inadvertently along with produce and may form wild populations on public and private land. The risk of restricted pest animals entering Victoria has increased with the increase in global trade in pest animals and with increased incidence of international and domestic travel.

As the exercise of a warrantless power lacks the inherent prior safeguard afforded by independent verification through the warrant process, two issues arise. The first is whether the absence of a prior safeguard is itself reasonable in the context of the particular powers provided for under the bill. It has been recognised in New Zealand and Canadian jurisprudence that a search without warrant will be appropriate where the process of obtaining a warrant would have a disproportionate adverse effect. By way of relevant example, powers of warrantless search have been accepted where there is an emergency or potentially dangerous situation (see K. Tronc et al, *Search and Seizure in Australia and New Zealand* (1996), 47–53), a serious threat to safety or property (*R v. Williams* [2007] 3 NZLR 207 [20]) or where there is a risk to the safety of the public (*R v. Feeney* (1997) 115 CCC (3d) 129). In *BC Securities Commission v. Branch* (1995) 97 CCC (3d) 505, the majority of the Supreme Court of Canada held that, depending on the nature of the interests at stake and the extent of the expectation of privacy, searches in the regulatory or administrative context may attract a lower standard of protection than searches in the criminal context. The court held that the greater the departure from the sphere of criminal law, the more flexible the application of the requirement of prior authorisation of the search by a neutral magistrate.

In my view this provision is, on balance, compatible with section 13(a) of the charter. Before the power can be exercised, there must be a reasonable belief that a restricted pest animal is on the land. By its very nature, this is a situation that requires an urgent response. The power to

search does not apply to a dwelling, where a greater expectation of privacy would arise (see *R v. Grayson* [1997] 1 NZLR 388, 407). A search of a dwelling for a captive restricted pest animal, or a search for the purpose of obtaining evidence of an offence against the act or regulations can only occur pursuant to a warrant (section 83). The power is appropriately circumscribed, certain and reasonable in the circumstances to manage the spread of pest animals. Authorised officers must exercise the power compatibly with the right to privacy and other relevant rights.

Emergency entry — right to property

I have also considered whether the extension of the power of emergency entry effected by clause 11 is compatible with the right in section 20 of the charter for an individual not to 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.

Under the emergency entry powers in section 82 (the reach of which is extended by clause 11) an officer may take without payment, or require the occupier of the land to give, samples of: plants or parts of plants; an animal or part of an animal; soil, sand, gravel or stone; or fodder or grain. However, the taking of samples is only permissible in accordance with the processes set out in the act and where an emergency is taking place.

In many if not all cases, the taking of samples may well amount to such a minimal interference with property that it may be incorrect to say that section 20 of the charter is engaged. Assuming it is engaged, however, any deprivation of property that occurs as a result of the amendment will take place under powers conferred by legislation, in accordance with the law, and only where necessary to deal with restricted pest animals. If not required for the purpose of a proceeding under the act, the remainder of any samples taken must, pursuant to section 83K, be returned to the person from whom they were taken within 28 days.

Accordingly, the provision is compatible with the right to property in section 20 of the charter.

Further seizure powers — rights to privacy and property

Section 83 of the act provides for the circumstances in which a search warrant can be obtained, empowering an authorised officer to enter land and to search, inspect and seize items connected with an offence against the act and regulations. Where such a warranted search is being conducted, section 83A(b)(i)(B) also empowers the authorised officer to seize (or sample) items that are not of a kind described in the warrant if he or she reasonably believes that they will afford evidence about the commission of an offence against the act or regulations.

Clause 12 of the bill extends this power to items that the authorised officer reasonably believes will afford evidence about the commission of an offence against a related act or regulations made under those related acts, for the purposes of which the officer is appointed. A 'related act' refers to the Wildlife Act 1975, the Fisheries Act 1995 and the Flora and Fauna Guarantee Act 1988, each of which is also regulatory in nature and generally relates to conservation and natural resources.

It is possible that, in some cases, the seizure of items by an officer exercising a search power under warrant pursuant to section 83 may engage the right to privacy. In my view, however, any interference with privacy authorised by the new amendment to section 83A will be neither unlawful nor arbitrary. The statutory precondition of an independently issued warrant acts to prevent an unjustified exercise of the search power. Under the new amendment, an officer may only seize an item relating to offences against other acts if the officer has been appointed to exercise powers under those acts. Further, section 83A(b)(ii) adds an additional requirement: that the authorised officer must hold a reasonable belief that it is necessary to seize that thing in order to prevent its concealment, loss or destruction or its use in the commission of an offence against the act in respect of which it is seized.

There is a strong public interest in the investigation of regulatory offences of this nature, which have the potential for significant harm to the public. Finally, I also note the discretion of a court under the Evidence Act 2008 to exclude unlawfully or improperly obtained evidence, which would include evidence obtained in breach of a charter right.

For the same reasons, I am of the opinion that the amendment to section 83A is not incompatible with the right to property in section 20 of the charter. Given that the power to seize only arises where there is a risk of destruction or disposal of evidence or of the commission of an offence, it would be impracticable to require an officer to obtain a further warrant based on what was sighted at the premises during the initial search. I note that pursuant to section 83G, the seized items must be returned if not required or where a proceeding has not commenced or is discontinued within a particular period of time.

Livestock Disease Control Act 1994

Notification of unusual circumstances of disease or death — freedom of expression

Clause 17 (new section 7B) makes it an offence not to notify an inspector of any unusual circumstances of disease in or death of livestock.

The right to freedom of expression protected by section 15 of the charter includes a right not to impart information, although it is not clear that the right is engaged by a regulatory reporting requirement of this nature. Even assuming that it is, section 15(3) of the charter relevantly provides that special duties and responsibilities are attached to the right to freedom of expression and that the right may be subject to lawful restrictions reasonably necessary for the protection of national security, public order, public health or public morality. To the extent that clause 17 imposes any restrictions on freedom of expression, they are reasonably necessary for the protection of public health in terms of section 15(3) of the charter. Livestock disease control is a matter of considerable importance for the maintenance of public safety. Proper regulation is vital for protecting health and preventing the spread of disease. Inspectors need to be aware of disease or death of livestock from unusual circumstances to undertake their statutory functions. Requiring the provision of this information is necessary to ensure proper regulation and monitoring of the livestock industry.

Vendor declarations — right to privacy

Clause 18 (new section 8A) imposes various requirements to make vendor declarations when livestock are sold or transported. A vendor declaration may include the disclosure of limited personal information such as the location of the livestock owner's property and the name and signature of the person making the declaration. I consider that this provision is compatible with section 13(a) of the charter. In order to regulate the potential spread of disease it is important that the vendor is capable of identification if necessary.

Testing for diseases — right to privacy

Clause 25 (new section 16(2A)) requires a person who has submitted for testing any sample or specimen taken from any livestock or livestock product to provide their name and address as well as the livestock owner's name and address. If the sample or specimen is infected with disease, this information must be notified to the secretary (new section 16(2B)).

In my opinion, this provision is compatible with section 13(a) of the charter. The requirement to provide this information specifically relates to the testing of livestock suspected of carrying disease and the testing regime would not function effectively without relevant authorities being able to inform the owner about any diseases in their livestock. The secretary needs to be aware of the origin of any outbreak of disease so that measures may be taken to control it.

Secretary's powers to release records — right to privacy

Clause 38 (new section 107B(3)(c)) clarifies the circumstances in which disease notification records maintained by the secretary under section 107B(1) may be made available by the secretary. Records may be released to any person or body where the secretary is satisfied that their release will assist: in disease prevention, monitoring or control; in the protection of domestic or export markets for livestock or livestock products; or where it is otherwise in the public interest to do so.

Records may also be made available, under clause 38 (new section 107B(4A)) to certain public officials (employees of the Department of Primary Industries or the Department of Sustainability and Environment) if the records are required for the purpose of carrying out their duties in relation to emergency planning, preparation, response or recovery; to certain inspectors for the purpose of exercising functions or duties under the Livestock Disease Control Act itself or under the Prevention of Cruelty to Animals Act 1986; and to an emergency services agency under the Emergency Management Act 1986 for the purpose of emergency planning, preparation, response or recovery.

Finally, new section 107B(4B) empowers the secretary to make available records relating to property identification codes allocated by the secretary to any person or body for the purposes of reuniting livestock with its owner, subject to conditions.

These records may contain limited personal information about livestock owners such as names and addresses. However, the provision of access to this information in the limited circumstances provided by the legislation accords with the purpose of the regime, which operates in the interests of public health and safety. Finally, the disclosure of information for the purposes of reunification of livestock with owners is intended to benefit the livestock owner.

For these reasons, 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.

Minister's and inspectors' powers to order destruction of livestock — right to property

Section 31(1)(b) of the Livestock Disease Control Act provides that the minister's powers to declare an area a restricted or control area include the power to require livestock to be destroyed or disposed of. Clause 27 amends section 31(1)(b) by clarifying that such an order can be made whether the livestock are diseased or not.

Although this clearly amounts to an interference with property, in my opinion, any such interference is in accordance with the law and appropriately circumscribed. The power operates in limited circumstances where a restricted or control area has been declared. An order that livestock be destroyed may only be made where the minister believes or suspects that it is reasonably necessary to make the order for the purpose of preventing, controlling or eradicating an exotic disease in respect of the specific class or description of livestock to which it applies. In addition, compensation is available to owners of the property that has been destroyed. Therefore, this provision is compatible with section 20 of the charter.

Clause 40 amends section 120(1) of the Livestock Disease Control Act to provide a power to destroy livestock or any other thing seized in accordance with division 3 of part 8 (Additional powers of inspectors for exotic diseases) to avoid risk to life or property.

Although this amounts to an interference with property, I am of the opinion that such an interference is in accordance with the law and appropriately circumscribed. The destruction may only take place where the inspector is of the opinion that it is necessary to do so in order to control, eradicate or prevent the spread of an exotic disease. The secretary's approval is required before destruction may occur. Compensation is available to owners of the property. Therefore, this provision is compatible with section 20 of the charter.

Fair hearing issues

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. 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.

I have considered the effect of the following clauses on the fair hearing right:

clause 21 of the bill (new section 9BA of the Livestock Disease Control Act);

clause 32 of the bill (new section 79HA(1) of the Livestock Disease Control Act);

clauses 31 and 33 of the bill (new sections 79(5C) and 79I(5C) of the Livestock Disease Control Act); and

clause 52 (amending section 21(1) of the Veterinary Practice Act 1997).

In each case, I consider that the procedures provided for in the relevant legislation (as amended by the bill), including the rights of appeal or review that are available, are appropriate to the nature of the particular interests that are at stake. In my opinion, there are no incompatibilities with section 24 of the charter.

Conclusion

I consider that the bill is compatible with the Charter of Human Rights and Responsibilities.

Martin Pakula, MLC
Minister for Public Transport

Second reading

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

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

That the bill be now read a second time.

Incorporated speech as follows:

The Primary Industries Legislation Amendment Bill 2010 makes miscellaneous amendments to the Catchment and Land Protection Act 1994, the Livestock Disease Control Act 1994 and the Veterinary Practice Act 1997.

The Catchment and Land Protection Act 1994 provides the legislative framework for the management of invasive pests in Victoria.

The cost of weeds and pest animals to the Victorian economy is estimated to be $1 billion annually. While the social impacts are much more difficult to quantify, it is clear that these costs are considerable, particularly upon farm businesses.

Globalisation and the expansion of overseas travel and trade have also increased Victoria's rate of new pest incursions. There is, however, currently no allocation of responsibility or legislative powers to control wild or escaped populations of restricted pest animals which constitute the three highest categories of pest animals in Victoria and include species declared as prohibited, controlled and regulated.

For example, the red-eared slider turtle is a serious pest in a number of countries and has the potential to have a devastating impact on Victorian waterways. Fortunately this is the only restricted species currently known to be in the wild in Victoria, inhabiting a small number of water bodies in the Melbourne area. While the Department of Primary Industries (DPI) is currently treating the small number of known infestations in the interests of keeping Victoria free of these pests, it must rely solely on an implied power to do so. If these pests were to enter a private water body such as a farm dam, DPI would have no power to enter or take action to prevent the spread of this serious pest.

The bill provides the department with formal powers to enter land and manage infestations of restricted pest animals. This largely aligns department responsibilities and operational provisions with those that exist in respect of state prohibited weeds.

The bill will assist in protecting Victoria from new invasive pest animal species by providing for an emergency declaration of a new pest animal species which poses a threat to Victoria.

Other amendments provide enhancements to assist in the management of established pests and create efficiency gains through streamlining existing provisions. These include improved weed hygiene provisions and allowing contractors to assist in carrying out works on behalf of the secretary which reduces officer time spent supervising works. These amendments will enable DPI to better support key stakeholders and landowners already meeting their obligations for managing pests.

The Livestock Disease Control Act 1994 (LDC act) provides Victoria with the capacity to effectively detect and respond to disease threats faced by livestock industries. This bill further enhances these capabilities through several mechanisms.

A major portion of the LDC act concerns exotic disease surveillance, detection, prevention and control. These functions will be further improved by tightening controls on the illegal practice of feeding pigs scraps of meat, known as swill feeding, a practice which poses the highest risk for the introduction of foot and mouth disease into Australia. Early detection of new and emerging diseases is important if they are to be understood and controlled. Unusual circumstances of disease in livestock or unusual deaths may occur. Diseases may initially present with non-specific signs or in certain sectors of industry. Once an anomaly is detected it is vital that further events are reported. The bill makes provision to require such events to be notified to DPI so the cause can be further studied and dealt with.

Livestock traceability is key to product integrity and disease control. Knowledge of where livestock are, and their associated movements is paramount. A critical component of the national livestock identification system is vendor declarations which include information given by the vendors about the animals being sold to a purchaser and intervening persons such as livestock agents and saleyards. The requirement to make a vendor declaration is provided for by the regulations and other subordinate instruments. This bill moves this requirement into the LDC act to better underpin livestock traceability.

Diagnostic testing technologies are rapidly advancing, with veterinarians now able to undertake pen-side, or point-of-care, testing of sick livestock. Such tests allow for rapid and accurate detection and exclusion of endemic and more importantly emergency and exotic diseases, for example, anthrax. Some of the tests becoming available were previously only conducted at laboratories that had high capital investment in technologies such as polymerase chain reaction

(PCR). The future promises 'lab on a chip' testing which will allow testing for many diseases or conditions with a one-step test.

The LDC act regulates testing for notifiable diseases, including exotic diseases. Testing ensures that animal health officials know when and where these diseases are occurring thereby avoiding the potential repercussions. There is no current framework in place to accommodate testing outside a registered veterinary diagnostic laboratory. The bill will allow the use of approved pen-side tests by trained and qualified persons. The bill will also ensure that adequate details and records are kept by the tester and that the results are notified to the Department of Primary Industries. An example of such a test is the one for anthrax that can be performed on animals that have died suddenly or unexpectedly. This will reduce the risk of the carcase being opened and consequently the community being exposed to a potentially lethal disease.

Veterinary diagnostic laboratory capacity is an important component of effective disease surveillance. Presently to test for notifiable diseases a laboratory is required to meet prescribed standards for registration, including the standard which in Australia is audited and accredited by the National Association of Testing Authorities (NATA). Some laboratories do not perform enough production animal testing for them to justify entering into NATA accreditation yet meet other requirements. The bill will allow the secretary of DPI to approve these laboratories for registration on a case-by-case basis.

The LDC act provides for collection of funds for the administration of compensation funds for the cattle, sheep and goat, pig and bee industries. This bill introduces administrative changes to the way the advisory committees are appointed to allow for flexibility in case of future changes to names and structure of representative organisations. The bill will also allow interstate producers of sheep and goats sold in Victoria to have paid duty refunded and will allow payments to be made from the Bee Compensation Fund towards programs that will benefit that industry more broadly.

As part of the administration of the LDC act, data is collected on livestock properties, including their location, contact details and animal numbers and species. This information is necessary to enable disease surveillance and control and proves vital in emergencies such as exotic disease outbreaks. It also has great potential to benefit the livestock sector and the broader community during the planning for, response to and recovery from other emergencies, such as natural disasters like that seen on Black Saturday last year. Knowing where livestock are improves the ability to deploy resources to protect them and respond to issues that arise. The bill will enable the release of disease notification and property identification information to a greater range of persons and their agencies for specified purposes including to other emergency response agencies. This will facilitate a more coordinated approach to emergencies and disease outbreaks.

The bill also amends the Veterinary Practice Act 1997 that deals with the registration of veterinary practitioners and for investigations into the professional conduct and fitness to practise of registered veterinary practitioners.

The bill will complete the legislative framework for the implementation in Victoria of the agreed national model for the national registration of veterinary practitioners.

The bill will also clarify the basis on which the Veterinary Practitioners Registration Board of Victoria may investigate complaints concerning the professional conduct of practitioners. The bill inserts a penalty for a registered veterinary practitioner failing to notify the board of a change of address but also doubles the time in which practitioners have to notify. The bill also provides more flexibility with regard to the function of the board to establish competency in veterinary practice.

I commend the bill to the house.

Debate adjourned on motion of Ms LOVELL (Northern Victoria).

Debate adjourned until Thursday, 5 August.

Sitting suspended 6.30 p.m. until 8.02 p.m.

PERSONAL PROPERTY SECURITIES (STATUTE LAW REVISION AND IMPLEMENTATION) BILL

Statement of compatibility

For Hon. J. M. MADDEN (Minister for Planning), Mr Jennings tabled following statement in accordance with Charter of Human Rights and Responsibilities Act:

In accordance with section 28 of the Charter of Human Rights and Responsibilities, I make this statement of compatibility with respect to the Personal Property Securities (Statute Law Revision and Implementation) Bill 2010.

In my opinion, the Personal Property Securities (Statute Law Revision and Implementation) 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

Background

On 21 October 2009, Victoria referred legislative powers through the Personal Property Securities (Commonwealth Powers) Act 2009 (the referral act) to the commonwealth to enable the commonwealth to enact its Personal Property Securities Act 2009 (the PPS act) and provide for the application of that legislation in Victoria.

The PPS act creates a uniform national scheme (the PPS scheme) for the regulation of security interests over personal property, broadly being any property other than land/buildings. In broad terms, the PPS act regulates the registration of security interests in personal property and provides rules that govern the priority among competing security interests in personal property and for the enforcement of those interests. Operating alongside the Uniform Consumer Credit Code, the PPS act will outline the circumstances in which a security interest in personal property upon debtor default can be enforced, and the enforcement procedures to be undertaken.

The PPS act establishes a single national register of personal property securities (the PPS register). In general, the priority between competing security interests will be determined by the date of registration on the PPS register. The PPS register will help prospective purchasers and lenders determine whether personal property is or may be subject to a security interest and will facilitate the resolution of priority disputes.

A statement of compatibility for the referral act was prepared and tabled in Parliament in October 2009. That statement concluded that the referral act and the PPS act, including the provisions relating to the PPS register, were compatible with the human rights and responsibilities set out in the charter.

Key features of the bill

The Personal Property Securities (Statute Law Revision and Implementation) Bill (the bill) includes amendments to Victorian acts to implement the PPS act. Once the PPS register commences, security interests in motor vehicles, crops, wool, stock and the personal property of cooperatives will be capable of registration on the national PPS register. Consequently, the bill provides for the closure of the following registers of 'security interests' created and regulated under Victorian law:

Vehicles Securities Register (VSR) – Chattel Securities Act 1987

Registers of crop and wool liens and stock mortgages — Instruments Act 1958

Register of cooperative charges – Co-operatives Act 1996.

The bill repeals the relevant provisions in the Chattel Securities Act, Instruments Act and Co-operatives Act that create these registers from the commencement date of the PPS register. The relevant provisions of the bill will take effect on proclamation which will be aligned with the commencement date of the PPS register. In addition, the bill repeals provisions concerning the registration and priority of these interests. Such provisions are contrary to Victoria's referral act and will be inconsistent with the PPS act once the PPS register commences.

Registered security interests recorded on the VSR, the register of cooperative charges and the register of stock mortgages prior to the repeals will be migrated to the PPS register. Registered crop and wool liens have a short statutory lifespan of 12 months and consequently, these interests will not be migrated to the PPS register. Importantly, the transitional provisions in part 9 of the PPS act will preserve the current priority of registered security interests that are migrated to the PPS register and also the priority of registered crop and wool liens. Existing registered security interests will be preserved by the bill despite the repeals.

Information-sharing powers

To facilitate the migration of registered interests from the VSR, the register of stock mortgages and the register of cooperative charges, part 5 of the bill includes a power for the relevant Victorian register administering bodies to provide, or cause to be provided, to the registrar of personal property securities, or to any person employed in the administration of the PPS act, any information contained in the records of those administering bodies under the relevant provisions of the Chattel Securities Act, Co-operatives Act and Instruments Act that is necessary to give effect to the PPS act, and to the establishment of the PPS register. The bill also includes an immunity for information provided by the relevant administering bodies to the commonwealth in good faith and on a reasonable belief that it was provided in accordance with the information-sharing powers in the bill.

Other amendments

The bill also includes amendments to —

exclude certain statutory rights, licences and entitlements and authorities from the operation of the PPS act by declaring them not to be personal property for PPS act purposes to ensure that security or financial interests in these licences are not regulated under the PPS act;

clarify the interaction of the PPS act and provisions in Victorian acts that set an order for the distribution of proceeds of sale in relation to property that has been forfeited, impounded or confiscated by the state under enforcement powers. These amendments are designed to preserve the current operation of these laws in Victoria;

preserve the operation of section 6 of the Chattel Securities Act that relates to security interests in goods affixed to land which is not regulated under the PPS act;

make other minor consequential amendments to the acts set out in the schedule to update references to the repealed Chattel Securities Act and to amend terminology.

Human rights issues

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

Property rights

Section 20 of the charter provides that a person must not be deprived of his or her property otherwise than in accordance with law. As outlined above, the bill does not alter the existence or value of a person's interest in property. The bill provides for the closure of the registers of security interests in motor vehicles, crops, wool and stock and the personal property of cooperatives. However, the closure of these registers does not affect the existence of current registered security interests. Existing security interests will be continued in force and, with the exception of liens in wool and crops, be migrated to the national PPS register. These interests will be governed by the PPS act which is consistent with the right to property set out in the charter. Importantly, the priority of existing security interests will be preserved by the operation of the transitional provisions in chapter 9 of the PPS act.

Consequently, I consider that the provisions of the bill do not engage the right to property in section 20 of the charter.

Privacy rights

Section 13(a) of the charter recognises a person's right not to have his or her privacy, family, home or correspondence unlawfully or arbitrarily interfered with. Privacy encompasses concepts of personal autonomy and human dignity. It encapsulates the notion that individuals should have an area of autonomous development, interaction and liberty — a 'private sphere' free from government intervention and from

excessive unsolicited intervention by other individuals. Privacy comprises bodily, territorial, communications and information privacy.

An interference with privacy will not limit the right if the interference is neither arbitrary nor unlawful. The interference will not be arbitrary if the restriction on privacy accords with the objectives of the charter and is reasonable in the circumstances. The interference will not be unlawful if the law authorising it is circumscribed, precise and determined on a case-by-case basis.

The bill includes powers that enable the relevant administering bodies of the VSR, the register of cooperative charges and the stock mortgage register, to provide information contained in their records on the current registers to the PPS registrar that is necessary to give effect to the PPS act and to establish the PPS register. These information-sharing powers engage the right to privacy in section 13 of the charter in that they will enable information about an individual's security interest recorded on a Victorian register to be given to the PPS registrar. Details of the grantor of the security interest (debtor) will also be transferred from the Victorian registers. However, for the reasons set out below I consider the right is not limited, because any interference in privacy is not arbitrary or unlawful.

In each case, the relevant administering body is required to only provide information that is necessary to give effect to the PPS act and the establishment of the PPS register. Moreover, the power will enable the transfer of information recorded on one register to another. Registrars will be required to deal with the information held on their registers and exercise the powers in the bill in a manner that is consistent with the Information Privacy Act 2000. The PPS registrar in receiving that information will be bound by the Privacy Act 1988 (commonwealth). The provisions of the PPS act that establish and regulate the PPS register are compatible with the rights set out in the charter.

Conclusion

I consider that the bill is compatible with the Charter of Human Rights and Responsibilities. To the extent that the bill enables the operation of the PPS act in Victoria and to the extent some provisions of the proposed PPS act raise human rights issues, those provisions do not limit human rights.

Justin Madden, MLC
Minister for Planning

Second reading

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

That this bill be now read a second time.

Introduction

In October 2009, the Victorian Parliament enacted the Personal Property Securities (Commonwealth Powers) Act 2009 (the Victorian referral act). That act referred legislative power to the Australian Parliament to enact a Personal Property Securities Act that would apply in Victoria. In November 2009, following similar referrals of legislative power from New South Wales, South Australia and Queensland, the Australian Parliament enacted the Personal Property Securities Act 2009 (PPS act). It is anticipated that the remaining jurisdictions will follow suit in 2010. The purpose of this bill is to make amendments to certain Victorian acts as a consequence of the enactment of the new commonwealth PPS scheme and to facilitate the transition of security interests currently recorded on certain state registers to the national PPS register.

The personal property securities (PPS) scheme is designed to provide a single registration system for security interests over personal property. The scheme is a commonwealth-administered scheme. Personal property can mean any type of property that is not land or buildings. Security interests in personal property include mortgages, charges and pledges as well as financing leases, hire-purchase agreements and retention of title agreements where a sale does not transfer ownership until full payment is received. The PPS scheme establishes a national PPS register that will operate on a 24/7 basis and be managed by a registrar for personal property securities. The PPS scheme is designed to provide a single framework of rules for determining the priority of competing security interests over personal property and for the enforcement of those interests. However, due to the legal complexities that arise in applying a uniform commonwealth law in a federal framework, jurisdictions have negotiated to ensure, as far as is possible, that the PPS act makes appropriate allowances for situations where there can be regulatory overlap.

The PPS scheme is supported by business and finance bodies as it is designed to not only reduce the high costs that are involved with the payment of various fees for multiple registrations in multiple jurisdictions, but to also reduce the hidden transaction costs for business associated with ensuring compliance with different laws, compliance with different registration requirements and, where necessary, the need to search different registers before determining whether the personal property in question is the subject of a security interest. The implementation of the PPS scheme is one of the priority items on the Council of Australian governments (COAG) business regulation reform agenda. The commonwealth PPS act has a default registration commencement date of 1 February 2012. However, it is expected that in line with a COAG commitment to activate the electronic PPS register by May 2011, the commonwealth will make the necessary proclamation for the PPS scheme to commence in May 2011. The Australian government is in the process of building the register and designing its functionality in consultation with industry and with state and territory

governments. Accordingly, the commencement of certain provisions in this bill is dependent on the registration commencement date of the PPS register. I turn to the key amendments to Victorian laws that are proposed through this bill.

Closure of certain Victorian registers and transitional processes

Parts 2 to 5 of this bill principally amend the Chattel Securities Act 1987, the Instruments Act 1958 and the Co-operatives Act 1996 to provide for the closure of the vehicle securities register as the primary securities register for motor vehicles in Victoria, the closure of the registers of liens in wool and crops and the register of stock mortgages and the closure of the register of cooperative charges. The bill also facilitates the transfer or 'migration' of information relating to the security interests on stock mortgages, motor vehicles and cooperative charges to the PPS register to ensure these security interests continue to be registered on the commencement of the PPS register. The bill does not provide for the transfer of liens in wool and crops registered in Victoria as these currently have a statutory life of 12 months. Lien-holders will have the opportunity to re-register new security interests in wool and crops on the PPS register once the current liens expire.

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

Incorporated speech as follows:

The bill also inserts savings provisions into these acts to continue to protect those security interests and preserve the rights attached to those interests that have been created pursuant to the Victorian schemes, but not yet fully registered on Victorian registers prior to the registration commencement date of the PPS register. It is also noted that under the transitional provisions of the Commonwealth PPS Act holders of security interests that are validly created but not registered on existing registers will be allowed a period of 24 months from the registration commencement date of the PPS register to register their interests on the PPS register. The bill, whilst closing down the vehicle securities register and the register for cooperative charges to new interests, will provide a continued role for these registers to serve as historical databases for parties wishing to access any information recorded on these registers up to the registration commencement date of the PPS register.

Exclusion of certain statutory rights, licences and authorities from the PPS scheme

The PPS act includes statutory licences within its broad definition of 'personal property'. Provided that these licences are transferable there is nothing preventing an individual or entity from using these licences as collateral to raise finance and for the financier to lodge an interest in that licence on the PPS register. However, the PPS act recognises that some statutory licences may be excluded from the operation of the PPS scheme. Section 8(1)(k) of the PPS act provides the PPS act does not apply to an interest that is a particular right, licence or authority granted by or under a law of a state if a provision of that law declares that kind of statutory right not to be personal property for the purposes of the PPS act. A similar 'carve-out' is contained in sections 3 and 4 of the Victorian referral act which refers a number of matters in relation to personal property, but does not include in the definition of personal property an 'excluded state statutory right'. The facility to exclude certain statutory licences and rights from the PPS scheme recognises that these licences and rights may be governed under existing registration schemes, subject to national arrangements or reforms, or may not be appropriate for registration as collateral on the PPS register.

Part 6 of this bill inserts a number of such declarations into various Victorian statutes to provide that various rights, licences or authorities are not personal property for the purposes of the national PPS scheme. For example, the rights, licences and authorities issued under Victorian primary resources and utilities legislation, such as under the Mineral Resources (Sustainable Development) Act 1990, the Gas Industry Act 2001 and National Electricity (Victoria) Act 2005 will be excluded from the scope of the PPS scheme. Schemes involving gas and electricity are currently the subject of the COAG national energy market reforms and it is expected that the current licensing regimes will be reviewed as part of this process. Other licences, such as those issued under mineral resources and petroleum legislation are already the subject of comprehensive regulatory schemes that also provide for the registration of financial interests. These are industry-specific schemes where there would be little utility in allowing financial interests over such licences to be registered on the PPS register when other substantive aspects of those licences continue to be recorded in the relevant state register. Other licences such as keno, wagering and betting, and monitoring licences issued under the Gambling Regulation Act 2003 are currently undergoing a competitive licence awarding process and the new licences will not commence until 2012. As the transitional process from the current licences to the new licences is currently under way, these have been excluded from the PPS scheme.

Declarations as to priority between certain statutory interests and security interests

Section 73 of the PPS act allows state law to determine the priority between security interests in personal property to which that act applies and other interests in the property created under a law of the state. This mechanism enables existing priorities set out under state law to continue to apply despite the operation of the priority rules for security interests contained in the PPS act. In order to enliven this mechanism, section 73(2) of the PPS act requires the relevant state law to make an express declaration that section 73(2) of the PPS act applies to the priority set out in the state law. Part 7 of the bill inserts such declarations into certain state acts, such as the Infringements Act 2006, the Marine Act 1988 and the Road Safety Act 1986 to clarify the interaction of the PPS act and the provisions in Victorian acts that set an order for the distribution of proceeds of sale for property that has been forfeited, impounded or confiscated by the state under enforcement powers conferred by those acts. The inclusion of these declarations is intended to preserve the current operation

of those laws and to avoid legal doubt arising from the future operation of the PPS scheme.

The bill, in schedule 1, also sets out other consequential amendments to update existing references in Victorian legislation to reflect the new PPS scheme and to remove references to legislation such as the Chattel Securities Act 1987 that will substantively be repealed by this bill.

Conclusion

It is appropriate to bring to Parliament's attention that the key amendments proposed in this bill are those deemed necessary to enable the commencement of the PPS scheme in Victoria in May 2011. The PPS scheme remains new and untested in Australia at present. It is not unreasonable to expect that as users of the system become familiar with its operation and particularly the PPS scheme's interaction with state laws, issues arising from the operation of this scheme may be brought to light in future. As a result, Parliament may be required to consider further consequential amendments to Victorian laws. In that context, I also note that the commonwealth is obliged under the PPS act to undertake a review of the operation of that act within three years of its commencement. The commonwealth is also obliged to consult with states and territories in reviewing the scheme under the intergovernmental Personal Property Securities Law Agreement 2008. I expect that any complementary or PPS-related amendments made to state laws would be considered as part of that review.

The government has consulted with various stakeholder groups during the policy development for this bill and will ensure that users of the current Victorian registers are kept informed of the changes and the processes leading up to the commencement of the PPS scheme in May 2011. I understand that the commonwealth intends to undertake a nationwide education campaign with respect to PPS reforms leading up to the commencement of the scheme. However, the Victorian government also intends to provide PPS-related information to users of affected Victorian registers and to provide information through relevant Victorian government websites leading up to the scheme's commencement.

This bill is another example of the Brumby government's continuing commitment to fostering an efficient and competitive economy and removing the regulatory obstacles towards achieving a streamlined national economy.

I commend the bill to the house.

Debate adjourned for Mr RICH-PHILLIPS (South Eastern Metropolitan) on motion of Ms Lovell.

Debate adjourned until Thursday, 12 August.

BAIL AMENDMENT 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 Bail Amendment Bill 2010.

In my opinion, the Bail 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 main purposes of the bill are to:

amend the Bail Act 1977 to clarify and amend the law relating to conditions of bail, sureties and deposits, variation of bail, revocation of bail, further bail applications and appeals

amend the Bail Act to require a decision-maker to take into account any issues that arise due to the Aboriginality of a person when making a determination under the act in relation to the person

amend the Magistrates' Court Act 1989 to create a new legislative framework for bail justices

make consequential amendments to those and other acts.

Human rights issues

The bill engages the following human rights protected by the charter:

recognition and equality before the law

privacy and reputation

taking part in public life

cultural rights

property rights

liberty and security of person, and in particular the right to release pending trial, subject to certain guarantees, and the right to challenge the lawfulness of detention

fair hearing.

The impact of the bill upon each of these charter rights is discussed in turn below.

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

Section 8 — recognition and equality before the law

Section 8(3) of the charter provides that every person is equal before the law and is entitled to the equal protection of the law without discrimination and has the right to equal and effective protection against discrimination. In the charter, discrimination in relation to a person means discrimination on the basis of an attribute set out in section 6 of the Equal Opportunity Act 1995; the attributes in section 6 include age and race.

Clauses 5, 29 and 32 of the bill engage the right in section 8(3) of the charter. Clause 5 provides a special provision for Aboriginal people. Clauses 29 and 32 impose

age-related requirements for bail justices and acting bail justices.

Special provision for Aboriginal people

Clause 5 of the bill inserts new section 3A in the Bail Act. Section 3A requires a decision-maker to take into account (in addition to any other requirements of the act) any issues that arise due to the Aboriginality of an accused, including the person's cultural background and any other relevant cultural issue or obligation, when making a determination under the Bail Act. For example, a decision-maker would be required to take into account matters such as an obligation to attend a community funeral or participate in community cultural activities when imposing conditions of bail.

This constitutes discrimination on the grounds of race. However, the right to be free from discrimination in section 8(3) is qualified by section 8(4) of the charter, which provides that measures taken for the purpose of assisting or advancing persons or groups of persons disadvantaged because of discrimination do not constitute discrimination. This recognises that substantive equality is not necessarily achieved by treating everyone equally, and that affirmative action or positive discrimination may be necessary to achieve equality for some groups in the community. As the purpose of section 3A is to recognise historical disadvantage, which has led to the overrepresentation of Aboriginal people on remand, in accordance with section 8(4) of the charter, it constitutes permissible discrimination.

Section 3A also promotes the cultural rights of Aboriginal persons contained in section 19(2) of the charter as it requires a decision-maker to take into account any issues that arise due to the Aboriginality of an accused, which may, as outlined above, include participation in cultural events or ceremonies.

Age-related requirements for bail justices and acting bail justices

Clauses 29 and 32 of the bill substitute provisions in the Magistrates' Court Act to provide age-related requirements for the appointment and retirement of bail justices and acting bail justices. These requirements constitute discrimination on the grounds of age and, therefore, limit the right to equal protection before the law. On balance, however, the limitations upon this right are reasonable and justifiable in a democratic society for the purposes of section 7(2) of the charter, having regard to the factors set out below.

(a) the nature of the right being limited

The prohibition on discrimination is one of the cornerstones of human rights instruments and this is reflected in the preamble to the charter. However, the right to equality before the law is not absolute and may be subject to reasonable limitations in accordance with section 7 of the charter. I note that the right is stronger with regards to 'immutable' characteristics, such as ethnicity or sex, as opposed to attributes which change over a lifetime, such as age.

(b) the importance of the purposes of the limitations

The purpose of the limitations is twofold. Firstly, it aims to ensure that those appointed to and holding the offices of bail justice and acting bail justice are competent and able to perform the important duties of those offices. Secondly, it aims to maintain public confidence in the bail justice system. These purposes are important as bail justices and acting bail justices make decisions that may limit the rights of others, and in particular the right to liberty and security of accused people.

(c) the nature and extent of the limitations

The nature and extent of the limitations are that:

a person is not eligible to be appointed as a bail justice until they turn 18 years of age or after they turn 65 years of age (new section 120A(2)(a))

a person is not eligible to be appointed as an acting bail justice until they turn 70 years of age or after they turn 75 years of age (new section 120E(2)(a))

a bail justice ceases to hold office when they turn 70 years of age, unless their fixed term of appointment expires before this (amended section 123(a))

an acting bail justice ceases to hold office when they turn 75 years of age, unless their fixed term of appointment expires before this (amended section 123(a)).

The minimum age requirement of 18 for appointing bail justices recognises that a person should be an adult to fulfil the important duties of this office, which involve making decisions that impact on the rights of others. The maximum age requirement of 64 for appointing bail justices recognises that bail justices are only appointed for five-year fixed terms and that considerable resources are involved in appointing and training bail justices.

The minimum age requirement of 70 for appointing acting bail justices recognises the aim of restricting this position to experienced retired bail justices. The maximum age requirement of 74 for appointing acting bail justices recognises that acting bail justices are appointed for 12 months and cease to hold office when they turn 75 years of age.

The maximum age requirements for bail justices and acting bail justices are in line with the standard age for retirement within the community and with the age requirements applicable for judicial and acting judicial officers. This is necessary to maintain public confidence in the competence of bail justices and in the office generally.

(d) the relationship between the limitations and their purposes

There is a direct connection between the limitations and their purposes of ensuring that bail justices are competent and of maintaining public confidence in the bail justice system.

(e) any less restrictive means reasonably available to achieve their purposes

An alternative would be to conduct individual assessments of competence instead of imposing a set retirement age. However, this would create a considerable administrative burden on the system. Given the retirement age is consistent with the standard retirement age in the community it is reasonable in the circumstances.

Section 13 — privacy and reputation

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. The right to privacy concerns a person's private sphere, which should be free from government intervention or excessive or unsolicited intervention by other individuals.

An interference is not unlawful if the law authorising the interference is precise and circumscribed. An interference is not arbitrary if it occurs in accordance with the provisions, aims and objectives of the charter, and is reasonable in the particular circumstances.

Clause 29 of the bill substitutes sections 120B(2)(b), 120D(2)(b) and 120F(2)(b) in the Magistrates' Court Act. These sections require applications for appointment and reappointment as a bail justice or acting bail justice to contain an authority to conduct a police record check on an applicant. The sections engage the right in section 13(a) of the charter as they allow the Department of Justice to request and then to receive the results of police record checks conducted on applicants for these offices.

The purpose of conducting a police record check on applicants is to ensure that only appropriate people are appointed or reappointed as bail justices or acting bail justices. This is important as bail justices and acting bail justices make decisions that may limit the rights of others, and in particular the right to liberty and security of accused people. As such, the provisions also seek to maintain public confidence in the bail justice system.

The right to privacy is not limited by sections 120B(2)(b), 120D(2)(b) and 120F(2)(b) because the interferences are neither unlawful nor arbitrary. The interference is not unlawful because the precise circumstances in which an applicant is required to authorise the conduct of a police record check are specified in the bill. It is not arbitrary because the purpose is in accordance with the provisions, aims and objectives of the charter. Furthermore, a police check is only conducted with an applicant's consent. In addition, safeguards are in place to ensure that applicants' personal information is protected. The Department of Justice manages all the personal information it holds in accordance with the privacy principles contained in the Information Privacy Act 2000.

Section 18 — taking part in public life

Section 18(2) of the charter provides that every eligible person has the right, and is to have the opportunity, without discrimination to have access, on general terms of equality, to public office.

The offices of bail justice and acting bail justice are public offices for the purpose of the charter. Clauses 29 and 31 of the bill limit the right in section 18(2) of the charter as they substitute sections in the Magistrates' Court Act to regulate both the appointment to and suspension and removal from office of bail justices and acting bail justices, specifically:

section 120A(2), which provides eligibility criteria for the appointment of bail justices

section 120C(2), which provides eligibility criteria for the reappointment of bail justices

section 120E(2), which provides eligibility criteria for the appointment of acting bail justices

section 122, which provides for the suspension from office of bail justices, including acting bail justices

sections 122A and 122B, which provide for the investigation and removal from office of bail justices, including acting bail justices.

On balance, however, the limitations upon this right are reasonable and justifiable in a democratic society for the purposes of section 7(2) of the charter, having regard to the factors set out below.

(a) the nature of the right being limited

Section 18(2) of the charter provides that every eligible person has the right, and is to have the opportunity, without discrimination to have access, on general terms of equality, to public office.

The United Nations Human Rights Committee has recognised that conditions may be imposed which limit the right to hold public office. However, to ensure access on general terms of equality, the criteria and processes for appointment, promotion, suspension and dismissal must be objective and reasonable.

(b) the importance of the purposes of the limitations

The purpose of sections 120A(2), 120C(2), 120E(2), 122, 122A and 122B is to ensure that only appropriate people are eligible to be appointed or reappointed as bail justices or acting bail justices, and that only such people continue to hold these important offices. This is important as bail justices and acting bail justices make decisions that may limit the rights of others, and in particular the right to liberty and security of accused people. As such, the provisions also seek to maintain public confidence in the bail justice system.

(c) the nature and extent of the limitations

Sections 120A(2), 120C(2) and 120E(2) limit the right in section 18(2) of the charter as they create a number of eligibility criteria regarding who can be appointed and reappointed as a bail justice or an acting bail justice. The appointment criteria include: age requirements; citizenship requirements; a requirement that a person not be bankrupt or their property subject to control under the law relating to bankruptcy; completion of prescribed training; fluency in English; and ordinarily residing in Victoria. If a person is seeking reappointment as a bail justice or appointment as an acting bail justice, an additional eligibility criterion is that, during the previous term of office, the person was reasonably available to be rostered for duty and when rostered the person was reasonably available to perform that duty.

Section 122 limits the right as it provides for bail justices (including acting bail justices) to be suspended from office: for contravening the code of conduct; for unreasonably failing to comply with a direction by the Secretary of the Department of Justice to attend training; or where there are other grounds for removal. Sections 122A and 122B limit the right as they provide for a suspended bail justice to be removed from office by the Governor in Council upon the recommendation of the Attorney-General, following an independent investigation.

(d) the relationship between the limitations and their purposes

There is a direct connection between the limitations on the right and their purposes. The criteria for appointment and reappointment as a bail justice or acting bail justice are necessary to ensure the effective functioning of the criminal justice system, community safety and that the rights of an accused are respected and protected. Given the importance of the position and the power bail justices have to make decisions that potentially limit the rights of others, it is necessary that they are of good reputation, well trained and able to carry out the duties required.

In accordance with international law, sections 120A(2), 120C(2), 120E(2), 122, 122A and 122B set objective and reasonable criteria and procedures for appointing, reappointing, suspending and removing bail justices and acting bail justices from office.

(e) any less restrictive means reasonably available to achieve their purposes

None apparent.

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 the law.

Clause 15 of the bill substitutes sections 18AI and 18AJ in the Bail Act. Section 18AI requires an accused who applies to a court to vary the conditions of his or her bail to notify any sureties of the making of such an application. Section 18AJ provides that a surety is entitled to attend and to give evidence at the hearing of the variation application. Given a surety undertakes to pay a specified amount if an accused fails to abide by the conditions of his or her bail, sections 18AI and 18AJ promote the surety's right not to be deprived of his or her property arbitrarily.

Section 21(6) — right to be released pending trial, subject to certain guarantees

Section 21(6) of the charter provides that a person awaiting trial must not be automatically detained in custody. Rather, the person has a right to be released on bail subject to giving a guarantee to appear for trial, at any other stage of the judicial proceeding, and, if appropriate, for execution of judgement.

A number of clauses in the bill engage the right in section 21(6) of the charter. Some of these clauses promote this right, while others limit it.

Clauses promoting the right in section 21(6)

Clause 15 of the bill substitutes two sections in the Bail Act that promote the right in section 21(6) of the charter:

section 18 promotes the right as it allows an accused who has been refused bail or whose bail has been revoked to make further application for bail to a court in a range of circumstances, thereby facilitating his or her ability to be released on bail

section 18AC(1) promotes the right as it allows an accused who has been granted bail to apply for variation of the conditions of bail. This may assist an accused whose circumstances change to continue to comply with the conditions of bail, or it could allow an accused who is unable to meet the conditions of bail to seek varied conditions, thereby facilitating his or her release from custody.

Clause 10 of the bill substitutes sections 9(3A), 9(3B), 9(3C) and 9(3D) in the Bail Act to provide a clearer procedure for a surety and an accused person to sign bail forms when they are not able to be present in the same location. These sections promote the right in section 21(6) of the charter as they will ensure that an accused who has been granted bail does not remain in custody for longer than necessary.

Clauses limiting the right in section 21(6)

Clause 8

Clause 8 substitutes section 5 of the Bail Act to provide new provisions for imposing conditions of bail. This clause engages the right in section 21(6) of the charter as it allows a decision-maker to impose conditions on an accused when granting bail. It limits this right as an accused may not be able to meet the conditions of bail, in which case he or she will remain on remand. On balance, however, the limitation upon this right is reasonable and justifiable in a democratic society for the purposes of section 7(2) of the charter, having regard to the factors set out below.

(a) the nature of the right being limited

While everyone has a right to liberty and security of person, it is accepted that the right does not grant complete freedom from arrest and detention. Deprivation of liberty is a legitimate form of state control. However, it is subject to a number of procedural safeguards, including the presumption in favour of bail as set out in section 21(6) of the charter.

There will be instances where the right in section 21(6) may be limited in accordance with section 7 of the charter. For example, pretrial detention may be necessary to ensure the presence of the accused at the trial, at any other stage of the judicial proceeding, or for execution of judgement. It may also be necessary to prevent interference with witnesses and other evidence, or the commission of other offences.

(b) the importance of the purpose of the limitation

The purpose of allowing a decision-maker to impose conditions of bail is to reduce the likelihood that, if released on bail, an accused would: fail to attend court; commit an offence; endanger the safety or welfare of members of the public; or interfere with witnesses or otherwise obstruct the course of justice. This purpose is important as it seeks to preserve the integrity of the criminal justice system and to protect the community.

(c) the nature and extent of the limitation

The nature and extent of the limitation is that an accused may not be able to meet the conditions of bail imposed by a decision-maker, in which case he or she will remain on remand. Importantly, clause 8 contains a number of provisions aimed at ensuring that decision-makers impose appropriate conditions of bail, namely:

section 5(2), which requires a decision-maker who is considering releasing an accused on bail to first consider releasing the accused on his or her undertaking, without

any conditions and then to consider conditions about conduct and finally a deposit or surety condition, with or without conditions about the conduct

section 5(3), which only allows a decision-maker to impose conditions for the purpose of reducing the likelihood an accused may: fail to attend court; commit an offence while on bail; endanger the safety or welfare of members of the public; or interfere with witnesses or otherwise obstruct the course of justice

section 5(4), which requires conditions to be no more onerous in nature and number than required to achieve the purposes in section 5(3) and reasonable, having regard to the nature of the alleged offence and the circumstances of the accused

section 5(5), which requires a decision-maker to have regard to the means of an accused both when determining whether to impose a deposit condition and the deposit amount

section 5(7), which requires a decision-maker to have regard to the means of a proposed surety both when determining whether to impose a surety condition and the surety amount

sections 5(6) and 5(8), which require a decision-maker to consider other conditions if an accused does not have sufficient means to satisfy a deposit condition, or is unable to provide a surety with sufficient means.

(d) the relationship between the limitation and its purpose

There is a direct connection between the limitation on the right and its purpose. The limitation strikes the correct balance between ensuring the effective functioning of the criminal justice system, community safety and the rights of an accused.

(e) any less restrictive means reasonably available to achieve its purpose

None apparent.

Clause 10

Clause 10 inserts new section 9(2A) in the Bail Act to provide for a magistrate or judge to determine the suitability of a proposed surety, if an objection is raised about the surety. Section 9(2A) limits the right in section 21(6) of the charter as if a proposed surety is determined to be unsuitable and an accused cannot provide another suitable surety, this will result in the accused remaining on remand. On balance, however, the limitation upon this right is reasonable and justifiable in a democratic society for the purposes of section 7(2) of the charter, having regard to the factors set out below.

(a) the nature of the right being limited

See above.

(b) the importance of the purpose of the limitation

The purpose of establishing a procedure to deal with objections about the suitability of a proposed surety is to ensure the surety is appropriate. This purpose is important as a surety undertakes to ensure that the accused abides by his or her conditions of bail, most importantly to attend court. Therefore, it is imperative that people who are accepted as sureties are able to meet their obligations.

(c) the nature and extent of the limitation

The nature and extent of the limitation is that where a court determines that a proposed surety is unsuitable, the accused will remain on remand if they are unable to arrange for an alternative surety.

(d) the relationship between the limitation and its purpose

There is a direct connection between the limitation on the right and its purpose. The limitation strikes the correct balance between ensuring the effective functioning of the criminal justice system, community safety and the rights of an accused.

(e) any less restrictive means reasonably available to achieve its purpose

None apparent.

Clauses 11 and 22

Clauses 11 and 22 substitute two sections of the Bail Act, which limit the right in section 21(6) of the charter:

section 12(1A) limits the right as it allows a bail justice to remand an accused who is an adult to the next working day, unless this is impracticable, in which case the bail justice must not remand the accused for more than two working days

section 24(3)(a)(ii) limits the right as it allows a bail justice to revoke bail and remand an accused who is an adult to the next working day, unless this is impracticable, in which case the bail justice must not remand the accused for more than two working days.

On balance, however, the limitations upon this right are reasonable and justifiable in a democratic society for the purposes of section 7(2) of the charter, having regard to the factors set out below.

(a) the nature of the right being limited

See above.

(b) the importance of the purposes of the limitations

Generally, if a person is arrested outside court hours, police make a determination as to whether or not to grant bail. If bail is not granted, an accused is brought before a bail justice. This is an important safeguard as a bail justice is independent of the investigative process and impartial. Any decision to refuse bail must be made in accordance with the tests for bail in section 4 of the Bail Act. If a bail justice determines it necessary to refuse bail, the accused must be remanded in custody until he or she is brought before a court.

If police arrest an accused without warrant for breaking the conditions of bail, the accused must be brought before a bail justice within 24 hours, unless he or she was due to attend court within that time. If of the opinion that the accused has broken or is likely to break a condition of bail, the bail justice may revoke bail. If a bail justice determines it necessary to revoke bail, the accused must be remanded in custody until he or she is brought before a court.

The purposes of allowing a bail justice to refuse or revoke bail and remand an accused are important as they aim to preserve the integrity of the criminal justice system and to protect the community.

(c) the nature and extent of the limitations

The nature and extent of the limitations are that if a bail justice refuses or revokes bail, an accused person will be remanded in custody for up to two working days before being brought before a court. I note that this amendment to the Bail Act reduces the maximum period for which a bail justice can remand an accused adult from eight days to two working days. Thus, ensuring the minimum restriction possible is imposed on the right necessary to achieve the purpose.

(d) the relationship between the limitations and their purposes

There is a direct connection between the limitations on the right and their purposes. The limitations strike the correct balance between ensuring the effective functioning of the criminal justice system, community safety and the rights of an accused.

(e) any less restrictive means reasonably available to achieve their purposes

None apparent.

Clauses 15, 17 and 22

Clause 15 substitutes sections in the Bail Act that limit the right in section 21(6) of the charter:

section 18AC(2) limits the right as it allows the prosecution to make application for variation of the conditions of bail, which may result in an accused being remanded in custody, if he or she cannot meet any new conditions

section 18AE(1) limits the right as it allows the prosecution to make application for the revocation of bail, which may result in an accused being remanded in custody

section 18AG limits the right as it allows the Director of Public Prosecutions (DPP) to appeal against a refusal to revoke bail, which may result in the revocation of bail, if the Supreme Court thinks a different order should have been made

section 18AJ limits the right as it entitles a surety to attend and give evidence at the hearing of an application by the accused to vary the conditions of bail, which may result in the accused being remanded in custody, if the surety objects to the variation and the court refuses to make it.

Clause 17 substitutes one section and inserts another in the Bail Act that limit the right in section 21(6) of the charter:

section 18A(1) limits the right as it allows the DPP to appeal an order granting bail, which may result in the revocation of bail, if the Supreme Court thinks a different order should have been made

section 18A(12) limits the right as it allows the DPP to appeal a decision of a single judge of the Supreme Court made under section 18A to the Court of Appeal, which may result in the revocation of bail.

Clause 22 substitutes section 24(4) in the Bail Act. Section 24(4) limits the right in section 21(6) of the charter as it allows the DPP to appeal against a refusal to revoke bail under that section, which may result in the revocation of bail, if the Supreme Court thinks a different order should have been made.

On balance, however, the limitations upon this right are reasonable and justifiable in a democratic society for the purposes of section 7(2) of the charter, having regard to the factors set out below.

(a) the nature of the right being limited

See above.

(b) the importance of the purposes of the limitations

The purpose of allowing the prosecution to make applications both for variation of the conditions of bail and the revocation of bail is to enable the prosecution to respond to new information that impacts on the appropriateness of either the accused remaining on bail or the conditions of bail. Specifically, it enables the court to manage any change in risk through the prosecution seeking a variation to the conditions of bail or the revocation of bail, where such risk cannot be managed by varied conditions. This purpose is important as it seeks to preserve the integrity of the criminal justice system and to protect the community.

The purpose of allowing a surety to attend and give evidence at the hearing of an application by the accused to vary the conditions of bail is to protect the surety's interest in the cash, property or other asset he or she has provided as security, which is important as it is a right protected by the charter.

The purpose of allowing the DPP to appeal is to enable bail decisions to be tested in circumstances that warrant review. This purpose is important as it seeks to preserve the integrity of the criminal justice system and to protect the community.

(c) the nature and extent of the limitations

The nature and extent of the limitations are that an accused may be remanded in custody as a result of:

the prosecution applying for variation of the conditions of bail or revocation of bail

a successful appeal by the DPP

a surety objecting to an application by the accused to vary the conditions of bail.

I note that to appeal an order granting bail to the Supreme Court, the DPP must be satisfied that the conditions of bail are insufficient or the decision to grant bail contravenes the Bail Act, and that it is in the public interest to do so. I also note that to appeal a refusal to revoke bail to the Supreme Court, the DPP must be satisfied that it is in the public interest to do so. I further note that section 18A(12) also gives an accused the right to appeal a decision of a single judge of the Supreme Court made under section 18A.

(d) the relationship between the limitations and their purposes

There is a direct connection between the limitations on the right and their purposes. The limitations strike the correct balance between ensuring the effective functioning of the criminal justice system, community safety and the rights of an accused and a surety.

(e) any less restrictive means reasonably available to achieve their purposes

None apparent.

Section 21(7 — right to challenge the lawfulness of detention

Section 21(7) of the charter provides that a person deprived of liberty by arrest or detention is entitled to apply to a court for a declaration or order regarding the lawfulness of his or her detention.

Clauses 15 and 17 of the bill substitute two sections and insert another in the Bail Act that promote the right in section 21(7) of the charter:

section 18AA(1)(c) promotes the right as it allows an accused whose bail was refused or revoked by a bail justice to make a further application for bail to a court without having to establish that new facts or circumstances have arisen since the bail justice refused or revoked his or her bail

section 18AH promotes the right as it preserves any other right of application or appeal an accused has to the Supreme Court and the County Court

section 18A(12) promotes the right as, in the event the Supreme Court revokes bail following an appeal by the DPP under section 18A, it allows an accused to appeal that decision to the Court of Appeal. This section also promotes the right to a fair hearing of an accused.

Section 24 — 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.

The purpose of the right in section 24 of the charter is to ensure the proper administration of justice. This right is concerned with procedural fairness (i.e. the right of a party to be heard and to respond to any allegations made against them, and the requirement that the court or tribunal be unbiased, independent and impartial), rather than the substantive fairness of a decision or judgement of a court or tribunal (i.e. the merits of the decision).

Clause 31 of the bill substitutes section 122B in the Magistrates' Court Act. Section 122B engages the right in section 24 of the charter as it provides that the Governor in Council may remove a bail justice from office on the recommendation of the Attorney-General. Section 122B does not preclude review; the Supreme Court's inherent jurisdiction to review the removal decision is retained. Therefore, section 122B does not limit the right in section 24 of the charter.

Conclusion

I consider that the bill is compatible with the charter because, even though it does engage human rights, it either does not limit those rights or any limitations are reasonably justifiable.

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 this bill be now read a second time.

Incorporated speech as follows:

This government is undertaking the most significant reform of criminal legislation in 150 years. The criminal justice system is being modernised through reform of both laws and procedures. We have already achieved significant progress through introduction of the Uniform Evidence Act and a new Criminal Procedure Act. The review of the Crimes Act continues, with work progressing on drafting a new Criminal Investigation Powers Bill. As this bill attests, we have now come to the Bail Act 1977.

To remand a person in custody, pending a hearing of his or her criminal offence, is a significant step to take. An accused person is presumed innocent until proven otherwise, and has a right to bail. Yet in some cases the criminal justice system recognises that a person must be kept in custody to ensure the safety of witnesses; or the safety of the community; or to ensure that the accused will appear in court.

The ability to impose conditions on bail can allow accused people to live in the community, as long as they adhere to those conditions. Failure to do so may result in removal of their liberty by remand in custody until their charges are dealt with. It is a pivotal process in the criminal justice system, with the police granting over 25 000 bail applications per year, and the Magistrates Court approximately 3000.

The Bail Act was enacted in 1977, based largely on the common law, and over the years has been amended many times. The act is drafted in a language and style that is now outdated, and was in need of modernising and updating.

In November 2004, I asked the Victorian Law Reform Commission (VLRC) to review the Bail Act and its practical operation to ensure that it was consistent with the overall objectives of the criminal justice system.

In conducting its review, the VLRC undertook extensive consultations with the courts, prosecutors, legal practitioners, police, government agencies, bail justices, community groups and the general public.

I tabled the VLRC's *Review of the Bail Act — Final Report* in the Parliament on 10 October 2007. The VLRC report contains 157 recommendations for procedural, administrative and legislative changes to ensure the bail system functions simply, clearly and fairly.

The government is responding to the VLRC recommendations in two stages. In setting the agenda and timetable for reform, the government has been mindful of the need for the criminal justice community to have time to absorb significant legislative and procedural change. This bill responds to 40 of the VLRC recommendations, and represents the first stage of reforms to Victoria's bail system.

The 40 recommendations that we are responding to first are those focusing on clarification of the existing law and enhancement of the operation of the bail system. Broadly, the aims of the bill are to clarify aspects of current bail law, codify some existing practice by bail decision-makers, and promote efficiencies in the operation of the bail system.

This bill will establish a new legislative framework for the operation of the after-hours bail system. The VLRC report noted that approximately 95 per cent of bail applications are considered by lay decision-makers, police and bail justices. We saw reform of the bail justice system as a priority given the large number of bail decisions made by police after hours, where a bail justice may need to be called.

The next stage of bail reforms will involve consideration of the remaining VLRC recommendations. The legislative recommendations include: rewriting the Bail Act and regulations; incorporating all provisions dealing with bail into the new Bail Act; simplifying the tests for bail; empowering police, bail justices and magistrates to grant bail for all offences; and providing courts with the power to remand a young person (18–20) to either a Youth Justice Centre or a Youth Unit within an adult correctional facility.

In considering these recommendations, the government will continue to consult with those who work with the bail system every day, and will continue to balance the need to ensure community safety with the integrity of the criminal justice system and an individual's right to liberty.

I will outline some of the key features of the bill.

Bail justices

The bill enacts a new framework for Victoria's bail justice system. Bail justices are volunteers trained to hear bail applications under the Bail Act and interim accommodation orders under the Children, Youth and Families Act 2005 outside court hours.

They are given the significant responsibility of making decisions about an accused person's liberty after hours when courts are not available.

The bill clarifies the administrative framework for the bail justice system, with the Secretary of the Department of Justice taking a greater responsibility for administering the system. This includes training, rostering and oversight of how bail justices are performing their role through powers to issue guidelines, and direct bail justices to additional training where this appears necessary.

The bill establishes five-year fixed-term appointments for bail justices. A bail justice will be able to apply for reappointment before their term of office comes to an end. A bail justice who is not a bankrupt or subject to bankruptcy proceedings, has performed their role diligently in the preceding term, has completed reappointment training and ordinarily resides in Victoria will be eligible for reappointment.

To ensure appropriate behaviour, the bill provides for the enactment of a code of conduct for bail justices in regulations. If a bail justice contravenes the code of conduct that bail justice may be suspended from office, following which the bail justice may either be directed to undertake training or counselling, or subjected to independent investigation and possible removal from office.

The bill makes the suspension and removal processes for bail justices clearer, less complex and less costly, and more appropriate to volunteer office-holders. The secretary may suspend a bail justice from office. A suspended bail justice may then be removed from office by the Governor in Council upon the Attorney-General's recommendation following an independent investigation.

While bail justices must still retire from office when they turn 70 years of age, the bill provides for the appointment of acting bail justices for a period of 12 months. To be eligible for appointment as an acting bail justice, a person must, amongst other things, be at least 70 but under 75 years of age and have been a bail justice for five years immediately before appointment. This aims to ensure that experienced, competent bail justices are able to continue to perform bail justice duties if they wish to do so.

Changes have also been made to the Bail Act to ensure that an accused adult remanded by a bail justice is brought before a court at the earliest opportunity. The Bail Act currently allows a bail justice to remand accused adults for up to eight days. The practice for some time has been for bail justices to remand an accused to the next available court sitting day, and this is now provided for in the act. The bill also provides a maximum remand period of two working days.

Conditions of bail

Under the Bail Act, a decision-maker can impose conditions on accused people when granting bail. This balances the accused person's general entitlement to bail with the need to ensure their attendance at court, and the need to ensure the safety of witnesses and the community. This bill will clarify the purposes for imposing conditions and the kinds of conditions that can be imposed. It contains a new provision recommended by the VLRC that simplifies and updates section 5 of the act, that governs the imposition of conditions, to better reflect the way decision-makers impose conditions of bail.

The new section requires a decision-maker to consider the conditions for releasing an accused on bail in the following order:

> on his or her own undertaking, without any other conditions
>
> on his or her own undertaking, with conditions about conduct
>
> with a surety or deposit of money, with or without conditions about conduct.

This provision better reflects the current practice of decision-makers, who are much more likely to impose conditions about the conduct of an accused than a surety or deposit condition.

In accordance with new section 5(3), a decision-maker may only impose a condition of bail in order to reduce the likelihood that an accused may:

fail to attend court

commit an offence while on bail

endanger the safety or welfare of members of the public

interfere with witnesses or otherwise obstruct the course of justice.

This reflects the purposes for which a decision-maker may currently impose special conditions of bail.

In accordance with new section 5(4), the conditions of bail must be no more onerous than is required to achieve the purposes in section 5(3), and reasonable, having regard to the nature of the alleged offence and the circumstances of the accused. These requirements reflect the current requirements for general conditions of bail.

The requirements for imposing surety and deposit conditions have been updated to ensure that disadvantaged accused people are not granted bail with conditions that they cannot meet.

New section 5 sets clear parameters for decision-makers to impose conditions of bail. There are no 'standard' conditions of bail that are appropriate to every accused person, apart from the requirement to attend court. The new provision retains the discretion of a decision-maker to impose conditions that are appropriate to the circumstances of the alleged offending and the individual circumstances of the accused. This approach allows for appropriate use of bail support programs, which have been proving highly successful in reducing reoffending.

Aboriginal Australians

The VLRC noted that Aboriginal Australians are overrepresented on remand and face unique disadvantages in their contact with the criminal justice system. In recognition of this, the VLRC recommended that the Bail Act should contain a specific provision for accused people who are Aboriginal.

In line with this recommendation, the bill inserts new section 3A in the Bail Act. Section 3A requires a decision-maker to take into account (in addition to any other requirements in the Bail Act) any issues that arise due to the Aboriginality of an accused when making a determination under the Bail Act.

Under section 3A, a decision-maker would be required to take into account matters such as an obligation to attend a community funeral or participate in community cultural activities when imposing conditions of bail on an accused who is Aboriginal.

While the provision requires the decision-maker to take the evidence into account it does not require the decision-maker to reach a particular decision. The test for granting bail remains unchanged, requiring a decision as to unacceptable risk.

Procedures for administering surety conditions

In some cases a person will be granted bail with a surety, provided by a relative or friend, to ensure their attendance at court. A surety is a promise to pay an amount of money to the court if the accused person fails to attend court. This bill will clarify a number of procedures for sureties.

The bill establishes a new procedure in the Bail Act for dealing with objections about the suitability of a proposed surety. These disputes will go back before a magistrate or judge for determination.

The bill also establishes a clearer procedure in the Bail Act for an accused person and a surety to sign bail forms when they are not able to be present in the same location. This aims to ensure that an accused who has been granted bail does not remain in custody for longer than necessary.

Further bail applications, revocation applications and variation applications

Section 18 of the Bail Act deals with further applications for bail, applications to vary bail conditions, applications to revoke bail and appeals by the Director of Public Prosecutions (DPP) when a court refuses to revoke bail. The bill replaces section 18. In general, the new provision clarifies or codifies the current law, but also makes two changes:

An accused whose bail is refused or revoked by a bail justice will be able to make a further application for bail to a court without having to establish that new facts or circumstances have arisen. This reflects the limited resources available to accused people in bail justice hearings, in contrast to court hearings. For instance, accused people are usually not legally represented in bail justice hearings.

Bail-related applications after the completion of a committal hearing are to be made to the relevant higher court. This will ensure that the court that will hear the trial will have control of all aspects of that trial including the accused's bail.

Appeals of decisions to grant bail by the DPP

Section 18A of the Bail Act allows the DPP to appeal to the Supreme Court against a grant of bail. The bill contains several amendments to section 18A, which seek to clarify or codify existing bail laws, including:

clarifying that the Supreme Court makes a fresh consideration of bail after setting aside an original order on appeal

codifying the right of an accused person to appeal the decision of a single judge of the Supreme Court to the Court of Appeal, and extending this right to the DPP.

This government is committed to ensuring that the right balance exists between the rights of an individual who has not been convicted of a crime, and the need to ensure the safety of the community and accused people's attendance at court. This bill demonstrates this commitment by clarifying and codifying many confusing or outdated aspects of the Bail Act. It will ensure that bail processes will run more efficiently. It also modernises the office of bail justice through a new legislative framework for the bail justice system. The bill

represents a further step in the government's program of reviewing and modernising the criminal law.

I commend the bill to the house.

Debate adjourned for Mr RICH-PHILLIPS (South Eastern Metropolitan) on motion of Ms Lovell.

Debate adjourned until Thursday, 12 August.

DOMESTIC ANIMALS AMENDMENT (DANGEROUS DOGS) BILL

Second reading

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

Ms LOVELL (Northern Victoria) — In speaking on this bill I indicate from the start that the Liberal-National coalition will not be opposing it. The main purpose of the bill is to amend the Domestic Animals Act 1994, to make further provisions for the registration of restricted breed dogs and to amend the definition of a restricted breed dog. In addition it will provide that the Victorian Civil and Administrative Tribunal may review declarations of restricted breed dogs and abolish review panels in the existing act. The bill will increase penalties for certain offences and further enable the making of declarations of dangerous dogs and menacing dogs, and also provide further destruction powers for dogs to be destroyed, and make other miscellaneous and consequential amendments to the act.

At the outset I believe responsible owners of dogs do not have anything to fear from this legislation. If people are acting within the law, if they are doing the right thing, if their dogs are registered and microchipped they have nothing to fear from this legislation. However, I do note that it is estimated that only 40 per cent of dogs are registered and therefore 60 per cent of dog owners in Victoria are not complying with the current legislation. They need to be aware that this new legislation will make it easier for their dog to be destroyed if it is found wandering the streets, and they should now look to be compliant with the law and register their animal with their local council because part of the bill will increase quite significantly the penalty for not registering their animal, if it is over three months old.

In 2001 the Animals Legislation (Responsible Ownership) Act declared particular breeds of dogs to be restricted, and that was in line with commonwealth legislation. In 2003 the Victorian government introduced restricted breed dog registration to stop the breeding of dangerous and restricted breed dogs, and in 2005 the Primary Industries Act (Further Amendment) Act 2005 made several changes to legislation regarding restricted breed dogs. We have had a history in Victoria, for the last nine years, of increasing the legislation that governs particular restricted breed dogs in this state.

Australia has one of the highest incidence of pet ownership in the world. This shows that many Australians are great lovers of animals, especially as family pets but also as working animals in Australia. The working dog is particularly important in country Victoria.

Australia has a population of about 4 million dogs — a lot of dogs. I grew up in Williamstown — —

Ms Pennicuik — It is a good place to grow up.

Ms LOVELL — Yes. Ms Pennicuik also grew up in Williamstown. In fact we went to primary school together. Williamstown was once known as 'Dogtown' because every family had a dog. There were dogs everywhere, roaming the streets. Over the years the legislation has been tightened to prevent dogs roaming on their own, both for the safety of citizens and the animals themselves which, in more modern times, would often get run over by cars and cause other problems that did not exist in Victoria 100 years ago.

There are 335 breeds of dogs in Victoria, which the minister acknowledged in his speech. Unfortunately we still have a lot of dog attacks even though we have had increased regulations around the control of animals. Almost six people a day are attacked by dogs in Victoria, with more than 2000 people being treated in hospital for dog bites in 2008 alone. Whilst some dog attacks and dog bites are relatively minor, just requiring a trip to the local doctor for a tetanus injection, others are more serious, requiring a trip to the emergency ward for some stitches. However, some dog attacks have led to lengthy hospital stays ranging from two days to more than a month. You would have to think that if someone is in hospital for more than a month it must have been a fairly serious dog attack.

In 2009 the City of Greater Geelong reported that there was at least one dog attack a week, yet the number of registered dangerous dogs in the city had dropped by almost half that year. Even though the city did not have as many dangerous dogs, it still had a lot of dog attacks, which shows that it is not only registered dangerous dogs that are attacking people but also breeds that we do not think of as dangerous.

It is really sad when you think that most dog attacks are perpetrated by a dog that is known to the person it attacks, particularly children. In Victoria the highest incidence of dog attacks is on two-year-olds. Ms Pennicuik and I were talking about the fact that often the dog is known to the child. We wondered whether it might be a result of the dog being jealous that its owners are paying more attention to the child than to it or whether it might be because at two years of age the child is at eye level with the dog and there might be some other things that happen around eye-level interaction about which we are not really aware. It is very sad when you think that most dog attacks, whether they be on children or adults, are perpetrated by a dog that is well-known to that person, that is either a family pet or the dog of a family member or friend.

Some examples of recent dog attacks that have been reported in the media include a Staffordshire bull terrier-pit bull cross that attacked a 67-year-old woman in March 2010, partially severing her arm. That dog was a family pet. In October 2009 an American pit bull terrier not only attacked its owner but also killed his two dogs. In February 2008 an 11-year-old Melbourne girl was hospitalised after being bitten by the family dog, believed to be a labrador. Labradors are not dogs that people think of as dangerous. They are more often known as a lovable and adored breed in Victoria and are often used as companion animals and guide dogs for the blind. In late 2007 a nine-week-old baby girl was reportedly dragged from a cot and killed by a pet Rottweiler — a tragic, incident.

The parliamentary library prepared a good brief on this bill, and I thank the library for all the work it put into that bill because having read it we have learnt a lot about dog attacks, the background to this bill and the principal act itself. The brief refers to research by Monash University's Victorian injury surveillance unit (VISU). It found that in 2005–07 there were three deaths and more than 6330 people were treated for dog-bite injuries in Victorian hospitals. Of those 6330 people, 1445 were hospital admissions and stayed for a period of between two days and more than a month; 4885 of them were presentations at the emergency department, maybe for some sutures or just for a tetanus injection.

VISU's research found that two-year-olds, as I said before, are at the highest risk of a dog-bite injury. The emergency department data indicates that the majority of these attacks occurred at the injured person's own home or another person's home they were visiting, with 11 per cent occurring in the street. Unfortunately the family pet was involved in the majority of emergency department cases of child dog-bite injuries. Last night Ms Pennicuik and I were discussing the dynamics when the family pet that has been centre of attention of a young couple suddenly has to compete with a young child in the house. It causes the animal to become jealous. One problem is that children move around at the same level as the dog, and another huge problem is that they do not understand how to treat animals. Pet owners need to be careful when they have young children in the family to keep a close eye on the animal and not leave the children alone with that animal. No matter how much we love our animal, no matter how much they are a part of the family and no matter how much we think they would not hurt a fly, it does have animal instincts and if it is hurt, it will retaliate.

The main provisions of this bill will increase the penalties and tighten the restrictions on certain breeds of dogs. One of the things that the bill will do is define more clearly that certain breeds of dogs are restricted breeds. Previously commonwealth customs regulations were referred to in the act. Instead of just referring to those commonwealth customs regulations, the legislation will now define that a restricted breed dog is one of the following breeds: a Japanese tosa; a fila Brasileiro; a dogo Argentino; a perro de presa Canario, or presa Canario; and an American pit bull terrier, or pit bull terrier. Apparently of those five breeds only one is in Victoria, and that of course is the American pit bull terrier, which we see so often in our streets and always treat warily when we do see them in the street. I have to admit that a couple of times I have seen them on the streets not on leashes, and I have wondered about the responsibility of the owners of those dogs.

The bill will also increase penalties quite significantly; in fact most of the penalties will double. The first of those penalties that will double is for a failure to comply with the requirement of an owner of a dog or a cat to register that animal with the council if the animal is over three months old. That penalty will increase from 10 penalty units to 20 penalty units. That is a hefty fine for not registering your cat or dog. That provision has increased the current penalty amount from $1168.20 to $2336.40. This does not apply just to dangerous animals; it applies to all animals. If you have a kitten of four months old and you have not had it registered, you will be up for a fine of $2336.40.

That really has nothing to do with making people safer from dangerous animals. It is probably just revenue collecting on the part of the government, because it is a hefty fine and, as I said before, with only 40 per cent of dogs being registered in Victoria I think the fines might become quite a significant revenue earner.

Clause 6 of the bill once again doubles from 10 to 20 the number of penalty units for an owner who has failed to renew registration for a cat or dog that is currently registered; if the owner fails to re-register an animal, the fine will be $2336.40.

Clause 8 will double the penalty for dogs and cats that are found outside their owners' premises without the identification that is required by section 19 of the act. The penalty for the offence of a dog found at large during the day has been doubled from three to six penalty units, and the penalty for the offence of a dog found at large during the night has also been doubled, from 5 to 10 penalty units. As I said, the current rate of a penalty unit is $119.45, so these fines are quite significant.

In relation to dog attacks the penalty units are doubled from 20 to 40 units. For a dog that attacks or bites a person or animal, causes death or serious injury to a person or animal and is then declared a dangerous dog, the penalty has been doubled from 20 to 40 penalty units. The person in apparent control of the dog at the time when the attack occurs, whether or not that person is the owner of the dog, is guilty of the offence. It will be the person who has control of the dog at the time who pays that fine, not necessarily the owner of a dog.

The bill will allow councils to declare a dog to be dangerous where the dog has been the subject of a second or subsequent offence under section 29(5) to 29(8) of the principal act. A new paragraph to be inserted into section 41A by clause 12 refers to a council's ability to declare that a dog is a menacing dog and will allow a council also to declare a dog that causes a non-serious bite injury to a person or another animal to be a menacing dog.

There will be an amnesty for the registration of dangerous dogs and dogs of restricted breeds. Clause 7 inserts proposed section 17, which provides for a two-year amnesty period. This will give owners the opportunity to register dogs of restricted breeds under the new criteria. During this two-year amnesty period a council may register a dog that was previously registered as a dog of another breed provided that the dog was in Victoria before the commencement of the operation of the section.

The bill will also prohibit the keeping of dogs of restricted breeds, but it will allow the keeping of a dog of a restricted breed for a two-year period from the commencement of operation of section 17 inserted by clause 7. After that time the keeping of such dogs will only be permitted if the dog was registered during the two-year amnesty period and if the dog was in Victoria before the commencement of the two-year amnesty. People will not be able to bring such dogs into Victoria during the two-year amnesty; it will apply only to dogs that are already here in Victoria.

The bill also provides for the destruction of a dog that is a danger to the public and for an inspector to destroy any animal if the animal is behaving in such a manner and there are such circumstances that it is likely that the animal will cause the death of or serious injury to a person or another animal.

The Greens will be bringing forward some amendments to the part of the bill dealing with the destruction of dogs. In foreshadowing their amendments I say that the Liberal-Nationals coalition will not support those amendments. We believe the legislation provides the right framework under which these animals should be regulated and that if owners do the right thing in the first place by registering and microchipping their dogs they will have nothing to fear from the legislation.

The provisions applying to councils for the destruction of dogs that are a danger to the public will include a new section to be inserted into the act that will allow a council to destroy a dog that is not registered and whose owner is not identifiable if that dog is at large and is reasonably believed to have caused or to be likely to cause offence by attacking or biting a person or animal or rushing at or chasing any person. Where a dog is a danger to the public, is not registered, is found to be at large — it has to be out roaming the streets — and its owner cannot be identified, this bill will allow for a council to destroy that animal because it is believed to be a danger to people. But if owners have done the right thing in the first place and complied with the registration, they have nothing to fear: their dog will not be put down and the council will notify them that it has their animal.

Councils may not destroy a dog sooner than 48 hours after a record is made by an authorised officer. An authorised officer must declare a dog to be a danger to a person or animal, and the council has to wait at least 48 hours before it destroys that animal. Within that 48 hours I guess someone would have the opportunity to claim the dog, but if the dog has been declared dangerous, the animal would probably still wind up being destroyed.

The explanatory memorandum states that this power is discretionary rather than mandatory; councils have a discretion about whether or not they destroy a dog. But if we are talking about an animal that someone who is qualified to make the decision believes is a danger to the public or to other animals, it is probably wiser for

that animal to be destroyed. The bill will allow councils to immediately destroy a dog if an authorised officer reasonably believes the dog is behaving in a manner which will in the circumstances result in imminent serious injury or death to a person or another animal. This applies regardless of whether or not the owner is identifiable. That is an extreme case, but if a dog was in such a state that it was an imminent danger to people or to other animals, it would probably be the right decision to put that animal down.

Councils will also be empowered to destroy a seized dog on the basis that it is at large or it is at a place that is not permitted by council order or where the dog is declared a dangerous dog. These dogs may be destroyed no earlier than 24 hours after a record is made confirming the preconditions to destruction, including that the dog is declared a dangerous dog. However, if there is information that leads to a reasonable belief by the authorised officer that the dog is at large because of an act or omission by a person other than the owner, the council may not destroy the dog. So if it can be proved that someone purposely let the dog out of someone's yard, the council cannot destroy the dog. That is always a danger.

When I was very young my family had a dog that was let out by some neighbours' children. It did not get into any trouble — it was only a small dog — but unfortunately it wound up at the pound and somebody else picked it up and took it home before we could get there to take it home. It was soul-destroying to us as children to lose our puppy in that way, but fortunately it went to another home and was not put down.

Clause 15 provides for councils to provide details of dogs destroyed in the above circumstances to the secretary, and to include information such as the time and date of destruction of the dog and certain information relating to the dog and its owner. As part of the bill, the power of the courts will allow them to order payment of costs of the disposal of destroyed dogs and cats, so if an owner is found guilty of an offence, a Magistrates Court may order that the dog be destroyed and that the owner pay the amount that is fixed by the council for the costs and expenses incurred. The courts may also require the owner to attend a training course relating to responsible dog ownership, and that the owner and dog attend obedience training. Obedience training is a great thing for dog owners to go through if they acquire a new dog. Taking a dog to obedience training classes is a good bonding experience for the owner and the dog, but it also teaches both of them — it teaches the dog obedience and it teaches the owner about responsible ownership of a pet.

Reviews of actions and decisions of the authorised officers under this act will now be made by the Victorian Civil and Administrative Tribunal. In the bill VCAT replaces the review panel that was referred to in the act, and the panel is abolished.

The bill also provides for payments to the Treasurer. This increases by $1 per animal the amount councils must pay to the Treasurer for the registration of each dog and cat that is registered with the council in their local council areas. Councils currently pay $1 in respect of each cat that is registered, and the bill proposes to increase that to $2. I say again that cats are not dangerous dogs, but for some reason they are caught up in this bill as well.

Councils must also now pay the Treasurer $3.50, up from $2.50, for each registered dog, so the Treasurer can look forward to getting an increased amount of money. There are numerous dogs in Victoria — 4 million Australia-wide — so if Victoria has 25 per cent of the human population, perhaps it has 25 per cent of the animal population as well. That would mean the Treasurer could look forward to a nice little bonus from councils for the registration of animals of about $1 million a year.

The Liberal-Nationals coalition consulted widely and a number of organisations expressed concerns about this legislation, particularly about the fact that the bill seems to impose penalties on the breed of the dog rather than the deeds that are performed by that dog. A number of them also expressed concerns about the time lines for destroying animals.

I would like to quote from a couple of the responses we received. Our shadow Minister for Local Government, Jeanette Powell, the member for Shepparton in the Assembly, consulted with local councils. The Victorian Local Governance Association wrote back to Jeanette and said that most of the councils are happy with the bill. In fact in the view of many local councils this bill makes life easier from an enforcement and compliance perspective, and the increased levies will not come into effect this year as local governments are already past their registration and renewal period. This will allow local governments time to communicate these increases and implement them. Local councils are not concerned, even though this bill does seem to put a lot more responsibility on them for regulating the control of dangerous breeds of dogs.

However, some dog clubs such as the German Shepherd Dog Club of Victoria declared some concerns with the bill. I think I said earlier that only 40 per cent of dogs were registered. It is actually that 40 per cent of

owners fail to register their dogs, so it is 60 per cent of dogs that are registered and 40 per cent that are not, but that is still a large proportion of the dog population. The German Shepherd Dog Club wrote:

> Surely this is a failure of the current system yet we see nothing in the bill that would effectively counteract this situation.

What it is saying is that the current legislation is not being enforced and yet we are seeing greater regulation put on restricted breeds of dogs. If the current legislation were enforced, perhaps there would not be a need for this further legislation.

The club also raised the following issue:

> As a responsible dog club we try to keep abreast of the current dog legislation but would suggest that the majority of pet-owning public would be relatively ignorant on the subject.

It was concerned about the communication to dog owners about this increased regulation and how they will know about this increased regulation if they are not members of a dog club.

The club raised concerns about proposed section 84TA, to be inserted by clause 23 of the bill, in which an unidentified dog found at large can be destroyed within 48 hours because the authorised officer declares the dog to be dangerous and orders its destruction. The club says the authorised officer becomes prosecutor, judge, jury and executioner based on a very subjective premise that the behaviour of the dog is likely to or might result in the commission of an offence. The club is concerned about that, and I know that the Greens are concerned about that provision as well. The German Shepherd Dog Club is also concerned about the qualifications of many of the authorised officers to make subjective observations when such irreversible results are at play.

The club also raised concerns about proposed section 84TC, also to be inserted by clause 23, which gives council discretionary powers to destroy a dog, even though it is registered, after a 24-hour period in circumstances where the dog is found at large and has already been declared a dangerous dog. The club says a dog may be destroyed even though at the time it is found it may not be posing a threat to anybody, so it is concerned about the short time frame for destruction of that dog. It sums up by saying:

> The priority for councils and government should be the thorough education of the pet-owning public regarding responsible dog ownership and the current legislation as is relates to all dogs. This existing legislation should be enforced.

As I said, the German Shepherd Dog Club has a real concern that the current legislation is not being enforced, yet here we are putting in place further regulation but not enforcing the current legislation. The Australian Companion Animal Council also raised concerns about proposed section 84TA, headed 'Destruction of a dog that is a danger to the public', and proposed section 84TC, headed 'Destruction of declared dangerous dog found at large'. The ACAC strongly disagrees with the introduction of these two sections. The ACAC also raised concerns about the reclassification of dogs from 'menacing' to 'dangerous'. It says:

> Random attacks in public places are comparatively rare and as such, education for parents and children is the best strategy to decrease the occurrence of dog bites.

Like the German Shepherd Dog Club, it advocates more education of pet owners rather than more regulation. The Victorian division of the Australia Veterinary Association says that it does not support the breed-specific parts of the bill and believes 'that it should be the actions or behaviour of the dog, not its breed, that should determine how it is treated'. Again it is the deed, the fact that a dog attacks, rather than the breed of the dog that should be the reason for the dog being declared a dangerous dog. The Australian Veterinary Association also says that it 'would be better to impose greater sanctions on irresponsible owners' than to punish all owners of dogs as this bill does because it puts greater requirements on people for registration and microchipping and also increases the cost of registering a dog. The association summed up its response to the Liberal-Nationals coalition by saying:

> If you don't recognise the role of the owner in the existence of dangerous dogs, you won't even come near to solving the problem. If you were able to immediately eliminate every pit bull and pit bull cross, but they were replaced by Rottweiler-Doberman crosses, selected for aggression, and trained to be aggressive, it won't be a safer place for children. That you can be sure of.

I think it is probably right in saying that. When you ban one breed of dog you find another breed of dog that will take its place, because many of the owners of these dogs choose dogs to train them to be fighters — that is, to be aggressive — rather than to be placid family pets. Unfortunately that gives every dog in that breed a bad name and does result in people fearing a breed of dog rather than the deeds that a dog may perform. I know that when I was younger my mother had a thing about Alsatians — she hated Alsatians and thought they were all terribly aggressive dogs. Then our neighbours got an Alsatian, and it was the most loving and gentle dog we had ever known. It was a beautiful dog, and we all

adored this dog, but at the same time we were all taught to know that the dog could turn on us, that it is an animal and that if we did anything that hurt or spooked the dog, we needed to be very aware that it could turn and snap at us if it felt it needed to protect itself.

In summing up I would like to acknowledge that there are a number of concerns about this legislation. As I said, the Liberal-Nationals coalition is not opposing the legislation. It provides a framework to make people safer in Victoria and puts some further restrictions on the keeping of dogs that are deemed to be dangerous dogs and restricted dogs in Victoria. Dog owners who do the right thing have nothing to fear from the law; if they are adhering to the law and have their dogs registered and microchipped, they should have nothing to fear from this legislation.

Ms PENNICUIK (Southern Metropolitan) — I thank Ms Lovell for comprehensively laying out the provisions of the Domestic Animals Amendment (Dangerous Dogs) Bill. I will not go into a detailed description of what is in the legislation. It is true that Ms Lovell and I were discussing the bill last night. We were talking about the fact that most dog bites occur in the home with the family pet or in the home of someone known to the person who is bitten — an extended family member or a neighbour — and that is something to bear in mind.

Ms Lovell also mentioned the research brief put together by the library, which I too have read through. A lot of work has gone into the brief, and I would like to thank the library staff for that. I thank them also for the excellent brief they put together on the previous bill, the Control of Weapons Amendment Bill, which I did not mention; I take the opportunity to redress that omission.

As members will probably be aware, I have always been concerned with animal welfare, and I looked at this bill through those eyes, notwithstanding that it is a serious matter when someone is attacked by a dog in such a way that causes them serious injury, causes the death of an animal they own, or, as the library brief pointed out, occasionally causes the death of a person, although that is very rare. Like most people in this chamber, I have been bitten by dogs myself a couple of times — when I was a child, not for a long time — and I do not believe those dogs were destroyed after having bitten me once on the leg, I think, and once on the hand, so this bill needs to be looked at in relation to whether it is going to achieve the aims the government says it is going to achieve.

Having looked at the main purposes of the bill, I wonder whether any of them are going to be achieved or whether they are necessary at all. The bill has five main purposes. The first is to make further provision for the registration of restricted breed dogs and to amend the definition of a restricted breed dog.

Reading through the explanatory memorandum and the library brief, the situation is that there are restricted breeds that cannot be brought into Australia under the commonwealth Customs Act, and they are listed in that act. I am not quite sure why that has to be replicated in the Victorian act especially as if another dog breed is added to the federal act, it will not be reflected in the Victorian act because this bill lists the restricted breeds rather than just referring to restricted breeds. I am not quite sure why this clause is in the bill, notwithstanding that I noticed in the library brief that similar clauses have been included in acts in other states.

One of the main purposes of the bill is to provide that the Victorian Civil and Administrative Tribunal (VCAT) may review declarations of restricted breed dogs. The bill also abolishes review panels. I am not quite sure why the review panels need to be abolished or whether they are not serving their purpose effectively. I have not heard any evidence of that. I am not quite sure why this measure is being taken in the bill and also I am not quite sure that VCAT will provide an expeditious or satisfactory process for people appearing before it, because very often it does not.

One of the major provisions of the bill increases penalties for certain offences, being the failure to register a dog or having a registered dog at large during the day, which attracts one kind of penalty by day and another during night hours. Much has been made of this provision and of the fact that it will make people more likely to register their animals. If someone's dog is not registered and they are liable for a $2500 fine, that will make them more likely to register their animals. I put it to the chamber that this is going to make people less likely to register their animals. If that is the fine for not registering their animals, people are probably more likely to abandon their animal so they do not have to pay the fine. I am not sure that provision is going to work at all.

Mrs Peulich — It is a ridiculous amount.

Ms PENNICUIK — Mrs Peulich says it is a very high amount and has described it as a 'ridiculous amount'. Members of Parliament would have received submissions from people who are very concerned about dogs — associations that work for the welfare of dogs such as Good for Dogs, Lawyers for Animals, the

Royal Society for the Prevention of Cruelty to Animals (RSPCA) and several other organisations that are mentioned in the library brief. All those bodies question this provision and whether it will be effective. I fear that it will be counterproductive to its stated aim.

Further, the bill will enable the making of declarations of dangerous dogs and menacing dogs. Those provisions already exist under the act. Where there are dangerous dogs everybody, including the submitters, agrees that if a dog is seriously a dangerous dog, then people and other animals need to be protected from that dog. No-one disagrees with that, but we have concerns about how this bill handles these issues and we have serious queries as to whether the provisions will be effective.

The bill provides further powers for dogs to be destroyed; they have been described as streamlined powers for dogs to be destroyed. It is of concern to me and to many in the community that dogs that are not dangerous — that are family pets, that may have escaped by accident or been set free by mischievous neighbours or children of neighbours or have just dug a hole and escaped under the fence — could be caught in the provisions for expediting the destruction of dogs. As we know, councils already have the power to destroy dogs but they have to wait eight days before they can destroy a dog.

We are in agreement with a lot of points raised by Ms Lovell, especially on the issue of tragic incidents when young children are bitten by dogs, because they can often be severely injured or disfigured for life. Many of those incidents occur because children around two to four years of age or even younger are crawling, toddling or walking around on the same eye level as the dog, especially smaller dogs, as well as being at the same level as the dog's mouth. In some of these instances the dog may have accidentally bitten the child or may have been provoked because the child poked its eye or something like that. Because little children do not understand that a dog can retaliate in such a situation, they may find themselves bitten. Given that the library brief tells us that the family pet is involved in the majority of emergency cases for child dog-bite injuries, that situation is of most concern. There are numerous instances of dog attacks occurring in a home, but dog attacks on the street do not occur often. As Ms Lovell pointed out, at the time we were growing up there were dogs everywhere. In Newport dogs were everywhere, but that is not necessarily the case now, when not as many dogs are seen. That is why the incidence of dog attacks in the streets has lessened.

This bill does nothing to fix the biggest problem, which is attacks on children, adults and other animals by the family pet or the neighbour's pet. Sometimes these attacks occur when members of an extended family are visiting. That is the biggest issue, and it will not be addressed by this bill at all.

My question to the government is: what is the government doing about that particular issue in terms of public awareness and campaigns to raise awareness? I have come across a lot of people with young children who do not keep their dogs under control. Often these people have a cavalier and laid-back attitude to dogs being near young children. As Ms Lovell said, such people are often convinced that their pet would never hurt a child, but that is not the case, and the figures bear this out, and this bill does nothing about that problem. It is a matter of education.

The stakeholders mentioned in the library's excellent brief on this bill and the stakeholders who have written to us about the bill are not convinced that this bill will achieve any of the aims it states it will achieve. Such organisations as the Royal Society for the Prevention of Cruelty to Animals, the Australian Companion Animal Council and Dogs Victoria believe that community education about responsible dog ownership and education about choosing appropriate breeds is the most effective way to reduce dog attacks. A representative from the RSPCA stated that the best chance of reducing dog attacks is a combination of education, obedience training, responsible ownership and bringing the right dog into your home. I am not convinced that any of the main purposes of this bill will be achieved by the passing of the bill, which is of concern.

As I said, local councils already have the power to destroy dogs, but at the moment the council has to wait eight days before doing so. Sadly, as we know, too many animals are abandoned, which is a big problem. I foreshadow that with increasing fines being imposed, more animals will be abandoned and will find themselves in the pound.

Clause 24 of the bill, which inserts new section 84TA into the principal act, empowers a local council to destroy any dog seized that is not registered and whose owner is not identifiable, that is at large and that is reasonably believed to have caused or is likely to cause, if it were at large, an offence under section 29 of the act. Perhaps the dog may have escaped and the owner cannot be found because the dog has no identification. It also has to be said that a dog's collar may have slipped off, and sometimes there are problems with microchips — they do not always work. In some cases the owner of a dog may not know that a dog is

missing — they could be away for the night — but this bill provides that a council must make a decision within 48 hours about whether it is going to destroy a dog. I am referring to a dog that has not been declared dangerous under the existing provisions of the act or declared a menacing dog. The legislation applies to a dog at large about which an authorised officer has made their own assessment that that dog poses a danger and may do something that would cause its owner to be guilty of an offence under section 24 of the act. That is just way too loose and could result in dogs that are no threat to the community, but are at large by accident, being destroyed. There are already strong enough provisions for councils to destroy dogs.

The point should also be made that there should not be this rush to destroy a dog within 48 hours. Once the dog is in the pound and under lock and key, it is no threat to anybody in the community. Eight days should still be allowed for the owner to collect the dog. The decision to kill a dog that has not been declared a dangerous dog should not be made in a hurried way, lightly or without any evidence that that is necessary. That cannot be ascertained in 48 hours, so the eight-day provision should remain.

I flag to the chamber that I have amendments that I know some people have already seen. I am happy to have them circulated.

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

Ms PENNICUIK — The amendments go to removing the offending proposed new section 84TA, which allows a dog to be destroyed within 48 hours without any appeal or redress. They go to reversing the provisions that double the fines for not registering a dog or for a dog being found at large. The bill provides for fines of $2395 for the late payment of registration and renewal; $1195 for a dog escaping its owner's property, which probably is by accident; and a maximum fee of $717 for a dog at large during the day and $1995 at night. As Good for Dogs has pointed out, this is a lot of money for many Victorians and it is unfair on owners who try to do the right thing. They say that it will likely lead to an increase in the number of dogs in pounds and shelters not being reclaimed by their owners, and that would add to the numbers of dogs being destroyed. That is not what we want to see.

The Greens would like to see some more attention paid to the supply end, in particular the selling of dogs and cats in pet shops, which needs much stricter regulation. The Greens consider that the selling of dogs and cats in pet shops should be banned.

The Greens would also like to see some action by the government about puppy farms. I am sure people are familiar with the issues surrounding those farms. What happens there is absolutely horrendous. Everyone would probably be aware that for a long time the RSPCA, Lawyers for Animals and many other groups in the community that are concerned about animal welfare have been raising these issues with the government. For the record, I quote from an RSPCA website publication:

> A puppy farm … is an intensive commercial puppy breeding operation with an emphasis on production and profit and with little or no consideration given to the welfare of the animals involved. In such operations, the facilities provided for breeding animals and their puppies fail to meet the animals' psychological, behavioural, social or physiological needs and, as a result, many have a very poor quality of life.

That is to put it mildly. Many have an absolutely miserable quality of life. Their life is nothing more than breeding. The bitches just breed and breed until they wear out basically, and then they are replaced. People need to familiarise themselves with the conditions on some of these puppy farms. It is appalling to me and to many people in the community who are concerned about animal welfare that this situation is allowed to continue in the state of Victoria. We need to think about the supply problem. Too many of these pets are coming out of puppy farms where animals are so badly mistreated, and the government is doing nothing about that.

Ms Darveniza interjected.

Ms PENNICUIK — Not enough, because it is still happening. Obviously not enough is being done. We also need to look at the supply side to make sure that people are not buying animals from those places and that the supply of animals is more strictly regulated.

In terms of puppy farms the RSPCA talks about the law being there but not enforced. Part of the problem, as I understand it from reading the RSPCA's literature, is that enforcement is devolved to councils and they do not have the wherewithal to deal with it properly. It is outside the scope of what we are doing now, but it is worth mentioning that perhaps the state government needs to take over enforcement of the regulations and the law in this particular area.

The other amendment I have to the bill seeks to amend the principal act to make it no longer possible for councils to donate dogs and cats for scientific research. Many people in the community and I do not think that

is an appropriate thing for councils to be doing with animals of which they have custody. It is still in the act that councils are able to do that, and that is not appropriate or acceptable.

Many in the community and I would like to see a day when all animals that are found at large, unless they are established to be a dangerous dog that cannot be cared for in another home, should be re-homed. That can be brought about by measures to make sure that the number of abandoned animals and animals at large is minimised. Unfortunately I do not think this bill is going to achieve that. My vision would be that there are no animals — or very few animals — destroyed and that they are found new homes because there are not too many of them at large in the first place. That is not what this bill addresses. With those remarks, I look forward to the committee stage of the bill.

Ms DARVENIZA (Northern Victoria) — I am very pleased to rise and speak in support of this bill. The Greens have a number of amendments that they have circulated in the chamber, and I am also speaking in opposition to those amendments. I will not go through the Greens amendments now because I understand that Ms Pennicuik will be taking them into committee and they will be dealt with then.

There are a couple of things I would like to say in response to some comments made by Ms Lovell and Ms Pennicuik. First of all, I echo Ms Lovell's comments that responsible dog owners have nothing to fear from this bill. I absolutely agree with her. Ms Lovell is right. Responsible dog owners do not have anything to fear from this bill. Far and away the majority of people are responsible dog owners. They care for their dogs and look after them in a proper way. They make sure they are registered, exercised and well fed. When their dogs are sick, they take them to the vet. They clean up after their dog in a responsible way when they take their dog for a walk.

Having been a dog owner, I know that a dog owner has a responsibility to be a responsible dog owner not only for the safety and welfare of their dog but for the safety and welfare of the rest of the community. Dogs need to be well trained, obedient and able to be taken out into the community. People should be fairly confident that it will behave in a fairly appropriate manner.

There are a couple of points that were raised by Ms Lovell and Ms Pennicuik that I do not agree with and I would like to take up and correct. Ms Lovell and Ms Pennicuik had misconceptions about penalties. The penalties for non-registration at large that they referred to are the maximum court-ordered penalties that can be applied if the council takes an owner to court. It is important to correct the impression they have given because the council has a hierarchy, a process and procedures for dealing with people who have failed to register their dog. You receive a letter of warning, a warning notice, a standard infringement notice and, finally, as a last resort the council could take you to court. The people the council are mainly looking to take to court are those repeat offenders and recalcitrants who are not prepared to work with the council to make sure they do the responsible thing and have their dog properly registered. It is only the most recalcitrant and irresponsible owners that end up in court. At the end of the day the court imposes those fines.

Ms Lovell talked about the Treasurer and the state government being the recipient of those fines — that is, fines of $1200 to $2400 — that would be imposed by the courts. Sadly, the Treasurer is not going to be able to put that money in his coffers. That revenue goes to the local council. I wanted to clear up that matter.

Ms Pennicuik asked the government what it was doing about education to prevent animals biting or attacking children. She particularly talked about children and the instances where children can be bitten rather than attacked. That is a bit of an overstatement from Ms Pennicuik. Ms Lovell also talked about children and how they can be bitten by a dog.

I will address some comments in regard to this matter. An additional $1 will be added to the dog and cat yearly levies, and that money is going to be made available to the Treasurer. Ms Lovell commented that this increase was a bonus for the Treasurer. This is the first increase in this levy since 2001. Importantly this increase directly funds Victoria's responsible pet ownership program, which is something Ms Pennicuik talked about. This is a very important program that aims to reduce dog bites and attacks, especially in relation to children in their homes. An election commitment was made by the government of $500 000 for this program over four years. We have delivered on this commitment. This levy increase will further fund that important program.

In relation to that program the Monash University Accident Research Centre's report covering the period from 1999 to 2007 found an increased trend in dog bites and hospitalisations as a result of dog-bite injuries. In the face of that trend the government's responsible pet ownership education program in kindergartens and schools was put in place, and that has resulted in a reduction in the 2005–07 hospitalisation rate and in the severity of injuries in the age group of children experiencing the program. However, currently the

funding only allows for an estimated 50 per cent of schools to experience that program.

I say to Ms Pennicuik, through the Chair, that the levy payment to the Treasurer from cat and dog registration, which the bill provides for, is going to provide significant funding to expand the coverage of that program. That is a very positive outcome.

The program is referred to in an article from the *Border Mail*, a daily newspaper in my electorate of northern Victoria, of 8 June 2010. It is titled 'Students get lowdown on animal behaviour'. There is a bit of a story here with some nice pictures of the kids with their pets, and the article says:

> Prep–2 coordinator Kylie Schneider said the annual visit gave preps valuable lessons while building on what year 1 students had already learnt.
>
> …
>
> The Department of Primary Industries program is funded from a levy of $2.50 on each dog registration and $1 on each cat registration.

There is some information on how well the program is working in Ms Lovell's and my electorate.

I will just run quickly through the bill. I will do it quickly because I know that members want to go into committee and that there are other matters that need to be dealt with. It is an important bill, it is a good bill, and it is a bill that deserves the support of all members of this chamber. It addresses the community need and expectation regarding dog attacks and the expectation of dog owners being responsible owners.

This bill provides a balance. It will increase education, which I have just talked about, while enhancing compliance. The increased penalties and actions introduced in the bill will encourage dog owners to be more responsible.

The bill increases the power of the council to control or to immediately destroy unregistered or unidentified dogs which are considered to be dangerous to the community. It increases the penalty relating to irresponsible owners who allow their dogs to remain unidentified, cause an attack, menace a person or stray at large. Courts will have the power to order a dog owner to attend responsible dog ownership and dog obedience training — which I think is a fantastic idea. I believe that all dog owners should be going to obedience training. The owner needs to be trained in how to care for and ensure that their dog is obedient — probably more than the dog needs to be trained.

As I said, the bill increases the levies that will be paid to the Treasurer, and that is going to ensure increased funds for responsible pet ownership community programs, and to enhance compliance. The bill revises the restricted dog breeds appeal process to ensure procedural fairness, to encourage increased compliance by permitting a council registration amnesty period for dogs that currently remain undeclared and to provide a standard for restricted breed dogs.

I will deal with a couple of key points of the bill. Firstly**,** I want to go to the destruction of dogs that are unregistered and unidentifiable and at large. The bill provides for council officers authorised under section 72 of the bill to seize and destroy within 48 hours any dog that is not registered or identifiable, is at large in a public place and that the council reasonably believes to be a danger to public safety. Councils would no longer have to hold such dogs for up to 8 hours to permit owners to come forward to reclaim their missing, unregistered or unidentifiable dog — —

An honourable member interjected.

Ms DARVENIZA — Eight days. I beg your pardon, Acting President, I think I said 8 hours.

The bill provides for the government to issue practice guidelines for authorised officers to give guidance as to what constitutes a danger to the public. I will not go into that. I have the paperwork here, and I could talk about it at length, but in the interests of time and the time of day I will not do that. Perhaps it might be dealt with in committee.

The bill deals with the issue of the destruction of a dog where there is an immediate risk of death or serious injury by empowering a council's authorised officer to immediately — that is, on the spot — destroy any dog behaving in a manner or in such circumstances that the officer reasonably believes there is an immediate risk of death or serious injury to a person or other animal. Again there is a standard operating procedure that has to be followed after the event and also the notification to the secretary, but again I will not go into those details.

The bill also deals with the destruction of straying, declared dangerous dogs. Under the Domestic Animals Act dogs that have attacked a person or animal may be declared dangerous dogs. Such dogs have already demonstrated that they represent a danger to the public, so they are already designated dangerous dogs. The bill proposes that where such a declared dangerous dog is found straying at large in a place where it is not permitted to be by the order and restrictions set down

by the council, the council would be able to destroy the dog 24 hours after confirming that it is a declared dangerous dog.

Again I do not want to go into this in great detail, but we are talking about dangerous dogs. There are restrictions on where and how such a dog can be housed, where it is allowed to be outside its enclosure and what circumstances and restraints it must be subjected to. The bill deals with the matter of the destruction of dangerous dogs that are out there at large. These dogs are the subject of quite a bit of regulation and restriction. They must be identifiable. They have to be microchipped so that they can be scanned if the pound picks them up. They will be identified and the owners will be informed of where the dog is. An owner will have the opportunity to explain why the dog was at large and why they were not responsible for the dog being at large — that is, if there were circumstances such that somebody else was responsible for letting the dog out, either deliberately or by accident.

The bill also broadens the basis for the declaration of a dangerous or menacing dog. A dog that attacks but has not caused a serious injury will attract a penalty and may be subject to restriction. It is proposed to allow these dogs to be declared menacing, which would require them to be leashed and muzzled in public places. Councils can currently declare dogs to be menacing for aggressively rushing at or chasing people. Dogs that repeatedly cause non-serious attack, rush, chase or aggression offences will be able to be declared dangerous by councils and be subject to significant restrictions that apply to declared dangerous dogs under the legislation.

Again, in picking up the points that were made by Ms Lovell and Ms Pennicuik I think I have dealt with increasing the penalties for dog attacks and for unregistered and stray dogs. I hope I have suitably covered that in my contribution. I also think I have covered the increased funding and responsibilities for pet ownership and community programs.

In relation to the amendment to the restricted dog regime, under the Domestic Animals Act it is illegal to possess a restricted breed dog unless it was acquired before 3 November 2005. Illegally kept dogs are able to be destroyed under the Domestic Animals Act, and as of March there were around 342 restricted breed dogs that have been declared in Victoria; 266 are alive and kept under prescribed restrictions. There are estimated to be several times that number of this type of dog in the community; most are crossbreeds of other more common breeds. Proof of the actual breed of any crossbred dog as a restricted breed of dog is problematic in court proceedings and assessment by expert panels due to the subjective nature of the way a breed is described and assessed. The bill will provide an amnesty period of two years to allow persons in possession of a restricted breed type of dog to register the dog correctly and to comply with the legislation.

To ensure a more consistent appeals process and to address the difficulties in identifying restricted breed dogs, disputes on breed determinations will be referred to the Victorian Civil and Administrative Tribunal in place of the current panel established under the Domestic Animals Act. In addition, breed identification standards for restricted breeds will be prescribed to assist and facilitate a council, owners and VCAT.

In conclusion, the bill has been through a very extensive consultation process. We have been out there talking to stakeholders for more than 12 months. We have consulted with the Australian Veterinary Association, the Royal Society for the Prevention of Cruelty to Animals, the Municipal Association of Victoria, the domestic animal management committee, the Lost Dogs Home, local government, the Victorian Local Governance Association, Dogs Victoria and the American Pit Bull Terrier Club of Australia. There has been widespread consultation. As I said, it is a very good bill which will ensure that our public is kept safe from dangerous dogs roaming at large. It will also put in place a range of initiatives to ensure people become more responsible dog owners, which are very positive and good things. I commend the bill to the house.

Motion agreed to.

Read second time.

Ordered to be committed later this day.

BUSINESS OF THE HOUSE

Adjournment

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

> That the Council, at its rising, adjourn until Tuesday, 10 August.

Motion agreed to.

DOMESTIC ANIMALS AMENDMENT (DANGEROUS DOGS) BILL

Committed.

Committee

Clauses 1 to 7 agreed to.

Clause 8

Ms PENNICUIK (Southern Metropolitan) — I move:

1. Clause 8, lines 19 to 21, omit subclause (1).

This is an amendment to clause 8 that would omit subclause (1). Subclause (1) provides a doubling of the penalty where a registered dog or cat is not wearing its identification marker outside its premises. The reason a registered dog or cat would not be wearing its marker outside its premises would probably be that it had lost its marker, and I do not see how that penalty is going to achieve anything. The registered dog or cat should be returned to its owner and the marker should be put back on the animal.

Hon. M. P. PAKULA (Minister for Public Transport) — The government does not support the amendment. The doubling of the penalty for failing to have a council registration tag on a dog will be the maximum court-ordered penalty that can be imposed if a council chooses to take the matter to court. In practice councils continue to have discretionary powers, which are generally a warning followed by an infringement notice, which is currently $60 — and that is not increasing as a result of the bill. Typically a council would only take a repeat-offending owner to court for such an offence or do so as part of responding to a range of offences if a dog's owner had shown gross negligence or irresponsibility.

Amendment negatived; clause agreed to; clauses 9 and 10 agreed to.

Clause 11

Ms PENNICUIK (Southern Metropolitan) — I move:

2. Clause 11, after line 24 insert —

'( ) After section 34(2)(a) of the **Domestic Animals Act 1994 insert** —

"(ab) because the dog was ill or suffering from a medical condition as evidenced by written advice from a veterinary practitioner; or".'.

This amendment to clause 11 would involve amending the principal act to provide an excuse as to why a dog may be behaving in a particular way from which someone may infer that the dog is a menacing or dangerous dog. The excuse would be that the animal is ill or suffering from a medical condition as evidenced by written advice from a veterinary practitioner. It provides for an ill dog who is not behaving properly not being destroyed. That is it in a nutshell.

Hon. M. P. PAKULA (Minister for Public Transport) — The government does not support this amendment. We do not believe there should be an exemption from a council's power to declare a dog dangerous as a result of an attack simply because the dog is ill or suffering from a medical condition. We believe the public should be protected from dogs whether the dogs are sick or healthy, and the owner ought to be responsible for seeking treatment for and of course containing a dog that might be sick. We do not support the amendment proposed by the Greens.

Amendment negatived; clause agreed to; clauses 12 to 14 agreed to.

Clause 15

Ms PENNICUIK (Southern Metropolitan) — I move:

3. Clause 15, line 18, after "**Secretary**" insert "**and in annual report**".

This amendment would require that a council provide details of dogs it has destroyed in certain circumstances to the secretary and in its annual report. The amendment just adds the annual report.

Amendment negatived.

The DEPUTY PRESIDENT — Order! I now ask Ms Pennicuik to move her amendment 4. I advise the committee and Ms Pennicuik that I regard this amendment as a test for her amendments 8 and 9. The more substantive amendment of the group is amendment 9, but we will test that in this clause, clause 15. Ms Pennicuik may want to bear that in mind in her discussion of amendment 4.

Ms PENNICUIK (Southern Metropolitan) — I move:

4. Clause 15, line 19, before "A council" insert "(1)".

This amendment tests my amendments 8 and 9, in particular amendment 9 which seeks to amend clause 15 by inserting a new subsection (2) which provides that a council must include in its annual report

the information required to be provided to the secretary, under what will be subsection (1) if this amendment is agreed to, relating to a destroyed dog, except for the details of the owner of the dog referred to in what will be subsection (1)(c)(i). This means that in its annual report the council should provide information about the time and date of destruction of the dog and the following information, if known, about the dog: the number of prescribed identification devices, the sex of the dog, the date of birth of the dog and the breed of the dog, but not information about the owner of the dog. It is just information for the community about the destruction of dogs without identifying the owners of the dogs.

Hon. M. P. PAKULA (Minister for Public Transport) — The government does not support these amendments. Under the current act the Victorian declared dog registry has a high level of reporting requirements already for the Secretary of the Department of Primary Industries and a high level of privacy protections. We do not believe it is adequate to offer to delete the names and addresses of the owners, because these incidents are relatively infrequent, but they are high profile — that is, serious dog attacks — and it could make it easy to match dates to media reports, thereby allowing both the victim and the owner of the dog to be identified.

Additionally, the publication of the microchip number of the destroyed dog can easily be used to identify the dog's owner. For those and other reasons, the government does not support these amendments.

Amendment negatived.

The DEPUTY PRESIDENT — Order! I now ask Ms Pennicuik to move her amendment 5. In the case of amendment 5, it is my view that it is a test for Ms Pennicuik's further amendments 6 and 7, 10 to 14 and 17. The more substantive amendments are amendments 11 to 13 to clause 23 which invite the house to delete the proposed insertion of section 84TA in the principal act in relation to destruction of a dog that is a danger to the public.

Ms PENNICUIK (Southern Metropolitan) — I move:

5. Clause 15, lines 21 and 22, omit ", 84TB or 84TC" and insert "or 84TB".

This amendment is a test for the other amendments mentioned by the Chair. The effect of this amendment is to remove from clause 23 proposed section 84TA. Notwithstanding everything that has been said by Ms Darveniza, it is my view that this is an unnecessary provision because it is basically repeating proposed sections 84TB and 84TC.

However, it is basically allowing for a dog that is at large and not identified. Both of those things could be an accident, in that the dog could have crawled out from under the fence and lost its collar. I agree that there need to be stricter controls for declared dangerous dogs — a lot of criteria have to be satisfied to become a declared dangerous dog — but this is a dog that is found at large and is not a declared dangerous dog. It could be someone's pet that has got out of its yard.

The time frame here is too short; it does not allow a reasonable time for a person to claim the dog. Once the dog is contained by the council it is not a danger to the community at all; it is a dog in the custody of the council and is not a declared dangerous dog or a menacing dog. To rush to destroy that dog within 48 hours is not warranted. New sections 84TB and 84TC cover bona fide dangerous dogs.

Hon. M. P. PAKULA (Minister for Public Transport) — The government does not support this amendment. It is an amendment that would effectively remove the central purpose of the bill and gut it. In response to Ms Pennicuik's comment, I would potentially agree with her if the only criterion was that the dog be at large, but in these circumstances the dog has to be at large and dangerous and not registered. As Ms Pennicuik well knows, it is not simply about losing a collar. These days dogs that are registered have better technology than a collar.

The main purpose of the bill is to give council the ability to control dogs that are a risk to the public. A message needs to be sent to irresponsible dog owners that if you do not manage your dog responsibly by containing, registering and microchipping it, particularly if it is a dangerous dog, then the risk is the dog will be lost to you. This is an important provision to encourage dog owners to register, identify, securely control and confine their dogs on premises, particularly dangerous dogs. This is the provision that sends that message.

Ms PENNICUIK (Southern Metropolitan) — I must correct the minister, because this clause does not refer to dangerous dogs. Dangerous dogs are declared dangerous dogs. This clause refers to a dog that is at large, where the owner has not been found. Yes it may be unregistered and may not have a microchip, but it is not a dog that is a declared dangerous dog. The authorised officer holds a belief that the dog could be a danger in the future. That is not tight enough. The dog is not a danger anymore, because it is contained and in

council custody; it is not a danger. All that needs to be found is the owner. If it is not registered and the owner cannot be found, there is a provision already in the act for the eight days to expire. This clause is about getting dogs out of the hands of the council before the eight days have expired. It is not needed at all, given the other clauses and the beefing up of everything under this bill. This clause could result in the unwarranted destruction of dogs that are a danger to nobody.

Hon. M. P. PAKULA (Minister for Public Transport) — I assure the Chair that I am not seeking to provoke Ms Pennicuik, and I did not assert this was a declared dangerous dog. What I said was that it was a dog that was out, unregistered and dangerous. Ms Pennicuik is partially right: it means that in the opinion of the council officer the behaviour of the dog was likely to be dangerous. It is not as laissez faire or as wanton as Ms Pennicuik suggests, and in fact in Ms Darveniza's contribution she went through the criteria that the officer has to take into account in determining whether, in his or her belief, the dog is dangerous.

Committee divided on amendment:

Ayes, 3

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

Noes, 33

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

Amendment negatived.

Clause agreed to; clauses 16 to 22 agreed to.

Clause 23

The DEPUTY PRESIDENT — Order! Ms Pennicuik's amendments 10 to 14 have already been tested. I regard amendment 15 to be a test for her amendment 16.

Ms PENNICUIK (Southern Metropolitan) — I move:

15. Clause 23, page 13, after line 23 insert —

> "(3) An authorised officer who destroys a dog under subsection (1) must record, as soon as practicable but no longer than 24 hours after destroying the dog, the reason for holding the reasonable belief referred to in subsection (1).".

This is because that provision, which relates to the immediate destruction of a dog that may cause serious injury or death, does not have any reporting requirement underneath it.

Hon. M. P. PAKULA (Minister for Public Transport) — The government does not support the amendment. Any dog destroyed under proposed section 84 of the act must be reported to the Secretary of the Department of Primary Industries. In the case of proposed section 84TB — the immediate, on-the-spot destruction of a dog that an authorised officer reasonably believes is behaving in a manner or in circumstances that will result in imminent serious injury to or the death of a person or another animal — the standard operating procedures will require the officer to subsequently list and report to the secretary why they formed that reasonable belief. For that and other reasons, we do not support the amendment.

Amendment negatived.

Ms PENNICUIK (Southern Metropolitan) — I move:

18. Clause 23, page 14, line 27, omit "24" and insert "72".

This amendment aims to change the time in which the council must decide whether to destroy a dog from 24 hours to 72 hours in order to allow more time for that decision to be made.

Hon. M. P. PAKULA (Minister for Public Transport) — The government does not support the Greens' amendment. These dogs are already declared dangerous and are under restriction. For that and other reasons, the government does not support the amendment.

Amendment negatived.

Progress reported.

Business interrupted pursuant to standing orders

ADJOURNMENT

The DEPUTY PRESIDENT — Order! The question is:

That the house do now adjourn.

Kindergartens: government support

Ms LOVELL (Northern Victoria) — The matter I wish to raise is for the attention of the Minister for Children and Early Childhood Development, and it is in regard to the state and federal Labor governments' policy to increase by 2013 kindergarten hours from 10 to 15 hours per week for children in the year before school. My request of the minister is for her to outline what further assistance the Brumby government plans to provide to kindergartens to enable them to achieve this outcome without cutting back other vital services and programs, such as three-year-old kindergarten and playgroups; without enforcing the use of waiting lists and reducing access to four-year-old kindergarten; and without pushing the cost of kindergarten out of reach of some families.

At a briefing last week the Department of Education and Early Childhood Development was unable to tell me what impact this Labor government policy will have on kindergartens across the state and whether federal government funding for 15 hours per week would continue beyond 2013. It is clear that the Brumby government does not know the true impact of this policy and that it signed up to the deal before it had established whether it was feasible and before the effect it would have on three-year-old kinder and other programs had been investigated. It is irresponsible for a government to sign up to a deal before the necessary homework has been done and before these critical questions have been answered. The onus has now fallen on local governments and kindergartens to do the government's homework.

During this process it has become apparent that local governments and many kindergartens do not have the resources or the facilities to achieve this outcome by the government's deadline of 2013. A number of deficiencies and impacts have been identified in local government capacity assessment reports, including infrastructure limitations, staff shortages, a shortage of kindergarten places in some areas, impacts on other services and the potential for parental fees to increase.

The state government acknowledged the severe shortage of staff in its bilateral agreement, which states that an additional 600 to 800 early childhood teachers will be required to move from a 10-hour program to a 15-hour program by 2013, but the time line in the agreement shows the government only plans to increase staff numbers by 150 in this time.

There are also concerns that parents will not be able to afford the increase in kindergarten hours because the government is not budging on its 65 per cent contribution toward funded kindergarten programs, meaning parents face a 50 per cent increase in kindergarten fees. This could push the cost of kindergarten out of reach of low-income working families which are just above the threshold to receive a health care card and therefore do not qualify for a kindergarten fee subsidy.

Greater Bendigo City Council estimates it will have a shortage of 388 four-year-old kindergarten places by 2016 and has identified an infrastructure black hole in excess of $13 million that will need to be filled in order for Bendigo's kindergartens to provide 15 hours of four-year-old kindergarten a week without impacting on other valuable programs such as three-year-old kindergarten and playgroups. The council also identified a 38 per cent shortage of appropriately qualified staff in stand-alone preschools and a 50 per cent shortage in long-day care centres.

It is clear that many questions remain unanswered, but the one thing that is certain is that kindergartens and local government require further assistance from the state and federal Labor governments if they are to implement this policy. I call on the minister to outline what further assistance the Brumby government plans to provide to kindergartens to enable them to achieve 15 hours of kindergarten per week for children in the year before school by 2013.

Member for Derrimut: allegations

Mr DALLA-RIVA (Eastern Metropolitan) — My adjournment matter tonight is for the Premier. It relates to a media release that was issued today by Mr Costas Socratous, which is addressed 'To the editor of your newspaper' and entitled 'From conspiracy to corruption'. It relates to the issues about the involvement of Mr Socratous as the former electorate officer for the Parliamentary Secretary for Human Services, the member for Derrimut in the other place, Telmo Languiller. Mr Socratous raised a range of issues that relate to an allegation of fabrication of a statement to police alleging that Mr Socratous had been involved in criminal activity. We are aware that as a result of that the police did not pursue the matter any further.

Mr Socratous, in his media release, states:

> My concern to the residents is when a member of Parliament makes a false statement to the police against any person

> knowing that his statement will destroy the life and reputation of this person.

Mr Socratous believes it is not appropriate for a member of Parliament to be doing this kind of thing in the course of their ordinary business. With respect to Mr Languiller, Mr Socratous states:

> He has been elected by the people to represent them honestly and truthfully. And not to make false statements to police just to hold his position and is not fit to represent any of us.

That is from a press release Mr Socratous issued today. We know there have been issues around branch stacking; this has been detailed in an Ombudsman's report. There has been a significant amount of cover-up by certain members of the government. What we are seeking is that this issue of Mr Languiller abusing his position in government to make these allegedly false statements to the police in trying to discredit and destroy the reputation of Mr Socratous, who exposed the corruption inside the Brumby government, be addressed.

I am asking the Premier to stand up and not condone or support this type of behaviour from his parliamentary secretary. The action I seek is that the Premier now, as a result of this media release today, stand down Mr Languiller until he can determine fully why Mr Languiller made those false allegations and claims to the police and Mr Languiller's ulterior motive in doing so. I would like the Premier to report back to the people of Victoria on this.

Hon. M. P. Pakula — On a point of order, Deputy President, I submit that the matters raised by Mr Dalla-Riva are not proper matters for the adjournment debate. They do not fall within the administrative responsibilities of the Premier, and the action sought, that the Premier stand up, is not an appropriate action for the adjournment debate.

Mr D. Davis — On the point of order, Deputy President, the Premier appoints a range of parliamentary secretaries. It is important that they be in good standing. If there are issues surrounding corruption or malfeasance or other serious allegations, as have been made tonight — —

Hon. M. P. Pakula — It is a press release.

Mr D. Davis — There is involvement of the police. The Premier should stand Mr Languiller aside until this matter is cleared up. It is absolutely a matter for the Premier, who appointed Mr Languiller as a parliamentary secretary.

Mr Dalla-Riva — On the point of order, Deputy President, I followed what I believe to be the appropriate processes in the adjournment debate. I raised a matter for the attention of the Premier. I outlined the issues and the reasons the Premier should be involved. I then sought an action and that action related to dealing with the particular issues that I raised. In my view a matter raised in the adjournment debate should relate to the administration of a minister. My matter was addressed to the Premier. The Premier did appoint the relevant member to the role of parliamentary secretary, and this matter relates to the performance of that parliamentary secretary as a result of the issues I have raised for the attention of the Premier.

The DEPUTY PRESIDENT — Order! I accept that the Premier appoints the parliamentary secretaries. I ask Mr Dalla-Riva to repeat the action that was sought. As the minister said, for the Premier to stand up is not an action I would want to hear. It is the bit after that that I need to hear.

Mr Dalla-Riva — The action I sought was for the Premier to review the allegations that have been put forward, to stand Mr Languiller down subject to that investigation and to report to the people of Victoria the outcomes of that investigation into the allegations made about Mr Languiller's performance.

Hon. M. P. Pakula — On the point of order, Deputy President, I suggest this ought to be a matter that the Chair takes advice on, because the logical extension of Mr Dalla-Riva's position is that the adjournment debate could from here on in be used for member after member to simply stand up and ask the Premier to sack a minister or a parliamentary secretary. If that is what the house intends the adjournment debate to be, then that is what it could well become. Once it is appropriate for the adjournment debate to be used to call for a parliamentary secretary to be stood aside, it can simply be used by members over and over again to call for ministers or parliamentary secretaries to be sacked, and I think that is a matter about which the Chair should give proper consideration.

Mr D. Davis — Further to the point of order, Deputy President, the Premier does appoint parliamentary secretaries. This is a serious matter; there is a document that has been circulated widely in the community today that points to serious allegations against Mr Languiller. For the Chair's information, I understand a question was asked in the lower house today, in answer to which the Premier took these matters on notice, and he will no doubt come back to

the Parliament. This is a further point here, and this is entirely within order.

Mr Viney — On the point of order, Deputy President, I believe it is not appropriate for the adjournment to be used as a mechanism for raising allegations about members of either house and that such a process can only occur by way of substantive motion.

Mr Dalla-Riva — Further to the point of order, Deputy President, just for clarity, I was seeking an action from the Premier. As we know, in adjournment matters we can seek that ministers and the Premier take action, and it is up to them as to what they do.

The DEPUTY PRESIDENT — Order! As the Clerk says, this is lineball. I will deal with Mr Viney's point first. The normal way to deal with an allegation against a member would be by way of substantive motion. In this case I do not believe that is relevant, because the member has not actually made an allegation against the other member; he has sought a review of an allegation by another party. I think that in terms of how the house treats this matter, that is a different thing.

I am also of the view that, as I understand, the Premier is responsible for the appointment of ministers and parliamentary secretaries and certainly is in a position to either request that they stand aside or to terminate their commission in the event that the Premier were to be concerned about the performance of their duties or related matters that might reflect adversely on the government or the Parliament.

Mr Dalla-Riva — I am not making the allegation.

Hon. M. P. Pakula — You are repeating an allegation; it is a nonsense distinction.

The DEPUTY PRESIDENT — Order! There is a distinction. Nonetheless, I understand that a process by which a member comes in and picks up a press release, a letter or some other communication that forms an allegation against a minister and repeats it in the adjournment whilst a review is being sought of that matter — a matter that is in the public domain — is not a direct accusation by the member but is amplifying an accusation made by another party, and that is what makes it very much lineball.

In terms of previous rulings in the Parliament, on most occasions when allegations have been made against other members they have been ruled out of order as matters that were inappropriate for the adjournment debate. It is my view on this occasion that I should direct the minister not to answer the question that has been put. I will take the adjournment item on advisement, consider it further and report to the Parliament on the next sitting day. In all probability it will be the President who will make that determination.

Geelong Ring Road: section 4C route

Mr KAVANAGH (Western Victoria) — My adjournment matter is for the Minister for Roads and Ports, Mr Pallas, and relates to the proposed six-lane Surf Coast Highway connection for the Geelong Ring Road, 4C. On Tuesday I presented a petition with almost 900 signatures objecting to the present proposed route of 4C. Residents of Grovedale were recently horrified to discover that the proposed 4C route had been changed with little notice given to them, and it is now planned to run right next to a very large number of houses to the south of Grovedale. An aerial photograph which was used at a recent meeting of residents with the route shown on it causes any observer to ask why would anyone locate a road right there. Why would they put it right next to all those houses when there is vacant land south of the housing development which would be a much more appropriate place? Even if it costs more money to do so, the proposed route should be altered so that it interferes with far fewer people.

The action I seek from the minister is that he reconsider the proposed 4C route with a view to locating it where it will adversely affect and reduce the quality of life and cause air and noise pollution for far fewer residents — that is, to put it south of its present intended route and on an alignment with Boundary Road as being the most obvious option.

Planning: Geelong Golf Club site

Mr KOCH (Western Victoria) — My issue is for the Minister for Planning and relates to the erosion of the power of local government during the past 11 years. It has become an increasingly common trait of the Brumby government to ignore the needs of local communities and allow developers to bypass local government authorities and take their proposals directly to the Minister for Planning, Justin Madden.

In 2006 the redevelopment of the former Geelong Golf Club site was approved by the City of Greater Geelong. During a recent public meeting Geelong residents were alarmed to hear that the developers had abandoned the approved plan in favour of another that would not be presented to the City of Greater Geelong for consideration. Instead the developers decided to take their revised plan for this site directly to the planning minister. The City of Greater Geelong's stringent planning procedures, which are designed to reflect the

views of its community and restrict overdevelopment, have been bypassed on a number of occasions in recent times, as I have indicated on other occasions, with the most publicised being the 94-unit redevelopment at the old Geelong Technical College site in Moorabool Street.

This new proposal includes a Woolworths hardware store, two takeaway food outlets, offices and a medical centre. The plans for this development should be assessed against the City of Greater Geelong's planning guidelines, and proper procedures should be followed to determine if the proposal is a good fit for this site. Geelong residents have a number of concerns about the now unapproved plans, and these need to be appropriately addressed. These concerns include the lack of a traffic management plan to cope with increased traffic created by retail outlets; the loss of significant open space situated within 3 kilometres of central Geelong; the preservation of established native trees and fauna, particularly bird life; concerns about the excessive heights of buildings associated with the project; and concerns about insufficient drainage due to paved car parking areas. These concerns would be addressed in the course of complying with the City of Greater Geelong's planning guidelines, and they should be appropriately addressed by the planning minister.

My request of the Minister for Planning is to restore the integrity of the City of Greater Geelong's planning procedures and refrain from making deals with developers that undermine local municipalities. The minister should ensure adjoining property owners are not disadvantaged by changes to their environment, inadequate traffic management, building heights, inadequate drainage and, in the case of the Geelong Golf Club site, the desecration of the lone pine memorial at this site should be overturned.

The DEPUTY PRESIDENT — Order! I will make one further comment on Mr Dalla-Riva's matter because I have given it some further consideration. I stand by the previous ruling inasmuch as it will come back to the house, but can I suggest that in further consideration of this matter my leaning in terms of that item would be that it is inappropriate for this house by way of an adjournment request to ask the Premier to sack a minister or a parliamentary secretary. It is my view on consideration that it would be more appropriate, if that is the course of action sought by a member, to do that by substantive motion.

I tend to think, however, that the other part of Mr Dalla-Riva's request, which was to seek a review of the matters that are now in the public domain, is a fair request and perhaps the extent to which they would reflect on the opportunity of a minister or an officer of the Parliament to perform their duties and maintain the integrity of the Parliament might be linked to that. But I think on further consideration that the actual request during an adjournment debate for the Premier to take action that would involve the termination of a commission is out of order, and that part of it would require a substantive motion.

What I would be leaning towards on the next occasion, consistent with what I said previously, is to allow for the review aspect of Mr Dalla-Riva's adjournment item but not the call for the sacking.

Mr Finn — On a point of order, Deputy President, you have made it clear that in your view it would be inappropriate during the adjournment debate for any member to call for a dismissal — the sacking of a minister or a parliamentary secretary — and I accept that. I am just wondering if you make a differentiation between a dismissal, a termination of commission and a standing down whilst a matter is being examined, as Mr Dalla-Riva has called for this evening with regard to Mr Languiller.

The DEPUTY PRESIDENT — Order! I would not differentiate between the two, because I do not believe that the house, by way of a request from a single member in the adjournment debate, is able to request the Premier to take that sort of action. I believe it would be quite in order for the house to prosecute that sort of case by a substantive motion and obviously for all members to have an opportunity to vote. A stand-down situation might well be an appropriate action by a Premier in the event that they wanted to appear to be fair and open in their evaluation or review of a matter, but I still think that is within the judgement of the Premier on that occasion.

Lake Wendouree: restoration

Mr VOGELS (Western Victoria) — I rise tonight to raise a matter for the Minister for Water, Mr Holding, regarding the implementation of the scheme to construct a pipeline from the Ballarat West bore to Lake Wendouree. In the years since Lake Wendouree went bone dry Ballarat residents have become used to big, flashy announcements from this Labor government about filling Lake Wendouree, only to be followed by a lack of action. Last election the government promised it would restore Lake Wendouree to its full glory. Sadly, by December 2008, when the lake was meant to have been full again, under the government's plans it remained dry as a chip. So dry was the lake bed that it caught fire on

three separate occasions over the 2008–09 Christmas-New Year period.

The new Ballarat City Council, led by strong community representatives like Mayor Judy Verlin and Cr Ben Taylor, has taken a proactive stance on Lake Wendouree. Indeed the council's strategies, together with a return of more normal winter weather, have resulted in water starting to build up in the lake. By the end of winter and spring it is expected the lake will look a treat, no thanks to the Labor government.

With this in mind, it was no surprise to see the Premier recently trying to claim credit by making yet another big, empty promise to fill the lake. Ballarat's Labor MPs, who had ignored the lake for years, saw there was water in it now and said, 'Quick, Minister, claim credit for the work that council has done and for natural rainfall'. The government announced a $1.3 million program to construct a new pipeline to transfer water from the Ballarat West bore to Lake Wendouree. The pipeline will barely be finished by the election, but Labor will use it to claim all the credit when the water level is naturally up by polling day.

It appears that in the government's haste to get this project under way and to look as if it is doing something it has breached the proper tendering processes. Local civil construction firms have quite rightly expressed their anger that this project was not put out to tender. The proper tender process has seemingly been disregarded. The action I seek from the minister is that he explain to the people and businesses of Ballarat why a proper tender process was not undertaken in awarding the contract to construct the Ballarat West bore to Lake Wendouree pipeline.

Housing: Dandenong tenants

Mrs PEULICH (South Eastern Metropolitan) — I wish to raise a matter for the attention of the Minister for Housing in relation to some correspondence I received — and I believe other members may have received this communication — from a constituent making a representation on behalf of Ms Melanie Hastie and her five children. They reside at 27 Burchall Grove in Dandenong North. It appears that Ms Hastie's mother had lived at this particular ministry of housing house and that Ms Hastie may not have the right to continue living there.

On 9 August 2010 at Dandenong apparently attempts were made to contact the relevant government departments to have the decision reviewed. Office of Housing officers are determined to reclaim that particular property and say that perhaps Ms Hastie might not have a claim to continue living there. The matter is going before the Victorian Civil and Administrative Tribunal (VCAT) very soon, and that may well leave Ms Hastie and her five children without a roof over their heads. I do not wish to enter into the merit of her claim to continue living there, but there are a number of options. It seems to me that it may be a situation where the department needs to offer more assistance to Ms Hastie and her five children to find accommodation.

One option might be to allow Ms Hastie to continue living at the current house with the appropriate support; I do not know how viable that is. Another option might be to allocate the family and their children to another ministry of housing house locally to ensure that the children can attend the local school. I believe they may not have been able to attend the local school for six months due to the housing problems and other problems in the family. There are some serious problems that the family does need support with. Or it might be that the family needs to be located to another area where it can start afresh.

I do not know the merits and the ins and outs of this case, but it could certainly have some serious consequences. The department needs to try a little harder to find the appropriate support to make sure that Ms Hastie and her five children are not left on the streets as a result of a VCAT hearing which, on behalf of the director of housing, seeks to reclaim possession of the property. That is an inappropriate result. I ask the minister to intervene to see what the Office of Housing in Dandenong can do to assist in finding suitable accommodation for the family or suitable arrangements so that it does not end up on the streets.

St Albans: Anglican church emergency relief centre

Mr FINN (Western Metropolitan) — I wish to raise a matter for the attention of the Minister for Community Services. The matter concerns the emergency relief centre which I visited at the St Albans Anglican church in the last couple of weeks. The minister there is Reverend Faith Johnson, and I think a more appropriately named member of the clergy would be hard to find anywhere. This particular emergency relief centre is run purely by volunteers. It has on a regular basis helped up to 90 people in a single morning. That group of volunteers is a very committed, hardworking and dedicated group, some of advancing years it has to be said — one volunteer I am told is in her nineties. They do a magnificent and sterling job, and I was impressed when I was told of the level of

commitment they show to their clients, many of whom are suffering significant hardship.

My main concern is that the centre of this effort is a tin shed in the car park of the church. The tin shed holds tinned food, clothing and a variety of things that might help people who find themselves in strife. The trouble is the tin shed. It has holes in the roof. It is not connected to electricity, so it is prone to be extremely hot during summer and very cold in these winter months. The volunteers give freely of their time to work in this shed to help fellow human beings who might be going through some hardship at a given time.

They have many plans for what they would like to do to help more people and to set up a more permanent fixture to help the people of St Albans who are going through difficult times, but the problem is that they have little money with which to implement these plans. They are helping people in the true Christian spirit, and I suggest that by doing so they are also saving the state a good deal of money. If these people were not volunteering their time in the way they are doing, either the state or federal government would have to come to the aid of the people the volunteers are assisting, and that would obviously cost taxpayers a good deal of money.

I ask the minister to accompany me to meet Reverend Faith Johnson and the volunteers and see for herself what is being done at St Albans Anglican church. Hopefully she can then get an idea of what she can do to provide more help for both the volunteers and the people of St Albans.

Roads: school pedestrian crossings

Ms PENNICUIK (Southern Metropolitan) — The matter I raise tonight is for the attention of the Minister for Roads and Ports, Mr Pallas, and it concerns the safety of patrolled school pedestrian crossings on arterial roads.

Parents of children at two primary schools have written to me about the danger to their children posed by fast-moving traffic on arterial roads with patrolled school crossings. In the first case, parents have been seeking the installation of signals at a patrolled school crossing on Bay Road, Sandringham, which has a 40-kilometre-per-hour speed limit that we are advised is largely ignored. There have been several near misses at the crossing when motorists have not stopped while children are crossing. As a consequence many parents are now refusing to allow their children to walk to school. VicRoads has refused a request from the parents for a signalised crossing on the grounds that not enough children are using the crossing to warrant the installation of lights, which is a catch 22 situation.

In the other case parents are seeking the introduction of a 40-kilometre-per-hour speed limit on Toorak Road, Camberwell, during school travelling hours in the close vicinity of a patrolled and signalised school crossing. As in the previous case there have been several near misses caused by vehicles not stopping while children are crossing. Also as in the previous case some parents are now refusing to allow their children to walk to school. VicRoads has again refused this request on the ground that the school does not have a gate directly onto the arterial road.

We all know that for many reasons it is beneficial for children to walk to and from school, not least because of the benefits provided by the exercise, and it is vital that all measures be taken to ensure a safe environment for them to do that. My request to the minister is that he review these two situations and the criteria governing the installation of signalised crossings and 40-kilometre-per-hour speed limits on arterial roads in the vicinity of schools, with the primary objective of ensuring a safe walking environment for schoolchildren so that as many children as possible are able to walk safely to and from school.

Schools: growth areas infrastructure contribution

Mr P. DAVIS (Eastern Victoria) — I raise a matter for the attention of the Minister for Planning in respect of an unequal and unfair imposition of the government's growth tax — the growth areas infrastructure contribution — in the education sector, the matter having been raised with me by Bishop Christopher Prowse, Bishop of the Catholic diocese of Sale which stretches from Mallacoota to the eastern suburbs of Melbourne.

The intention of the Growth Areas Authority to charge development levies is jeopardising plans for the large investment in urgently needed new Catholic schools in the metropolitan growth corridor that reaches into my electorate of Eastern Victoria Region. Without action to alleviate the burden of the development tax, there is every chance that rapidly growing communities on Melbourne's eastern fringe will be left with inadequate education facilities.

Sale diocese is establishing five new schools to satisfy the expected demand for about 25 per cent of new residents in the growth areas of Casey, Cranbourne and Officer who are Catholic. The Growth Areas Authority's criteria for taxable developments include a

definition of community facilities, under which schools are supposed to be exempt. However, there is a twist in that the exemption covers government schools but not non-government schools.

The authority has calculated the growth levy for the new Catholic schools in Cardinia at $2.34 million, while the amounts for schools planned in Cranbourne and Officer have not been finalised. It has indicated to the diocese that the amount of the levy will be reduced, but as Bishop Christopher Prowse has pointed out in a letter to me, the authority makes no justification for discriminating between government and non-government schools. The bishop rightly says that from a planning perspective schools, as community facilities, are vital infrastructure for our community. However, if the growth levy continues to be imposed, the church will not be able to afford to build new schools.

The authority's final word to the diocese on this matter is that the matter of exemptions from the levy is up to the minister to decide. Therefore, on that advice I put it to the Minister for Planning that he act to exempt the five planned Catholic schools and thus enable their construction to meet the needs of Catholic families in the eastern growth corridor.

Nurses: national registration

Mr D. DAVIS (Southern Metropolitan) — My matter for the adjournment debate tonight is for the attention of the Minister for Health, and it concerns the new registration arrangements that are in place for health professionals with our new national registration system. Members will be aware that until 30 June there was a state registration system but now we have a national registration system with arrangements overseen by ministerial council — arrangements that have national significance.

A number of nurses — I am talking about many hundreds in this instance — and nursing students have been disadvantaged by this change. What has occurred is that Victorian-based universities took in a large number of students from India in particular but also from the Philippines and elsewhere. These were division 1 nurses registered in their own countries who sought training here and worked through an 18-month program in Victoria. I am aware of a number of individuals who finished their course on 2 July and therefore just missed the cut-off arrangements for the old state-based registration system.

The impact of this has been that the arrangements for registration have changed and these students are now no longer able to be registered under the national arrangements. The website for the new national registration authority says that there will be transitional arrangements for these students. It is quite serious, and we are aware of the shortage of health professionals and especially nurses and division 1 nurses. These nurses-to-be, one would hope, have completed their nursing training in their own country and completed an 18-month course at universities like the University of Ballarat, Deakin University, La Trobe University or other universities in Victoria.

Victoria has a significant education market, and I have seen promotional documents released by Victorian universities advertising the stream that these division 1 registered nurses would be able to complete in Victoria to achieve registration. Unfortunately for these nurses — I met with a number of them last weekend — they are now in a serious situation where they are no longer able to be registered without further tests and further impediments to their registration.

I call on the Minister for Health to look into this matter very seriously and very quickly, because there are literally hundreds in this position. I am aware that there was a meeting a week ago attended by 600 of these students who are unable to achieve registration in the forthcoming period. This is very serious for our system since we have a shortage of nurses, and the minister needs to remedy the situation and ensure that proper transition arrangements are in place and that the original arrangements that were conveyed to these people are honoured and not broken.

Responses

Hon. M. P. PAKULA (Minister for Public Transport) — Ms Lovell raised a matter for the Minister for Children and Early Childhood Development seeking that the minister provide to kindergartens information about how kindergarten hours can be increased from 10 to 15 hours without a reduction of services. I will convey that to the minister.

Mr Kavanagh raised a matter for the Minister for Roads and Ports in relation to the Surf Coast Highway stage 4C and seeks from the minister an alteration of its route. I will convey that to the Minister for Roads and Ports.

Mr Koch raised a matter for the Minister for Planning seeking that he restore integrity to the planning processes of the City of Greater Geelong. In conveying that to the Minister for Planning I in no way concede that there is not integrity in Geelong's planning processes.

Mr Vogels raised a matter for the Minister for Water regarding the refilling of Lake Wendouree — a fantastic project — and asked that the minister explain to the people of Ballarat the tender processes that may or may not have been carried out on that project. I will convey that to the Minister for Water.

Mrs Peulich raised a matter for the Minister for Housing regarding a constituent, Mrs Hastie, who with her five children is at risk of losing her home. Mrs Peulich asked that the minister reconsider that situation or assist her in seeking alternative arrangements. I will convey that to the Minister for Housing.

Mr Finn raised a matter for the Minister for Community Services asking that the minister accompany him to the emergency relief centre run by the Anglican Church in St Albans. I will convey that to the Minister for Community Services.

Ms Pennicuik raised a matter for the Minister for Roads and Ports regarding a signalled pedestrian crossing in Bay Road, Sandringham, and a 40-kilometre-an-hour zone in Toorak Road, Camberwell, seeking that decisions of VicRoads on those matters be reconsidered, and that the criteria more generally be reconsidered. I will convey that the Minister for Roads and Ports.

Mr Philip Davis raised a matter for the Minister for Planning seeking that five planned Catholic schools in his electorate be exempted from the growth areas infrastructure contribution. I will convey that to the Minister for Planning.

Mr David Davis raised a matter for the Minister for Health seeking that the minister seriously look into a matter concerning overseas students engaging in nursing training and asked him to ensure that they have proper transition arrangements that will enable them to achieve registration. I will convey that to the Minister for Health.

The DEPUTY PRESIDENT — Order! The house now stands adjourned.

House adjourned 10.42 p.m. until Tuesday, 10 August.