PARLIAMENT OF VICTORIA

PARLIAMENTARY DEBATES (HANSARD)

LEGISLATIVE ASSEMBLY

FIFTY-SIXTH PARLIAMENT

FIRST SESSION

Thursday, 2 September 2010

(Extract from book 12)

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

By authority of the Victorian Government Printer

The Governor

Professor DAVID de KRETSER, AC

The Lieutenant-Governor

The Honourable Justice MARILYN WARREN, AC

The ministry

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

Legislative Assembly committees

Privileges Committee — Mr Carli, Mr Clark, Mr Delahunty, Mr Lupton, Mrs Maddigan, Dr Napthine, Mr Nardella, Mr Stensholt and Mr Thompson.

Standing Orders Committee — The Speaker, Ms Barker, Mr Kotsiras, Mr McIntosh, Mr Nardella and Mrs Powell.

Joint committees

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Heads of parliamentary departments

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

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

Parliamentary Services — Secretary: Mr P. Lochert

MEMBERS OF THE LEGISLATIVE ASSEMBLY

FIFTY-SIXTH PARLIAMENT — FIRST SESSION

Speaker: The Hon. JENNY LINDELL

Deputy Speaker: Ms A. P. BARKER

Acting Speakers: Ms Beattie, Ms Campbell, Mr Eren, Mrs Fyffe, Ms Green, Dr Harkness, Mr Howard, Mr Ingram, Mr Jasper, Mr Kotsiras, Mr Languiller, Ms Munt, Mr Nardella, Mr Seitz, Mr K. Smith, Dr Sykes, Mr Stensholt and Mr Thompson

Leader of the Parliamentary Labor Party and Premier:
The Hon. J. M. BRUMBY

Deputy Leader of the Parliamentary Labor Party and Deputy Premier:
The Hon. R. J. HULLS

Leader of the Parliamentary Liberal Party and Leader of the Opposition:
Mr E. N. BAILLIEU

Deputy Leader of the Parliamentary Liberal Party and Deputy Leader of the Opposition:
The Hon. LOUISE ASHER

Leader of The Nationals:
Mr P. J. RYAN

Deputy Leader of The Nationals:
Mr P. L. WALSH

Member	District	Party	Member	District	Party
Allan, Ms Jacinta Marie	Bendigo East	ALP	Lim, Mr Muy Hong	Clayton	ALP
Andrews, Mr Daniel Michael	Mulgrave	ALP	Lindell, Ms Jennifer Margaret	Carrum	ALP
Asher, Ms Louise	Brighton	LP	Lobato, Ms Tamara Louise	Gembrook	ALP
Baillieu, Mr Edward Norman	Hawthorn	LP	Lupton, Mr Anthony Gerard	Prahran	ALP
Barker, Ms Ann Patricia	Oakleigh	ALP	McIntosh, Mr Andrew John	Kew	LP
Batchelor, Mr Peter John	Thomastown	ALP	Maddigan, Mrs Judith Marilyn	Essendon	ALP
Beattie, Ms Elizabeth Jean	Yuroke	ALP	Marshall, Ms Kirstie	Forest Hill	ALP
Blackwood, Mr Gary John	Narracan	LP	Merlino, Mr James Anthony	Monbulk	ALP
Bracks, Mr Stephen Phillip [1]	Williamstown	ALP	Morand, Ms Maxine Veronica	Mount Waverley	ALP
Brooks, Mr Colin William	Bundoora	ALP	Morris, Mr David Charles	Mornington	LP
Brumby, Mr John Mansfield	Broadmeadows	ALP	Mulder, Mr Terence Wynn	Polwarth	LP
Burgess, Mr Neale Ronald	Hastings	LP	Munt, Ms Janice Ruth	Mordialloc	ALP
Cameron, Mr Robert Graham	Bendigo West	ALP	Napthine, Dr Denis Vincent	South-West Coast	LP
Campbell, Ms Christine Mary	Pascoe Vale	ALP	Nardella, Mr Donato Antonio	Melton	ALP
Carli, Mr Carlo Domenico	Brunswick	ALP	Neville, Ms Lisa Mary	Bellarine	ALP
Clark, Mr Robert William	Box Hill	LP	Noonan, Wade Mathew [8]	Williamstown	ALP
Crisp, Mr Peter Laurence	Mildura	Nats	Northe, Mr Russell John	Morwell	Nats
Crutchfield, Mr Michael Paul	South Barwon	ALP	O'Brien, Mr Michael Anthony	Malvern	LP
D'Ambrosio, Ms Liliana	Mill Park	ALP	Overington, Ms Karen Marie	Ballarat West	ALP
Delahunty, Mr Hugh Francis	Lowan	Nats	Pallas, Mr Timothy Hugh	Tarneit	ALP
Dixon, Mr Martin Francis	Nepean	LP	Pandazopoulos, Mr John	Dandenong	ALP
Donnellan, Mr Luke Anthony	Narre Warren North	ALP	Perera, Mr Jude	Cranbourne	ALP
Duncan, Ms Joanne Therese	Macedon	ALP	Pike, Ms Bronwyn Jane	Melbourne	ALP
Eren, Mr John Hamdi	Lara	ALP	Powell, Mrs Elizabeth Jeanette	Shepparton	Nats
Foley, Martin Peter [2]	Albert Park	ALP	Richardson, Ms Fiona Catherine Alison	Northcote	ALP
Fyffe, Mrs Christine Ann	Evelyn	LP	Robinson, Mr Anthony Gerard	Mitcham	ALP
Graley, Ms Judith Ann	Narre Warren South	ALP	Ryan, Mr Peter Julian	Gippsland South	Nats
Green, Ms Danielle Louise	Yan Yean	ALP	Scott, Mr Robin David	Preston	ALP
Haermeyer, Mr André [3]	Kororoit	ALP	Seitz, Mr George	Keilor	ALP
Hardman, Mr Benedict Paul	Seymour	ALP	Shardey, Mrs Helen Jean	Caulfield	LP
Harkness, Dr Alistair Ross	Frankston	ALP	Smith, Mr Kenneth Maurice	Bass	LP
Helper, Mr Jochen	Ripon	ALP	Smith, Mr Ryan	Warrandyte	LP
Hennessy, Ms Jill [4]	Altona	ALP	Stensholt, Mr Robert Einar	Burwood	ALP
Herbert, Mr Steven Ralph	Eltham	ALP	Sykes, Dr William Everett	Benalla	Nats
Hodgett, Mr David John	Kilsyth	LP	Thompson, Mr Murray Hamilton Ross	Sandringham	LP
Holding, Mr Timothy James	Lyndhurst	ALP	Thomson, Ms Marsha Rose	Footscray	ALP
Howard, Mr Geoffrey Kemp	Ballarat East	ALP	Thwaites, Mr Johnstone William [9]	Albert Park	ALP
Hudson, Mr Robert John	Bentleigh	ALP	Tilley, Mr William John	Benambra	LP
Hulls, Mr Rob Justin	Niddrie	ALP	Trezise, Mr Ian Douglas	Geelong	ALP
Ingram, Mr Craig	Gippsland East	Ind	Victoria, Mrs Heidi	Bayswater	LP
Jasper, Mr Kenneth Stephen	Murray Valley	Nats	Wakeling, Mr Nicholas	Ferntree Gully	LP
Kairouz, Ms Marlene [5]	Kororoit	ALP	Walsh, Mr Peter Lindsay	Swan Hill	Nats
Kosky, Ms Lynne Janice [6]	Altona	ALP	Weller, Mr Paul	Rodney	Nats
Kotsiras, Mr Nicholas	Bulleen	LP	Wells, Mr Kimberley Arthur	Scoresby	LP
Langdon, Mr Craig Anthony Cuffe [7]	Ivanhoe	ALP	Wooldridge, Ms Mary Louise Newling	Doncaster	LP
Languiller, Mr Telmo Ramon	Derrimut	ALP	Wynne, Mr Richard William	Richmond	ALP

[1] Resigned 6 August 2007
[2] Elected 15 September 2007
[3] Resigned 2 June 2008
[4] Elected 13 February 2010
[5] Elected 28 June 2008
[6] Resigned 18 January 2010
[7] Resigned 25 August 2010
[8] Elected 15 September 2007
[9] Resigned 6 August 2007

CONTENTS

THURSDAY, 2 SEPTEMBER 2010

CONTENTS

Thursday, 2 September 2010

The SPEAKER (Hon. Jenny Lindell) took the chair at 9.34 a.m. and read the prayer.

Mr McIntosh — On a point of order, Speaker, in relation to the resignation of the member for Ivanhoe, I have had a look at *Hansard* over the last 10 years and it is very clear that the Speaker has read letters of resignation. I can refer you to the specific dates. Certainly Lynne Kosky, André Haermeyer, Stephen Bracks, John Thwaites, Pat McNamara and Jeff Kennett all had their letters read to the house, and I was wondering whether, as a matter of courtesy, the Speaker proposes to read the member for Ivanhoe's letter to the house.

The SPEAKER — Order! Due consideration has been given to the issue the member for Kew has raised and, under advice, I am not reading the letter to the house.

BUSINESS OF THE HOUSE

Notices of motion: removal

The SPEAKER — Order! Notices of motion 5, 6, 77 to 86, 155 and 219 to 228 will be removed from the notice paper unless members wishing their notice to remain advise the Clerk in writing before 2.00 p.m. today.

PETITION

Following petition presented to house:

High Street–Epping–Findon–O'Herns roads, Epping: traffic lights

To the Legislative Assembly of Victoria:

Traffic lights for the intersection of High Street, Epping Road, Findon Road and O'Herns Road, Epping.

This petition of residents of Victoria draws to the attention of the house the need to install traffic lights at the above intersection, to improve safety and ease congestion for drivers and families that use these roads in Epping.

By Ms GREEN (Yan Yean) (1352 signatures).

Tabled.

Ordered that petition be considered next day on motion of Ms GREEN (Yan Yean).

ENVIRONMENT AND NATURAL RESOURCES COMMITTEE

Soil carbon sequestration in Victoria

Mr PANDAZOPOULOS (Dandenong) presented report, together with appendices and transcripts of evidence.

Tabled.

Ordered that report and appendices be printed.

DRUGS AND CRIME PREVENTION COMMITTEE

Strategies to reduce assaults in public places in Victoria

Mrs MADDIGAN (Essendon) presented report, together with appendices and transcripts of evidence.

Tabled.

Ordered that report and appendices be printed.

DOCUMENTS

Tabled by Clerk:

Statutory Rules under the following Acts:

Building Act 1993 — SR 82

Mental Health Act 1986 — SR 81

Subordinate Legislation Act 1994 — Ministers' exemption certificates in relation to Statutory Rules 81, 82

Water Act 1989 — Warrion Water Supply Protection Area Groundwater Management Plan under s 32.

BUSINESS OF THE HOUSE

Adjournment

Mr BATCHELOR (Minister for Energy and Resources) — I move:

That the house, at its rising, adjourn until Tuesday, 14 September 2010.

Motion agreed to.

MEMBERS STATEMENTS

Theresienstadt: Drawn from the Inside

Mr BATCHELOR (Minister for the Arts) — The Jewish Museum of Australia here in Melbourne is once again providing us with a rare window to the past with its latest art exhibition, Theresienstadt: Drawn from the Inside. This compelling exhibition from the Jewish Museum of Australia collection showcases some 150 watercolours and drawings of Paul Schwarz and Leo Lowit. Their work was hidden in a suitcase and carried out of the Theresienstadt concentration camp during World War II by Paul's wife Regina, who later entrusted them to the Jewish Museum in Melbourne.

The pictures speak of this horrific time in history. Paul Schwarz captured the intimate world of the housing barracks, secluded nooks, and little courtyards of the ghetto in almost idyllic watercolours. Leo Lowit's unflinching material is stark, unforgiving and sometimes ironic in its depiction of the horror, fear and desolation in Theresienstadt.

When we look at these pictures we see the Jewish holocaust experience, but we also get a snapshot of the daily life of a Jewish community in those circumstances. It is a small but extremely important part of Jewish art history, and it speaks volumes, especially today. The Theresienstadt: Drawn from the Inside exhibition is on at the Jewish Museum of Australia until 13 March 2011, and I encourage all members to visit it.

Jack Green

Mr BAILLIEU (Leader of the Opposition) — Jack Dawson Green was born in December 1923 in Camberwell. He was educated there and then at Melbourne High School. Jack was a keen sportsman and swam with the local swim club. Having first, like so many others, run away to join the army at the age of 15, Jack joined the Royal Australian Air Force at the age of 18, with his parents' approval. Eventually he was posted to the 603 City of Edinburgh Squadron flying out of Ludham Airfield in Norfolk.

While Jack was serving with the rank of warrant officer, tragically his Spitfire was shot down during a mission over Holland on 17 March 1945. Like so many other young Australians, Jack died in the service of his country and the defence of freedom. He was just 21. He was buried nearby in Barendrecht near Rotterdam.

In honour of the lone allied serviceman buried in their town, the local council erected a memorial in 2004, and every year since then a service has been held in Jack's memory. This year the council of Binnenmaas, where Jack's plane crashed, erected a further monument to his sacrifice and named a local street Jack Dawson Green Lane. That ceremony was attended by the year 8 children from Rehoboth School, who tend Jack's grave; the Australian ambassador; services personnel and Mr Anton de Man, who as a five-year-old had seen the crash and whose search for Jack's grave led to the tributes. I am pleased to say the service was also attended by Jack's 90-year-old sister, Joyce Morgan, and her daughter, Margaret Bardell.

The generous welcomes, flags, flowers and anthems 65 years after Jack's death were deeply moving and have only firmed, with love and tears, the bond between the people of Victoria and this beautiful corner of The Netherlands.

Lest we forget.

SpringDale neighbourhood centre: activities

Ms NEVILLE (Minister for Mental Health) — Last Friday I had the opportunity to attend and speak at the annual general meeting of the SpringDale neighbourhood centre. The occasion marked SpringDale's 21st birthday. It was an opportunity for me to acknowledge the centre's achievements and contributions over those years.

SpringDale plays an important role in bringing over 500 people together each week on the north Bellarine Peninsula. The centre tackles local issues, provides information to the broader community through the *SpringDale Messenger*, assists families with child care and provides opportunities for people to be involved in classes and recreational activities.

One of SpringDale's great strengths is the involvement of enthusiastic volunteers who give so generously of their time. One of those who was so central to the development and growth of SpringDale and whom we remembered on Friday was Ted Chidzey. He was actively involved with the committee of management, a daily visitor to the centre and a strong advocate for SpringDale who was passionate about supporting and working with young people. It is appropriate that his contribution was recognised with the Ted Chidzey Youth Encouragement Award.

The recipient of the inaugural award was Blaise White, a year 11 Bellarine Secondary College student who has taken on the challenge of raising funds for cancer research. Blaise and his cousin Zac will walk from The Zoo cafe at Drysdale to Tocumwal. They set out to

raise $10 000 but have already raised over $13 000. Congratulations to Blaise and Zac, and I wish them all the best on their walk.

Congratulations to Anne Brackley, the coordinator of the centre, and to the staff, committee of management and volunteers for their hard work and commitment.

Electricity: charges

Mrs POWELL (Shepparton) — It has been brought to my attention by Garry Parker, the managing director of the Shepparton-based Geoffrey Thompson group of companies, that regional businesses are being disadvantaged by the inconsistent tariff and metering options being offered to them by electrical distributors compared to those offered to many Melbourne businesses.

In late 2005 Mr Parker made a request to Powercor to have the companies' electricity billing amended from kilowatts to kilovolt amperes following his group's major investment in power factor correction equipment at one of its refrigeration plants to reduce electricity wastage and CO_2 emissions. The response from Powercor was that it was under no regulatory obligation to do so until the current Essential Services Commission price determination ends in 2010–11. Mr Parker was advised by the state government that there is an inconsistency between electricity distributors providing customers with kilovolt amperes metering options.

Because Powercor is not required by the state government to offer kilovolt amperes metering options, the Geoffrey Thompson group of companies has seen little change in its electricity account as a result of its electricity efficiency investment. In fact the benefits of those works currently flow to Powercor.

Mr Parker raised his companies' concerns with the state government in 2007. He received a response acknowledging the inconsistency between distributors in which the author stated that the government would continue to push this issue with the Department of Primary Industries energy policy division as it believes this issue needs further investigation from a government policy perspective and promised to keep him updated on this. It is now three years later, and Mr Parker has never heard back from the state government.

I call on the Minister for Energy and Resources to ensure that businesses in regional Victoria are not disadvantaged by unfair and inconsistent tariff and metering options from electricity distributors.

Amsleigh Park Primary School: *Where in the World is Carmen Sandiego?*

Ms BARKER (Oakleigh) — I had the great pleasure recently of attending this year's Amsleigh Park Primary School production titled *Where in the World is Carmen Sandiego?*. The production follows the pursuit of the world-renowned thief Carmen Sandiego who, following the theft of the jubilee diamond from the Melbourne Museum, travels to various countries. The theft and the pursuit around the world were reported and updated from the desk of *Today, Tonight, Tomorrow*, and I congratulate the newsreaders, Melissa Claydon and Carey Tsiavis. Without autocues they delivered the news with great professionalism and were just fantastic.

All grades participated, and after starting in Australia they sang and danced in the USA, including Alaska and Hawaii, Africa, China, India, Greece, Scotland, Egypt, Brazil, Russia and Ireland. One of the prep classes took us to Germany, and with their wonderful costumes we had no doubt that *Schnappi Das Kleine Krokidil* meant we were in the company of some very happy small crocodiles. The staff took us to France, and their rendition of the cancan was performed with great skill and enthusiasm. The production concluded with the school choir singing *I Still Call Australia Home* and then the whole school singing *Home Among the Gum Trees* and *Waltzing Matilda*.

Thanks to all the staff, particularly Rebecca Carr and Samantha Hayes for their leadership, coordination and management of the production, and thanks to all parents and families who assisted with all the tasks required both before and on the night.

Amsleigh Park Primary School is a fantastic school with growing enrolments and great staff, under the very capable leadership of Sally Davies, and I congratulate them on their continuing care and education of many local students. Also, our very best wishes go to Frank Catalano, who after six years as assistant principal at the school has moved to Glen Waverley Primary School, where he is principal.

Water: retail prices

Ms ASHER (Brighton) — I have previously revealed to this house the appalling fact that the Minister for Water does not even know the price of water. I do not expect the minister to know the price of water for every tier, for every year, for all three Melbourne Water authorities off by heart — I would not expect that for a minute — but I do expect that when he is asked a question on notice he will be able to

give correct answers in writing. We have seen the sad circumstance already that on the figures from July 2010 the minister was wrong. If we are to believe the minister's answers, South East Water, by way of an example, will have massive prices as of 1 July 2012: $1.74 for block 1, $2.11 for block 2, and $ 3.41 for block 3, which are of course significant increases from 2010. The question will be re-lodged so that the minister can correct his errors for the 2010 year at least.

It is a tragedy that the community will be paying significantly increased prices for water, and this minister is not aware of increases. I repeat the point: I do not for 1 minute expect the Minister for Water to know every water authority's individual pricing for every year at every block level, but in relation to a question on notice I do expect the Minister for Water to understand the price of water and the impact that is having on Melburnians.

Peninsula Health: funding

Dr HARKNESS (Frankston) — Peninsula Health will receive $30 million for new capital works and extra beds as part of the health agreement between the Victorian and commonwealth Labor governments. Peninsula Health will receive $5 million to treat even more emergency patients and boost access to elective surgery. The funding will see the expansion of acute and short-stay beds at Frankston Hospital in order to develop a transit lounge in addition to 24 acute and short-stay beds. Peninsula Health will also receive $25 million for 30 additional subacute beds and a community rehabilitation centre at the Mornington Centre. The rehabilitation centre will significantly boost local access to support older people with complex care needs in returning home with maximum independence and function. Reducing the number of patients waiting for elective surgery and boosting access to high-quality health services closer to home is a key priority for this government.

Police: Frankston

Dr HARKNESS — Since Labor came to government police numbers in Frankston have now officially doubled. There has been an increase in police numbers locally of 105 per cent. When the Carrum Downs police station opens an extra 20 police will be new to the area. One sergeant reported to the local press recently when commenting on a police operation:

> 'We were able to charge so many because of the extra police … already at the station. It's really helping us'.
>
> …
>
> 'The kids were quite surprised by the sheer number of police …

Peninsula Link: trail extension

Dr HARKNESS — Cyclists and walkers will benefit from an extension to the Peninsula Link trail, a new off-road path being constructed as part of the $759 million freeway project. Nearly 3 kilometres of extra path will be added to the new trail, making it 25 kilometres in length, to cater for the growing number of people walking and cycling in the area. Previously plans for the path ended just south of Baxter, and we are extending it so people can travel along the disused Mornington tourist railway and across Moorooduc Highway into the Mount Eliza regional park and the tourist railway station.

Roads: south-western Victoria

Dr NAPTHINE (South-West Coast) — The return of normal wet winter weather has highlighted the significant lack of funding for the highways and arterial roads across south-western Victoria. These highways and arterial roads are the responsibility of the state government. The dangerous and appalling condition of the roads across south-western Victoria clearly demonstrates a lack of funding by the city-centric Brumby Labor government. Typically, the Brumby government prefers to spend $20 million putting fairy lights on the West Gate Bridge and $6.6 million on politically motivated self-promotional advertising of its unfunded transport plan to fixing the large number of dangerous potholes, truck ruts, uneven and broken surfaces and non-existent or unsafe shoulders on key highways and major arterial roads in south-western Victoria.

Recent headlines in local papers have highlighted the disgraceful state of our roads and the massive damage bills being incurred by innocent motorists due to these huge, dangerous potholes on the Hopkins Highway, the Henty Highway, Caramut Road, Nelson Road, the Woolsthorpe Heywood Road and even our no. 1 highway, Princes Highway west. The Warrnambool *Standard* of 31 August ran a headline 'Hell holes — pothole-riddled local highways danger zones'. On 28 August the Hamilton *Spectator* had the headline 'Disgrace' and a banner headline 'Roads going to pot (holes)'. The Warrnambool *Standard* of 1 September had a headline 'Pothole damage keeps tyre and rim outlets busy', with a veteran tyre retailer quoted in the article as saying, 'It's like an early Christmas for dealers'.

Highways and major arterial roads are important to the people of south-west Victoria. They are in dangerous and unsafe condition, and urgent action is needed — —

The DEPUTY SPEAKER — Order! The member's time has expired.

Aberfeldie Bowls Club

Mrs MADDIGAN (Essendon) — I would like to congratulate the Aberfeldie Bowls Club, which opened its greens for the 100th time this year. The Aberfeldie Bowls Club is an essential part of Essendon and has been very active in the last 100 years. The club started off as the Aberfeldie Bowling, Croquet and Tennis Club on 16 March 1910, and it is one of the few clubs that owns its own land. At that stage people who wanted to be part of this club could buy a frontage foot that went the whole length of the property for 10 shillings each. That was very successful, resulting in a significant amount of land.

Humorously enough, during the era of the Kennett government-appointed commissioners, one of the Moonee Valley commissioners came up with the great idea of closing some bowling greens and picked Aberfeldie as one of them. He was not aware that it was not Crown land and that the Aberfeldie Bowls Club owned its own land, and he had to retreat very quickly, as he did on many other issues in Essendon.

The bowls club has been very active in encouraging young players. I would like to congratulate its current president, Laurie McDonald, as well as Margaret Clark, Joan Chamberlain and the other members for all the great work they have done with this club. They open the greens on Saturday and are looking forward to a very exciting season and a very big event on 28 November — celebrating not only the election result but also their 100 years of operation.

Ambulance services: Morwell

Mr NORTHE (Morwell) — The closure of Ambulance Victoria's communications centre in Morwell on 4 September has created a cause for concern for existing local employees. The closure this weekend will occur due to the transfer of regional ambulance communication services to the Emergency Services Telecommunications Authority centre located in Ballarat. The consolidation of communication services is not without criticism, with concerns raised about the cost-benefit analysis of the system being established in Ballarat, the potential loss of local knowledge in regional areas and the loss of local jobs. Interestingly back in 1999 when in opposition the current minister for Police and Emergency Services bemoaned the potential loss of local jobs given the proposal to close some Rural Ambulance Victoria regional offices and centralise administrative services in Ballarat.

This government should not be so hypocritical. I say this because we now have a situation where some Morwell communications employees still have no viable employment opportunities available to them after the closure of the Morwell centre in two days time. It is simply not good enough that some employees still face a future of uncertainty, and I call upon the Minister for Health to resolve these matters urgently. While I understand that a number of employees have accepted other positions within Ambulance Victoria or voluntary departure packages, the Brumby government has long known the Morwell closure was imminent. But it appears very little has been done from a government perspective to secure the future of some long-serving members of the ambulance service in Victoria, and this is not acceptable.

Cancer After Care Group Geelong

Mr TREZISE (Geelong) — On 19 August I was once again pleased to attend the annual general meeting of Cancer After Care Group Geelong, a group I have had the pleasure of working with for the past decade. To say the group is one of the most effective and committed organisations I have come across would be an understatement. Testament to that is that at this year's annual general meeting the group presented a $883 000 cheque to the Geelong Hospital for the purchase of a RapidArc radiotherapy machine. That is in addition to the $2 million the group has raised for cancer services over the last 32 years. The purchase of RapidArc radiation technology means that patients of the Andrew Love oncology centre will be treated with state-of-the-art technology, a credit to the Cancer After Care Group Geelong. The machine is the first to be operational in Victoria, and it provides doctors in Geelong with the latest technology.

I take this opportunity to congratulate and commend all members of the Geelong Cancer After Care Group and in particular its current committee president, Libby Bate; vice-president, John Hill; secretary, Joyce Johnson; and treasurer, Jim Lingard. While talking about Barwon Health, I would also like to welcome to the organisation the new chief executive officer, David Ashbridge. I know he has already visited every workplace in Barwon Health, and that has been appreciated by the staff. I look forward to working with him for many years to come.

Cyberbullying: government performance

Mr KOTSIRAS (Bulleen) — The Brumby Labor government equates to 11 years of incompetence, 11 years of mismanagement and 11 years of spin instead of substance. It is a government that is prepared to spend millions of dollars of taxpayers money to spread misinformation to give the impression it is doing something.

In 2006 as a result of an increase in the number of incidents involving cyberbullying, the Liberal members of the Education and Training Committee recommended that there be a coordinated and managed approach between schools, families and government to ensure that cyberbullying is tackled head on. However, the Labor members of the committee voted against this recommendation because they felt that cyberbullying was not increasing and that the government had enough safeguards in place. They were not prepared to face reality and admit that the Victorian Labor government was sitting on its hands and hoping the problem would simply disappear. They placed their political ambitions before the wellbeing of students. They were wrong.

Recently the *Manningham Leader* announced a cybersafety campaign because of the increase in cyberbullying incidents in our community. I congratulate the *Manningham Leader* for taking this initiative, but I call on the state government to stop its media blitz about how good it is and to spend the money on young Victorians.

Minister for Innovation: performance

Mr KOTSIRAS — On another issue, I condemn the Minister for Innovation for failing this very important sector of the Victorian economy. Minister Jennings has now been the Minister for Innovation for nearly four years, and one has to ask what he has achieved in those four years. Victoria is falling behind simply because this minister has shown no interest in and no understanding of what innovation means to the economy.

Northern Football League: achievements

Ms GREEN (Yan Yean) — As the 2010 football and netball season has come to an end for some and is coming to an exciting head for others, I congratulate the northern football and netball league for the great competition offered, which is growing massively. I want to thank the coaches, parents, officials, volunteers and even the umpires for the part they all play in Australian sporting life in the north. In particular, junior football is showing massive growth in the expanding suburbs, and I want to congratulate all the clubs that fielded teams of boys and girls.

I especially want to congratulate South Morang, which played in six under-age finals, winning four; Whittlesea club which played in three, winning one; Yarrambat, which played in two, winning one; and Diamond Creek, which played in two and won one. I also say tough luck to Epping, which played in two finals, and Mernda, which played in one — better luck next year.

In the seniors this weekend Diamond Creek versus Whittlesea will obviously be an exciting match in the second division grand final, and in the third division grand final I will be backing Hurstbridge ahead of Parkside — I am sure much to the chagrin of the member for Northcote.

In netball Macleod unfortunately defeated Diamond Creek Blue, Mernda A defeated South Morang in a great game and unfortunately my own team, Epping B, lost to North Heidelberg by one goal for the third time in five weeks. Well done, everyone.

Albury-Wodonga cancer centre: establishment

Mr TILLEY (Benambra) — Last Sunday I joined over 1400 border residents who came together to rally for the establishment of an Albury-Wodonga commonwealth cancer centre. Each year around 1400 new cases of cancer are diagnosed in the Albury-Wodonga region. Most of these patients are forced to travel hundreds of kilometres for surgery, diagnosis and follow-up treatment. Precious little cancer treatment and support exists on the border. What exists is stretched, and patient recovery is undoubtedly impacted when cancer patients have to travel great distances, with all the associated stress that that can cause for people who need to be focused on more important things.

Under the commonwealth government's regional cancer centre program, cancer centres were to be built in regional hubs which lack treatment options. It is unfortunate that in a political environment which has obviously seen some quite robust electioneering the announced locations for these commonwealth cancer centres seem on face value to put politics before patients. Albury-Wodonga is a prime area for the establishment of such a centre given its distance from major metropolitan cities and the fact that the large regions of north-eastern Victoria and the Riverina in New South Wales see Albury-Wodonga as their hub.

I commend the efforts of organisers, in particular Jenny Black, who has been a long time dedicated cancer

patient supporter both as a nurse and through her work with Brave Hearts, for leading the campaign to ensure that cancer treatment on the border is improved. I call on the Victorian government to support my communities and call for the establishment of a commonwealth cancer centre.

Solway Primary School: principal for a day

Mr STENSHOLT (Burwood) — On Monday of last week I had the privilege to be principal for a day at Solway Primary School in Ashburton. Solway primary is a wonderful primary school led by a dynamic principal, Julie Wilkinson. Although well and truly in suburbia, the school has managed to develop a very strong sense of community. Students, teachers, parents and families at Solway primary feel very much part of a local community that cares.

My stint as principal for a day coincided with Book Week, so the day started with a fun-filled assembly with most of the children and teachers dressed up as their favourite book characters. A parade of book characters was the highlight of the assembly — a veritable carnival of characters. I was also able to induct some new student leaders for the second half of the year as well as hand out reading achievement awards to many students. Solway primary has an enviable reputation for its strong literacy program, and in the past some students have won national awards for story writing.

Also on the agenda for the day was a staff meeting; a meeting with Tania Coltman, the president of the school council, to discuss its Building the Education Revolution project; and a tour of the school with the principal. A special treat was reading stories to the prep students. I was also given a presentation by students of their work on sustainable towns, and I ended the visit with an open forum with years 5 and 6 where I fielded many questions on politics, the environment and what I do as an MP. I commend Solway primary for its achievements, and I commend the program to Parliament.

Ashwood College: principal for day

Mr STENSHOLT — I also had the opportunity to participate as principal for a day at Ashwood College, where I was joined by the Premier. The Premier heard directly from the students about the impact on them of the recent fire. We toured the school, and the Premier ably adjudicated a debate on climate change, talked to the Victorian certificate of education media class and enjoyed excerpts from the school musical.

Economy: cost of living

Mr WELLER (Rodney) — I rise to bring to the attention of the house the financial difficulties now being faced by Victorians right around the state. It has become abundantly clear that the skyrocketing cost of living, which is a direct result of the government's reckless and inept policies, is hitting home in a major way on family budgets.

Aside from price hikes occurring across the board, it is the cost of key essentials which is having a major impact on the explosion in the cost of living we are now seeing. Municipal rates continue to rise steeply as councils are forced to try to recoup the new and extra costs being imposed on them by the state government. Power costs, another essential, have also risen dramatically, again as a direct result of the government's bungling. A prime example of this is the so-called smart meter program. My office has been swamped with complaints from constituents already battling to meet the rising cost of power who are now being lumped with a major cost for a meter they will never own and which delivers no direct benefit to them.

And of course there is water. Victorians in both metropolitan and rural areas are seeing their water bills explode as the government scrambles to find the money it has squandered on ill-advised and badly flawed water management programs. Cost of living increases are now out of control, and Victorians everywhere are crying, 'Enough!'.

Spotswood Primary School: centenary

Mr NOONAN (Williamstown) — On Sunday, 15 August 2010, approximately 1000 people gathered at Spotswood Primary School for a reunion to celebrate the school's centenary. History records that Spotswood Primary School opened as an adjunct to Williamstown state school back in 1910, after local residents expressed concern at the difficulties they had experienced in enrolling and transporting their children to primary schools in neighbouring suburbs such as Yarraville and Newport. It was not until 1914 that the land the school stands on today was secured and the actual Spotswood Primary School was established with 157 students.

We are extremely indebted to local historian Helen Penrose, who decided to research and write the school's history as part of the centenary celebrations. Helen describes the book, entitled *Lessons in Community*, as her gift to the community, but like most writers she understates the significance of her own work. The book now provides our community with a valuable link to

the school's past, and as Helen wisely suggests it should also generate productive thought about the future.

I congratulate all those involved in organising such an enjoyable and memorable event to mark the Spotswood Primary School centenary. In particular, I want to acknowledge the organising committee, which included current principal Jackie Green, Helen Penrose, Julie Taylor, Alison Riley, Angela Boquest and Anne McNamara, along with the school's council, led by president Mick Brady. I would also like to thank the current teachers, staff and students of Spotswood Primary School for inviting the entire community to participate in their celebrations.

Hospitals: waiting lists

Mr BLACKWOOD (Narracan) — I take this opportunity to bring to the attention of the house the enormous problems that our hospital system is battling right across the state.

Over the last 11 years we have witnessed a steady decline in the ability of many of our public hospitals to meet the Brumby government's own benchmarks. The government has been unable to resolve the crisis in our hospital system because it has presided over a period of false reporting which has led to thousands of patients languishing on hidden waiting lists.

As indicated in the integrated performance reports for Victorian hospitals for July 2008 to September 2009, elective surgery waiting lists continue to grow, and more and more patients are spending unacceptably long periods on trolleys and in chairs in emergency departments waiting for a bed. Victorians who waited more than 24 hours in an emergency department for a bed in the June to September quarter 2009 numbered 397. This was over 100 more than in the previous quarter in 2009. From June 2008 to September 2009 more than 10 000 Victorians had elective surgery cancelled by hospitals as our health system struggled to cope.

As the Victorian president of the AMA has said:

> Our doctors and nurses do a fantastic job but … our public hospital system is unable to cope with its current level of resources.

It might be okay for Minister Andrews to claim that the state government is performing more surgery than at any time in our state's history, yet the sheer magnitude of the problems that our hospitals are currently facing indicates quite clearly that he is failing in his role as Minister for Health.

Eumemmerring Primary School and Chalcot Lodge Primary School: RoboCup

Mr DONNELLAN (Narre Warren North) — Last week I had the opportunity to attend a presentation by students from Eumemmerring Primary School and Chalcot Lodge Primary School. The presentation they put on was in relation to robotics, because they recently won the state junior RoboCup championships held at Scienceworks. The students had to undertake these tasks by themselves and put together small robots that danced and pranced and carried on like a pack of pork chops; they did a very good job of entertaining all of us. I congratulate the students and the principals of the schools, Wayne MacDonald and Kay Schlanger, and Tamsin and Karin who put this together and beat all the other schools in the state. Congratulations — it was marvellous.

Harkaway scout camp cook-off

Mr DONNELLAN — Last Saturday I also had the opportunity to visit the Harkaway scout camp, which was holding a cook-off competition for the local scouts, cubs, joeys and so forth in Casey. The competition involved them making an entree, a main course and a dessert — not in a kitchen but in a very basic environment. I enjoyed the bush doughnuts that were provided by the Hampton Park scouts, and I also took note of the interesting way that the Eumemmerring scouts made pizzas in a thick pan. They did a marvellous job. Congratulations to the manager of the Harkaway scout camp, Rod Gill, and his team for putting on the competition.

Fairfield Primary School: 125th anniversary and community art show

Ms RICHARDSON (Northcote) — On 15 August I had the great privilege of attending Fairfield Primary School's annual community art show. That it was also this great school's 125th anniversary gave the day an added significance. As well as featuring the work of over 100 artists from the community, the school hosted a reunion and an exhibition by its history society. Families from the local community as well as many alumni and former teachers took part in the celebrations.

The highlight for me, however, was the wonderful commemorative book launched on the day. It is the culmination of a five-year project involving students, teachers and parents. Through this project students uncovered and assembled an archive with fascinating photos and documents that speak directly of the experience of past generations. The photos are

fascinating, and the ups and downs of the school over 125 years are brought to life by a wonderful author, historian and parent, Emma Russell. This book is a beautiful testament to the school and the community.

The Fairfield Primary School history project was run by teacher and history committee convenor Hamish McPherson. Great support was provided by Judy Walsh, who is retiring this year after 15 years as the school's much-loved principal. Special thanks are due also to Janet White, Sian Edwards and Janet Strachan.

Funds raised by the art show support the school's extensive art program, including the Artist Involvement Program run by Marjie Tkatchenko, a teacher at the school since 1975. This year's joint parent convenors of the art show were Jo Utting and Julie Anderson. Thanks are also due to committee member Sophia Dimitropoulos. They all worked tirelessly to coordinate dozens of parent volunteers who together helped make the day a resounding success.

Fairfield Primary School sets the standard in primary school education. Students, parents, teachers and staff can rightly be proud of their school's achievements. Here's to another 125 years at Fairfield Primary School.

CONFISCATION AMENDMENT BILL

Second reading

Debate resumed from 1 September; motion of Mr HULLS (Attorney-General).

Mrs MADDIGAN (Essendon) — I am pleased to rise to support the Confiscation Amendment Bill 2010. I guess as the member for Essendon it is appropriate that I speak on this bill because my electorate has housed a number of well-known criminals who I sincerely hope have made a significant contribution through the previous Confiscation Act to the state government coffers.

The Confiscation Amendment Bill 2010 improves and clarifies the operation of the earlier act to ensure that it remains an effective tool in deterring and combating serious crime. The amendments in the bill give effect to the government's 2006 election policy commitment to further streamline the operation of Victoria's confiscation scheme.

The act currently contains both civil and conviction-based confiscation powers. The civil forfeiture powers do not require a criminal conviction. They are available where property is suspected to be tainted in relation to serious criminal activity.

The conviction-based powers in the act enable property to be forfeited following a conviction for a criminal offence. This includes powers to forfeit property under a discretionary court order upon conviction and powers to forfeit property automatically following conviction for serious profit-motivated offences. The act also contains powers for a court to make a pecuniary penalty order requiring a person to pay to the state benefits derived from criminal activity.

The need for amendments to the 1997 act relates to the fact that well-organised criminals in our community are getting smarter and more sophisticated in the way they try to hide assets so they cannot be confiscated by the state. For example, this can include setting up sham creditors and property transfers to create false third-party claims over confiscated property. Such arrangements undermine the act's objectives in disrupting and deterring criminal activity and depriving persons of ill-gotten gains.

The bill provides for a new, general anti-avoidance power to set aside or vary schemes that have the power of defeating the act's operation. The new anti-avoidance power provides a flexibility to target anti-avoidance arrangements, whatever form they may take. I believe these provisions will be very warmly welcomed by our community at large, because nothing annoys the community more than seeing, if I might say, people flaunting their wealth in front of others when they have achieved that wealth through criminal activities in the state.

The bill contains a series of amendments that strengthen and expand the operation of existing powers and procedures under the act. They include changes to: firstly, expand the availability of automatic forfeiture and civil forfeiture powers in relation to money laundering offences and certain fisheries offences; secondly, extend the tainted property substitution powers which are currently limited to court-ordered forfeiture to apply to automatic forfeiture cases; thirdly, create a new, general anti-avoidance power for the court to set aside schemes or arrangements that are designed to defeat the act's operation; and fourthly, enhance the information-gathering powers of confiscation agencies to enable them to obtain key information about property that is subject to this act.

These amendments strengthen the confiscation scheme in its aim of deterring and disrupting serious and organised crime and its disgorging of ill-gotten gains. The bill also contains a series of amendments to clarify the act's operation and procedures, including changes to ensure that the restraining order powers operate as originally intended; to clarify the powers to award costs

in confiscation proceedings; to clarify the operation of the pecuniary penalty under powers in the act; to clarify that a derivative use immunity applies to a number of provisions under the act that require persons to provide information; and to change the period of a freezing order from 72 hours to three business days to address practical problems that arise when a freezing order is made before a weekend. These changes are aimed at enhancing the effective and efficient administration of Victoria's asset confiscation laws.

The bill also separates the civil forfeiture powers from the conviction-based powers and clarifies the operation of the civil forfeiture powers. The civil and conviction-based forfeiture powers are currently intertwined within the act, and the nature of civil forfeiture proceedings may be unclear in some respects. This may create complexity and confusion in the operation of these powers. The bill therefore clarifies these powers by separating out the key civil forfeiture provisions into their own part in the act and clarifying the civil forfeiture proceedings operating in rem rather than in personam. The amendments also expand civil forfeiture to capture property that is likely to be used in future offending in addition to property used in past offences. This change, along with the other civil forfeiture amendments, reinforces the distinct purposes of civil forfeiture. These powers are preventive and remedial, and they are aimed at disgorging tainted property and preventing its use in future illegal activity. This is in contrast to the conviction-based powers in the act, which have similar objectives but also involve a punitive element.

I believe these powers are very good and will make the act stronger. I assume that in years to come we will have more bills relating to confiscation as criminal elements in our community find different ways of trying to hide their assets from the state; however, I believe these are a strong step forward, and I look forward to the bill passing through the house.

Mr McINTOSH (Kew) — The confiscation laws in this state were initiated by the former Attorney-General, Jan Wade, under the Kennett Liberal government, and the confiscation laws have been extended by the current government and the current Attorney-General.

The confiscation of proceeds of crime is not something that members on either side of the house disagree with, but most importantly the matter I want to touch on is the suggestion that in the second-reading speech the minister refers to clarifying and improving a number of procedural matters relating to the asset confiscation scheme. There has been effectively a complete rewrite of parts 2 and 3 of the existing legislation in relation to, firstly, the attaining of what is now called a civil forfeiture restraining order and then ultimately to the forfeiture of property subject to a conviction of a number of scheduled offences.

If I can perhaps identify them, the offence of cultivating and possessing a commercial quantity of an illegal drug is a schedule 2 offence, and certainly the opposition has no qualms about that. That is part of the original legislation and has been effectively rewritten into the current bill, so the opposition does not have any qualms about the fact that an offence such as cultivating and possessing a commercial quantity of a drug should be a civil forfeiture offence.

An issue arises as to the process. It is a bit unclear to me whether or not in the clarification and improvement of a number of procedural matters relating to the asset confiscation scheme, as the Attorney-General has set out in his second-reading speech, they have been imported into the current rewrite of that scheme. Let me make it perfectly clear that the opposition does not in any way disagree with the fact that assets should be originally restrained when a charge is originally laid or within 72 hours of that charge potentially being laid, and certainly on conviction — the opposition does not in any way disagree with the fact that those assets would be forfeited automatically once that conviction was sustained in a court of law. My concern is that the Attorney-General in rewriting this legislation is at pains to point out — —

Mrs Maddigan interjected.

Mr McINTOSH — Thank you very much, I am sure the whip will be very happy.

Mrs Maddigan interjected.

Mr McINTOSH — Thank you, but do not waste too much of my time. In relation to the bill, the process is a civil process and is accepted to be a civil process; it is not a criminal process. In many respects the actual procedure that is to be adopted is akin to what a commercial lawyer would describe as something like a Mareva injunction, which is an injunction that restrains property; and it restrains it urgently where, if notice has been given to the other side, there may be some profound impact involving the destruction of property. For example, if computers were seized, while the physical property itself may be important, the information contained on the computers would be far more valuable and may be subject to being destroyed if notice were given to a defendant. Accordingly, in such cases the courts have allowed a Mareva injunction, which is a civil remedy of civil forfeiture. Restraining

orders are very akin to that process. One of the things I would like the Attorney-General to clarify is whether or not the important thing is — —

Mrs Maddigan interjected.

Mr McINTOSH — I hope I get another 2 minutes because of the discussion across the table. The critical thing is that all the civil rules under the current regime in relation to obtaining these sorts of orders have not been imported. The first is that the Crown can make an application without notice to the Supreme Court or County Court, which is a specific provision in both the old act and the rewrite. That is done almost as a matter of course: the Crown obtains the order without notice being given to the defendant and, critically, the defendant's property rights can be impacted. While a preserving order, an interlocutory order or an ex parte order, may be gained, there should be some ability to question whether or not that order was properly made.

Certainly there should be the opportunity that an order being made without notice should be made only when there is a demonstrable reason in relation to urgency — that is, when it is made without notice to the defendant and there is a potential for the destruction of valuable property. I do not disagree that that may arise more often in relation to drug and similar cases. This provision is aimed at dealing with the Mr Bigs of the world, but the critical thing is that there ought to be an opportunity to perhaps put the other side of the argument at some stage.

Justice Robson in the 2007 Supreme Court case *DPP v. Grillo* said that it is almost axiomatic in these sorts of proceedings that the defendant should be given the opportunity of being heard in relation to the taking of their property and that while a holding ex parte order might be granted, there should certainly be an opportunity for the defendant to be heard. That should be specifically provided for, and perhaps the Attorney-General could clarify that.

The second aspect I raise is that if there is an obligation to put in material, there should be a clear, unequivocal obligation, as in a civil process like a Mareva injunction, of absolute candour on behalf of the Crown as to the reasons it is seeking the material and on what basis. The notion of absolute candour should be clearly imported into the legislation so that there would be an obligation on the Crown to provide absolute candour. If absolute candour were not provided, that would be a reason for a forfeiture order to be defeated.

The third aspect — it is another matter I would like the Attorney-General to provide clarification on; and again we do not disagree with the regime — is that where a clear error has been made there should be some mechanism for undoing the ultimate forfeiture order. That should be imported into the legislation so that it can be reviewed if there is a clear inequity or injustice created either by way of a lack of candour on behalf of the Crown or perhaps through some process going wrong in the system. Most importantly, once a forfeiture order is made, it should be capable of being reviewed by a court if those sorts of civil matters are breached.

Debate adjourned on motion of Ms KAIROUZ (Kororoit).

Debate adjourned until later this day.

OCCUPATIONAL LICENSING NATIONAL LAW BILL

Second reading

Debate resumed from 1 September; motion of Mr CAMERON (Minister for Police and Emergency Services).

Mr LIM (Clayton) — I rise to support the Occupational Licensing National Law Bill 2010. The general thrust of this bill is to realise the decision by the Council of Australian Governments to set up a national system that can provide licensing arrangements for businesses and workers. Such arrangements are required to create consistency across Australia and enable licensees to carry out work anywhere in Australia without the trouble of having to hold multiple licenses, as is the experience under the present system. Lastly, such arrangements need to maintain the important function of offering protection to general consumers, staff and the public.

The provisions of the bill detail some new proposals in that the bill aims to implement national law — namely, the national occupational licensing law. The law will apply in the following areas. A process in relation to disciplinary action against licensees has been drawn up for the licensing authority to help workers and businesses to understand how to better operate across borders and throughout the whole country. The bill aims to reduce the existing overlap of regulations and, in some cases, rules by setting up formal requirements for relevant individuals and businesses to be licensed to undertake work. For certain occupations the national regulations will be used to further specify licensing requirements.

The bill aims to cut some unnecessary red tape and make a more streamlined national regulatory system. It also proposes to establish a formal process for applicants and licensees to pursue internal reviews of the licensing authority as well as for the Victorian Civil and Administrative Tribunal (VCAT) to hear appeals of particular decisions. In order for the national law to be more effectively enforced, authorised officers will be provided with specific powers giving them the authority to oversee the national law as well.

Some crucial technical amendments in this bill include: the establishment of a licensing authority which will be monitored and governed by a board; setting up a more streamlined system of governance for the NOLS (national occupational licensing system); the establishment of the Occupational Licensing Advisory Committee (OLAC); and setting up specific functions of the ministerial council.

Necessary protection for consumers and the general public will be maintained. A national register system will be provided by the bill to assist existing and potential licensees, and the public will also have access to such registers for information and necessary knowledge. Systems in the financial, reporting and planning categories of the national occupational licensing system will be provided by the national law. It will cover freedom of information and laws relating to archiving as well as to the Ombudsman and certain privacy issues.

In conclusion, the national law provides consistency in licensing policy nationally and continues to offer a fair degree of flexibility to tackle particular issues. The bill has also been found to be compatible with the human rights charter, and I commend it to the house.

Mrs VICTORIA (Bayswater) — I rise to speak on the Occupational Licensing National Law Bill 2010. The introduction of this bill has come about essentially because of what was agreed on by COAG (Council of Australian Governments) back in April 2009 as a result of the 2006 Productivity Commission study by Gary Banks. That established that there were many inconsistencies in occupational licensing throughout the country and recommended that we have a national occupational licensing system. That is how this bill has come about.

Victoria is the first state to come on board with this; the other states and territories are to follow. The idea is that the national system will remove the inconsistencies currently experienced by those who are seeking work in particular occupational areas in jurisdictions other than where they are registered and by those travelling between states. We have a lot of border towns where people work on one side of the border and live on the other.

The seven occupational areas initially affected by the provisions of this bill fall within two groups: those that will be affected from 1 July 2012 and those coming online in 2013. Building and building-related occupations; electrical occupations; land transport occupations, which is passenger vehicle and dangerous goods drivers only; and maritime occupation areas come online in 2013. Plumbing and gasfitting; property agents, excluding conveyancers and valuers; and refrigeration and air-conditioning mechanics will be affected in 2012.

A couple of occupational areas that have not been included in the system at this stage have been brought to my attention. I can understand that we have to go with the occupations in which people are most likely to gain employment in other states, but security service providers are not mentioned at all and neither are gaming service providers. It has been brought to my attention that croupiers may often deal a game here in Victoria or may be very specialised in a particular game at Crown Casino, but that if they want to relocate — for example, because their spouse has to relocate — and to work at Star City Casino, currently they cannot take their gaming licence with them. Whether it be a casino or even a TAB or pokies venue, at the moment that licence is not transferable. Motor car traders is another occupational group that it has been brought to my attention has not been mentioned in the bill.

The idea behind this legislation was that COAG wanted to work towards a seamless national economy. This was something that it touted back in 2008. Certainly I think this legislation goes a long way towards harmonisation in terms of people being able to work where they want to. We are a far more transient society than we were two or three decades ago — or even one decade ago. I think what is happening with this is extremely logical.

The only thing that I can see missing from this at the moment — and I believe there are medium-term plans to rectify this — is that there is no equity among registration plans, so people who are having to, for example, work here in Victoria as an electrician and then go to New South Wales, Queensland or Western Australia as an electrician face quite different registration fees if they register in one of those other states. There is quite an inequity there, but as I say, I believe that is going to be addressed, and I am pleased about that.

This will reduce a lot of red tape. It will also increase labour mobility, giving people a much better chance if, for example, an industry goes quiet here to pack up their families, move and still have a viable future. As I said, this legislation is also particularly good for those who live in border towns like Echuca-Moama and Albury-Wodonga. I think a national system is a terrific idea, and we should all be supporting this bill.

Ms HENNESSY (Altona) — I rise to speak in support of the Occupational Licensing National Law Bill. As the previous speaker outlined, this legislation is yet another important step forward in the general thrust at a COAG (Council of Australian Governments) level to move to a seamless national economy, a thrust that is critically important if we are to continue to improve the productivity not just of this state but of this nation.

As we know, COAG has acknowledged that Australia's overlapping and inconsistent regulations have had a significant impact on productivity growth, and all levels of government are to be commended for the incredible energy with which they have pursued the issue across a whole range of regulatory industries. This bill takes a step forward in terms of addressing the issue of national occupational licensing and develops a framework around the system for that regulation.

Historically occupational licensing has been done by the states. This has led to a whole range of different processes, standards and policy settings across various jurisdictions. Whilst some attempts have been made to address those issues by virtue of implementing systems of mutual recognition, there have still been significant inconsistencies, and those inconsistencies have acted — and most of the evidence from the industries supports this — as a disincentive to the mobility of a workforce, which goes not only to productivity but also has an impact upon both small and large businesses and upon individuals who may choose to work in different jurisdictions on a short, medium or longer term basis. The purpose of developing a national licensing scheme is to reduce the inconsistencies, to reduce those costs and to enable a more mobile workforce but at the same time to not jeopardise things like occupational health and safety and public health.

Turning to the scope of the national licensing scheme and looking at policy functions and systems, it will cover the policy setting and functions of occupational areas, licence policy enforcement, skill and education requirements, financial and disciplinary arrangements and appeal rights. We also need to look at what policy functions will remain with the states within the existing jurisdictional regulation. They will be conduct requirements, consumer protection, public safety laws, consumer complaints, consumer remedies and appeal mechanisms.

With this new approach some more work will need to be done to ensure that the national licensing system interfaces well with the existing licensee requirements. New applicants and existing licensees will have to apply to an existing regulator. They will have a delegation from the national regulator in order to process applications for a licence. The existing jurisdictional regulator will still monitor and enforce conduct requirements. Any breach will still trigger disciplinary action under the national law, and that action will be taken by the existing jurisdictional regulator, again operating under delegation from the national authority.

Other speakers have already canvassed the occupational areas that are to be covered. One cohort of occupations will commence in July 2012 and another cohort in July 2013.

The previous speaker spoke of potential gaps in the scope of inclusion, but there are well-thought-through criteria for the occupational areas that are to be included. At least one of the critical areas of the occupation had to be licensed across all jurisdictions, and all the areas included are subject to work on achieving full and effective mutual recognition. Another important criterion was looking at the importance of the occupation to the national economy and the volume and nature of mutual recognition difficulties.

Often when we move to a national scheme and look at harmonisation there is some debate about what standards a state jurisdiction may lose by moving to a national jurisdiction. I am pleased to see that those issues have been intelligently addressed in the national licensing scheme, and that thinking is adequately addressed in this bill.

The objectives of the national law make it absolutely clear that worker and public health and safety is still to be a key priority, and the process for developing national regulations, including occupational licensing advisory committees, will have broad representation and ministerial council approval. These are adequate checks and balances to ensure that safety considerations remain paramount under the national system.

I happily give my full support to this bill, which demonstrates yet again that we are committed to making improvements in productivity without necessarily jeopardising occupational health and safety or public health standards. I support the bill.

Mrs FYFFE (Evelyn) — I am pleased to rise to speak on the Occupational Licensing National Law Bill. Having been a small business owner I fully appreciate the need to reduce red tape on business wherever possible. This bill appears to offer such benefits to businesses, so I support the bill.

The purpose of the national licensing system is to remove overlapping and inconsistent regulation between jurisdictions for licensing and occupational areas. By doing so the bill aims to improve business efficiency and the competitiveness of the national economy while improving labour mobility. The national licensing system will initially apply to seven important occupational areas: building and related occupations; electrical; land transport; maritime; plumbing and gasfitting; property agents; and refrigeration and air-conditioning mechanics.

The harmonisation of the national licensing regulation framework is the central focus, and I support that entirely. It is my understanding that it is anticipated that a secondary objective of achieving licensing fee harmonisation will be worked out in the not-too-distant future, and I hope to see that come to fruition under one government or another.

Licensing can pose problems for small businesses, particularly one-person businesses. Often the owner of a small business is the salesperson, the bookkeeper, the administrator, the receptionist and the boss, so anything that will ease their burden is good.

In the couple of minutes I have left I would like to take the opportunity to praise tradies, as they are affectionately known in Australia, for how they have helped me in my more than 30 years in small business and even now as a homeowner in the Yarra Valley. Many businesses in the Yarra Valley have been started by people who began their working careers with apprenticeships in one trade or another, went on to become subcontractors and then employed one or two apprentices. Some of their businesses have grown to be solid, very good businesses.

While running a restaurant and a winery in an area like Yarra Junction where there was no sewerage, we were reliant on assistance. We had an excellent electrician, the late Dave Cutting, whose 'No worries, Chris!' saved me on many occasions when refrigeration to the coolroom failed. When something would short in the winery Dave would come out. He was quiet and laconic, and he would work to fix it. We were fortunate because his daughter, Kit, also became an electrician and continued her dad's practice of always being available.

There was also Kevin. We had septic sewerage systems which combined with heavy clay soils and a lot of trees, meant that inevitably you had problems, no matter how much you tried to fix it. Kevin would say, 'No worries; she'll be right' as he arrived quietly to fix another blocked toilet or drain.

Then there was Charlie, who was a bit of a rascal. I am not even sure if this bill would work for Charlie because I cannot remember whether he was licensed. Charlie was one of those people you would go to when you had any maintenance problems or needed something fixed.

Mr Jasper — A handyman.

Mrs FYFFE — He was a very good handyman. From 1975 to 2006 he worked on various projects for us. Charlie would be pleased with this legislation, because his sons are also tradesmen and have moved interstate to work, so this legislation will make things much easier for them.

I will tell a little story about Charlie. As I said, Charlie was a bit of a rascal with a great personality. Once he was doing some work for my father-in-law down at the beach, turning a carport into a study. He got halfway through the work and said, 'I will see you on Monday, Mr Fyffe'. One Monday passed and another and another, and eventually, after repeated phone calls, Charlie turned up. As he walked in my father-in-law, who was a bit cross at this time, said, 'Charlie, you told me you would be back on Monday'. Charlie said, 'But I didn't tell you which Monday, Mr Fyffe'. Charlie was one of those who could have transported his skills anywhere, and his sons are the same. There are so many excellent tradesmen in my area who go to work in Queensland for a while. In fact Hervey Bay became known as a second Upper Yarra Valley because so many people moved up there for a period of several years. Thankfully most of them have moved back down again.

It really is important that we make it easier in this country for tradespeople to move around to respond to emergencies and provide labour when necessary. We saw the problems after the cyclones in Queensland when tradespeople who offered to go up to Queensland from New South Wales could not go and do the work because their registrations were not accepted. We want those who wish to move around the country to be able to do so freely. We need to limit red tape on small business. The government promised it would reduce red tape on all small businesses, but unfortunately it has not delivered on that promise. It is very difficult for any small business to continue in this state.

Ms KAIROUZ (Kororoit) — It gives me great pleasure to contribute to debate on the Occupational Licensing National Law Bill 2010. The bill before us is a further step towards establishing a national licensing system for certain occupations. I congratulate all governments around the nation for forming an agreement and recognising the need for a national licensing system. As part of its reforms to provide for a seamless national economy COAG (Council of Australian Governments) signed an intergovernmental agreement for the establishment of a national licensing system for specified occupations. This system is designed to facilitate businesses and workers operating across state and territory borders. This will make life simpler for them while continuing to ensure that there are checks and balances and necessary protections for consumers and the community.

The agreed process to bring about the national licensing system involves the passage of the national law in the Victorian Parliament. The national licensing system will initially apply to the following occupational areas: building and building-related occupations; electrical; land transport, but only passenger vehicle and dangerous goods drivers; maritime; plumbing and gasfitting; property agents; and refrigeration and air-conditioning mechanics. As I have said the national licensing system is designed to facilitate these businesses, to make life easier for them and to benefit workers operating across states.

As I have just mentioned the national licensing system covers a diverse range of occupational areas. This legislation provides a set of comprehensive licensing requirements from which regulations will specify the licensing requirements for specific occupational areas. On 3 July 2008 COAG agreed that the national licensing system will initially apply to those trades. From July 2013 it will apply to building and building-related occupations; land transport, but only passenger vehicle and dangerous goods drivers; maritime; and property-related occupations, such as conveyancers and valuers. A number of occupations scheduled to be covered from 2013 — for example, land transport and maritime — are currently subject to parallel COAG reform processes, and there may be further consideration as to whether they need to come under the national occupational licensing system.

A further number of occupational areas included in the national licensing system were chosen based on the following selection criteria: at least one critical area of the occupation is licensed across all jurisdictions; all have been subject to the work done towards achieving full and effective mutual recognition; the importance of the occupation to the economy in terms of the level of demand, its intrinsic mobility and the number of licensees; and the volume and nature of mutual recognition difficulties.

I believe this is a very good bill. It will do much to contribute to the productivity of our nation. We have been extremely lucky as a nation to be doing very well in the global economy. We certainly did not struggle as much as other nations did. I believe this bill will increase productivity, contribute to the economy, make life easier for businesses and cut red tape. In preparing this legislation there was extensive consultation with businesses, the community and trade unions. It is great to see that everybody has come to an agreement around the bill. Also I am pleased to hear that the opposition will not be opposing the bill. I wish it a speedy passage and look forward to continuing to see further reform in this area.

Mr JASPER (Murray Valley) — As a long-term supporter of the elimination of border anomalies I am certainly pleased to support this legislation. I want to indicate to the house that this matter goes back a long way. In 1979 the then Premier of Victoria, Rupert Hamer, introduced the Border Anomalies Committee to look at border anomalies between Victoria and New South Wales. In the 1980s that worked very effectively. In the 1990s under the coalition government of Premier Kennett this matter went on the backburner and little was done through those years. Then there was the change of government in 1999, and in 2004, to my horror, I received a letter from the then Premier, Steve Bracks, indicating the Border Anomalies Committee would be abandoned.

To his credit Mr Bracks listened to the representations I made in 2005 and re-established a forum, which was conducted in Echuca in July 2006. Since then there have been border anomalies committee forums held in Echuca, Albury, Mildura, Albury again, and a forum is being held this Friday, tomorrow, at Swan Hill. I will certainly be attending that border anomalies committee forum and hoping that on this occasion we can get a reciprocal fishing licence between Victoria and New South Wales.

This has been a huge issue. What I have been working on for many years is the elimination of border anomalies, particularly between Victoria and New South Wales. I seek to remove those anomalies by instituting reciprocal licences, mutual recognition or uniform legislation being prepared across the states. I welcome the fact that there has been a COAG (Council of Australian Governments) meeting. What was determined at that meeting was that governments should look at national reform.

It is also interesting that in the second-reading speech, which was presented to the Parliament by the minister, the statement of compatibility in relation to the Charter of Human Rights and Responsibilities was 21 pages long and the second-reading speech was only 4 pages long. As far as the minister was concerned, that gave full coverage of what the legislation was proposing with this national occupational licensing system. He also indicated that in April 2009 COAG had agreed to a national licensing system for specific occupations, and this has been mentioned by other speakers.

What we see is the establishment of a system for the holding of multiple licences. A typical example is a person who was operating at the hospital at Wangaratta. He was a nuclear scientist who had a licence to operate in Victoria. Once a month he went to the Albury Base Hospital, and to work there he had to be licensed as a nuclear scientist in New South Wales. These are the sorts of things that need to and will be addressed by some of the actions which are being taken through this bill. It is interesting to see what is being introduced.

In the time I have available I want to refer to the report on the bill by the Scrutiny of Acts and Regulations Committee (SARC). People should read that report, because it raises a number of concerns about the legislation. It supports it and supports the fact that we should be looking at various areas of industry to get uniformity in licensing between states and across Australia. However, if you read the notes presented by the Scrutiny of Acts and Regulations Committee, you see that it has indicated that the Parliament should be able to introduce legislation and have it gazetted within 12 months.

We see a lot of legislation coming before the house where it may be 12 months, 18 months, 2 years or even 3 years before the legislation is finally gazetted. In the case of this bill, the minister's second-reading speech indicates that the first tranche of occupations to be approved, comprising various occupations, will commence under the national system on 1 July 2012. Approval for the remaining occupations will commence after 1 July 2013. Members of SARC believe that there needs to be a full explanation in the second-reading debate on this bill as to why this extended time is needed to get legislation through the Parliament, albeit that the legislation needs to be uniform with other states. We need an explanation as to why an increased period of time is required for the legislation to be enacted and become operative in the state of Victoria.

I refer again to the report from the Scrutiny of Acts and Regulations Committee. People should read the submissions received by the committee, particularly the one from the Victorian privacy commissioner in which areas of concern are mentioned. These include criminal history information, information and privacy, national registers, the ministerial council and the regulation-making process. These are the concerns expressed by the Office of the Victorian Privacy Commissioner, and these are issues that should be addressed, in particular by looking at the legislation as it moves between this house and the Legislative Council.

In its report SARC also noted that 'certain provisions allow regulations to modify a number of commonwealth acts'. These commonwealth acts are mentioned. They have clauses which will allow the government to change the act by regulation. These are what are called Henry VIII clauses. In years gone by Henry VIII did not worry about what the Parliament said; he just made changes. Here we have a situation where regulation-making powers are provided in an act to enable that act and how it operates to be changed. This is an area of concern that has been raised by SARC. It has written to the minister, bringing it to his attention that members of the committee are not satisfied with the need to include provisions in the national law that permit regulations to modify an act. As I said, this is an area of great concern which I believe should be looked at. We should also look at the national privacy provisions and the areas of concern that have been brought forward in relation to modifying provisions of the commonwealth Privacy Act, which is certainly important as far as legislation is concerned.

I understand the time constraints on this debate, although I would like to say plenty more because border anomalies and differences between the states are a massive issue. This is a step in the right direction. I support the bill, but we need to be aware of the comments made by the Scrutiny of Acts and Regulations Committee in relation to this legislation. It is important for all of us, and we need to move forward on eliminating anomalies right across Australia.

Motion agreed to.

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

Third reading

Motion agreed to.

Read third time.

RESIDENTIAL TENANCIES AMENDMENT BILL

Second reading

Debate resumed from 1 September; motion of Mr ROBINSON (Minister for Consumer Affairs).

Mr CARLI (Brunswick) — I am pleased to rise in support of the Residential Tenancies Amendment Bill. This bill makes a number of changes to the Residential Tenancies Act to improve and strengthen it in a number of areas, including protecting the interests of tenants. This legislation is the result of very wide community consultation and discussions dealing with some major areas of concern.

Broadly speaking, the objectives of the bill are, firstly, to enact a regulatory framework for residential parks. This is essential to protect the residential rights of individuals who own the property that sits in the park, generally caravan parks and residential parks of that type. This first element is trying to put into legislation a clear framework that will protect owner-renters as well as making very clear and protecting the legitimate interests of park operators.

The bill also deals with rooming house provisions, which are included as a response to the work done and recommendations made by the Rooming House Standards Taskforce, and that is what I want to focus on in my contribution. The task force itself was set up following of a terrible tragedy that occurred in my electorate of Brunswick, which I will discuss a little bit later. Clearly it is important to put into effect the changes and improvements to standards with regard to rooming houses recommended by the task force, particularly in the unregulated areas and where there have been very poor practices.

Another element of the bill is the creation of national model legislation to regulate residential tenancies databases — that is, the databases that list tenants and their creditworthiness — to provide a standard. The bill also makes changes to protect the health and safety of caravan park users.

I want to focus particularly on the changes, improvements and regulations relating to rooming houses. The bill enables regulations to be made to prescribe standards that will be the requirements for all rooming house accommodation. It also expands the evidence-gathering power of the director of Consumer Affairs Victoria and enables her to undertake representative action on behalf of residents. The bill establishes a duty for landlords and their agents to notify local government where they reasonably believe their property is being used as an unregistered rooming house. It improves protection for rooming house residents who are required to vacate because the operator of a leased rooming house has defaulted on their lease. These are fairly important protections.

The provisions in this bill are obviously raising standards, and they will have an effect on the rooming house tenant market. There will be a decline in available housing stock. Separate from this change in the legislation, more than $70 million has been put towards assisting people, particularly families, out of rooming houses and into other properties and towards dealing with the fact that there will be a decline in rooming house stock. We also have to deal with the fact that there has been a growth in the number of unregistered rooming houses. We have a very tight rental housing market, and because there are a lot of people who cannot enter that market or who are very vulnerable or very marginal to that market, we have seen the expansion of the practice of people basically buying large houses and dividing them up into rooms.

The changes provided for in the bill come in large part as a result of a tragedy that occurred above a Pizza Hut restaurant on Sydney Road in October 2006, when a fire occurred. A series of rooms above the restaurant were leased out and were essentially operating as rooms in a rooming house. There had been concerns about fire safety noted by council and inspectors had been involved, but there was really a failure to act. There was what the coroner described as a system failure, and the operators had been able to run their affairs with impunity. Ultimately a tragedy occurred in which two young people, Leigh Sinclair and Christopher Giorgi, died in that fire. They were unable to leave their room and escape the fire. I send my sincerest condolences to their families. It was really a massive tragedy in which two young lives were lost.

The coroners inquest held following that tragedy really demonstrated the failure of the system — the failure of council inspectors and the failure to act. There was a failure to deal with concerns where there had been notification and lives were imperilled, and finally two lives were lost. As a result the Rooming House Standards Taskforce was established, chaired by the member for Albert Park. That task force looked at the whole question of how we should deal with this issue and respond to what one can only describe as the damning coroners report, which really did show the system's failures, how we can ensure that there is protection there, and how we deal with unregulated rooming houses where clearly people's lives are in danger.

The task force came up with 32 recommendations relating to compliance, enforcement, safety and security, and mandatory registration of affordable rental accommodation. That is all part of this bill. It is about improving the overall standards. The government has accepted in principle all 32 recommendations. As I said, it has allocated $77.2 million to address rooming house issues up to 2014. This bill provides for that first tranche of changes that ensure that we follow-up on those recommendations and improve rooming houses.

We need to recognise that in dealing with rooming houses we are dealing with a very broad population and that often they are very vulnerable people who struggle to get into the residential housing market. We deal with transient people but increasingly also with families and the break-up of families. As I said, we are dealing with a broad population, and rooming houses differ a lot in quality and in the way they are managed. Clearly this legislation is there in part to deal with those things.

The task force identified six standards to be implemented immediately: fire safety plans, power overload protection, working double power outlets, fire-safe locks on bedroom doors, locks on bathroom doors and window coverings. The government is looking at further minimum standards that can be introduced to improve the standard of private rooming houses. The improvement of standards is clearly important. Local government is also acting on these matters. One of the things that came out of the tragedy was that local government had not done its work effectively, and there is now, if you like, a clampdown on unregistered rooming houses or a very strong check of the performance of rooming houses. Obviously that is having some negative impact in that we are losing some rental housing stock.

However, some very strong programs are being put in place on the ground, and housing groups are working very closely with local government to find alternative accommodation for those people who are displaced from properties. That is an inevitable consequence of taking action. If we are going to clean up the sector and improve it — although we want to highlight the successful rooming houses — where rooming houses are not able to be improved or where their owners are not prepared to improve them, they essentially have to be eliminated from the sector. That is the process that is being undertaken at the moment. I suppose a lot of members are watching the process as it unfolds. As properties are taken out of the market and as people are being displaced, there is a very big emphasis by the government on ensuring that we find alternative accommodation for families, which are fairly new to the rooming house sector and really do not belong there. Families are in that sector because there is nothing else available, and that is occurring along with the growth in demand for public housing and social housing at the moment.

A very terrible tragedy occurred in Brunswick, and the coroners investigation into the deaths recommended improvements. It focused particularly on minimum standards, and action is now being undertaken. The government has indicated that rooming house reforms will continue.

Mr HODGETT (Kilsyth) — I am pleased to rise to make a contribution to the debate on the Residential Tenancies Amendment Bill 2010. This bill is a significant piece of legislation that seeks to effect a number of different changes to the principal act. It amends the Residential Tenancies Act to provide for the regulation of agreements between park owners and tenants in respect of moveable dwellings, essentially where the moveable dwelling is owned by the resident but the site on which it is situated is leased from a park operator. It amends the act to regulate residential tenancies databases in line with national model legislation to enable the improved minimum standards to be introduced for rooming houses, to enhance identification of and enforcement against unregistered rooming houses, to improve fire safety and emergency management planning in caravan parks, and to increase penalties for offences under the Residential Tenancies Act.

I wish to make my contribution to the debate on the component of the bill that enables improved minimum standards to be introduced for rooming houses and enhances identification of and enforcement against unregistered rooming houses, so I will turn my attention to rooming houses in the time that is available to me.

The bill follows the report of the government's Rooming House Standards Taskforce, which made a number of recommendations relating to standards in private rooming houses. The bill gives the director of Consumer Affairs Victoria the power to investigate, without the need for a complaint, rooming house rent increases, whether a rooming house owner is in breach of a duty to maintain a room or rooming house in good repair or whether an owner is in breach of the standards to be prescribed under the bill. Breaches of standards can be subject to fines of 60 penalty units for individuals or 300 penalty units for bodies corporate. The director cannot vary an individual's rent, but the director's investigation reports can be submitted as evidence to the Victorian Civil and Administrative Tribunal in a relevant hearing.

The bill provides for the Governor in Council to make regulations relating to the standards of rooming house facilities, including privacy, safety, security and amenity. Likely standards to be included in the short term include fire safety plans, power overload protection, working double power outlets, fire-safe locks on bedroom doors, locks on bathroom doors and window coverings. We are advised that a regulatory impact statement will be prepared before standards are prescribed.

The bill also places an onus on property owners and agents who have reason to believe a property is being used as an unregistered rooming house to notify the local council. Building owners who are not rooming house owners must give each individual rooming house resident a minimum of 45 days' written notice to vacate. This would operate where, for example, the head lessee — the rooming house operator — had breached a lease and the owner was terminating the head lease. In these circumstances the rooming house tenants are entitled to individual written notice prior to eviction.

Consumer Affairs Victoria inspectors are empowered to enter non-residential rooms of rooming houses, such as common areas, to enforce compliance without warrant or consent. Residents may choose to grant access to their rooms, or a search warrant may be obtained. These provisions may only be exercised between 9.00 a.m. and 5.00 p.m. The director of Consumer Affairs Victoria is provided with further investigatory and information-gathering powers, including the capacity to require the production of documents or the giving of evidence.

These issues — rooming houses being in good repair, standards of rooming house facilities, privacy, safety and security — have been raised time and again by concerned people in my electorate and in other parts of the state. Housing and homelessness are areas I take a great interest in, and I note there are now 41 014 vulnerable Victorians languishing on Labor's public housing waiting list. There are a number of groups in my electorate working in this area, such as Holy Fools; the Mooroolbark Baptist Church, which feeds some 120 people every Monday night; The Dining Room in Croydon; and the Vive Cafe. There is also a terrific individual, David Knoop, who does a lot of work on housing, homelessness and getting better outcomes in these rooming houses. These organisations and people do terrific work, and they tell me we definitely need rooming houses for housing stock but that we need to get rid of the cowboy operators and make sure the rooming houses provide good, safe, adequate accommodation for people.

The most vulnerable people in my electorate are being exploited through having to pay exorbitant rents to operators of privately run boarding houses and rooming houses as they desperately walk the thin line between having a roof over their heads and being homeless. I will continue to monitor the effectiveness of this bill in addressing this issue.

Ms CAMPBELL (Pascoe Vale) — I am particularly pleased to speak on the Residential Tenancies Amendment Bill 2010. In the time available to me I want to highlight the important work that has been done in relation to consultation on this bill. In the second-reading speech the minister highlighted the vast array of community organisations and individuals who have contributed to this strong legislation. In relation to community consultation, when we as a Labor government bring the community along with us we are able to present to this house strong legislation based upon the reality of people's lives.

I want to particularly thank the community housing sector, including Yarra Community Housing, which does a magnificent job in my own electorate; St Kilda Community Housing; the Community Housing Federation of Victoria; VCOSS (Victorian Council of Social Service); the REIV (the Real Estate Institute of Victoria); and the Municipal Association of Victoria. An organisation I had quite a lot to do with in relation to a responsibility that was previously assigned to me is the Housing for the Aged Action Group — HAAG, as it is affectionately known by its members.

I want to home in particularly on the residential villages and parks. This area of public policy and accommodation sprang up at a time when there was a particular need. These mobile homes became permanent homes providing affordable housing, but they did not provide security to the residents nor what I would call respect and dignity in many cases. Over the years I have had a bit to do with one that is fairly close to my own electorate — it actually adjoins my electorate — that has improved. I was particularly concerned about how people were being treated and how they were not being given appropriate respect, confidentiality, cooling-off periods and the services it was claimed were provided in publicity brochures and signage out the front. People moved in believing and trusting the organisations and individuals involved only to find that their faith was misplaced. People are in an extremely difficult position who, when they have sold their homes — and I am thinking of quite a number of people in Glenroy — want to move to a village fairly close by but who, after finding one that is affordable, subsequently find themselves not receiving the treatment they rightly deserve.

If members are interested, the July Housing for the Aged Action Group's newsletter outlines how it has consulted with more than 140 residents. It now has a membership of 140 residents living in a range of parks and villages in most regions of Victoria, and I trust its advice has also been of assistance to the departmental staff who will be ensuring that this legislation is implemented.

I respect the fact that we have a very short time to speak in this debate. I want to highlight that I will be watching to ensure that the rights of residents of a village very close to my electorate which houses residents who previously resided in my electorate, at Federation Residential Village, are respected and protected.

Mrs POWELL (Shepparton) — The Residential Tenancies Amendment Bill deals with amendments to the Residential Tenancies Act. At the outset I would like to advise that my husband and I own two properties that we receive rent from. The coalition does not oppose the legislation. The bill provides for regulations and agreement between caravan park owners and tenants, but I would like to focus my contribution on part 5, which deals with rooming houses. The bill enables improved minimum standards to be introduced for rooming houses. It provides for better identification of unregistered rooming houses, enhances enforcement against unregistered rooming houses and increases penalties for offences under the Residential Tenancies Act.

I am a member of the Family and Community Development Committee, which conducted an inquiry into supported accommodation for Victorians with a disability and/or mental illness. The committee's report was tabled in December 2009. The committee heard there were some people with a disability and/or mental illness who live in rooming houses because they are unable to find any other accommodation. We were told that it was very difficult for them to find alternative accommodation, particularly accommodation they could afford. We were told that the rooming houses are generally run by commercial operators and have been being established across Victoria since the early 2000s. The numbers are increasing due to the declining affordability and accessibility of private rental housing and also the lack of public and social housing.

The 2006 census stated that there were approximately 4500 Victorians living in rooming houses, which vary in size. There are small properties that house about four or five tenants and there are larger buildings that can accommodate more than 100 residents. With the growth in rooming houses the resident mix has now become much more complex and diverse.

An Australian Institute of Health and Welfare report highlighted that residents in rooming houses are generally the homeless, the aged and frail, those on low incomes, singles and people with a disability. They are the most vulnerable people in our society. The evidence the committee received from individuals and organisations was that there are a range of problems in rooming houses. People have minimal tenancy rights. They can be evicted without appropriate notice and given rooms that are inappropriate but for which the rent is quite high. There is vulnerability to abuse, particularly for women living in rooming houses, and a lack of privacy — there are no locks on bedrooms, bathrooms or windows. There is exploitation: the rent may be too high for the type of accommodation, and some people talked to us about living in so-called shoeboxes. There are poor living standards and there is overcrowding and a lack of maintenance of rooms and buildings in general. There is also a lack of support services, because people with a disability or mental illness do not just need a roof over their heads, they need support from organisations and also from the landowner.

There was evidence of appalling conditions, but there was also evidence given to the committee by people from good rooming houses. These operators are angry at the non-compliance of some rooming house operators, who they say give the whole industry a bad reputation. This bill goes some way towards addressing the issues that the Family and Community Development Committee report and the task force identified. I would like to applaud the task force for the work it did in bringing about some of the recommendations in the legislation.

As I said, the bill addresses some of the concerns raised, but it has taken far too long. There have been many complaints to the government about unregistered rooming houses, rooming house proprietors who are doing the wrong thing and people who are being exploited. There were two tragic deaths in a rooming house in 2006. The government should have acted immediately to improve safety in rooming houses. We have a lot of overseas students who live in rooming houses, and when we see reports in the media about deaths or injuries in rooming houses we have to make sure we learn from those mistakes and put in place protections so that all tenants who live in Victorian rooming houses are protected.

Hopefully the provisions in the bill will protect people who live in rooming houses. I urge the government to move on the recommendations and put those protections in place.

Mr SCOTT (Preston) — It gives me great pleasure to rise to support the Residential Tenancies Amendment Bill 2010, which is a bill to amend the Residential Tenancies Act in a number of ways. Like the member for Pascoe Vale I want to focus in particular on the aspects that affect what are referred to as residential parks, which contain owner-occupied mobile dwellings.

In my electorate is the Summerhill Residential Park, which members may be familiar with. A former member for Preston in particular championed the rights of the residents of that village, which led to a privilege matter in this house of a quite serious nature. The situation that faces many residents in these parks is that effectively they have the worst of both the renting and the owning worlds: they own a dwelling but rent the land, which can give them the insecurity of renting but the responsibilities of owning.

A significant financial risk can accrue in situations of uncertainty whereby a person often expends a large sum of money — well over $100 000 — to purchase what is in theory a moveable dwelling but in reality is fixed to an address. That is particularly true in Victoria where a market for moving a lot of these dwellings does not really exist, as far as I am aware. For a lot of these dwellings there is a not a market to move them or to change a lease. Effectively that opportunity does not exist in a way that people would expect.

A market exists for caravans, but for the moveable dwellings we are talking about, which are quite substantial buildings, a market really does not exist, and I welcome anyone checking on websites like realestate.com.au and others. There are no adverts which say, 'Move your moveable home here'. That market simply does not exist on a scale of any measurable character. It is important for us to regulate this area, and frankly, as time goes by there will be further acts of Parliament to deal with the area of people who live in these dwellings.

In my contribution, which I will keep brief because of the time constraints of debate on a Thursday, I would like to say the bill is due to the actions of a number of very brave people, particularly the residents of Summerhill, who brought a lot of the issues to public attention under extraordinarily difficult circumstances. I would particularly like to thank Lionel and Marion Foster for their work in representing their constituency of residents who have to suffer under the regime of Mr Wellard at Summerhill as well as other people who have worked on the bill — and I mentioned previously a former member for Preston, Michael Leighton. Andrew McDonald has subsequently left the minister's office, but he worked heavily on these issues to support the rights of tenants.

Turning to the bill and a number of its provisions, I will touch on the notice period, whereby the time for a notice to vacate has been increased from 120 days to 365 days. There has been an increase in the precontractual period to consider a side agreement as well as a cooling-off period of five days, and particularly importantly the bill protects the rights of owner-renters to form residents committees. To take the example of Summerhill, the brave residents there who formed their own residents committee were subject to serious harassment by the owner and a complete rejection of the legitimacy of the residents committee, which is an extraordinary thing to happen post-2000 — it was a few years ago; it was not in 2010. It is extraordinary that the legitimate right to seek collective representation in a residential park was treated as a hostile act, frankly by an owner whose attitude failed the test of decency.

Part 4A increases the monetary jurisdiction of the Victorian Civil and Administrative Tribunal from $10 000 to $100 000 for disputes. This is very important because the assets involved can be quite substantial. The buildings that people own and their lease arrangements can be worth quite large sums of money. These are very substantial investments that people are making into their future.

I do not have time to go through all the clauses of the bill, but this is an excellent piece of legislation that has arisen because of the bravery of people who were subjected to harassment and constant intimidation within their own living space, who were pensioners and who felt vulnerable — but who were willing to stand up for their rights. It is due only to their bravery that this legislation is before the house. I commend the bill to the house.

Mrs VICTORIA (Bayswater) — I too rise to speak on the Residential Tenancies Amendment Bill 2010. There are some very good measures in the bill, and I would like to go through a couple of them. The purpose of the bill is predominantly to make amendments to the Residential Tenancies Act and to provide for the regulation of agreements between park owners and tenants in relation to moveable dwellings.

The moveable dwellings we are talking about are those where the dwelling is owned by the occupant but the land is not — that is, the dwelling is on leased property. The bill also aims to regulate residential tenancy databases so that they are in line with national model legislation; I will come back to that in a moment. The

current minimum standards for rooming houses are going to be upgraded so that they are better for everyone involved. There has certainly been a lot written about rooming houses in the press. The bill brings in harsher and stricter measures against unregistered rooming houses, and again there has been plenty in the papers about that. The bill will improve fire safety and emergency management plans in caravan parks and increase penalties for offences under the Residential Tenancies Act.

The main provisions affecting people who are residing in caravan parks as owner-renters are in parts 3 and 4 of the bill. There are around 4200 owner-renters in caravan parks and approximately 500 caravan parks throughout the state. As I said, these are people who own the building — which is moveable — but they are renting a site. I have one caravan park in my electorate, Wantirna Park Caravan Park, and I have to say it is a very nice caravan park. There are well over 100 residents who fall into this category. It was interesting looking at the demographics of those residents: there are nearly 70 male and nearly 50 female residents in this category, and almost 100 of them are aged over 55, with only 11 being under the age of 35.

One of the things recognised by the bill before the house today is the importance of permanent communities. There are plenty of people who during their retirement years choose to downsize their residence. There are very active community groups — for example, the Knox and District Over 50s group — which are fantastic at providing a community environment and allowing group members to support each other, but not everybody has the opportunity to participate in such a group. Quite often when people move into one of these residential villages they find they are setting up their own little community, and it is very valuable to them.

The new protections will mean that if the landlord requires the resident to vacate, they will be given a much longer time in which to do so. The minimum notice will be increased to a year; up until now it has been very short. This is significant because so many of these dwellings have essential services fitted. They might have, for example, running water, sewerage and that type of thing, so you cannot just pick up these dwellings and move them like a tent. The services need to be fully thought about before the move, and the residents also need to think about where they are going to relocate to. Some more boundaries are being set and some really good, constructive initiatives are starting in this area. The minimum notice to vacate will increase from 120 to 365 days.

As we are restricted by time in this debate, I will touch only briefly on rooming houses. Stories have been appearing in the *Knox Journal* and the *Knox Leader* about really bad conditions in rooming houses, including overcrowding, substandard safety measures and ruthless rooming house and boarding house owners. There is going to be a lot more stringent regulation around the way these rooming houses are conducted and regulated. The Governor in Council is now going to have the power to make regulations regarding the standards of rooming house facilities, including standards of privacy, safety, security and amenity. One would think that a lot of the things that are being introduced — such as fire-safe locks, working double power points, power overload protection and that sort of thing — were pretty logical, but until now they had not been set down in regulation so people were not protected.

I think there are some particularly good measures in this bill, although there are some areas that have not been thought through well enough. I will not be opposing the bill.

Mr FOLEY (Albert Park) — I rise to support the Residential Tenancies Amendment Bill and the tabled amendments. In doing so I would like to take the opportunity to clear up a number of deliberate myths perpetuated by those opposite, particularly the shadow Minister for Consumer Affairs, the member for Malvern — although I welcome his support for this bill.

Firstly, there was his attempt to deliberately confuse the house on the issue of the tabled amendments, where he has mythologised that these were somehow dropped on him from a great height immediately before the debate. Let the record show that the member for Malvern was given advice on Monday that these amendments were coming and was encouraged to contact the department officers to have a briefing on the matter. He chose not to take up that offer. This reflects the continuing laziness and sloppiness of the shadow minister.

Let me also clear up the other myth perpetuated by those opposite — that this is somehow an issue that the government has been tardy in addressing. At the launch of the Premier's Rooming House Standards Taskforce at the Sacred Heart Mission in St Kilda we were joined by the Lord Mayor of Melbourne, Robert Doyle, who in the 1990s was the Parliamentary Secretary for Human Services. He related to a wide audience how the former Liberal government in the 1990s underwent a process, of which he was personally in charge, of looking at this issue of rooming house standards. It came to the conclusion that it was too difficult to deal with and that it would have too big an impact on private

sector owners' rights and on rooming house availability. The Lord Mayor wished the standards task force well and congratulated the Premier for having the fortitude to tackle this issue.

Let it be clear to this house that this is an issue that both sides of Parliament have been confronted with, and when those opposite were given the opportunity and the resources to deal with this issue in the 1990s they squibbed it. I welcome the belated agreement they have come to that supports the Brumby Labor government's support for these arrangements. Let us just clear up that myth. In so doing I particularly acknowledge a number of people mentioned in this report.

I acknowledge Mr Nathan Rao, who was presented with an Australian bravery medal for saving four people from a fire in a rooming house in Brunswick in 2006. That was the same fire that cut short the lives of Christopher Giorgi, who was 24, and his girlfriend, Leigh Sinclair, who was 25. I note that when he accepted the bravery award from the Governor, Mr Rao commented that he did so in memory of Chris and Leigh and in honour of the people who had survived. I further note that he was nominated for the award by Mr Giorgi's mother and was particularly supported by the Giorgi family.

I would like to put on the record our appreciation of Mr Rao's efforts. I also suggest that the people Mr Rao accepted his award in memory of were two young people who were not stereotypical marginalised residents. They were two young people who were deeply attached to one another and were seeking affordable housing in inner Melbourne. They paid for it with their lives, having been exploited by unscrupulous owners and landlords. The coroner's report into those tragic deaths makes important background reading to the amendments that are before us today. This report came out after the Premier's Rooming House Standards Taskforce had been finalised and covered much of the same territory.

Let it be equally clear, though, that this raft of amendments is but the first in a range of reforms contained in the Premier's task force response. This is also an issue of regulatory reform, of enforcement and of partnership with local government, which will continue to have responsibility for enforcing the provisions of the legislation in this area. This is an issue which will see a range of measures flow through, as set out in the Premier's Rooming House Standards Taskforce response. It is on schedule and it is significantly budgeted for, and that will see a regulatory regime put into place not just for the standards of the properties we are seeing here but also to regulate the nature of the businesses that operate in this sector. As these reforms are rolled out over the next 12 to 18 months they will implement the long-term measures needed to ensure that this sector is safe, affordable and secure for the people who are exposed to it.

Finally, I will say that the main area of this reform package's success will be in the increase in affordable rooming house supply in both the public and private sectors, on which this government has spent record amounts, which we are seeing come through the system. May this bill have a swift and speedy passage through the Parliament and may it stand as a monument to the tragic deaths, the lives cut short, of Mr Giorgi and Ms Sinclair.

Mr K. SMITH (Bass) — I rise to speak in regard to one specific part of this bill relating to retirement village-type owner-renters in caravan parks and to raise an issue that is of concern to some people in my area but which I know is a concern across other parts of Victoria as well. It concerns retired people who move into what is looked at as being a residential village, a place into which they move their moveable home, which is basically a proper house that has been built up on stumps and has joists and bearers and will often have a carport or a garage attached. Once it is there it is a normal house, usually smaller than what you would consider to be a normal house but it is a house that these people have chosen to live in.

Normally on their retirement from work such people have sold their house in the city areas and moved down to some of the retirement areas — in my case, down to Inverloch or even over onto Phillip Island. They find themselves locked in with a lease that will only give them a maximum tenure of two years. This is a problem for those people, particularly if they have a landlord who is causing them some grief and not delivering what he is meant to, by not putting in the swimming pool, not putting in the community facilities that were on the original plans and not allowing these people the opportunity to feel that they have some security of tenure in the homes they are in.

It is not going to be easy for these people to just uproot themselves from the site. They cannot just load their home onto the back of a truck, because it is actually a house. Like any normal house it would have to be moved and put onto a big truck if it was going to be moved, and it could not just happen in 5 minutes because often they would have to pull down a carport or garage that was attached to it. A lot of these people are in the twilight of their lives. They are people who have retired and are expecting that they may have 20 or maybe 30 years ahead of them. They have a few dollars

because they have sold their city house and moved into one of these smaller houses.

These people have made agreements with the landlord for two years of tenure, but then they are under constant threat that they may well be tipped out. The person who owns the site may wish to move them out because he might want to turn it into an actual caravan park because there may be a greater return. It may be that he is just going to try to sell off the site because the land value might be more than what the caravan park site is worth.

Although there is now a proposal for a minimum of five years for people who are going in — which is certainly a step in the right direction, I have no doubt about that — that is for new caravan parks and residential parks, not those that are already established. I would have liked the government — and I know this has been under consideration for some time — to have looked at existing caravan parks and residential villages and tried to get that period of time extended.

I had a lot of discussion in relation to the parks in my area with HAAG (Housing for the Aged Action Group), which is a tenants union offshoot — not an organisation I would normally have a lot to do with, but I found that they were very willing to try to help these tenants try to get this term extended. I believe they were looking for a 50-year term. I think 50 years is probably too long a time to lock people in — whether it be the landlord or whether it be the people who have got the houses — but I think they could be given a few more years than just the five years that are there now.

I must say that the people from HAAG were very good in the discussions that we had, and I understand that a number of negotiations have gone on with the minister in relation to this issue. The minister has come back with this piece of legislation, which is at least giving these people some sort of security if they have to move into a new park. However, it does not provide security for those who are in existing parks; these people may be asked by their landlord to remove their home with 120 days notice. I notice that with the new ones it is going to go up to 365 days notice, but I would like to think that these people would be given some consideration and help. I hope in the future there may well be some more thought put into this and we will be a position where we can offer these people more security of tenure than they currently have.

Debate adjourned on motion of Mr DONNELLAN (Narre Warren North).

Debate adjourned until later this day.

JUSTICE LEGISLATION FURTHER AMENDMENT BILL

Second reading

Debate resumed from 1 September; motion of Mr CAMERON (Minister for Police and Emergency Services).

Mr LUPTON (Prahran) — I am pleased to make some comments in support of the Justice Legislation Further Amendment Bill 2010. I want to focus my remarks on part 3 of the bill, which deals with amendments to the Prostitution Control Act, and in particular what this bill seeks to do in amending section 12(2)(b) of that act in order to allow Victoria Police to issue banning notices against kerb crawlers, in particular in the area of St Kilda, which is in my electorate of Prahran.

The issue of street prostitution in that part of my electorate has been of serious concern to me and to residents in that area for some considerable time. A number of efforts have been made over the years to address this issue and to protect the amenity of the area and the safety of its residents. The major problem that Victoria Police has faced over the years has been the difficulty of effectively collecting evidence against the clients of street workers. It has been a difficult thing to prove the intention to solicit for the purposes of prostitution, and it is a very labour-intensive and resource-intensive job for Victoria Police to go about that work. It has proved to be very difficult for them to enforce the current provision of the Prostitution Control Act, which has existed for many years and which is the same as provisions in other jurisdictions around Australia.

For that reason — because it has been so difficult to enforce — the government has worked with members of the community and with Victoria Police and listened to concerns and issues that have been raised. We have brought this amendment into the bill to allow the police to issue banning notices. They do not have to, under this provision, prove an intention to solicit for the purposes of prostitution. Under this provision the police will only need to have a reasonable suspicion that somebody is intending to solicit for the purposes of prostitution.

This will make it easier for the police to effectively enforce the law: if a police officer has a reasonable suspicion that somebody intends to solicit for prostitution, they can issue them with a banning notice on the spot, and if the person does not leave the area immediately, they can be issued with an on-the-spot

fine for infringing a banning order. If they return to the area within 72 hours of being given a banning notice, they will also be subject to an on-the-spot fine for breaching a banning notice order. If an on-the-spot infringement notice is issued, it will be in the sum of $238.90, and if the police take the matter to court, the penalty can be $2389. We have worked with police on these reforms, and the police believe they can make a significant improvement in relation to the issue of street prostitution by utilising these banning notices.

Over the last couple of years banning notices have been introduced in Victoria for a range of offences, in particular those relating to drunk and disorderly behaviour around entertainment precincts. Many banning notices have been issued, and they have proven to be a very effective method for the police to maintain public order and safety. It is because of the success of the banning notices in those other areas of law and social disorder that we have decided it is well worth introducing banning notices into this area of controlling street prostitution — that is, because they have proven to be successful in relation to drunk and disorderly behaviour.

I am pleased that the police are looking forward to obtaining these new, stronger powers. The police are keen to make sure that the law is enforced as effectively as it can possibly be, and I look forward to working with the police and the community to make sure that these new powers that have been given to Victoria Police are given a chance to operate and contribute to improving the amenity and safety of my local area. The laws that we are debating here, and which I trust the Parliament will pass, are going to be subject to a sunset clause, so they will run until the end of 2011. During that time they will be evaluated, and if they are working successfully, I anticipate they will be continued after that date. If there is any need to make further modifications to the law as a result of the introduction of these powers and in relation to the evaluation of their operations, we will certainly look at that.

I look forward to these laws being enacted. We want to make sure that we take responsible and proper steps to ensure that the amenity and safety of residents in the area that has been subject to street prostitution are effectively looked after, and these laws are a very important step in that process. I commend them to the house.

Mr DELAHUNTY (Lowan) — I rise to speak on behalf of the Lowan electorate on the Justice Legislation Further Amendment Bill. As we know, this is an omnibus bill which amends various acts of Parliament. Like other opposition members, I am not opposing this legislation.

Firstly, I want to cover the Liquor Control Act of 1998, which we know does many things. Part 3 of the bill inserts a new part 8B in the Liquor Control Act of 1998 to provide a suite of powers to the chief officers of the Metropolitan Fire and Emergency Services Board and the Country Fire Authority and the Director of Liquor Licensing in relation to inspection, evacuation and closure of venues when there is a serious fire threat.

In my part of western Victoria we had large fires on 7 February which impacted on Horsham and Coleraine. In Horsham 13 houses and many businesses were impacted, including the Horsham Golf Club, which was a licensed facility. At that stage Horsham Rural City Council swung into gear and under its CEO, Kerryn Shade, set up a working party to assist the community.

I take this opportunity to mention that Kerryn Shade was appointed to the position of CEO at the council in 1995 after the amalgamation of the then City of Horsham and the shires of Arapiles and Wimmera. Prior to that he was secretary for the Shire of Warracknabeal and prior to that the Shire of Arapiles. Kerryn Shade's final council meeting was recently held at Natimuk, the headquarters of the former Shire of Arapiles. The son of his dear friend, the late Councillor Max Grimble, was part of the forum, and that made the day a special occasion for Kerryn. Kerryn has had over 30 years experience in western Victorian local government and in total 45 years in local government. He is a Frankston boy, and he is proud of the fact that he comes from Frankston.

Kerryn Shade has witnessed a lot of changes, the most notable being the restructure. Local government has been Kerryn's life, and he is a very decent man with high integrity and heaps of common sense. He is married to Dawn. I have had a long professional and personal relationship with Kerryn. I wish Kerryn and Dawn all the best in retirement and in the next chapter of their lives. That deals with the fire issues and the Liquor Control Act.

In the short time I have left I turn to the amendments to the Prostitution Control Act 1994, which the member for Prahran has spoken about. Part 11 of the bill inserts new part 2A, which will allow members of the police force to issue 72-hour banning notices if they reasonably suspect a person has committed or is committing an offence within a prescribed area as defined in section 12(2)(b) of the act. These banning notices can only be issued to clients soliciting for street

prostitution, and such notices do not apply to the prostitutes themselves.

I was a member of the Drugs and Crime Prevention Committee, which produced a report, tabled this year, on its inquiry into people trafficking for sex work.

An honourable member — Great work!

Mr DELAHUNTY — Yes, we did some good work. It was an interesting inquiry. Sex work in Victoria is legal when regulated and licensed according to the provisions of the Prostitution Control Act. However, providing commercial sexual services is illegal when it is street sex work, when the person is under the age of 18, when it takes place in an unlicensed brothel or when it is provided through an unlicensed escort agency.

I will be very interested to see how this banning notice will work, because the concept was discussed during our recent inquiry. Many people advocated the Nordic model, which makes prostitution legal, but it is illegal for people to seek sexual services. The result in the countries using this model has been to drive the industry underground. The committee examined that aspect and thought it would be the wrong thing to do; therefore it will be interesting to observe the effect of the banning notices. This is not an industry we often talk about, but it was an inquiry in which we had a lot of interest.

Dr Napthine — Not personal interest?

Mr DELAHUNTY — Not personal interest; but we were dealing with people during the inquiry who, through circumstances beyond their control, have been involved with the industry.

The banning notices are for 72 hours and are issued by Victoria Police. I will watch the progress of this aspect with interest, but for people who work and live in the area of St Kilda it will be interesting to see the outcome.

With those few words, and representing the people of Lowan, I am not opposed to this legislation.

Mr STENSHOLT (Burwood) — I will endeavour to be brief. This is an omnibus bill, as has been said by others. There are a number of small things I want to point out. The bill amends the Crimes Act to support the use of new digital evidence capture technology. I strongly support the police and other investigators having the latest technology to assist them.

I also support the member for Lowan in terms of the amendments to the Liquor Control Reform Act. There are over 16 000 licensed venues across Victoria, and the fire services are called out a couple of dozen times a year, whether it be nightclubs, bars or taverns. We are very lucky that there are not too many fatalities, and in recent years there have not been any. We want to keep it that way, and we want to ensure that the director of liquor licensing has the power to direct the immediate closure and evacuation of licensed premises when advised by the chief fire officer that there is a serious threat in relation to fire emergency or the health or safety of persons either in or near these premises. That is a very sensible suggestion.

I also support the provision contained in the bill for the continued ban on the supply and use of ice pipes.

Finally, there are the concessional tax rates for premium customers of wagering licensees. I suppose in past years it might have been called the Kerry Packer amendment, because Kerry was famous for making mammoth bets. This will ensure that we will not lose these premium customers and that the Victorian wagering licensee has the tools to compete in an international market. With these words, I support the bill.

Dr NAPTHINE (South-West Coast) — I rise to speak on the Justice Legislation Further Amendment Bill, which is an omnibus bill covering a range of portfolios, but as shadow Minister for Racing I will concentrate on clause 45, which proposes amendments to allow the Victorian Treasurer to reduce the tax rate for so-called premium customers who bet with the Victorian wagering and betting licence operator. That licence operator is at the moment Tabcorp.

The bill also provides for the Governor in Council, on the recommendation of the Treasurer, to regulate the 'prescribed amount of money' a person must invest with Tabcorp over a defined period to be called a premium customer. I have been advised in briefings that it is expected that the amount of money which would qualify a person to be classified as a premium customer will be $3 million per year. Currently there are approximately 20 to 25 premium customers with Tabcorp.

The question being asked is: why would this Parliament and Victoria seek to reduce the tax rates that apply to large punters who are betting with Tabcorp on Victorian and other racing? The answer is that there is enormous competition for these very large punters. There is competition from interstate betting operators, whether they be corporate bookmakers, betting

exchanges or interstate totalisators. They are trying to attract these large punters away from Tabcorp, which effectively takes dollars from Victorian racing and the Victorian Treasury. In that respect the opposition supports this component of the legislation.

A Racing Victoria media release dated 10 August and headed 'Racing Victoria welcomes legislation to attract more premium wagering customers' says:

> The proposed amendments will enable Victoria to more effectively compete with interstate TABs which presently offer large rebates to encourage premium customers to wager into their pools.

Chief executive Rob Hines is quoted as saying:

> This reform will significantly protect and grow the Victorian racing industry's revenue stream through its participation in the wagering business joint venture. In turn, this revenue is vital for sustaining the growth and viability of the industry across the state …
>
> Premium customers are a small group of highly professional operators who strategically invest large amounts of turnover on racing. They readily shift their business from one TAB to another and they will shun Victoria if we are unable to offer competitive incentives.

Amanda Lean from Tabcorp said in an email to me dated 1 September:

> Tabcorp supports the proposal within the bill to reform taxation applying to premium wagering customers …
>
> If Victoria's tax rate is not competitive with the tax rates applied to interstate totalisators, it limits the ability of Tabcorp to attract premium customers, and ultimately, the Victorian racing industry loses revenue.

We support this change. It is a response to a competitive situation. But what it highlights, and I want to talk about this in the remaining time I have left, is the need for a national approach to wagering and betting across Australia. Because while this legislation will allow Victoria to reduce its taxation rate for premium customers, the response by totalisators and corporate bookmakers in other states will be to introduce more competitive rates to attract these large punters. The result will be cutthroat competition. The winners will be the large punters and the losers will be racing industries across Australia, and of course state treasuries across Australia. There will be a race to the bottom to see who can offer the best deal, and the loser will be racing.

This highlights an issue I have raised time and again in my role as shadow Minister for Racing, and that is the need for a national approach. Whether we have corporate bookmakers operating out of Darwin, betting exchanges operating out of Hobart or totalisators operating out of any state or territory, if those operators are betting on Victorian racing, if they are making their profits and attracting their turnover from betting on Victorian racing — whether greyhounds, harness racing or gallops — wherever those operators are based in Australia there should be a fair and reasonable return to the Victorian racing product they bet on. Similarly, if they are betting on New South Wales racing, there should be a fair and reasonable return to New South Wales racing. I urge the minister to move to a national approach. Let me say that if the coalition is elected at the end of November and I am fortunate enough to become the Minister for Racing, the first thing I will be looking to do is to move to a national approach to get a fair deal for Victorian racing wherever people bet in Australia.

Ms DUNCAN (Macedon) — I rise in support of the Justice Legislation Further Amendment Bill 2010. It is an omnibus bill that amends an enormous number of acts: the Crimes Act, the Liquor Control Reform Act, the Drugs, Poisons and Controlled Substances Act, the Children, Youth and Families Act, the Corrections Act and the Metropolitan Fire Brigades Act, just to name a few of them.

In the brief time I have I would like to go to the amendments to the Liquor Control Reform Act 1998. We have seen in the briefing notes a range of newspaper articles relating to fires that have occurred around the world in licensed venues and the numbers of people killed in these sorts of fires. That happens for a whole range of reasons. Obviously the fires often occur late at night, these venues often have large numbers of people in them and dim lighting and loud music, and such venues are often not conducive to an orderly and timely evacuation. Ensuring that these places are fire safe and that emergency exits are not blocked is a very important feature of ensuring safety when people are attending these sorts of venues.

This bill will address a gap in the current legislation by amending the Liquor Control Reform Act to allow fire safety inspectors appointed by the chief officer of the Metropolitan Fire Brigade and the Country Fire Authority to enter and inspect licensed premises at any time without the need to provide prior notice of their intention to enter and without the need for a search warrant where the fire safety inspector reasonably believes or has reasonable grounds for suspecting a serious health or safety issue exists in relation to fire or emergency that could threaten people in or in close proximity to the premises. We are just looking at making sure that the MFB and the CFA are not hindered in their ability to go in and ensure that these places remain safe for the public to use. As I said, the

bill contains a range of other amendments to a range of acts. I commend the bill to the house.

Mr R. SMITH (Warrandyte) — I rise to speak on the Justice Legislation Further Amendment Bill 2010, and I want to focus my comments on part 4 of the bill, which defines the term 'ice pipe', makes it an offence to display an ice pipe at a retail outlet in Victoria, makes it an offence to sell or supply an ice pipe and allows members of the Victoria Police to seize ice pipes if they are displayed for sale or supply. I am certainly supportive of this measure, but I believe the government could have gone a little bit further and followed the coalition's lead by seeking to introduce legislation to ban the bong as well.

Banning ice pipes in itself is certainly a good idea but it does not seem like an approach that tackles the whole of the drug problem. It could easily be argued that by banning the ice pipe but not the bong the Brumby government is saying that it is not okay to smoke ice through an ice pipe but it is okay to smoke cannabis through a bong.

The coalition supported the Australian Drug Foundation's advocacy of a ban on selling bongs by promising in the lead-up to the 2006 election to do this — a promise which we have reaffirmed in the lead-up to the 2010 election. We on this side of the house believe that banning the sale of bongs sends a clear message that cannabis is a very dangerous and harmful substance.

A media release from 2 January quotes the Leader of the Opposition as saying:

> Victorians can't trust a government —

meaning the Brumby government —

> that claims it is tough on drugs yet won't take this important step to reduce drug use'.

Labor's record when it comes to tackling the drug problem is not a particularly good one. In 1996, while in opposition, the current Premier wanted to introduce a bill to decriminalise marijuana. Labor's drug policy document from 1999, entitled *A New Approach — Labor's Plan to Tackle the Drug Crisis*, states:

> Labor will decriminalise the possession and use of small quantities of marijuana.

On a number of occasions Labor has raised the issue of bringing injecting rooms into our communities, a position that we on this side of the house are vehemently opposed to. In 2005 the Premier's Drug Prevention Council gave advice after a request by the then Minister for Health, the current Minister for Education, on restricting the sale of bongs and other water pipes to minors. The council recommended a ban on the sale of bongs to minors and penalties for such sales, but nothing has been done by this government.

In 2006, when the Labor government banned the sale of cocaine kits, a press release from the then Premier, Steve Bracks, stated:

> This government will not condone the sale of items which blatantly promote the use of illegal drugs …
>
> …
>
> They send the wrong message and glamorise a lifestyle which is in fact ugly and dangerous'.
>
> …
>
> This Government recognises it's inconsistent that minors cannot buy tobacco products, yet they are able to purchase bongs or similar implements.

Despite this ringing endorsement of the coalition's position by a former Labor Premier, this government still refuses to take any action in this regard. In fact the government has gone further than doing nothing — it has taken an active stance against the banning of bongs by, along with the Greens, voting against and defeating a private members bill introduced in the upper house by Peter Kavanagh, a member for Western Victoria Region in that chamber, which would have banned the display and sale of bongs. That would have been a move which would have brought Victoria in line with other states.

In the short time I have left I reiterate that while I support the banning of ice pipes, this government should take the coalition's lead and also ban the sale of bongs.

Ms BEATTIE (Yuroke) — It gives me great pleasure to rise to support the Justice Legislation Further Amendment Bill. Other speakers have already correctly identified this as an omnibus bill and most speakers have concentrated on one particular aspect of the bill, and I would like to do that as well.

The particular section I will concentrate on is the one relating to amendments to the Guardianship and Administration Act 1986. Many people here will know how difficult it is to administer a deceased estate. Recently a case came to light where a black hole has been found — that is, the case of the parents of David Rosewall — —

Mr Ingram — Two cases.

Ms BEATTIE — Two cases. I stand corrected, but I am not sure by whom. Daniel Rosewall is a 28-year-old man who disappeared in January. His parents have been confronted with bills and debts that have been building up in Daniel's absence because he has not been declared legally deceased. As well as having the trauma of looking for their missing son, Daniel's parents have tried to deal with day-to-day matters, but they have found that they cannot even have Daniel's mail redirected to better manage his payments. Daniel's parents were told that privacy regulations meant that letters had to be returned to the senders of those letters. This meant that at least one debt was referred to a debt collection agency. This situation arose while Daniel's parents were distraught and hoping that their son would be found alive but were still having to administer his day-to-day affairs.

I would like to thank Daniel's parents for bringing this matter to the public's attention, because no parent should have to go through that. Daniel's parents cannot do much more to find Daniel, but they can look after his affairs. This section of the Justice Legislation Further Amendment Bill will fix that black hole. I wish the Rosewalls well in their attempt to find their son, Daniel. However, I hope that by closing this black hole things are made a little easier for the Rosewall family, and I hope a similar situation does not occur to anyone else.

With those few words, I commend the bill to the house.

Dr SYKES (Benalla) — I wish to make a brief contribution to the debate on the Justice Legislation Further Amendment Bill. My contribution will focus on the amendments to the Liquor Control Reform Act 1998. The amendment in this bill relates to providing a suite of powers to the chief officers of the Metropolitan Fire and Emergency Services Board and the Country Fire Authority, and the director of liquor licensing in Victoria relating to inspection, evacuation and closure of licensed venues if there is a serious threat of fire.

These powers are relevant in the electorate of Benalla. Just recently we have had serious fires in two of our well-known watering holes. Firstly, about six weeks ago the Bridge Inn at Maindample was completely gutted. Not only was the hotel gutted but so too was the community because the Bridge Inn was a place where people gathered for many of their community activities as well as having a quiet drink on a Friday afternoon or an evening after work. It was also a very popular tourist venue where people could pop in on their way to visit the magnificent areas of north-east Victoria. That is an example of a situation where something has gone wrong, and it is important that we look at putting in place mechanisms to minimise this occurring in other venues.

Interestingly and disappointingly only a week or so ago the Mansfield Hotel also had a major fire. I understand there is about $300 000 worth of damage and the hotel will be out of operation for a number of weeks or months. Fortunately in its case there is full insurance coverage, so the financial penalty is limited. Many of our older community hotels have been in existence for 100 years or more and are very quaint, and their appeal is their quaintness and their historic appeal but there is also an increased fire risk.

One other thing I would like to mention is that the new liquor licensing director appears to be operating in a very pragmatic fashion, recognising the need to ensure that our country hotels and other licensed premises continue to be financially viable and are in a position to provide services to people, whether it be as the venue for a quiet drink on a Friday afternoon or a Saturday evening, a low-volume takeaway packaged liquor outlet, a bed and breakfast or other type of licensed premises. We now have a liquor licensing director who has come in and is setting about bringing some common sense to some of the fundamentally flawed liquor licensing fees that were brought in about 18 months ago by a government that just did not understand the notion of the risks associated with liquor licensing outlets.

There are many other aspects of the bill I could contribute to, but in the interests of sharing the time around I will close my contribution there.

Debate adjourned on motion of Mr TREZISE (Geelong).

Debate adjourned until later this day.

DISTINGUISHED VISITORS

The ACTING SPEAKER (**Mr K. Smith**) — We have in the gallery members of a visiting delegation from East Timor. We welcome to the chamber the East Timorese Minister for Finance, the Minister for Social Solidarity, the Secretary of State for Social Security and Defence, and the president of the Public Service Commission. We welcome you all to our chamber.

MARINE SAFETY BILL

Second reading

Debate resumed from 1 September; motion of Mr PALLAS (Minister for Roads and Ports).

Mr TREZISE (Geelong) — I have great pleasure in supporting the Marine Safety Act 2010 that replaces the 1988 act. I am pleased to support this bill because it highlights not only this government's and the minister's commitment to safety on our waterways but also this government's commitment to safety across the entire transport sector in Victoria.

Prior to coming to this house I had the pleasure of being employed as the shipping manager, firstly, at the old Port of Geelong Authority, and secondly, following its sale, of being employed in a similar role by Toll Geelong Port. Marine safety came within my area of responsibility, as did occupational health and safety, within the port precincts of not only the port of Geelong but also, interestingly, the port of Hastings. Coming from that background I personally appreciate the importance of the legislation before us today.

It is important that our legislation, rules and regulations covering the marine sector continue to be re-examined to take into account changing circumstances. In the commercial area, changing circumstances include the size of vessels, their use and their ever-increasing numbers. For example, when I left Toll Geelong Ports in 1999 roughly 360 ships were visiting the port of Geelong each year, whereas today that number has increased by nearly 50 per cent to something like 550 vessels per year. Of course those vessels are getting bigger and bigger.

Circumstances in the recreational area also change, and legislation is needed to keep up with those changes. The sheer volume of recreational boaters has increased over the last number of years. I note, for example, that currently there are more than 200 000 recreational vessels registered in Victoria and there are more than 330 000 people with recreational boat operator licences. My electorate takes in the magnificent Corio Bay, and many people in my electorate and in the wider Geelong community enjoy boating as a recreational pastime. In addition, Geelong is home to a number of professional fishermen and companies that employ many people as part of the fishing industry. This bill is of particular interest to me and to my constituents in the Geelong electorate.

In supporting this bill I take the opportunity to commend the Minister for Roads and Ports on his consultation process in developing this legislation. It is a trademark of this government that consultation is always extensive and thorough. The consultation on this legislation was no exception. The review of the 1988 act commenced two years ago. Following that review a number of workshops were held for stakeholders to participate in, and from these workshops discussion papers were developed that document issues and reform options. Following the release of these discussion papers further consultations were held. Summaries of these consultations were published earlier this year, followed by ministerial briefings. I commend the minister on his wide and extensive consultation process in developing the bill before us this afternoon.

It is important to note that as a result of this consultation process and review of legislation a number of important changes to our laws were implemented in December 2009, one of which is of particular interest to me given that every summer thousands, if not hundreds of thousands, of swimmers, enjoy beaches like Eastern Beach in my electorate or beaches along the Surf Coast and on the Bellarine Peninsula. These people share the water with vessels like speedboats, and even more worryingly, jet skis. Regularly you see jet skis coming close to the shore at speed; close to people and children who are enjoying the shallows.

Mr Jasper — That is a good issue.

Mr TREZISE — It is a good issue. It is an important issue. I welcomed the minister's initiative in implementing hoon boating laws along the lines of the successful hoon driving laws that we implemented as a state government a number of years ago. The banning of vessels and their drivers from the water is a reasonable and good step forward. It provides effective powers to water enforcement officers in dealing with hoon boat operators. I welcome the addition of seizure powers, which will come into effect in September 2011, including the forfeiture of boats.

I have a particular interest in marine safety and in occupational health and safety from a ports perspective, so I commend the minister on the safety initiatives and the requirements set out in this bill. A number of members have dealt with the issues with regard to health and safety and marine safety as they apply commercially.

I will not go over that ground except to say that I support this bill and wish it a speedy passage through the house.

Mr K. SMITH (Bass) — I am pleased to have the opportunity to speak in the debate on the Marine Safety Bill 2010. It seems strange to me that this bill is a rewrite of the Marine Safety Bill of recent years and that it is 350 pages long. I scratched my head and thought about this. It was my understanding there was going to be a national, all-state agreement on a marine safety bill that would overtake what was happening in Victoria as far as marine safety was concerned. I am just wondering why this 350-page bill had to be produced at this stage.

Mr Jasper — And all the amendments too.

Mr K. SMITH — And all the amendments that go along with it.

In recent years I have been interested in some of the requirements the Marine Safety Board in Victoria has imposed on some of the older fishing boats that are operating in our waters, whether it be in Port Phillip Bay, in Western Port or out in Bass Strait. The board required the owners of some of the older boats to go to the expense of installing engine-smothering systems. If there is an engine fire, these smothering systems are supposed to put the fire out. There was a huge expense involved in installing these systems, and when we made inquiries of the Marine Safety Board in regard to previous fires that had occurred in boats it was not able to come up with any satisfactory explanation as to why it was forcing fishermen, particularly fishermen from my area, to fork out thousands of dollars to put these engine-smothering systems into their boats.

In the end the Marine Safety Board forced them to do it, despite written confirmation that the national marine safety people were not going to ask for that to be done in older boats. In relation to new boats the board was saying, 'Put them in; they can be part of the system when the boats are built', but in the older boats it was not going to be necessary. Bottles of smothering-type gas had to be stored somewhere on a boat, which was a nuisance for some of the fishermen. Some of the older fishermen know their boats — they know their engine, they can read their engine and they know whether there are going to be any problems as far as fires are concerned. As I said previously, there had been very few problems as far as fires in engines were concerned before, so I am wondering why we are looking at this piece of legislation again and why the board forced those fishermen to take this action.

There is another issue that comes to mind in relation to this bill and marine safety. In recent times I have spoken briefly about the removal of some temporary markers that were put at the entrance to the Bass River. Parks Victoria went through the area and decided that it was going to remove markers that had been placed on the river course as it flowed out into Western Port. It does not just flow out in a straight line, it meanders its way not only through the land itself but also as it gets out into Western Port. To be able to find the channel, people had placed pipe markers. These had been there for many years to show people where to follow the river. This is because one of the problems we have in Western Port is the rise and fall of the tide in the mudflats. Anybody who was not aware of the problems that could occur might go straight out from the Bass River because it appeared there was plenty of water for them to get through — and at high tide it may be that way — only to find that they could be stuck on the mud for some hours.

The safety situation in relation to that was that if somebody was stuck on the mud and a very heavy swell came up, their boat could well have been overturned, causing loss of life. Yet Parks Victoria felt that it could remove these markers. No temporary markers were put in to replace them. The marine safety people have not looked at putting in temporary markers, so we now have an extremely dangerous situation down at the entrance to the Bass River. I raise that issue because I can see how interested the Acting Speaker is and how concerned he is about problems with marine safety, particularly in the Bass area. I am sure that if he ever went fishing there, he would want to feel safe.

I will conclude with those remarks, because I know there are a lot of speakers to get through who also want to talk some common sense like I have been doing in relation to this bill.

Mr INGRAM (Gippsland East) — I rise to speak on the Marine Safety Bill. This bill has had an interesting process, and I make the comment, firstly, that it is an extremely lengthy piece of legislation. It was introduced in the last sitting week on the eve of the federal election. There has been an enormous amount of information to get through, and I must confess that due to the busy nature of our political lives I have not had the time and the opportunity to have a really good look at some of the details of it that I would have liked to study or to have had the consultation process I would have liked. This is part of the reason why in the last sitting week I tried to give the house an extra couple of weeks to have a good look at the bill.

One of the reasons I did that was because I was involved in the discussion paper process at a local level. When the discussion paper was released it generated enormous debate within my community and among communities right across Victoria. There was

opposition to some of the proposed changes that were thought to be part of the reforms, and it was quite clear that it was important that the community had a good understanding of what the changes to the legislation meant.

I attended one of the briefings on the discussion paper at Lakes Entrance. This came after some of those meetings in western Victoria that generated most of the debate and discussion. The marine board had already started to back away from some of the provisions in the bill at that time, so there were some good outcomes from that process. Looking at the changes I think most of the ones that were causing a bit of heartache have disappeared from the final bill, which is good thing.

There are a couple of things in the legislation which are probably still of some concern. As we often see nowadays in Parliament, a large portion of the really meaty bits of the changes come in regulations, and there is not necessarily a full discussion about their implications in this chamber. That is a problem with the direction in which governments are going: pushing more and more of the meaty bits of rules into the regulation-making process so that the Parliament really only looks at the overarching structure of the rules. We are probably abrogating some of our responsibility in doing that.

I have some particular discussion points to raise. A raft of amendments have been circulated by the government. One amendment has been circulated by the lead speaker for the opposition, the member for South-West Coast, in relation to the disallowance approach that Parliament can take to the regulations. As a fundamental principle I support the concept that Parliament should have a greater ability to approve or disallow regulations and to scrutinise the rules and laws that we are making. We should have the opportunity to say, 'Hang on a second; on behalf of our constituents we think that's not okay'. As a matter of principle I support the amendment circulated by the member for South-West Coast. Understanding the time taken in this Parliament it is probably unlikely that that amendment will get up in this chamber, which is another issue entirely, but if it does go through to the upper house and that amendment gets passed, I will be supporting it as it comes back to this chamber.

I thank the government and the department for the briefing on the bill. An issue that came up in that discussion, which I am sure is addressed in there, relates to commercial vessels. Owner-operators of commercial vessels will now be permitted to use their own vessels recreationally without having to comply with commercial requirements. This is an issue that I brought to the government's attention two years ago, and it related directly to an incident I had with the water police. It has been a grey area within the current rules in that a commercially registered boat arguably cannot be used for recreational purposes unless it is registered as recreational, but you cannot register as recreational a boat which has a pre-existing registration.

When I had this discussion with the water police they assured me that the vessel had to be registered as recreational. I said 'That's fine, but how can I register the boat as recreational if I have to then tell them the boat has no existing registration when it is already registered?'. The message really was, 'You will have to tell them it isn't registered'. The idea of a law enforcement officer telling a member of Parliament that you have to be dishonest to a government authority to find a way through a problem that we have created through laws and regulations was a bit foreign to me, so I wrote to the minister about it.

By the way, this is not a problem just for me; it is a problem that is starting to develop right across the commercial fishing industry, particularly for those who use small vessels and wish to take their families out on weekends in their boats. It is clearly a problem, and I wrote to the minister about it. The department came up with a minor fix, which in my view still was not acceptable. I am assured that the legislation before the house will enable that problem to be resolved and the issue to be addressed so that commercial registered vessels can be used, within reason, for recreational purposes, but there needs to be some identification of the change in operation, if you like.

The other point that was made in the briefing was that there was uncertainty about the ability to use regulations to specify vessels as being recreational or commercial and that this helps those who are flouting the requirements. This is definitely an issue, particularly with recreational vessels being used for arguably commercial purposes. I think the rules in the bill before the house deal with some of that, and it is important that we deal with it.

There are some other issues in relation to the commercial sector. Whilst we could argue that the regulation-making powers are fairly broad and would allow marine safety to develop new and different rules, so long as there was a consultation process — and under the regulation-making powers there is a process that has to be gone through — I think the provisions we have before us are good.

One of the issues of concern that came up in the original discussions around the development of this

bill — and I see it is addressed in the bill — is restrictions on recreational vessels. The original one that caused a lot of angst was restricting small vessels from going into marine waters. That upset a lot of small boat recreational users. There might still be some concern in relation to the endorsement process, and there need to be some clear discussions around that with the recreational fishing and boating sector to ensure that the endorsement process is not misused. I notice that one of the minister's amendments seems to deal with some of those concerns, and I think it is good for that amendment to be made.

There are some changes relating to the restricted licence and the ability for unlicensed persons to operate vessels when they are under supervision. As the father of four teenage children I think it is important that there is a process to allow children to operate vessels safely with supervision. The important thing we must highlight is that there are some elements of the recreational boating sector in particular that operate in a terrible manner, and we need to make sure that those rogue elements are weeded out and that the rules and fines are in place to deal with them.

With those words, I will say the bill addresses most of my concerns.

Mr CRISP (Mildura) — I rise to make a contribution to debate on the Marine Safety Bill 2010. The purpose of the bill is to provide a regulatory framework for safe marine operations in Victorian inland and coastal waters. The bill is about safety in our waters and makes clear the responsibilities of everyone, from the harbourmaster to recreational boat users.

I note that the second-reading speech talks about inland waterways being less available and people moving to the coast. However, with some rain our inland waters and lakes are coming back into use. With that background I note the controversial discussion paper has come and gone — and much of it has gone, thankfully — and also that the old issue of regulations which can be allowable or disallowable arises here as well. It is interesting that codes of practice are disallowable but the regulations are not. I note also that there is a national code on the way, and that may well change things further as well.

The bill makes some big improvements and changes which will need to be carefully rolled out in northern Victoria. Most of the boating in my electorate occurs on the Murray River, which is in fact in New South Wales. However, there are some permanent lakes in my electorate, such as Lake Cullulleraine, and there are often differences between Victoria and New South Wales, so some education will need to be undertaken in those areas.

There are many recreational lakes in the Mallee that are benefiting from the Wimmera–Mallee pipeline and are now being refilled. Lake Lascelles at Hopetoun is a prime example. Boating has returned to that community, and there are more lakes that will be filled. It is certainly a tribute to those involved that we are getting the lakes filled and a tribute to the people at Hopetoun who, even when the lake was dry, continued to develop the site and some of the excellent facilities, including accommodation, that are on the lake's edge.

Lake Walpeup in the Timberoo Flora and Fauna Reserve is just west of Ouyen. It was a recreational lake, and now the locals are working to refill it. With the lakes come boating and the issue of marine safety. The boating experience of many of those people will have been on New South Wales waters, so the differences in the jurisdictions will need to be managed with information and education.

This bill is about improving safety, but we need people to understand what is required of them, so those involved in rolling this out should not forget to communicate with inland Victoria, particularly in northern Victoria. With those words I indicate The Nationals are not opposing the bill.

Mr LANGUILLER (Derrimut) — The Marine Safety Bill 2010 provides for improved marine safety outcomes by replacing the current Marine Act 1998 with a more contemporary form of safety regulation that strikes an effective and appropriate balance between performance-based regulation and prescription. You would be aware, Acting Speaker, that while marine safety outcomes are generally good at present, safety risks and incidents are increasing, and so too are injuries and hospitalisations — at the rate of 100 per cent over the last five-year period for which data is available.

The bill represents a proportionate response to changes in risks. It is important to put on the record that as of 30 June Victoria had 1421 domestic commercial vessels, and that a further 204 were being constructed or undergoing initial survey. More than 200 000 recreational vessels are registered in Victoria, comprising more than 170 000 powered vessels and approximately 40 000 unpowered vessels. More than 330 000 Victorians are recreational boat operators, and many of them are in my electorate. The majority of them are good operators, but we encourage everybody to adopt good behaviour and to understand that safety is a prime concern. With those very limited but important

remarks, I commend the bill and wish it a speedy passage.

Mr WAKELING (Ferntree Gully) — It gives me pleasure to rise to make a contribution to the debate on this bill, which seeks to regulate the area of marine safety. The area I particularly wish to address concerns the issue of fuel lines and fuel tanks on marine craft. This issue was recently brought to my attention by a constituent, and I made representations on their behalf to the minister. Their concerns are particularly with respect to the fuel lines that are currently used in the state. They advise that with respect to commercial vessels there is a requirement to utilise a fuel hose that meets ISO standard 7840 and that recreational vessels utilise fuel lines that do not meet this standard.

My constituent has informed me that in the event of a potential fire, fuel lines that meet this ISO standard have a potential of resisting flame for 2.5 minutes and that further the hoses used by recreational craft may only have a resistance of 1.5 minutes. My constituent has raised these concerns in the context that in the United States the fuel lines must meet the standard SAE J1527 which provides for a resistance factor of 15 minutes. With those comments I conclude, but I believe this is an important issue which this bill needs to address.

The ACTING SPEAKER (**Mr K. Smith**) — Order! The member for Mordialloc has 30 seconds!

Ms MUNT (Mordialloc) — I would just like to say that as the representative of the Mordialloc electorate, which is on Port Phillip Bay and has a very large number of recreational vessels. I very much welcome this bill, as it strengthens and reaffirms provisions and provides for tougher sanctions for hoon boating operators, which is very important to the people of my electorate.

Sitting suspended 1.01 p.m. until 2.04 p.m.

Business interrupted pursuant to standing orders.

DISTINGUISHED VISITORS

The SPEAKER — Order! Before calling for questions, I welcome to the house Noel Maughan, a favourite former member for Rodney, and his wife. It is terrific to see them both here.

ABSENCE OF MINISTER

The SPEAKER — Order! I advise the house that the Minister for Industry and Trade, who is also the Minister for Regional and Rural Development, is absent from question time today. Questions for the regional and rural development portfolio will be answered by the Minister for Agriculture, and questions for the industry and trade portfolio will be answered by the Minister for Finance, WorkCover and the Transport Accident Commission, who is also the Minister for Water.

Mr McIntosh — On a point of order, Speaker, earlier today when I raised a point of order I asked, consistent with the past practice of the house, that you read the letter of resignation you received from Craig Langdon, the former member for Ivanhoe. You indicated that you would not do so based upon advice you had received. I ask that you publicly release or read to the house the advice upon which you relied in refusing to read Mr Langdon's letter of resignation, which is inconsistent with the past practice of this house.

The SPEAKER — Order! The resignation of the member for Ivanhoe has been announced to the house, as is appropriate. Whether or not the letter is read is a matter for the Speaker, and there is nothing in the standing orders that forces the Speaker to read it. In discussion with the clerks, taking into full account the contents of the letter, which refers to members of the public who have no ability to make any comment on what happens in this house, it was thought that the best thing to do would be not to release the letter.

QUESTIONS WITHOUT NOTICE

Ivanhoe electorate: government performance

Mr BAILLIEU (Leader of the Opposition) — My question is to the Premier. I refer the Premier to claims by the former member for Ivanhoe and former Government Whip that the Premier has shown little interest in the Ivanhoe electorate and preselected Mr Carbines, who is:

> … a candidate who has worked so little … One leaflet in 12 months, rarely attending events and when he does, attending only for a short time with little engagement with people, smacks of taking the electorate for granted.

I ask: is it not a fact that the Premier and this government ignore the residents of Ivanhoe and have taken them for granted?

Mr K. Smith interjected.

The SPEAKER — Order! The member for Bass is warned and will not be warned again!

Mr Batchelor — On a point of order, Speaker, the question asked by the Leader of the Opposition is an interesting one. I was just wondering if the Leader of the Opposition could remember the name of the Liberal candidate for Ivanhoe? Is there one?

Honourable members interjecting.

The SPEAKER — Order! The Minister for Energy and Resources will cease interjecting across the table in that manner. I warn him that I will not allow people to take frivolous points of order.

Mr BRUMBY (Premier) — I thank the Leader of the Opposition for his question. There are those of us in this place with better memories, or perhaps less selective memories, than the Leader of the Opposition. I certainly remember that when I came to government in this place in 1999 one of the huge issues at the time in the electorate of Ivanhoe and for our state as a whole was the former government's proposal to privatise the Austin Hospital.

Honourable members interjecting.

The SPEAKER — Order! The member for Scoresby will not interject in that manner. I ask government members to show some consideration. I warn the member for Kilsyth.

Mr BRUMBY — I remember what a huge issue that was. I remember on our side of politics we made a very specific commitment to save the Austin Hospital — not just to save it but to invest in it, rebuild it and build it into a great hospital in our state. And guess what? That is exactly what we did. That is exactly what we have done. I am proud of the way we saved the Austin Hospital from being sold off by the coalition's real estate company.

Honourable members interjecting.

The SPEAKER — Order! I warn all members that I have had enough at 2.12 p.m. I ask the Premier not to debate the question, and I suggest to the members of the opposition that the Premier will not be howled down.

Mr BRUMBY — I am proud of what has been achieved at the Austin Hospital. If I think back over the last year, from memory, I have been out there on at least two occasions with the Minister for Health. We had the expansion of the intensive care unit.

Honourable members interjecting.

The SPEAKER — Order! The Leader of The Nationals is warned, as is the member for Polwarth.

Mr BRUMBY — We have had big improvements there in terms of elective surgery, and of course we also have stages 1 and 2 — —

Honourable members interjecting.

Questions interrupted.

SUSPENSION OF MEMBER

Member for Caulfield

The SPEAKER — Order! Under standing order 124, I ask the member for Caulfield to depart the house for 30 minutes.

Honourable member for Caulfield withdrew from the chamber.

QUESTIONS WITHOUT NOTICE

Ivanhoe electorate: government performance

Questions resumed.

Mr BRUMBY (Premier) — We have had stages 1 and 2 — stage 2 was of course funded by our government — of the Olivia Newton-John Cancer and Wellness Centre. This is a great project for that area, one that we have supported very strongly indeed. It is great not just for that area but great in terms of the way in which we are tackling cancer in this state. With an ageing population we have more people who are being afflicted by cancer, and the more we can do in this area, the more families we will help. I am proud of what we have done in partnership with the Austin Hospital and Olivia Newton-John.

Just recently, with the Minister for Housing, I opened 50 to 100 social housing units at Mount Street — a great project in that area. In education, I have been out to some of the schools in that area, and we are seeing a huge investment in the regeneration of schools in the Ivanhoe electorate. I would say that these things represent a positive step forward for the people of that area — for the people of Ivanhoe and for the people of Heidelberg. What a contrast it is: had the government not changed in 1999, the Austin Hospital would be gone, finished, kaput, all done.

Honourable members interjecting.

The SPEAKER — Order! The member for Prahran is warned.

Mr BRUMBY — The auctioneer's hammer could have come out; that is what would have happened. We remember all the efforts. The schools closed and the hospitals closed, such as Latrobe Valley and Mildura — all those under the hammer under the previous government.

Mr Donnellan interjected.

The SPEAKER — Order! The member for Narre Warren North is warned.

Dr Napthine — On a point of order, Speaker, the Premier is debating the question, deliberately misleading the house and trying to rewrite history.

The SPEAKER — Order! The Premier has completed his answer.

Solar energy: government initiatives

Mr LUPTON (Prahran) — My question is to the Premier. I refer to the Brumby Labor government's commitment to make Victoria the best place to live, work and raise a family, and I ask: can the Premier update the house on the steps the government is taking to tackle climate change and create new jobs in Victoria?

Mr BRUMBY (Premier) — I thank the member for his question, and of course for his very strong support for the government's climate change white paper and our Climate Change Bill. Yesterday I was happy to join the Minister for Energy and Resources and the local member, the Minister for Housing, when we announced further funding to support the development of the solar energy industry in our state. We did this in Abbotsford at the site of Solar Systems.

It was a wonderful thing to be there to see the progress that Solar Systems is making in technology that is truly the best in the world. The technology we saw — with one mirror array and a small single box — generates enough power for 20 to 25 homes. The array that we saw was about to be taken to Bridgewater for further trialling, en route eventually to Mildura for what will be a huge solar investment for our state.

Yesterday, with the minister, I announced the establishment of the Office of Solar Energy. We will be the first state in Australia to have such a stand-alone office. Whether it be household solar panels, whether it be medium size solar networks, whether it be large-scale solar, those things will now come to the Office of Solar Energy with all of the support that we want.

We have also provided $20 million for the sustainable energy pilot demonstration program and $10 million for the sustainable energy research and development grants program. All of this is about achieving our target of 5 per cent solar generation capacity in our state by 2020.

We want to be, and we will be under our government, the solar capital of Australia. We will lead the way in solar energy across Australia. If you look at what is going to occur with solar energy, you will see that as a result of our policy between 5 and 10 medium to large-scale solar plants across the state generating billions of dollars of new investment and creating thousands of new jobs. This is good for the environment, good for tackling climate change and great for jobs in our state, particularly in regional Victoria.

I am also pleased that we have seen such strong support from those involved in the solar industry. Max Sylvester, the co-founder of the Victorian-based solar energy company Energy Matters, said:

> I think Victoria is a great example to the rest of the Australia, and to the world, of progressive renewable energy policy.

Michael Goldsworthy, the chief executive officer of Silex, Australia's biggest solar energy company, said:

> You'd have to travel a long way around the world to find a state or provincial government which is anywhere near matching what is happening here in Victoria.

That company is on track to secure the $420 million development at Mildura. As I said, that is part of the story of Solar Systems, but the other part is that the technology it is developing is 1500 times more powerful than a typical rooftop solar panel. The efficiency ratings which the company is getting from its technology compared with the normal conversion rate of 20 to 22 per cent are 40 to 50 per cent. This is a great achievement for our state and for research and development.

We have a great story to tell about solar energy in Victoria. Members will recall that during the last sitting week we were able to announce the AGL wind farm, which is the biggest wind farm development in the Southern Hemisphere. In part that project was stimulated by the construction of our desalination plant and the fact that all of the power for that is coming from renewable energy. Putting that demand into the market — —

Honourable members interjecting.

Mr BRUMBY — You are opposed to wind, you are opposed to desal — what else are you opposed to? You are opposed to everything!

The SPEAKER — Order! I ask the Premier not to debate the question.

Mr BRUMBY — Our Climate Change Bill, our climate change white paper and our 5 per cent target for solar energy all come together to give us a great environment in Victoria and not only lead the way in terms of tackling climate change but also create this new climate of opportunities for new jobs in our state. I believe we are leading the way in this regard, and the announcements on solar energy, the commitments of Solar Systems and Silex, and the commitment of AGL show just how strong our position is in terms of generating that investment and protecting the environment.

Questions interrupted.

DISTINGUISHED VISITORS

The SPEAKER — Order! Before calling the Deputy Leader of the Opposition, I acknowledge in the gallery today the former member for Kilsyth and a former member for Higinbotham Province in the other place. It is good to see you both here today.

QUESTIONS WITHOUT NOTICE

Questions resumed.

Ivanhoe electorate: government performance

Ms ASHER (Brighton) — My question is to the Premier. I refer the Premier to a letter written by the former member for Ivanhoe, which states:

> I also take this opportunity to outline my frustration with the government over the previous 12 months and the personal sense of disloyalty and betrayal I have experienced.
>
> …
>
> The ongoing insults by yourself … have been extremely offensive. … This was not lost on me and showed how little to interest people had in me or the Ivanhoe electorate.

And I ask: is it not a fact that for the last nine months the former member for Ivanhoe has been seeking funding from the Minister for Education for seven individual school projects in his electorate that have all been ignored by the minister and her chief of staff, Mr Carbines?

Mr BRUMBY (Premier) — I thank the Deputy Leader of the Opposition for her question.

Mr Hulls — Welcome back!

Mr BRUMBY — And I welcome her back. We will have to check *Hansard* for the last time she asked a question. It might be out of print; it will be in the archives. We will have to go down to the government records office.

Honourable members interjecting.

The SPEAKER — Order! The Premier will not debate the question.

Mr BRUMBY — I thank the Deputy Leader of the Opposition for her question about education. I am advised that since 1999, $50.3 million has been invested in government schools in the Ivanhoe electorate. Of this investment, $25 million has been provided by the federal government for projects delivered by the state government. I do not know what the record was in the 1990s — I can happily chase it up for the honourable member — but I would have thought that over that period of time that is quite a significant investment in schools in that area.

Mr Dixon interjected.

The SPEAKER — Order! The member for Nepean knows full well that if he wishes to ask a question, he stands in his place at the appropriate time and I will gladly give him the call.

Ms Munt interjected.

The SPEAKER — Order! The member for Mordialloc is warned.

Mr BRUMBY — Some of those projects that have been funded include the La Trobe Secondary College's science and maths specialist centres at a cost of $4 million, which were approved in the last financial year, and the Rosanna Primary School modernisation, including a multipurpose music room and canteen upgrade, at a cost of $420 000. I have a long list of projects here; I will not read them all because it would take too long. The Viewbank College modernisation, including facilities for art, fabrics technology and food technology at a cost of $1.576 million, was approved in 2002–03. There was also Viewbank Primary School.

There are a huge range of projects that have been funded in the education area. I understand there has also

been a significant increase in the number of teaching staff in schools in the Ivanhoe area, and I think that the investment we have made in schools in that area has been significant. It has been a significant investment, because we believe in providing opportunities to all students who attend our government school system. I believe we have done that, and I reject the assertion made by the Deputy Leader of the Opposition.

Seniors: travel concessions

Ms GRALEY (Narre Warren South) — My question is to the Minister for Senior Victorians. I refer to the Brumby Labor government's commitment to make Victoria the best place to live, work and raise a family, and I ask: can the minister update the house on how the government is extending the successful seniors travel program?

Ms NEVILLE (Minister for Senior Victorians) — I thank the member for Narre Warren South for her question. The issue of affordable travel for seniors was one of the key issues addressed by the Brumby Labor government's ageing framework — a framework that I launched last month and a framework that is about responding to the ageing of our population over the next 10 years.

This comprehensive, forward-looking plan has been welcomed. It has been welcomed, for example, by the Council on the Ageing, which has said:

> … we welcome the focus on creating an age-friendly society and a framework which seeks to address ageism and systemic age discrimination.

It was hailed by the *Portland Observer* as a 'long-term plan for ageing Victorians'.

In preparing the plan, we heard the views of around 1400 seniors right across the state. I am told that this makes it the largest consultation with seniors ever held in Victoria. But some people, unfortunately, were silent in that consultation process. They clearly do not care about seniors and have no ideas about the future, and that is why they did not bother to put in a submission to that consultation process. There was no submission from those opposite.

Seniors told us clearly in that consultation process that they wanted to remain living in their homes for as long as possible. They wanted to stay independent, and they wanted additional support to help them with their transport needs. That is why the Minister for Public Transport and I recently announced that as of 1 January next year all holders of a Victorian Seniors Card will be able to use public transport for free all weekend. That will mean that around 1 million Victorians will have access to free public transport every Saturday and Sunday to do their shopping, to visit friends and relatives, and of course to go and watch the Geelong Football Club play.

Mr Hulls — That is a good use of it.

Ms NEVILLE — A very good use. This is in addition to the highly popular two free trips on V/Line services, which we will increase to four trips per year for Seniors Card holders in regional Victoria. The free travel that is available during Seniors Week continues. Around 400 000 Victorians have currently signed up for the Sunday seniors pass. They will get their free myki in the mail from September onwards — and I would encourage other Seniors Card holders who have not signed up yet to do so, so they can take advantage of the benefit of free public transport.

This travel initiative has also been welcomed by the community:

> The CEO of Aged and Community Care Victoria today welcomed the state government announcement of free weekend travel for senior Victorians from 1 January.

To further assist seniors to be able to remain in their homes near family and friends, we have also continued to grow the home and community care (HACC) program. The Victorian HACC system supports more clients than any other state in the country — in fact it supports 90 per cent more people than when we came to government. We are proud of this record of investment in vital services. Unfortunately I know that some do not share this commitment. In particular, I noticed a recent comment from a member of our community who did not support increasing funding to community programs. It was in fact a member of this house who was reported in the *Melbourne Weekly Eastern* as saying that she will not commit to increasing or redistributing funding to community programs. Who was this article referring to? None other than the member for Doncaster.

Labor has a proud record of increasing funding for seniors. We have increased funding for seniors services by almost 98 per cent since coming to government. We will continue to stand up for seniors and we will continue to listen to seniors, and I am very proud that seniors will now have free weekend travel — thanks to a Labor government.

Desalination plant: security payment

Mr BAILLIEU (Leader of the Opposition) — My question is to the Premier. Under the provisions of the

contract for the desalination plant, when water is not required from the desalination plant in a given year, what is the cost of the security payment that must still be contractually paid to the AquaSure consortium?

Mr BRUMBY (Premier) — I thank the Leader of the Opposition for his question. Today the Minister for Water and I were at the desalination plant — —

Mr K. Smith interjected.

Mr BRUMBY — Since the honourable member knew we were there today, he would be aware of the extraordinarily positive economic impact that this huge project has had on the region, and I thank him for his acknowledgement of that. There are thousands of jobs that have been generated across the state, and I suspect that the Minister for Water may have a little more to say about this later today. I will pre-empt that just a little.

One of the great things about this project is the economic impact of it across the state. We looked today at the reverse osmosis plant which is under construction. The steel girders have been sourced locally in Victoria. The roof has been made by Ortech in Bendigo. The pipes are from Dandenong. There are jobs being generated right across the state.

Mr Baillieu — On a point of order, Speaker, the Premier is debating the question. He was asked a simple question about the annual security payment. I ask you to ask him to address the question.

Mr Stensholt interjected.

The SPEAKER — Order! The member for Burwood is warned. I uphold the point of order.

Mr BRUMBY — As the honourable member is aware, we have released publicly the capital cost and the provision that has been made for operating costs, but in relation to any individual payments to the company, we have consistently said that they are commercial in confidence and they will not be released.

Floods: preparedness

Mr HARDMAN (Seymour) — My question is to the Minister for Police and Emergency Services. Given the predictions of high rainfall over the weekend, can the minister advise the house of Victoria's preparedness for any flooding that may occur?

Mr CAMERON (Minister for Police and Emergency Services) — During the course of winter we have had more rainfall than we have been accustomed to in recent years.

Mr K. Smith interjected.

The SPEAKER — Order! The member for Bass!

Mr CAMERON — As a consequence of that the ground is extremely wet, particularly in the north-east, and the consequence of that is that additional rain will not be soaking into — —

Mr Jasper interjected.

The SPEAKER — Order! The member for Murray Valley!

Mr CAMERON — As a result of the saturation, every drop of rain will add to flood.

Honourable members interjecting.

Mr CAMERON — This is a fact; I do not know why members are laughing. I notice that there are some honourable members who are not laughing at you lot. Certainly I know that the honourable members for Benalla, Wangaratta, Murray Valley and Shepparton, for example, know how potentially important this issue is this weekend.

The Bureau of Meteorology has forecast a low-pressure system over the state this weekend, and it is forecasting substantial rainfall, particularly in the north-east. At this stage it is forecasting something between 50 millimetres and 100 millimetres of rain, and as we get closer to the weekend those predictions will become a lot better. The difference between 50 millimetres, which will bring about moderate flooding, and 100 millimetres is that if there is more than 75 millimetres there is the potential for major flooding. That will occur not only in the north-east, but there will also be the potential for minor flooding in other areas, including the north-west, the Wimmera and the south-west.

The particular areas that may be impacted are the Broken catchment, Fifteen Mile Creek, the Goulburn catchment, the Kiewa catchment, the Ovens River catchment, the King catchment, the Mitta Mitta catchment and the Seven and Castle creeks catchment.

I advise the house that the state's emergency services met yesterday, together with the Bureau of Meteorology. The State Emergency Service is on stand-by with its fantastic volunteers, and there will be some prepositioning of teams into the north-east in anticipation. The SES has already had discussions with

South Australia and Queensland in case additional assistance is required. The state control centre will be active from Saturday, and there will be one or two incident control centres established as necessary in the north-east.

This afternoon the SES, the police and the bureau are holding a press briefing, and that information will be updated between now and the weekend. In the event of flood, warnings will be issued by the emergency services using all the means that are available, including emergency broadcasters, information lines and emergency alert. The SES information line will be operating on Saturday on a 24-hour-a-day basis. The number is 1300 842 737, and it will be providing bulletins on its website along with rainfall information and flood warnings from the bureau site as well.

As honourable members from those areas will know, it is very important that local people, and maybe those people who have not lived there for a long period of time, appreciate whether or not they live in a potential flood area, that they plan in advance and that they listen very carefully to what the possibilities and the predictions may be. Certainly the situation is something that we are going to have to look at very closely in the next couple of days, because if we have that substantial rain, we will end up with substantial flooding.

Racing: industry funding

Dr NAPTHINE (South-West Coast) — My question without notice is to the Premier. On 10 April 2008 the Premier announced changes affecting the funding of Victorian racing industries and advised that 'The government will put in place funding arrangements no less favourable to the Victorian racing industry'. I ask: given recently published industry concerns that this promise is only for one or two years, will the Premier guarantee these 'no less favourable' funding commitments will apply throughout the full 12-year period of the post-2012 wagering and betting licence?

Mr BRUMBY (Premier) — I thank the member for his question. We have just completed a period of intense negotiation with racing industry controlling bodies to develop a framework for the future wagering licence arrangements, as we have consistently said, that are no less favourable to the racing industry. We have done this after what has been a decade of strong and consistent support for the racing industry in our state.

I am perhaps not necessarily surprised, but I am certainly somewhat dismayed that the opposition would come out with these comments today and the comments that have been in the press at the same time as the government has announced what is a world-class field of applicants for its post-2012 wagering licence. In a sense it almost defies belief that the opposition, and in particular the honourable member who has asked the question today, has been so consistent in his efforts to talk down our racing industry. It is in complete contrast to the work that we have done as a government in partnership with the industry to ensure that our industry keeps its position as the leader in Australia.

The role of the government is to provide the industry with the tools, if you like, to ensure that it can shape its own destiny and maintain that leadership position. That is why in 2008 — the year I understand the honourable member referred to — my government, in partnership with the Victorian racing industry, developed the $86 million Regional Racing Infrastructure Fund. The purpose of that fund was to support the development of the racing industry, particularly at country racing venues, and to ensure the continued provision of safe, high-quality racing products well into the future.

Dr Napthine — On a point of order, Speaker, the Premier is debating the issue. The question was quite specific: will he guarantee the no less favourable position for the full 12 years of the new wagering and betting licence? It is a very simple question: will he guarantee that no less favourable outcome? I ask you to ask him to address that question.

The SPEAKER — Order! The opportunity to take a point of order is not an opportunity to repeat the question, which I think the honourable member just did twice. The Premier is debating the question, and I bring him back to answering it.

Mr BRUMBY — I think the record shows that for every initiative — and there have been many of them — that we have taken to support and assist this industry and to move it forward, the shadow minister drags it back. As I said at the beginning of my answer, we are in negotiations with the industry at this point in time. As we are working through — —

Dr Napthine interjected.

The SPEAKER — Order! The member has asked his question and is receiving a response.

Mr BRUMBY — Our commitment to the industry was quite unequivocal. We are meeting with the industry as we speak, and for all of the good that we are doing with the industry, the contribution of the opposition is to talk it down and drag it back.

Health: government initiatives

Mr LANGUILLER (Derrimut) — My question is to the Minister for Health. I refer to the Brumby Labor government's commitment to make Victoria the best place to live, work and raise a family, and I ask: will the minister inform the house of how the government is securing investment in Victoria's health system to deliver better health care for Victorian families, and whether there are any challenges to these investments?

Mr ANDREWS (Minister for Health) — I thank the honourable member for Derrimut for his question. I was very pleased just this morning to visit the Sunshine Hospital campus of Western Health with the honourable member and officially open the new fast-track area adjacent to the emergency department at Sunshine Hospital. It is a fantastic project worth $3.5 million, which is money well spent. It is a great investment to support the staff to treat the more than 62 000 patients who attend the Sunshine Hospital emergency department each year. It is one among many projects, large and small, right across our system that are all about delivering better outcomes for patients now and into the future.

It also gave us an opportunity to announce $2.3 million in additional new medical equipment for Western Health. This ranges from a complete replacement of the whole infusion pump network across Western Health to some cardio-catheterisation equipment for Footscray hospital. Many different pieces of equipment, all meeting the needs as spelt out by Western Health, will be funded under our strong, enduring and consistent efforts around medical and hospital equipment. It was a fantastic outcome for Western Health and its growing number of patients.

Thirdly, this visit gave us an opportunity to reflect upon announcements I made with my colleague Nicola Roxon, the federal Minister for Health and Ageing n the Gillard government, when we celebrated the localisation, the breakdown, of the $900 million-plus that was secured through the health reform agreement entered into earlier this year. As some honourable members would be aware, that $900 million in additional funding over four years will support both additional subacute beds across the system and expansions in intensive care and high dependency unit capacity, as well as short-stay beds. That is the point of the story. Out at Sunshine six additional short-stay beds, to complement the fast-track beds we opened today, are fully funded under the historic health reform agreement negotiated with the Gillard federal government. That is a very important boost.

But it is not just Melbourne's west, as important as those investments are. Many other parts of the state will benefit. Alfred Health will receive additional short-stay beds and a 30-bed acquired brain injury unit. Eastern Health, at both Maroondah and Angliss, will benefit. Frankston Hospital and the Mornington Centre, which are both part of the Peninsula Health network; the West Gippsland Healthcare Group; and importantly the Echuca hospital, will all benefit. This has been a matter of note in Echuca; I know that the CEO and others are very pleased with the $13.5 million allocation for 24 subacute beds at that health service.

The Western District Health Service, which the member for Lowan is a big fan of, will benefit. Latrobe Regional Hospital also will get funding for community rehabilitation expansion and subacute capacity. Goulburn Valley Health will also get additional subacute beds. The Wimmera Health Care Group is being supported with additional subacute beds. These are fantastic investments right across Victoria to allow hospitals to treat more patients and provide better care.

I was asked about challenges to these new beds and this record investment. That is what it is: investment in record terms to treat more patients as part of a strong partnership with Canberra. It is a partnership that is about working together to put more into the system rather than taking funding away. These challenges are well summarised by a number of comments that have been made in recent weeks around the announcements I made with the federal health minister.

I will share a couple of them with the house. In the *Wangaratta Chronicle* a particular individual described this announcement and the strong partnership between our government and the commonwealth government as 'a despicable attempt to blackmail people'. In the *Ferntree Gully, Belgrave Mail* another individual thought it was 'real action to address hospital access issues'. In the *Great Southern Star* this was described as 'a cynical exercise in vote grabbing'. My personal favourite was the Swan Hill *Guardian*, where this record investment was described as a stunt but where the article said, 'We welcome it'. That is my personal favourite.

Finally we had in the *Mildura Midweek*, an august journal, the comment that, 'Somebody needs to explain how the new arrangements will work, but I suspect it hasn't been worked out yet'. In other words, we could summarise the comments as saying no, no, no but yes and: I have not quite worked it out yet. That is a paraphrasing of these contributions on this strong and enduring investment.

It is fair to say that there is a group within the community, the members of which are all over the place when it comes to these additional investments. They are unable to be clear with Victorian patients and Victorian communities about whether these beds will be funded — whether they are worthy of support. Despite the fact that this group in the community is all over the place, its members are from one organisation, and every honourable member knows which it is. It is this rabble opposite.

Insurance: fire services levy

Mr RYAN (Leader of The Nationals) — My question is to the Premier. I refer to the answer so recently given by the Minister for Health, and I ask: does the Premier stand by his statement to the house on 13 August 2009 that a property-based levy to fund the fire services is 'a disgraceful policy'?

Mr BRUMBY (Premier) — I was trying to find the quote from former coalition Deputy Premier Pat McNamara when he said he was going to reform the fire services levy, but obviously the member for Gippsland South and the former Deputy Premier just were not able to do it.

The reality is that we have had a fire services levy in place in Victoria under successive governments for many decades, and I have supported that policy, as it is appropriate and responsible to do so. We set up a review, which I — —

Honourable members interjecting.

The SPEAKER — Order! The member for Malvern!

Mr K. Smith interjected.

Questions interrupted.

SUSPENSION OF MEMBER

Member for Bass

The SPEAKER — Order! Under standing order 124, the member for Bass will leave the chamber for 30 minutes.

Honourable member for Bass withdrew from chamber.

QUESTIONS WITHOUT NOTICE

Insurance: fire services levy

Questions resumed.

Mr BRUMBY (Premier) — We set up the review, which was the green paper issued by the Treasurer, with a report back with a white paper in 2011. When I was provided with a recommendation from the Victorian bushfires royal commission in relation to this matter I said that we would give it full and proper consideration, which is what we did. In agreeing to move from a fire services levy to a property-based arrangement, what I had ruled out — —

Mr Wells interjected.

The SPEAKER — Order! The member for Scoresby will cease interjecting in that manner. I ask also the member for Kilsyth and the Deputy Leader of the Opposition to cease interjecting across the table.

Mr BRUMBY — What I have ruled out is a flat tax — a poll tax — and I have always said — —

Honourable members interjecting.

Mr BRUMBY — The reason I did — and the public needs to be clear about this — is because the last time we had one of these was under the former Liberal government. It was called the state property tax — the $100 home levy. Whether you were rich or poor, whether you lived in Broadmeadows or Toorak, you paid the $100, and that was the Liberal Party and National Party view of the world, and it was supported by the honourable member for Gippsland South.

In accepting the royal commission's recommendation we have said that the new arrangements will take place from 1 January 2012. They will be informed by the analysis and work of the white paper, which will be completed next year. But what we have said is that the new model will be progressive. Firstly, it will not be a flat poll tax; it will be progressive. Secondly, it will provide the same level of funding as the existing FSL (fire services levy) to both the CFA (Country Fire Authority) and the MFB (Metropolitan Fire Brigade). Thirdly, it will collect no more revenue than that which is gained under the current model. Fourthly, there will be a 50 per cent concession to low-income earners.

Mr Ryan — On a point of order, Speaker, the Premier is debating the question. Apparently the answer to the question is no, and he should just say that and complete his answer.

The SPEAKER — Order! I do not uphold the point of order.

Mr BRUMBY — We have been very clear in our response to the commission, unlike someone else who said on 3 August:

> The most efficient way of collecting the levy was along with council rates.

Then on 9 August in relation to the same question they said:

> This will depend in part upon the model we eventually develop. I anticipate though it will be a combination of police and emergency services and involvement from the Department of Local Government with appropriate input from Treasury.

That has cleared that up — that is, 'I don't know'. Peter Ryan: 'I don't know'.

Honourable members interjecting.

The SPEAKER — Order! I ask the Premier not to debate the question.

Mr BRUMBY — Apparently after all those years in government, when they were working to reform the system but just could not quite do it, and then all the years in opposition where they have said they will do it, and now there is a royal commission recommendation, the fact is they do not have a clue.

Desalination plant: progress

Ms MARSHALL (Forest Hill) — My question is to the Minister for Water. I refer to the Brumby Labor government's commitment to make Victoria the best place to live, work and raise a family, and I ask: can the minister inform the house about any recent developments regarding the Victorian desalination project?

Mr HOLDING (Minister for Water) — I thank the member for Forest Hill for her question. I was watching television last night and came across the Channel 10 news. I saw one commentator pointing at the sky saying, 'Look! It's raining!'. I thought, 'Finally! The opposition's water policy!'. I am very pleased to be able to inform the house that this is not our water policy. We are not a pray-for-rain government. What we have put in place — —

Honourable members interjecting.

Dr Napthine interjected.

Questions interrupted.

SUSPENSION OF MEMBER

Member for South-West Coast

The SPEAKER — Order! Under standing order 124 the member for South-West Coast will leave the chamber for 30 minutes. Anyone wishing to leave with the member for South-West Coast may do so now.

Honourable member for South-West Coast withdrew from chamber.

QUESTIONS WITHOUT NOTICE

Desalination plant: progress

Questions resumed.

Mr HOLDING (Minister for Water) — We are not a pray-for-rain government. Instead we have put in place the most comprehensive water plan that we have seen in this state's history, because we want to make absolutely sure not just that we prepare this state for the inevitability of future droughts — which will occur — but also that we prepare the state for the reality of climate change and for ongoing population growth.

The best way to do that is not just to make our irrigation systems in northern Victoria more efficient so that our irrigators in that part of the state have more certain water supplies; it is not just to connect communities in Victoria that have never before been connected by the completion of the state's water grid — and overwhelmingly now those projects have been completed; but it is also by constructing Australia's largest desalination plant. It is instructive to go back and look at what was being said in 2007, when we were being urged, often by those opposite, to get on and construct the plant, to get on and build it. Now, in 2010, some of the same people are saying this will be a white elephant.

In truth, as the Premier and I can now report to the house, great progress is being made — but it was a good opportunity looking through today, building on our visit in May and other visits to the plant that have been undertaken. There are now more than 3000 people working on this project. More than 1500 are working on site. There are hundreds more working in the transfer corridor. A huge amount of work has already been completed. Over 1.3 million cubic metres of earthworks have been completed, substantially completing that part of the project. The tunnel-boring activities have now been commenced. On the inlet structure 130 metres of tunnel boring has already occurred, and the new tunnel boring on the outlet

structure is commencing today. Work in the transfer corridor is also continuing apace — over 30 kilometres of the transfer pipeline has already been laid.

One of the great elements of this project is the huge amount of local content that is embedded in it. This is what is underpinning the jobs of hundreds, if not thousands, of Victorians who are supplying content to this plant, whether it be the workers at Tyco Water in Coolaroo, who are constructing the transfer pipeline; the staff at the Barro Group Donmix in Wonthaggi; the people from RTL Morwell, who have done a lot of excavation works; or the people from Olex Cables in Tottenham, who have constructed some of the works which are absolutely vital for the power connection for this project. There are workers in Bendigo and other parts of the state, including in Gippsland — those working on the site itself and tradespeople who are working on site. Two-thirds of the tradespeople are locals. That is a great employment opportunity. It is an employment bonanza for people who are in this region and who are benefiting from the job creation that this project is generating.

We know this state needs a non-rainfall-dependent source of water if we are to prepare the state for the future challenges of climate change and droughts. We do not believe the recent rain means that these projects should now be abandoned. We understand that Victorians need this investment in pipeline projects, this investment in modernising our irrigation systems, this investment in recycling projects and this investment in Australia's largest desalination plant. We need these projects if we are to future proof this state against the challenge of ongoing climate change and the danger of future droughts.

That is why we are planning for the future. That is why we are implementing a water plan which will guarantee water supplies for Victorians, which is seeing Victorians coming off severe water restrictions, which is seeing Victorian farmers with strong water allocations for the first time in many years and which is seeing the ongoing efforts of Victorian households to continue to save water to make sure that we prepare the state for future water challenges if and when they occur.

We are implementing these comprehensive plans. Those opposite are calling these projects white elephants. We reject that approach, and in the future Victorians will thank this government for having the foresight to implement this important plan to guarantee Victoria's water supplies.

MARINE SAFETY BILL

Second reading

Debate resumed.

Mr DELAHUNTY (Lowan) — I rise proudly to speak on behalf of the Lowan electorate on the Marine Safety Bill 2010. The purpose of this bill is to provide a regulatory framework for safe marine operations in Victorian inland and coastal waters. The electorate of Lowan obviously does not quite get to the coast — it gets to within about 8 kilometres — but there are many people in my electorate who use the coastal waters for marine activities.

Because of time limits I will cover only a couple of the main provisions of this bill. One imposes a safety duty on various people, including the users of recreational vessels. It also provides for the registration of vessels. There are many areas of concern, which have mainly come about because of Coroner Peter White's criticisms of the Brumby government in his findings in August 2010 where he said the marine police unit was 'understaffed' and 'underresourced'. The bill creates some good things, and like my colleagues I will not be opposing this bill.

For marine activities we need water, for fishing we need water and for recreational boating we need water. Thankfully, as has been discussed in question time today, there has been a lot of discussion about the rain we have had across Victoria. There is concern again about this weekend, when we could have exceptional rains, which could cause flooding. I have to say that in my electorate of Lowan the storages are rising rapidly. Today the total storage capacity levels are at 20.8 per cent. We have to remember that during the drought years those levels got down to 3 or 4 per cent.

As I said, the total storage capacity is 20.8 per cent. Bellfield Reservoir, the major water storage supplying the pipeline and most of our area, is at 45 per cent. Rocklands Reservoir, the biggest water storage in our area, is at 7.3 per cent, and water is pouring into it. The people around Balmoral and a lot of people around western Victoria will see this as a very good sign. Not only has it rained but there has also been the installation and implementation of piping for our channel system, which was started many years ago under the Mallee system. As well as the continuation of piping in the Mallee region, the Wimmera region is now being fully piped. Rain is falling and is benefiting not only our lakes but also our environment, particularly our rivers and streams.

Fishing is very important to the Lowan electorate, and Balmoral is very reliant on the Rocklands Reservoir. I will give an example of how important fishing is to my area. A few years ago I was talking to the owner of the bakery at Coleraine, and I asked 'How is business?'. He said 'It is pretty flat, but it is picking up a little bit'. He said, 'I will give you an example. The cafe in Balmoral put in an order for 24 loaves of bread to be delivered on Saturday morning'. I said 'Twenty-four loaves of bread?'. He said, 'Yes. As you know, Rocklands is nearly empty and there is not much activity up there. When Rocklands had water in it there was a lot of fishing and other recreational water activities going on and I used to send 250 loaves of bread up there on a Saturday morning, so you can see the impact of no water, no fishing and no recreational water activities'. Not only is Rocklands dry but the Toolondo Lake is also dry — some water is just starting to flow in there — and business in the caravan park has been heavily affected as a result.

Not only fishing but also water skiing is important for the Lowan electorate, and this bill touches on some of those areas. During the drought we had very limited opportunities for recreational water activities such as skiing, yachting, windsurfing and those types of activities. If you wanted to do those things you normally had to go up to the Murray River, which is a 3-hour drive away, or down to the sea, which is a $2^1/_2$-hour drive. With the rivers now flowing and the lakes filling we are seeing a lot more recreational water activity.

This bill is important for my electorate. In finishing I want to read a letter I received from Brian Murrell of the Casterton Angling Society. It states:

> Thanks for the letter to the Casterton Angling Society regarding the upcoming bill. I have looked through the proposed changes and have a concern with the requirement for seaworthiness checks.
>
> Whilst I believe that they have an obvious requirement for new vessels, I don't think it is necessary for second-hand sales and certainly not for smaller (under 12 metre) outboard-powered boats.
>
> Accidents can happen … with any spillage of fuel and subsequent spark or ignition from match etc in boats being completely seaworthy.
>
> Thanks for alerting us to this bill.

I state again that I will not be opposing the legislation.

Mr FOLEY (Albert Park) — It gives me great pleasure to rise to say a few brief words in support of the Marine Safety Bill. As the house is aware, this fairly large piece of legislation covering many aspects of our recreational, commercial and industrial marine activities has arisen from a very extensive consultation process. In the second-reading speech and in the subsequent debate the minister went to some effort to point to the extensive processes that have engaged all the users of our marine sector across the state for some considerable time, and a number of speakers from both sides have paid some attention to this issue.

I will focus my few brief comments on the aspect of the bill which deals with the increasing evidence of dangerous hoon behaviour in the recreational sector. I do so because the electoral district of Albert Park is somewhat of a focus for some less than pleasant hooning activity on the water, particularly by riders of jet skis. In the summer just gone in a small stretch of St Kilda beach between the marina and Brookes jetty there were some 35 jet skis on the beach at one point in time and an indeterminate number in the shallow water close by. This caused some considerable comment throughout my district and of itself is a sign of the enormous increase in jet ski activity. Whilst I am sure the majority of jet ski users are law-abiding citizens, sadly there are some among their number who are not, and it was only a matter of time before community concerns about managing the activities of hoons on jet skis came before this place, as it already has on at least one other occasion.

It is with great pleasure that I note that Parks Victoria, which is one of the enforcement agencies in this area, is well advanced in establishing a series of boating and swimming zones across my district. Indeed, Parks Victoria is rolling out the program as we speak. This will see the creation of designated swimming-only zones, which has been widely welcomed by the Life Saving Victoria communities that operate in my electorate as well as by sensible members of the angling and yachting fraternity who recognise the need for sharing and for the appropriate management of this behaviour.

The sad truth is that sometimes we have to cater for the lowest common denominator amongst the users of jet skis, and the firm but necessary measures that will be in place will give all users of recreational boating areas considerable certainty and security in ensuring that all of us can share in the fantastic recreational opportunities that Port Phillip Bay and other waterways in Victoria bring. In this respect I am particularly pleased to note that the majority of the changes in my electoral district will ensure that there are dedicated swimming-only zones at a considerable number of the very large and well-used recreational beaches. Boating of any type, particularly the use of jet skis, will be prohibited, which will for safety reasons separate jet ski

users and swimmers. In that regard this legislation is a positive measure, and the whole bill is replete with positive measures that will put in place security and certainty for, in this case, recreational users but indeed for all users of the diverse economic, social and recreational opportunities that our marine sector provides. I wish the bill a speedy passage.

Dr SYKES (Benalla) — I rise to make a brief contribution to the debate on the Marine Safety Bill 2010, and I wish to indicate that I, along with my Liberal-Nationals colleagues, will not be opposing the bill. The bill is very important to the electorate of Benalla because we have a considerable number of water storages, including Lake Eildon and the associated Eildon pondage, Lake Nillahcootie, Lake Nagambie, Lake Buffalo and Lake William Hovell. We also have the major river, the Goulburn River. The usage of these waterways is different for each particular waterway. In the case of Eildon there are a lot of houseboats, powerboats, jet skis and recreational fishermen and women in their tinnies. There is also some sailing. On other water storages that we have, particularly at Nagambie, we have rowing in addition to the powerboats. So water and water storages and the associated use of those is extremely important to the electorate of Benalla.

As has been mentioned by previous speakers on this side of the house, the bill now before the house spans 350 pages, and we have had limited opportunity to consult with the many constituents that we represent who have a vital interest in its implications. That is disappointing. But that said, I am advised, in particular by the member for South-West Coast, that in general the direction of this bill does make sense, and that is why I am not opposing it.

Lake Nagambie, which is about a one and a half hours drive north of Melbourne, is the site of a magnificent international rowing course. Many events are held there; thousands of people attend those events, and that brings a lot of money to the community. Similarly we have people there using powerboats and jet skis, and we have some recreational fishing. The challenge is to get the balance right for shared usage in areas where there is relatively little space. Just recently I have been approached by members of the local community representing the rowers and the powerboat people about the need to improve sharing arrangements.

In that regard, apart from having a set of rules we need to have goodwill on the part of everyone who is sharing the lake. We need to have sound education. We have these regulations in place, but we must also have meaningful enforcement. In times gone by enforcement has been absent. That has been a funding and cost-shifting issue that has seen the embattled Strathbogie Shire Council being expected to pick up the financial tab of enforcing the marine safety requirements on Lake Nagambie. In putting this legislation in place I hope we will ensure that there is adequate resourcing to allow enforcement of the relevant sections.

A major concern at Lake Eildon is its shift in status whereby it has now been claimed by the Minister for Water as part of Melbourne's domestic water storage arrangements — courtesy of that white elephant, the north–south pipeline. The concern locally is about potential restrictions on the lake's use. The houseboat fraternity is concerned about its longevity there. The powerboat users are also concerned, and interestingly the people around the perimeter of the lake are concerned because there are restrictions on the construction of dwellings. Whereas historically the restrictions were about not allowing the building of a dwelling closer than, say, 100 metres from the high water mark, recent interpretations of those historical guidelines have caused a lot of grief to people wanting to build or extend dwellings on the perimeter of Lake Eildon.

If we are going to have legislation in place that looks after the on-water aspects, then we need to ensure that the complementary legislation that looks after the development of the surrounding areas is also adequate and sympathetic to the needs of the local community. We have also had proposals to fence off access to the lake, particularly in the Goughs Bay area. Let us have the whole package. Let us recognise the importance of areas such as Lake Eildon to the local community.

In the last few seconds available to me to speak in this debate, I want to say that recreational fishing is important to Lake Eildon. It is important to our local communities. It generates a heck of a lot of income. Nearby we have the Snobs Creek fish hatchery, which is being developed as a native fish hatchery. That is great. Let us make sure it is developed properly, and let us make sure plenty of fish go into our local waterways for the benefit of everyone.

Mr BROOKS (Bundoora) — I have a couple of quick comments on this important bill. As many speakers have said, the bill provides for a new regulatory framework for marine safety in Victoria. In doing so it does not seek to radically change the existing regulatory framework but rather provides some improvements to it. These improvements have been developed through a consultation process that was undertaken as part of the review of the Marine Act

which commenced back in 2008. The review was driven mainly by a change in the usage of marine areas of Victoria, as the first page of the explanatory memorandum says, over the last 20 years.

As a boat operators licence-holder myself, it has been easy for me to notice these changes in behaviour that have probably driven some of the improvements to the bill. In particular, usage of recreational boats and vessels, jet skis and the like has increased; people see these as items they can purchase and just take straight to the water and use without understanding the dangers that are inherent in using vessels on our waterways, whether it be in Port Phillip Bay, Western Port or indeed some of our inland waterways. I commend the bill to the house.

Mr JASPER (Murray Valley) — In the first part of my contribution to this debate I acknowledge that the health minister is in the house, and I want to correct a comment that he made in question time in relation to the Wangaratta hospital. The comments made in the *Wangaratta Chronicle* were by the federal member for Indi, not the member for Murray Valley.

The Marine Safety Bill is an important and massive piece of legislation. It is disappointing that there is such a large number of amendments being proposed, particularly by the government and of course some by the opposition. It is a massive task for members not only to assess the legislation but also to look at the amount of amendments coming into this house. On this occasion I am very supportive of the bicameral system of government whereby this bill will go before the Legislative Council and its members will be able to further assess the amendments and see their relevance to the legislation before the house.

Earlier I spoke on a piece of legislation that dealt with border anomalies, the Occupational Licensing National Law Bill, and I made a comment about the difficulties for people living along the border between Victoria and New South Wales — in particular in the northern part of my electorate. Therefore, when I look at this legislation the question that comes to me is: 'What discussions has the Victorian government had with the New South Wales government to determine if this legislation is in line with New South Wales legislation?'. Obviously there are questions in relation to the massive changes that are sought to be implemented by this legislation, which to a large extent are welcomed by most of the speakers who have spoken on the legislation in this house. We need to be looking to get uniformity in boating laws.

At present we have differences in boating laws between the two states, and I ask the minister when he is closing the debate to indicate — or perhaps we can get an explanation in the upper house — whether this discussion has occurred with New South Wales to see that the boating legislation is in line between the states, particularly for the benefit of people with recreational boats as well as recreational fishing people. There are differences between Victoria and New South Wales in the registration of boats; there is also a difference in the licensing systems of the two states for people who use boats of various sizes.

These are the issues on which I have not been able to get appropriate consideration to date. I have received representations from people within my electorate at Yarrawonga, on the border between the two states, who have brought to my attention their concerns for people who use, say, Lake Mulwala, which is in New South Wales, and who then come up the Ovens arm in Victoria. This points to the need to make sure that the legislation is reciprocal between Victoria and New South Wales.

These are the issues of concern that I bring to the Parliament because of where I am situated in my particular part of the state. Being on the border between the two states, I need to ask the question. We have not been able to get an appropriate response as yet. Perhaps I might be able to speak to some of the departmental people that are in attendance in the house at present, and they might be able to clarify that position.

The other issue that comes from this is the wearing of safety vests. It has become a big issue, because for any type of boating people need to have a safety vest. I hear from recreational fishers who have very small boats with very small motors and who might fish in diverse places — in a stream, a dam or a lake, either stationery or drifting quietly — and have to wear the same safety vests as those required in speedboats or more highly powered boats. Because of the concerns expressed to me by a number of recreational fishers, I think this area needs to be addressed to get some differentiation between the need for safety vests in small boats as against the need in more highly powered boats.

These are the issues of concern in the legislation as far as I am concerned. We need to get clarification on how this legislation falls into line with that of New South Wales and the difficulties that may be caused for people living on the border between the two states, given the differences in the legislation. We need to be able to get appropriate clarification on those issues. We need to make sure that this legislation, which is seen as groundbreaking on the basis of its development and the

investigation undertaken, will be successful and will give us better control over all types of fishing and usage of vessels under the Marine Safety Act.

Debate adjourned on motion of Mr PERERA (Cranbourne).

Debate adjourned until later this day.

EDUCATION AND TRAINING REFORM AMENDMENT (SKILLS) BILL

Second reading

Debate resumed from 1 September; motion of Ms PIKE (Minister for Skills and Workforce Participation).

Ms GRALEY (Narre Warren South) — It is a pleasure to speak on the Education and Training Reform Amendment (Skills) Bill 2010. As the Minister for Skills and Workforce Participation said so well in her second-reading speech:

> This government believes in the vital importance of training not only for the careers and wellbeing of individuals, but also for the efficiency of industry and its contribution to Victoria's standards of living.

This Labor government has made education its no. 1 priority, and that means providing a variety of educational opportunities close to people's homes to suit the varied needs of all young Victorians. In my own electorate that has meant building Berwick TEC as part of Chisholm TAFE for those students who want to pursue a trade or technology courses; there is Alkira Secondary College, where students can get a fantastic general education in what is now an award-winning facility; and if a student is one of the bright sparks out there, they can access Nossal High School at the Berwick Monash University campus. There is something for everyone, because we are not all the same, and every child deserves the best and most appropriate education opportunities.

This bill builds on our commitment to reforming the education sector, and it aims to improve the Victorian training system in four main ways. It protects the consumer rights of students, particularly overseas students; the regulatory system for vocational training and education is enhanced; importantly it reforms the governance structure of TAFEs; and it guarantees subsidised places for students undertaking training to improve literacy and numeracy skills on the basis of gaining further qualifications. All of these are very worthwhile goals.

I would like to briefly speak on two aspects of the bill: the consumer protection elements and the TAFE governance structures. It is obvious that the current regulatory regime provides little in the way of consumer protection measures for students. This means it is too easy, as we have seen, for rogue providers to exploit vulnerable students, particularly overseas students whose visas, which allow them to enter and remain in Australia, are dependent on their continuous enrolment with a provider. These students have been particularly vulnerable to exploitation. The current system lacks a clear complaint-handling and dispute resolution process, which are vital for the integrity of Victoria's VET (vocational education and training) system, so it is important that the measures in the bill are supported.

The bill contains a number of provisions designed to enhance the fair treatment of students, especially overseas students who enrol with Victorian RTOs (registered training organisations) operating on a fee-for-service basis. The bill will also require a fee-for-service RTO to establish an effective complaint-handling process for dealing with complaints by current students, past students or prospective students, whether overseas or domestic, of the RTO. For fee-for-service providers, having a complaint handling process will be a condition of registration and also a ground on which the VRQA (Victorian Registration and Qualifications Authority) can determine whether to suspend or cancel the provider's registration. This is very important. This package of student protection measures will give students confidence that they will receive fair treatment, and it will give the RTOs confidence that their reputation for delivering a quality service is protected. Overall it means a better system for all.

The second part of the bill I would like to speak on is the TAFE governance structures. As I said, I am very fortunate to have Chisholm TAFE in my electorate; it is an innovative and inclusive education setting for many students and continues to grow at a very admirable rate. It is a large organisation, has a large budget and is always wanting to do more: it is always wanting to get more students in and build more buildings. I applaud the energy and enthusiasm its staff bring to this education setting.

This bill makes a number of changes to the TAFE governance arrangements so as to ensure that TAFE institutes have the flexibility they need in the future in the new skills system. It gives them the ability to meet government accountability requirements into the future. The proposed changes reduce slightly the size of TAFE institute boards, and the process of appointment of the

chair will change from one where the board selects its chair from within its membership to one where the chair is a direct appointee of the minister. I notice the opposition has been slightly critical of this aspect of the bill.

Ms Pike — Slightly!

Ms GRALEY — Actually, I was quite disappointed to hear the member for South-West Coast last night talking about the prospective chairs of these very important education institutions. Hopefully there will be some very talented and committed education people who want to put up their hands and take up the appointments as chairs. They will certainly not be the minister's toadies, which comment I found to be a quite unacceptable way of describing prospective chairs for these important roles. I suggest the opposition needs to get on board with this innovation. Having been a member of a health board, I know this sort of system works.

Without further ado, I say this is another step that the Brumby Labor government is taking to make sure that every child in our state gets a good education. I commend the bill to the house and wish it a speedy passage.

Mr KOTSIRAS (Bulleen) — Because of the time constraints and also the large number of people who wish to speak on the bill, I will make a brief contribution. I wish to restrict my comments to the bill's two main provisions. The first is the VRQA (Victorian Registration and Qualifications Authority) and the number of amendments to AQTF (adult, community and further education) to protect the interests of our overseas students. It has taken this government a long time to accept that there is a problem with our international students, and hence with our international reputation as an education destination, and to do something. Many students become victims of the bogus courses and the gaps in services that the government was warned about almost two years ago. The opposition, students and industry pointed to major systemic problems in our international education, and the media reported regularly on rorts and scams.

When you realise our international student sector is a big part of our economy you have to ask why it has taken this government so long to do something to try to save this important sector. According to Access Economics:

> Each international student (including their friend and family visitors) contributes an average of $28 921 in value added to the Australian economy … Overall, this sees international students and the associated visitation from friends and family contribute $12.6 billion in value-added.

That is a lot of money, which is going straight into our economy. For example, if we look at the number of providers we see that in 2006 there were 2515 and in 2007 there were 8750, which is an increase of 247 per cent, so it is a huge market. In terms of the number of overseas students attending the higher education sector, we had 266 000 students in 2007. It is a huge sector, and the question is why it has taken so long to do something.

Over the past few years a number of private colleges have closed their doors, causing thousands of students to be displaced and needing to look for new colleges. Interestingly enough, in today's *Age* there is an article which is titled, 'Out of school, out of luck', and I wish to quote from it. It states:

> Excom Education was one of the largest private providers of IT courses in Australia. It closed last week.

Further, it states:

> Tim Paisley chose Excom because he wanted a qualification that would provide steady employment. He borrowed $5000 from his father and took out an $18 000 personal loan to pay for the course. Last week he heard the college was shutting down.
>
> 'None of the teachers or any of the staff knew what was happening', he said. 'I've got nothing from Excom to say they've closed'.

This sort of news causes our reputation to go down and students from overseas to feel less inclined to visit our shores. On the same page in the *Age* a nearby article states:

> International student visa numbers dropped more than 16 per cent last financial year, with the number from India falling by more than half.
>
> In 2008–09, 65 503 Indian passport holders were granted Australian student visas across all education sectors. But in 2009–10, the number fell to just 29 721.
>
> Overall, 50 540 fewer international students were granted visas to study in Australia in 2009–10 compared with 2008–09.

While I welcome these attempts to make a difference, it is important the government has a coordinated approach to our international students and does not simply try to find scapegoats and cause more damage to our international student education sector. Dodgy colleges should be closed — they have no place in Victoria — because fraud and student exploitation by colleges, agents and employers cause much damage to Victoria's reputation as a study destination. It is now expected by the industry that, as I outlined earlier, there

will be a significant downturn in the number of international students next year. I say to the government that it should work with the industry, not against it, to find solutions. Let us stop dubious and questionable colleges from operating, but let us not damage our good colleges which have served both Victoria and their students well for many years.

The second issue I wish to raise is TAFE governance. The minister is at the table, and I ask her how she thinks we can trust a Labor government that has a minister who appoints the committee members to TAFE boards. Those members are not there to help a TAFE; they are there because the minister owes them a favour. That is the only reason why she will appoint them. It is a shame for our TAFE colleges, which are doing a magnificent job. But this minister has failed them. It is appalling that she is going to stack the boards with political appointees to whom she owes favours. It is a disgrace.

Mr SCOTT (Preston) — It gives me great pleasure to rise to support the Education and Training Reform Amendment (Skills) Bill 2010. I will make a brief contribution as time is short and others wish to speak. I think this is an excellent bill, which addresses the needs of students. Overseas students in particular can be in vulnerable situations, and the bill strengthens the protections for such students.

I declare a personal interest in this matter as my wife is a former overseas student who came to Australia on that basis. Her social network, and thus my social network, encompasses a large number of current overseas students. They will welcome the increased protections that are afforded them by the bill, which will buttress and support the already good work that has been done by the Victorian government with overseas students. I commend the bill to the house.

Dr SYKES (Benalla) — I too wish to make a brief contribution on the Education and Training Reform Amendment (Skills) Bill. I wish to touch on three issues; two were covered in some detail last night by the member for South-West Coast, and I encourage those interested in the subject to read his contribution.

The first of the issues relates to clause 3, which in essence guarantees subsidised places for students who are upskilling. That is fine, and we welcome that, but there are other issues where people want to broaden their skill base, and those people are likely to be hit with a significant cost increase in pursuing tertiary education. An example of where this broadening of the skill base could be relevant and yet people are likely to be penalised by it relates to people in country Victoria who are being forced to change their basic occupation. By way of example I take the recent decommissioning of Lake Mokoan, where, as part of that process — —

The DEPUTY SPEAKER — Order!

Dr SYKES — No, it is relevant, Deputy Speaker.

The DEPUTY SPEAKER — Order! The member had better be on the bill.

Dr SYKES — I am on the bill, thank you, Deputy Speaker. As part of that process there has been a water buyback; irrigation farmers have sold water and are now moving into other forms of agriculture and need upskilling — —

Ms Pike interjected.

The DEPUTY SPEAKER — Order! I do not need to take a point of order from the Minister for Skills and Workforce Participation. I remind the member for Benalla that he is speaking on the education and training bill only.

Dr SYKES — As a result of the change in economic circumstances these people need to train themselves for another vocation — another means of putting bread on the table. To that end they may already have a qualification, but there is no employment for that qualification, and therefore they need to get another qualification, which would be considered what we will call sideskilling instead of upskilling. They are being disadvantaged by the legislation as it stands at the moment.

The other issue that has been raised with me is concern in relation to the minister appointing board members and the chair to the board of a TAFE. That is an insult to country communities. We have the ability to select quality people; we have many quality people. We respect the right of the minister to have a significant role in those appointments, but the involvement of country people being whittled down to next to nothing is an absolute insult to them, and I hope the minister will reflect on what she is doing. I am aware of amendments proposed by those on our side of the house that seek to address the totally inappropriate politicisation of the education process.

The other issue I will touch on briefly is the maintenance of TAFE education and other tertiary courses. Our smaller education institutes such as Euroa Community Education Centre feel that they are being disadvantaged with this legislation and related changes to the provision of TAFE-type training. These institutes can see a lot of cherry picking going on with more

popular courses being taken from them and their being left to provide less popular courses. This is not economically viable for them and puts in jeopardy our smaller tertiary education institutes such as the Euroa Community Education Centre.

I will finish my contribution by saying that we have an outstanding TAFE college in north-eastern Victoria that services the electorate of Benalla. I am talking about the Goulburn Ovens Institute of TAFE. It provides a wide range of educational opportunities from technical courses through to theatre and arts. I want to see that continue. I want to see country people being able to access TAFE education for both upskilling and broadening their skill bases, but unless changes are made to the legislation and the approach of this government, country people will be further disadvantaged. Already hurting from 12 years of drought and other policy decisions, country people will not be able to afford to gain an education and therefore to educate themselves out of this increasing social disadvantage gap.

Mr LANGUILLER (Derrimut) — Very concisely, the bill aims to improve Victoria's training system in four main ways. The first and most important is to protect students' rights and ensure their fair treatment. The second is to improve the regulatory system for vocational education and training. The third is to reform the governance of the state's TAFE institutions and agencies. The fourth is to enshrine in legislation the state guarantee of subsidised places for students undertaking training to acquire essential literacy, numeracy and language skills and to raise their qualification levels.

These reforms are designed to preserve Victoria's position as a leader in the regulation of vocational education and training. They provide a great model, which the Victorian government commends to the commonwealth government for consideration as it designs a national regulatory framework.

In conclusion, it would be remiss of me not to mention that through my discussions with hundreds of students newly arrived from Latin America I know that they welcome these changes. They know the changes will improve the wellbeing, safety and welfare of students. We continue to encourage students to come here from all around the world, but I particularly emphasise that, whilst it was from a low base, there has been an extraordinary increase in the number of students coming from Latin America to study in Australia and choosing Melbourne and Victoria as the place to study.

Ms PIKE (Minister for Skills and Workforce Participation) — I would like to thank all members who made contributions to the debate on this really important bill. As many members have said, we know the vocational education and training sector is a very important sector for Victoria's economy and future productivity and in the lives of individuals. It is therefore really important that we maintain the quality of that sector and that students' interests are protected. The centrepiece of this piece of legislation is the protection of students' interests. As the member for Nepean rightly said in his contribution on the bill, this is about providing students with a fair go. absolutely concur with that sentiment.

Significant additional measures in this bill go to the heart of protecting students and making sure that they have access to quality education provision. I thank the member for Nepean, the member for Bulleen and other members who expressed their support for the regulatory and student protection measures in the bill.

Another aspect of the bill is the training guarantee. We need to remind ourselves that 1.6 million Victorian adults do not have qualifications beyond secondary school. They can benefit enormously on a personal level and can add considerably to the productivity of Victoria by having access to the vocational education and training system.

The guarantee enshrines that entitlement to training for Victorians. This is unique. It does not happen anywhere else in Australia, and we think it is unique internationally as well. We want to make sure not, as members opposite have said, that people are denied opportunities for education, but rather that we expand the opportunities for education. We have simply set out a minimum that an individual is entitled to. It is not about constraining people, but about opening up opportunities. I was pleased that in his contribution yesterday the member for Morwell gave an example of how the exemptions we have provided for through additional funding can work productively so that we continue to open up opportunities for and access to education and training for people.

I want to talk briefly about the amendments the opposition has put forward, particularly those regarding the governance issues. Opposition members have neglected to talk about the fact that the strengthening of governance goes hand in hand with the expansion of the capacity of boards to engage in activity on a commercial basis. In opening up the education and training system we want to make sure that government-supported and owned bodies such as TAFEs can compete and thrive in the contestable

training market. Therefore we want to give them the capacity to establish companies and to function fully on a commercial basis.

When they are given that opportunity, which is a huge expansion of their responsibilities, we want to make sure that the governance system is in place to protect their owners. Who are their owners? Their owners are the people of Victoria. The assets and the liabilities of these TAFE institutions belong to the people of Victoria, to the taxpayers of Victoria. In having these expanded opportunities to engage on a commercial basis, expanded accountability is required. We make no apology for strengthening the accountability of the TAFE boards, making sure that they have the right balance to engage as major public authorities in commercial functions operating in a competitive training market.

If the opposition's amendment regarding governance were to succeed, we would have to strip away from the bill all those other elements that provide for TAFEs to engage in commercial activities. I can tell the opposition that no TAFE college in our state would thank it for stripping away that opportunity for it to engage in those commercial activities because it would mean they would not be competitive with other providers in the training system. I encourage the opposition to think very carefully about this amendment.

I take exception to the imputation that this is around politicisation of the TAFE boards. I had the same rubbish thrown at me when I was Minister for Health and we were strengthening governance of the hospital boards, and none of that rubbish has stuck. Victoria has one of the strongest hospital systems in the country. It is in fact so strong that both Tony Abbott and Julia Gillard want to emulate what we have here in Victoria, because we have strong public accountability for the governance of public authorities. That is exactly what is important in the TAFE sector as well.

Finally, I want to address an issue that was raised by the member for South-West Coast in his contribution yesterday evening. He said that I as the minister showed 'a lack of attention to detail', that I got a matter in the bill wrong, wrong, wrong, wrong, wrong and that he thought it was 'extraordinary' that someone in my responsible position would 'make such an extraordinary error' in the bill. What has emerged is that in fact it was the member for South-West Coast who was wrong, wrong, wrong, wrong, wrong. I would be very pleased to hear an apology from the member for South-West Coast, because Deakin University does in fact have a registered training organisation, trading as DeakinPrime, which offers a number of vocational education services. Therefore the provisions as described in the bill are absolutely accurate when it comes to the context of Deakin University.

Again the member for South-West Coast comes into this place, denigrates ministers, makes false accusations, parades himself as a big know-all — —

Mr Wells — Oh, that's not fair.

Mr Batchelor — He's only a little know-all!

Ms PIKE — He's only a little know-all, yes; he knows hardly anything. I am very pleased to have the opportunity to correct that matter.

There have been some very thoughtful contributions made in the debate on this bill and there have also been some rather scurrilous accusations made by members opposite. I think there is an absolutely fundamental misunderstanding on their part about why we need to strengthen the governance of TAFE institutions. I have a very high level of confidence in the governance of our TAFE institutions. We have some excellent people running our TAFEs. They are doing an absolutely fantastic job, but they are moving into a different environment or context. They need to be able to compete with the other training providers. They need to have the shackles taken off them in terms of their capacity to raise loans, develop capital, set up companies and engage in a whole lot of other businesses, and to do that we have to guarantee that the public is protected.

The protection of the public is the government's absolutely fundamental obligation, and that is the motivation here. It has nothing to do with nobbling people or, as the eloquent member for South-West Coast described, making board appointments the minister's toadies. That is another classy comment.

Mr Batchelor interjected.

Ms PIKE — I think that is how he feels about boards; it is probably what he would do if he had the reins of power in his hands. It has nothing to do with that. It is about strengthening their capacity. They are the absolutely pivotal core of the training system in Victoria. The stronger the TAFEs are, the stronger our education and training system is and therefore the greater the levels of opportunities for our young people, which of course makes this great state more productive and economically viable.

I thank all honourable members for their contributions. I wish the bill a speedy passage.

Motion agreed to.

Read second time.

Consideration in detail

Clause 1

Ms PIKE (Minister for Skills and Workforce Participation) — I move:

1. Clause 1, page 2, after line 20 insert —

"( ) to enable the Victorian Registration and Qualifications Authority to apply to the Supreme Court for an order that a registered training organisation be placed under judicial administration;".

Amendment agreed to; amended clause agreed to; clauses 2 to 20 agreed to.

Clause 21

Ms PIKE (Minister for Skills and Workforce Participation) — I move:

2. Clause 21, line 21, omit "(1)".

Amendment agreed to; amended clause agreed to; clauses 22 to 32 agreed to.

Heading to clause 33

Ms PIKE (Minister for Skills and Workforce Participation) — I move:

3. Clause heading to clause 33, omit "**4.6AC**" and insert "**4.6A.5C**".

Amendment agreed to; amended heading agreed to; clauses 33 to 48 agreed to.

Heading to clause 49

The DEPUTY SPEAKER — Order! Before calling the member for Nepean, I advise that if his amendment is not agreed to, he cannot move amendment 2, as it is consequential. I therefore advise him to address the principles of both amendments.

Mr DIXON (Nepean) — I move:

1. Clause heading to clause 49, omit "**Schedule 5**" and insert "**regulation-making powers**".

Amendment agreed to; amended heading agreed to; clause 49 agreed to.

Part 3, new division 9 heading

Ms PIKE (Minister for Skills and Workforce Participation) — I move:

4. Page 66, after line 31 insert the following heading —

"Division 9— Reserve step-in powers".

Amendment agreed to; amended heading agreed to; clauses 50 to 55 agreed to.

Clause 56

The DEPUTY SPEAKER — Order! I advise the house that because the member for Nepean is proposing to delete the clause, he does not have to formally move amendment 3 in his name.

Mr DIXON (Nepean) — We are very keen on this amendment because we have had a lot of feedback from all TAFE colleges and institutes who have said to us that they are not in favour of that, and it would be remiss of us not to represent that view which we hold very strongly.

Mr THOMPSON (Sandringham) — In speaking on the amendment proposed by the shadow minister, I would like to add the comment that on this side of the house we are concerned with the potential colonisation of a range of boards and statutory authorities. I have noted the remarks of the minister, but an analysis of the majority of boards and statutory authorities across the state will show that many of the members of those are members of the Labor Party.

Business interrupted pursuant to standing orders.

The DEPUTY SPEAKER — Order! The time set down for consideration of items on the government business program has arrived and I am required to interrupt business. The question is that clause 56 stand part of the bill.

House divided on clause:

Ayes, 48

Andrews, Mr	Languiller, Mr
Batchelor, Mr	Lim, Mr
Beattie, Ms	Lobato, Ms
Brooks, Mr	Lupton, Mr
Brumby, Mr	Maddigan, Mrs
Cameron, Mr	Marshall, Ms
Campbell, Ms	Merlino, Mr
Carli, Mr	Morand, Ms
Crutchfield, Mr	Munt, Ms
D'Ambrosio, Ms	Nardella, Mr
Donnellan, Mr	Neville, Ms
Duncan, Ms	Noonan, Mr
Foley, Mr	Pallas, Mr
Graley, Ms	Pandazopoulos, Mr
Green, Ms	Perera, Mr
Hardman, Mr	Pike, Ms
Harkness, Dr	Richardson, Ms
Helper, Mr	Robinson, Mr
Hennessy, Ms	Scott, Mr
Holding, Mr	Seitz, Mr
Howard, Mr	Stensholt, Mr

Hudson, Mr
Hulls, Mr
Kairouz, Ms
Thomson, Ms
Trezise, Mr
Wynne, Mr

Noes, 33

Asher, Ms
Baillieu, Mr
Blackwood, Mr
Burgess, Mr
Clark, Mr
Crisp, Mr
Delahunty, Mr
Dixon, Mr
Fyffe, Mrs
Hodgett, Mr
Ingram, Mr
Jasper, Mr
Kotsiras, Mr
McIntosh, Mr
Morris, Mr
Mulder, Mr
Napthine, Dr
Northe, Mr
O'Brien, Mr
Powell, Mrs
Ryan, Mr
Shardey, Mrs
Smith, Mr K.
Smith, Mr R.
Sykes, Dr
Thompson, Mr
Tilley, Mr
Victoria, Mrs
Wakeling, Mr
Walsh, Mr
Weller, Mr
Wells, Mr
Wooldridge, Ms

Clause agreed to.

The DEPUTY SPEAKER — Order! The question is:

That clauses 57 to 72 inclusive stand part of the bill, the schedule and government amendments 5 to 18 inclusive be agreed to, the bill be agreed to as amended and the bill be now read a third time.

Question agreed to.

Circulated amendments

Circulated government amendments as follows agreed to:

5. Clause 57, line 14, omit "3.1.16(1)(e)" and insert "3.1.16(1)(a) and (e)".

6. Clause 57, lines 15 and 16, omit paragraph (b) and insert —

'( ) in subsection (2), for "or appointed to the board under section 3.1.16(1)(b), (c) or (e)" **substitute** "to the board under section 3.1.16(1)(b) or (c)".'.

7. Clause 63, line 8, omit "**2009**" and insert "**2006**".

8. Clause 69, line 14, omit "52" and insert "53".

9. Clause 69, line 18, after "17" insert "of the amending Act".

10. Clause 69, line 23, omit "56" and insert "57".

11. Clause 69, page 81, line 15, omit "56" and insert "57".

12. Clause 69, page 81, line 22, omit "59" and insert "60".zz

13. Clause 69, page 81, line 29, omit "59" and insert "60".

14. Clause 69, page 81, line 30, omit '2012.".' and insert "2012.".

15. Clause 69, page 81, line 33, omit "**2010**." and insert '**2010**.".'

NEW CLAUSE

16. Insert the following New Clause to follow clause 49 and the heading proposed by amendment number 4—

'AA New Division 7 inserted in Part 4.3

After Division 6 of Part 4.3 of the **Education and Training Reform Act 2006 insert** —

"Division 7 — Reserve step-in powers

4.3.38 Definitions

In this Division —

ESOS Act means the Education Services for Overseas Students Act 2000 of the Commonwealth;

RTO does not include any person or body exempted under section 4.3.16(4A) from the requirement to have the principal purpose of providing education and training.

Note

Persons and bodies exempted from this requirement include universities, TAFE institutes, adult education institutions and schools. Persons and bodies may also be exempted by the regulations or the Minister.

4.3.39 Displacement of other laws

This Division is declared to be a Corporations legislation displacement provision for the purposes of section 5G of the Corporations Act in relation to the provisions of that Act.

Note

Section 5G of the Corporations Act provides that if a State law declares a provision of a State law to be a Corporations legislation displacement provision for the purposes of that section, any provision of the Corporations legislation with which the State provision would otherwise be inconsistent does not operate to the extent necessary to avoid the inconsistency.

4.3.40 Notices relating to appointment of external administrator under Corporations Act

(1) A person, other than the Authority, must not make an application to the court under Chapter 5 of the Corporations Act for the appointment of an external administrator of an RTO unless the person has first given the Authority written notice of that application.

Penalty: 20 penalty units.

(2) An administrator of an RTO that is appointed under section 436A, 436B or 436C of the Corporations Act must give the Authority a copy

of the notice of appointment required to be lodged under section 450A of that Act before the end of the next business day after the appointment.

Penalty: 20 penalty units.

4.3.41 Application for order for judicial administration

(1) The Authority may apply to the Supreme Court for an order that an RTO be placed under judicial administration.

(2) The RTO is entitled to be heard in relation to an application by the Authority under this section.

4.3.42 Order for judicial administration

On an application under section 4.3.41, the Supreme Court may make an order that an RTO be placed under judicial administration if the Court is satisfied that it is in the interests of the RTO's students having regard to the following matters —

(a) whether the RTO is, or is likely to become, unable to deliver services to students in accordance with its obligations;

(b) whether the RTO has failed to comply with this Act, the regulations, the ESOS Act or the RTO standards;

(c) whether there are reasonable grounds for believing that the RTO is inefficiently or incompetently managed, and that the inefficient or incompetent management represents a substantial risk —

(i) of non-compliance by the RTO with the RTO standards; or

(ii) that the RTO will be unable to deliver services.

4.3.43 Commencement of judicial administration

The judicial administration of an RTO commences —

(a) at the time specified in the order for judicial administration as the time at which the judicial administration is to commence; or

(b) if no time is so specified, when the order is made.

4.3.44 Appointment of judicial administrator

(1) If the Supreme Court orders the judicial administration of an RTO, the Court must, by its order, appoint a judicial administrator of the RTO.

(2) The appointment may be for a period specified in the order, which must not exceed one month.

(3) The Supreme Court may by order extend the appointment of the judicial administrator.

(4) The Supreme Court may at any time cancel the appointment of a judicial administrator and appoint another person as judicial administrator.

4.3.45 Remuneration of judicial administrator

(1) The Supreme Court may give directions as to —

(a) the remuneration and allowances that a judicial administrator is to receive; and

(b) who is to pay the remuneration and allowances.

(2) The Supreme Court may charge the judicial administrator's remuneration and allowances on the property of the RTO under judicial administration in such order of priority in relation to any existing charges on that property as the Court thinks fit.

4.3.46 Administration to vest in judicial administrator

If the Supreme Court has made an order placing an RTO under judicial administration, then, at the time the judicial administration commences —

(a) any person vested with the administration of the RTO immediately before that time is divested of that administration; and

(b) the administration of the RTO vests in the judicial administrator appointed by the Court.

4.3.47 Powers and duties of judicial administrator

(1) If a judicial administrator is appointed to control the affairs of an RTO, the judicial administrator —

(a) is taken to be the governing body of the RTO; and

(b) has and may exercise all of the powers of the governing body of the RTO; and

(c) has such other powers as the Supreme Court directs; and

(d) must have regard to the interests of the students of the RTO; and

(e) subject to paragraph (d), is subject to all of the duties of the governing body of the organisation; and

(f) must comply with this Act, the regulations and the RTO standards; and

Note

The administrator of an RTO may also have to comply with the ESOS Act if the RTO is required to comply with that Act.

(g) must consult with —

(i) the Authority; and

(ii) in the case of an RTO that is also registered under the ESOS Act, the head of the Commonwealth Department administering that Act —

in carrying out his or her duties or in exercising his or her powers or functions under this Division.

(2) The powers conferred by this section are in addition to powers conferred on a judicial administrator by any other provision of this Division.

4.3.48 Supreme Court's control of judicial administrator

(1) A judicial administrator is subject to the control of the Supreme Court.

(2) In addition to duties imposed by this Division, a judicial administrator has such duties as the Supreme Court directs.

(3) The judicial administrator must report to the Supreme Court at the times that the Court directs.

(4) A judicial administrator may apply to the Supreme Court at any time for instructions —

(a) as to the way in which the judicial administration should be conducted; or

(b) in relation to any matter arising during the judicial administration.

(5) Before applying to the Supreme Court for instructions, the judicial administrator must —

(a) inform the Authority that he or she intends to make the application; and

(b) give the Authority written details of the application.

(6) The Authority is entitled to be heard on the application.

4.3.49 Application by Authority for instructions to judicial administrator

(1) The Authority may apply to the Supreme Court for an order that the Court give instructions to the judicial administrator relating to the conduct of the judicial administration of an RTO.

(2) The judicial administrator is entitled to be heard on the application.

4.3.50 Request by Authority for information

(1) The Authority may ask a judicial administrator to give the Authority information about one or more of the following in a reasonable time specified in the request —

(a) the conduct of the judicial administration;

(b) the financial position of the RTO under judicial administration.

(2) The judicial administrator must comply with the Authority's request.

4.3.51 Duration of judicial administration

(1) If the Supreme Court orders that an RTO be placed under judicial administration, the RTO remains under judicial administration until the judicial administration is cancelled or ends.

(2) The Supreme Court may extend a period of judicial administration.

4.3.52 Effect of cancellation or ending of judicial administration

At the time when the judicial administration of the RTO is cancelled or ends —

(a) the judicial administrator is divested of the administration of the RTO; and

(b) the administration of the RTO vests in the person or body that would have been the governing body of the RTO if the judicial administrator not been appointed.

4.3.53 How judicial administrator is to administer

The judicial administrator of an RTO must conduct the judicial administration as efficiently and economically as possible having regard to the interests of the students of that RTO.".'.

AMENDMENTS TO SCHEDULE

17. Schedule, line 2, omit "70" and insert "71".

18. Schedule, page 84, after line 21 insert —

'3.8 In section 54(b) for "University" **substitute** "University — ".'.

Third reading

Motion agreed to.

Read third time.

CONFISCATION AMENDMENT BILL

Second reading

Debate resumed from earlier this day; motion of Mr HULLS (Attorney-General).

Motion agreed to.

Read second time.

Circulated amendments

Circulated government amendments as follows agreed to:

1. Clause 16, after line 30 insert —

   "(2) In section 31G(1)(b)(i), (2)(f) and (3) of the Principal Act, for "72 hours" **substitute** "3 business days".".

2. Clause 35, page 25, line 4, omit "**insert**" and insert "**substitute**".

Third reading

Motion agreed to.

Read third time.

RESIDENTIAL TENANCIES AMENDMENT BILL

Second reading

Debate resumed from earlier this day; motion of Mr ROBINSON (Minister for Consumer Affairs).

Motion agreed to.

Read second time.

Circulated amendments

Circulated government amendments as follows agreed to:

1. Clause 79, line 3 after "**building**" insert "**or other person who is not rooming house owner**".

2. Clause 79, after line 3 insert —

   "(1) This section applies if a person who is not a rooming house owner leases a building to another person and the building is being used, whether by that lessee or another person, to operate a rooming house and —

   (a) notice terminating the lease of the building is given by a party to that lease; or

   (b) if the person operating the rooming house is not the lessee, the person operating the rooming house or any other party to any lease or other agreement under which that person occupies the building gives notice terminating that lease or other agreement; or

   (c) the lease, or if the person operating the rooming house is not the lessee any lease or other agreement under which that person occupies the building, is terminated by consent or by agreement; or

   (d) the lessee or other person operating the rooming house abandons the building.".

3. Clause 79, lines 4 to 15, omit all the words and expression on these lines and insert —

   "(2) If this section applies, notice to vacate may be given to each resident of the rooming house by —

   (a) a lessee of the building who is not the rooming house owner, or that person's agent, if —

   (i) that person's lease is not terminated as set out in subsection (1)(a), (b) or (c); or

   (ii) that person has not abandoned the building; or

   (b) the owner of the building or the owner's agent.

   (3) A notice to vacate given to a resident under subsection (2) must specify a date for vacating the building which is the later of —

   (a) 45 days after the date on which that notice to vacate is given; or

   (b) in a case referred to in subsection (1)(a) or (b), the date which is the end of the period specified in the notice referred to in subsection (1)(a) or (b), as the case requires.".

4. Clause 79, line 16 omit "(3) The owner of the building, or the owner's" and insert "(4) A person entitled to give notice to vacate to a resident under this section, or that person's".

5. Clause 79, line 20 omit "(1)" and insert "(2)".

6. Clause 79, line 21 omit "(4)" and insert "(5)".

7. Clause 79, line 25 omit "(5)" and insert "(6)".

8. Clause 79, line 28 omit "as" and insert "and in the same state of repair or general condition that".

9. Clause 79, lines 31 and 32 omit "the lessee of the building who was".

10. Clause 79, page 94, line 5 omit "lessee of the building" and insert "rooming house owner".

11. Clause 79, page 94, line 6 omit "(6) Nothing" and insert "(7) Subject to subsection (9), nothing".

12. Clause 79, page 94, lines 6 and 7 omit "the owner of the building" and insert "a person entitled to give notice to vacate to a resident under this section".

13. Clause 79, page 94, lines 8 and 9, omit "under Part 3".

14. Clause 79, page 94, after line 9 insert —

"(8) Nothing in this section prevents a rooming house owner giving, in accordance with this Act, a notice to vacate to a resident with an earlier termination date than that referred to in subsection (3) for a notice to vacate under this section and such a notice to vacate given by the rooming house owner —

(a) prevails over any notice to vacate given to a resident under this section; and

(b) must be complied with by the resident in accordance with this Act.".

15. Clause 79, page 94, line 10, omit "(7) If the owner of a building, or the owner's" and insert "(9) If a person entitled to give notice to vacate to a resident under this section, or that person's".

16. Clause 79, page 94, line 12 omit "(1)" and insert "(2)".

17. Clause 79, page 94, line 12 after "right," insert "Part 3 (except sections 93, 94, 94A, 94B, 94C, 94D, 95, 96, 97, 98, 109, 124 and Division 8 of that Part),".

18. Clause 79, page 94, line 13 omit "and Part 7" and insert ", sections 278, 279, 280, 281 and 284, Part 7 and Part 9".

19. Clause 79, page 94, line 15, omit "owner of the building" and insert "person entitled to give notice to vacate to a resident under this section".

20. Clause 79, page 94, line 16 omit "(8)" and insert "(10)".

21. Clause 79, page 94, line 16 omit "(5)" and insert "(6)".

22. Clause 79, page 94, lines 18 and 19 omit "owner of the building, or the owner's" and insert "person entitled to give notice to vacate to a resident under this section, or that person's".

23. Clause 165, line 4, omit "(which" and insert ", or if a greater amount is prescribed for the purposes of this section, that prescribed amount, (which".

24. Clause 165, line 8, omit "(which" and insert ", or if a greater amount is prescribed for the purposes of this section, that prescribed amount, (which".

25. Clause 166, line 14, omit "(which" and insert ", or if a greater amount is prescribed for the purposes of this section, that prescribed amount, (which".

26. Clause 166, line 18, omit "(which" and insert ", or if a greater amount is prescribed for the purposes of this section, that prescribed amount, (which".

27. Clause 167, line 24, omit "(which" and insert ", or if a greater amount is prescribed for the purposes of this section, that prescribed amount, (which".

28. Clause 167, line 28, omit "(which" and insert ", or if a greater amount is prescribed for the purposes of this section, that prescribed amount, (which".

NEW CLAUSES

29. Insert the following new clauses to follow clause 79 —

'AA New section 323A inserted

After section 323 of the Principal Act **insert** —

"323A Application for possession order by person entitled to give notice to vacate under section 289A

A person entitled to give notice to vacate under section 289A may apply to the Tribunal for a possession order for the building if —

(a) the person has given a resident a notice to vacate under section 289A; and

(b) the resident fails to vacate the building by the date specified in that notice to vacate.".

BB Consequential amendments — regaining possession

In the Principal Act —

(a) in section 326(2) after "322(3)" **insert** ", 323A";

(b) in section 330(1) —

(i) after "and rooming house" **insert** "or a building";

(ii) in paragraph (a) for "or mortgagee" **substitute** ", person entitled to give a notice to vacate under section 289A or mortgagee";

(iii) in paragraph (c) for "or mortgagee" **substitute** ", person entitled to give a notice to vacate under section 289A or mortgagee";

(iv) in paragraph (d) after "room," **insert** "building,";

(c) in section 330(2) after "323(b)" **insert** ", 323A";

(d) after section 333(1)(a)(ii) **insert** —

"(iia)in the case of a building in respect of which notice under section 289A was given, the resident must vacate that building: and";

(e) in section 333 —

(i) in subsection (1)(b) after "rooming house," **insert** "building,";

(ii) in subsection (2) after "a rooming house" **insert** "or a building";

(iii) in subsection (2) after "and rooming house" **insert** "or the building";

(f) in section 355 —

(i) in subsection (2)(a) after "rooming house," **insert** "building,";

(ii) in subsection (2)(b) after "shared room)," **insert** "building,";

(iii) in subsection (3) after "rooming house" **insert** ", building,";

(g) in section 358(1) —

(i) after "a rooming house" **insert** " or in the case of a building in respect of which notice under section 289A was given, a building,";

(ii) after "the rooming house" **insert** "or that building".'.

Third reading

Motion agreed to.

Read third time.

JUSTICE LEGISLATION FURTHER AMENDMENT BILL

Second reading

Debate resumed from earlier this day; motion of Mr CAMERON (Minister for Police and Emergency Services).

Motion agreed to.

Read second time.

Third reading

Motion agreed to.

Read third time.

MARINE SAFETY BILL

Second reading

Debate resumed from earlier this day; motion of Mr PALLAS (Minister for Roads and Ports).

Motion agreed to.

Read second time.

Circulated amendments

Circulated government amendments as follows agreed to:

1. Clause 7, after line 32 insert —

"**Note**

In making a declaration under this section the Safety Director must have regard to guidelines made by the Minister under section 31A of the **Transport Integration Act 2010**: see section 258(2).".

2. Clause 40, line 10, before "The" insert "(1)".

3. Clause 40, after line 12 insert —

"( ) A condition of registration imposed under subsection (1) must not restrict the distance offshore that a vessel may be operated based on the length of the vessel.".

4. Clause 41, line 14, before "In" insert "(1)".

5. Clause 41, after line 17 insert —

"( ) A prescribed condition of registration of a prescribed class or type of vessel must not restrict the distance offshore that the vessel may be operated based on the length of the vessel.".

6. Clause 81, after line 7 insert —

"**Note**

In making a declaration under this section the Safety Director must have regard to guidelines made by the Minister under section 31A of the **Transport Integration Act 2010**: see section 258(2).".

7. Clause 87, line 18, after "**vessel**" insert ", **government vessel or hire and drive vessel**".

8. Clause 87, line 19, after "vessel" insert ", government vessel or hire and drive vessel".

9. Clause 87, line 27, after "vessel" insert ", government vessel or hire and drive vessel".

10. Clause 87, line 28, omit "recreational".

11. Clause 87, page 88, line 1, after "vessel" insert ", government vessel or hire and drive vessel".

12. Clause 87, page 88, line 2, omit "recreational".

13. Clause 93, lines 24 to 26, omit "personal property is damaged, destroyed or lost as a result of the incident" and insert "there is significant damage to property, or property is lost or destroyed, as a result of the incident".

14. Clause 250, after line 6 insert —

"**Note**

In making a declaration under this section the Safety Director must have regard to guidelines made by the

Minister under section 31A of the **Transport Integration Act 2010**: see section 258(2).".

15. Clause 258, line 5, before "The" insert "(1)".

16. Clause 258, page 235, after line 4 insert —

"( ) The Safety Director must have regard to guidelines made by the Minister under section 31A of the **Transport Integration Act 2010** in making —

(a) a declaration under section 7, 81 or 250;

(b) a determination under subsection (1)(q).".

17. Clause 290, lines 12 to 14, omit subclause (1) and insert —

"( ) A person may apply to VCAT for review of —

(a) a reviewable decision; or

(b) a decision made, or taken to have been made, by the Safety Director under section 289 in respect of a reviewable decision —

if the person is an eligible person in relation to the reviewable decision.".

18. Part heading preceding clause 309, omit "**9.10**" and insert "**8.10**".

AMENDMENT TO SCHEDULE

19. Schedule 3, page 353, after line 30 insert —

'16.10 After section 31 **insert** —

"**31A Guidelines**

(1) The Minister must, within the period specified in subsection (2)(a), make guidelines in relation to the making of a declaration by the Safety Director under section 7, 81 or 250 of the **Marine Safety Act 2010** or the making of a determination by the Safety Director under section 258(1)(q) of that Act.

(2) The Minister —

(a) must make guidelines under this section no later than 7 days after the commencement of clause 16.10 of Schedule 3 to the **Marine Safety Act 2010**;

(b) may remake or amend guidelines made under this section at any time after guidelines referred to in paragraph (a) take effect.

(3) Guidelines and amendments to guidelines made under this section must be published in the Government Gazette.

(4) Guidelines and amendments to guidelines made under this section take effect on the day they are published in the Government Gazette.".'.

Third reading

Motion agreed to.

Read third time.

ENERGY AND RESOURCES LEGISLATION AMENDMENT BILL

Council's amendments

Message from Council relating to following amendments considered:

1. Clause 2, line 3, omit "section 83" and insert "sections 36 and 85".

2. Clause 2, line 5, omit "Section 83 comes" and insert "Sections 36 and 85 come".

3. Clause 14, line 23, after "**Objectives**" insert "**and functions**".

4. Clause 14, line 24, before "After" insert "(1)".

5. Clause 14, line 26, after "the" insert "prevention and".

6. Clause 14, after line 27 insert —

'(2) After section 7(f) of the **Electricity Safety Act 1998** insert —

'(fa) to regulate, monitor and enforce the prevention and mitigation of bushfires that arise out of incidents involving electric lines or electrical installations;".'.

7. Clause 34, line 13, omit 'bushfires.".' and insert "bushfires;".

8. Clause 34, after line 13 insert —

'(c) the inspection of electric lines or electrical installations for the purpose of the prevention of bushfires arising from such lines or installations;

(d) the training of persons conducting inspections of the kind referred to in paragraph (c);

(e) the auditing of the training and performance of persons conducting inspections of the kind referred to in paragraph (c)".'.

9. Insert the following New Clause to follow clause 18 —

'AA New Division 2A of Part 8 inserted

After Division 2 of Part 8 of the **Electricity Safety Act 1998** insert —

"Division 2A — Electric lines and municipal fire prevention plans

86B Municipal fire prevention plans must specify procedures for the identification of trees that are hazardous to electric lines

Without limiting section 55A of the **Country Fire Authority Act 1958**, a municipal council must, in a municipal fire prevention plan required to be prepared and maintained under that section, specify —

(a) procedures and criteria for the identification of trees that are likely to fall onto, or come into contact with, an electric line (***hazard trees***); and

(b) procedures for the notification of responsible persons of trees that are hazard trees in relation to electric lines for which they are responsible.'.'.

10. Insert the following New Clause to follow clause 30 —

'BB Director may give directions

(1) In section 141(2)(d) of the **Electricity Safety Act 1998**, for "safe." **substitute** "safe; or".

(2) After section 141(2)(d) of the **Electricity Safety Act 1998 insert** —

"(e) to do any other thing necessary to prevent an unsafe electrical situation from arising.".'.

Mr BATCHELOR (Minister for Energy and Resources) — I move:

That the amendments be agreed to.

These amendments were made on the basis of consensus between the parties in the other chamber, and I start by thanking those members in the other house and the member for Malvern for their ability to reach that consensus. Some of the amendments being presented for our agreement today originate from the government and some came from the Liberal Party.

The government is taking this action because it is committed to ensuring that all Victorian electricity consumers benefit from a safe electrical system. We want to make it safe, and these amendments address that — they go to the heart of improving the safety of our electricity system. The government is also committed to enhancing the safety and security of the electricity system by promptly implementing its response to the final recommendations of the 2009 Victorian Bushfires Royal Commission in relation to its concerns about electricity-caused fires.

Members will recall that the final report of the bushfires royal commission was released after this bill left this chamber to go to the upper house. The royal commission's final report was released during the bill's journey between this house and the upper house and the amendments proposed by the opposition and the government in the other place were a response to the royal commission. That is why both sides of that house supported the amendments, and I assume that will be the case here today.

The government amendments are in part a response to recommendations 28, 29, 30 and 31 of the royal commission's final report. These house amendments will amend the Electricity Safety Act to strengthen the electricity safety framework. Amendments 1 to 4 insert powers relating to electric line inspections, inspector training and auditing of inspector training and performance. Amendment 5 will require the principal councils to specify procedures for identifying hazard trees and for notifying responsible persons of the existence of these hazard trees. This amendment will clarify the existing obligation that municipal councils have to prepare fire prevention plans. The need for this clarification was pointed out by the royal commission.

Amendment 6 supplements the existing framework for managing the risks posed by hazard trees by allowing the director of Energy Safe Victoria (ESV) to direct a person to do anything necessary to prevent an unsafe electrical situation from arising.

The opposition amendments make further provisions in relation to the royal commission's recommendation 34 which calls for a strengthening of Energy Safe Victoria's mandate to reduce the risk of powerlines causing bushfires. Clause 14 of the bill gives Energy Safe Victoria an explicit mandate to address bushfire mitigation by amending ESV's objective in section 6 of the Electricity Safety Act. The opposition amendments add the word 'prevention' to Energy Safe Victoria's new explicit objective to promote mitigation of bushfire danger, which is inserted by clause 14.

These amendments will also add a new explicit function relating to the prevention and mitigation of bushfires by Energy Safe Victoria's function in section 7 of the Electricity Safety Act. The amendments that we are supporting here in the lower house are a combination of house amendments moved by the government in the upper house and amendments moved by the opposition and agreed by the government, in fact welcomed by the government, and I commend in totality all these amendments before us for consideration today.

Mr O'BRIEN (Malvern) — The opposition supports the amendments that have been made in the Council. As the minister points out, some of these amendments were initiatives of the government and some of them were initiatives of the opposition. I acknowledge the fact that the minister was prepared to see the opposition's point of view in relation to the

wording of some of our amendments, and I am pleased that an agreement was able to be struck.

These amendments provide for better regulation in respect of inspection, auditing and training in relation to electrical installations and the prevention of bushfires, including provisions for the identification of hazard trees and the reporting of hazard trees to responsible authorities via municipal councils through their municipal fire prevention plans. On that point, I note that that amendment is a reflection of the recommendations in the final report of the Victorian Bushfires Royal Commission. However, a number of resource issues arise with some of these amendments. To the extent that municipalities will bear an increased resource burden as a result of some of the requirements that are being imposed on them through this amendment I think it is absolutely essential that the government take stock of what those burdens are and not cost shift in an unfair way onto municipal councils.

I would also like to refer to amendments 5 and 6 before the house, which were moved by the opposition in the other place and accepted by that chamber. In particular these refer to recommendation 34 of the bushfires royal commission, which states:

> The state amend the regulatory framework for electricity safety to strengthen Energy Safe Victoria's mandate in relation to the prevention and mitigation of electricity-caused bushfires and to require it to fulfil that mandate.

This is absolutely essential, because the findings of the bushfires royal commission in relation to Energy Safe Victoria were fairly scathing. ESV was described in very blunt terms by the royal commission as a weak regulator. ESV was criticised for its lack of influence over distribution businesses, and the royal commission also noted that out of ESV's 90 staff the equivalent of two full-time staff are devoted to matters relating to bushfire mitigation. Certainly the failures of ESV in relation to the safe regulation of electricity assets have been identified by the bushfires royal commission, and it is essential that recommendation 34 be implemented in full.

In our view the government's original proposal fell short of what the royal commission recommended. Our amendments were intended to alter the functions of ESV, and as a consequence of amendment 6 ESV will have a function 'to regulate, monitor and enforce the prevention and mitigation of bushfires that arise out of incidents involving electric lines or electrical installations'.

It is important, indeed essential, to ensure that ESV as a regulator has the right statutory functions to undertake the sort of job the royal commission has identified as being necessary to try to reduce, mitigate and prevent bushfires caused by electricity assets, but it is equally essential that it has the money and has the capital to discharge those functions. The government cannot think it has discharged its responsibility to implement the royal commission's recommendation by simply changing the law that says what ESV must do; it must ensure ESV has the resources, the expertise and the personnel to implement those obligations. That is the challenge for the government.

As I said, I acknowledge that the government was prepared to accept the opposition's amendments, and I thank the minister for that, but the job is not done. The job cannot be done until ESV has not only the remit but also the means to do its job properly. With those few words, the opposition supports these amendments and wishes the bill a speedy passage.

Dr NAPTHINE (South-West Coast) — I wish to speak specifically to amendment 9. I understand, as the member for Malvern has said, that this amendment reflects the Victorian Bushfires Royal Commission's findings, but the issue I wish to raise is concern within municipalities across regional and rural Victoria about the cost-shifting aspects of this amendment. We need an assurance from the government that in implementing the royal commission's findings through this amendment it will meet the costs involved with respect to this new role that is being delegated to local municipalities. Clearly this amendment places an additional burden and cost on local government, particularly in regional and rural areas. In those areas where there are many electricity lines and potential hazard trees the cost will not be insignificant.

Local government has experienced in recent times real issues with cost-shifting under this government, and that has had a significant impact on the rate burden on local ratepayers — whether they be farmers, businesses or home owners — who have faced increases in rates well above the consumer price index. There is potential here, in our implementing the royal commission findings through this amendment, to again create a responsibility for local government that will involve significant cost to it. I believe, and many people in regional and rural Victoria believe, that cost should be met by the state government rather than being pushed onto local councils and local ratepayers.

In supporting these changes I seek assurances from the government that it will pick up the full cost of this additional legislative burden on local government. Local government has an important role to play in terms of community safety but it should not be left

holding the bag with regard to the cost, and I would ask that the government make it very clear here tonight that the full cost of this additional burden will be picked up by the state government rather than being pushed onto local government and local ratepayers.

Mr WYNNE (Minister for Local Government) — In rising to address these amendments, can I say that the work local government has done — and I have spoken of this in the house on a number of occasions, particularly in relation to the aftermath of those dreadful bushfires — has been quite extraordinary. We owe a great debt of gratitude to local government for what has been by any measure a magnificent effort in the fire recovery process across all the fire-affected communities.

I commend the work the Premier has done in consulting with local government. The Premier, the Minister for Police and Emergency Services, the Minister for Environment and Climate Change and I met with 150 members of local government bodies who assembled together under the auspices of the MAV (Municipal Association of Victoria) when we consulted with local government on the delivery of the royal commission's recommendations. We had an excellent conversation, and the Minister for Police and Emergency Services was with me on the day we had the initial consultation with local government.

Similarly, many government members went out and consulted with local governments and fire-affected communities right across the state about the implications of the recommendations of the royal commission. I not only attended the broader meeting with the Premier, the Minister for Police and Emergency Services and the Minister for Environment and Climate Change but also went to Horsham. Unfortunately the member for Lowan was not able to be there that night, and I ensured that his apologies were passed on at that meeting. I found it to be an excellent opportunity to meet with the local fire-affected community in Horsham.

Several issues were raised at that meeting, particularly around evacuations and how powerline issues were to be dealt with, and around the peculiarities of that fire. It was a fast-running grassfire, which was quite different from some of the fires we experienced in other parts of the state. Given the speed of that fire, how it was attacked and addressed in the Horsham area was quite different to the way in which fires were fought in other parts of Victoria. I undertook to go back to the Premier directly, as we were all requested to do as members of the government, to report faithfully — —

The DEPUTY SPEAKER — Order! I appreciate the complexity of this issue, but I remind the minister that we are speaking on the amendments.

Mr WYNNE — And I will, Deputy Speaker.

The DEPUTY SPEAKER — Order! I understand that, but speaking about how to fight a grassfire is not quite speaking on the amendment.

Honourable members interjecting.

The DEPUTY SPEAKER — Order! As I said, I appreciate the issue that we are debating, but these are the amendments, and I ask the minister to be relevant to the amendments before the house.

Mr WYNNE — I will be relevant to the amendments, as they pertain to issues that were addressed by the member for South-West Coast, because they go to the question of neighbourhood safer places and the issues of the — —

The DEPUTY SPEAKER — Order! The matter raised by the member for South-West Coast relates to amendment 9, which is about electrical lines and municipal fire prevention lines. It is quite narrow.

Mr WYNNE — That is right. With respect, Deputy Speaker, municipal fire prevention plans include the question of neighbourhood safer places. An issue the member for South-West Coast raised was the funding of local governments to support fire protection plans for their areas. I indicate to you, Deputy Speaker, that it will have been noted in the response to the recommendations of the royal commission that not only was there substantial consultation with the MAV representing local government but also that the government has committed a significant amount — $11 million — to the establishment of neighbourhood safer places. It is also supporting local government in relation to staffing at 25 fire-affected communities to assist in the further planning of fire protection activity in those neighbourhoods, and is providing some further support for the MAV to play its coordination role. The member for South-West Coast's suggestion that the government has in some way been derelict in its responsibility to support local governments in their full preparation for the fire season coming ahead is again quite wrong.

Mrs POWELL (Shepparton) — The Nationals support amendment 9. I would like to put on the record that, like the Minister for Local Government, I have also consulted with councils. I wrote to the 79 councils and alerted them that this amendment would have an impact on them. I wrote to the Municipal Association

of Victoria and to the Victorian Local Governance Association.

Proposed section 86B(b) states:

> procedures for the notification of responsible persons of trees that are hazard trees in relation to electric lines for which they are responsible.

The response from Ararat Rural City Council in relation to that provision was:

> This council believes that the power distribution companies have the resources and are already inspecting these lines. If councils are required to undertake these inspections this will be a duplication and another financial impost on local government.
>
> Should the government wish to fund this activity council would be in a position to assist in this process.

The Shire of Cardinia's response to my letter was:

> There is an element of cost shifting in the proposed amendment, in that the responsible party at present is the Power Authority. The amendment, as your email, would share the responsibility between council and the power authority which will give rise for blame shifting in the event of a problem. Who then is accountable?
>
> Is this the first stage of cost shifting, then tree maintenance would be the next stage?
>
> Tree maintenance is an extremely expensive area for our council. A stand of cypresses, 15 trees, along a roadside into Beaconsfield cost $25 000 to remove. Cardinia shire is a heavily wooded municipality.

Other concerns were raised, but I have not had time to bring them into the chamber. Some were concerns from local government about not just cost shifting but responsibility shifting onto local government.

Mr Wynne interjected.

Mrs POWELL — The minister is saying that it is their statutory responsibility. This is a responsibility that this amendment will put onto local councils, and they are talking about duplication because the government is already doing that. Again, it is more cost shifting onto local government — but more importantly it is responsibility shifting. I have just outlined the concerns of a couple of councils about these responsibilities that are going to be shifted onto them.

Motion agreed to.

GAMBLING REGULATION AMENDMENT (LICENSING) BILL

Council's amendment

Message from Council relating to following amendment considered:

Insert the following New Clause to follow clause 48 —

'AA New section 10.2A.11 substituted

For section 10.2A.11 of the **Gambling Regulation Act 2003 substitute** —

"10.2A.11 Publication of Review Panel reports

(1) The Minister must give a copy of each report of the Review Panel to the Secretary as soon as practicable after receiving it.

(2) The Minister must cause a copy of each report to be presented to each House of the Parliament —

(a) in the case of a report with respect to the regulatory review, within 7 sitting days of the House after the Minister publicly announces the government's decision on the regulatory review;

(b) in the case of a report with respect to the authorisation and licensing process, within 7 sitting days of the House after the Minister publicly announces the grant or issue of an authorisation or licence that is the subject of a report;

(c) in any other case, at the time determined by the Minister.

(3) If the Minister receives a report when Parliament is in recess, the Minister may give a copy of the report to the clerk of each House of the Parliament.

(4) If the clerk of each House of the Parliament receives a copy of a report under subsection (3), the clerk of each House of the Parliament must —

(a) as soon as practicable after the report is received, notify each member of the House of the receipt of the report and advise that the report is available upon request; and

(b) give a copy of the report to any member of the House upon request to the clerk; and

(c) cause the report to laid before the House on the next sitting day of the House.

(5) The Secretary must cause a copy of each report received under subsection (1) to be published on an appropriate Internet site as soon as practicable after —

(a) the copy of the report has been presented to each House of the Parliament by the Minister under subsection (2); or

(b) the copy of the report has been given to the clerk of each House of the Parliament by the Minister under subsection (3).

(6) Before complying with subsection (1) or (2), or doing a thing under subsection (3), the Minister may exclude information from the report if the Minister has received advice from the Victorian Government Solicitor that the information is —

(a) protected information; or

(b) information that is or could be the subject of legal professional privilege or client legal privilege.

(7) A report that is given to the clerks under subsection (3) is taken to have been published by order, or under the authority, of the Houses of the Parliament.

(8) The publication of a report by the Secretary under this section is absolutely privileged and the provisions of sections 73 and 74 of the **Constitution Act 1975** and of any other enactment or rule of law relating to the publication of the proceedings of the Parliament apply to and in relation to the publication of the report as if it were a report to which those sections applied and had been published by the Government Printer under the authority of the Parliament.

(9) For the purposes of this section, the Parliament is in recess when each House stands adjourned to a date to be fixed by the presiding officer of that House.".'.

Mr ROBINSON (Minister for Gaming) — I move:

That the amendment be agreed to.

The amendment is a common-sense and necessary amendment which has been formulated because of the diminishing number of sitting days in this Parliament. That is of relevance because the reporting arrangements that this Parliament agreed to some time ago involving the independent review panel provide for the panel's reports to be tabled on sitting days. At the time — I think it was agreed to in 2007 — it was not possible to judge how many reports the panel would be required to complete, nor was it possible to formulate a view on the way in which the independent review panel would operate.

It has become clearer in recent times that there are a number of reports that the independent review panel is still to complete. That is part of the gambling licences review project. It is important that those reports be tabled in order to help bring that process to a conclusion and to allow the government to announce the most significant remaining elements of that reform — namely, the awarding of licences.

That explains the necessity for the amendment. I am pleased to say that the opposition was involved in discussions about this over a period of time. We have worked out an arrangement in which notification will be provided to the opposition, the Greens, and indeed to the member for Gippsland East about the timing of reports that can be tabled out of session should the Parliament agree to this amendment. That is a sensible arrangement.

The opposition has sought some undertakings in respect of the way that arrangement will work, particularly late in the afternoon and on weekends. I think we have an understanding that, based on the government's desire to try not to use this power in any untoward way, it will be used simply as I have said: to discharge the business that remains to be done in the gambling licences review process.

The independent review panel has a very significant role to play. We value its work. As I have said, we want this process to be drawn to a conclusion at the earliest possible time. There is a lot of interest in it. As I said we cannot do that without the tabling of the independent review panel's remaining reports. It is expected that those reports will be completed in a successive manner. This amendment helps add some efficiency to this process. I appreciate the support of the opposition in agreeing to the amendments which went through the upper house in the last sitting week.

Mr O'BRIEN (Malvern) — The opposition does not oppose the amendments that the minister is introducing today. The work of the gambling review panel is important. It provides a safeguard in terms of the probity and integrity of the licensing process. In deference to the hour of the day and the further business to be transacted I will not take us through the history of why the establishment of the gambling licences review panel was necessary, but interested parties can look at *Hansard* for my past contributions on that matter. Suffice it to say that gambling is a very high stakes business, to coin a phrase. It is a business that involves a lot of money and therefore the integrity and probity of the licensing process must be beyond reproach. For that reason we support the gambling licences review panel. We had expressed concern that its powers are not as wide-ranging as we believe is appropriate, but for all that we acknowledge that Mr Merkel and his panel have made some very important contributions in their existence to date.

The minister sought the support of the opposition for these amendments to facilitate the tabling of reports of the panel in circumstances where there are perhaps very few sitting days left in order to enable reports to be

tabled out of session so that the work of the gambling licences process can continue. The minister put it to me that from the government's point of view it was difficult for the gambling licences process to continue while there were outstanding reports. The government felt that it was important that reports on stages of the process of a particular licence be tabled before further stages could ensue. In acknowledgement of that, the opposition was prepared to support measures to enable reports to be tabled so that the gambling licensing process can continue.

Certainly we have got a wagering licence, which I believe is supposed to be implemented before the election this year. We are 86 days or so from the election, and fewer than that from issuing the writ, so the minister has obviously got his work cut out for him if he is going to get us a result by 2 November — but we shall see. There is keno licensing and other forms of licensing that are still to be determined. It is a very active and busy time for the issuing of gambling licences in Victoria and also for the gambling review panel.

For that reason I am pleased to say that the opposition supports these measures. In relation to clause 10.2A.11(2)(c) the legislation provides that:

> The minister must cause a copy of each report to be presented to each house of the Parliament … in any other case, at the time determined by the minister.

I raised this with the minister just before this debate commenced. I sought an assurance from the minister that such discretion provided to the minister would not be used to avoid tabling a report of the gambling licences review panel that did not fit within subsections (a) or (b). The minister provided that assurance. He said that the entire purpose of this amendment was to ensure the efficient dispatch of the business of the panel, and on the basis of the assurance that was provided — —

Mr Hulls interjected.

Mr O'BRIEN — I note for the Attorney-General that it is recorded in *Hansard*. It is on that basis of the assurance and the other undertakings to which the minister has adverted in relation to notification of the opposition and other parties that the opposition is prepared to not oppose these amendments.

Motion agreed to.

JUDICIAL COMMISSION OF VICTORIA BILL

Statement of compatibility

Mr HULLS (Attorney-General) tabled following statement in accordance with Charter of Human Rights and Responsibilities Act:

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

In my opinion, the Judicial Commission of Victoria Bill 2010, as introduced to the Legislative Assembly, is compatible with the human rights protected by the charter. I base my opinion on the reasons outlined in this statement.

Overview of bill

The Judicial Commission of Victoria Bill 2010 (bill) creates the Judicial Commission of Victoria (commission), which will investigate and resolve complaints and concerns involving Victoria's judges, associate judges, magistrates, coroners, judicial registrars and VCAT members (officers).

Matters relating to both conduct and health issues may be raised in complaints from the public, or referrals made either by the heads of each court and VCAT or the Attorney-General (part 4 referral).

The bill establishes a modern approach to judicial complaints handling consistent with the need to maintain an independent judiciary.

Human rights issues

1. Right to a fair hearing — section 24(1)

A person charged with a criminal offence or a party to a civil proceeding has the right to have the charge or proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing.

Civil or criminal proceedings presided over by judges subject to the commission —

Independence

Public confidence in the judiciary is a central component of judicial independence. Only a court system which commands the public's respect in its authority to adjudicate can be effective and, through that, independent of external influence.

People who voluntarily accept public office are accountable for how they conduct themselves in the exercise of official functions. In the usual course, if improper conduct of any public office-holder results in appreciable or material harm to a member of the community, the appropriate response is to acknowledge any wrongdoing and to take remedial steps.

Under the bill, key responsibilities are held by the heads of jurisdiction, being the chief justice, the chief judge, the Chief Magistrate, the president of the Children's Court, the state coroner and the president of VCAT.

A key feature is their power to 'counsel' judicial officers regarding appropriate standards of behaviour as a means of

reaching collaborative solutions to resolve inappropriate conduct.

This counselling would not involve an improper exercise of power over a judicial officer. The principal role of counselling, or other remedial steps taken under the bill, is to remind a judicial office-holder of expected standards of behaviour and to prevent further incidents from occurring. The aim is not public chastisement or reprimand.

An 'independent' tribunal embodies traditional common-law values of judicial independence. The expression refers not just to a state of mind or attitude, but an objective status or relationship to others, particularly to the executive branch of government, which guarantees an appropriate level of freedom from external control or direction.

An accepted aspect of judicial independence is the general liberty of judges to hear and determine cases free from external influence or direction, irrespective of whether such influence originates in the community, in government, or even within the judiciary itself.

This freedom from external influence has necessary and recognised limits where conduct falls short of expected standards and results in a potential misuse of the judicial role.

While the commission process involves the exertion of influence by more senior judicial officers, such influence does not fetter or direct the exercise of powers which are properly open to a judicial officer. The commission investigates whether judicial conduct meets basic threshold standards of independence, honesty, and competency. The role of the commission is not to assess whether a decision was correctly made on the merits.

The aim is therefore to ensure that an officer is capable of making decisions which meet basic community expectations of an officer, not to direct how a judicial officer, upon meeting such standards, is to act in deciding cases.

Such influence is exercised by senior judicial officers, who can be considered to act exclusively out of consideration for the interests of the court and the administration of justice generally. Their control of the complaints process removes any perception of interference by government in the internal workings of the judiciary.

Ultimately, any guidance under the bill will seek to ensure that trials conducted by a subject officer conform to charter requirements of a 'fair' trial. The requirements of an 'independent' tribunal do not protect conduct which falls so short of expected judicial standards that the conduct itself violates the charter rights of litigants to a 'fair' hearing. It is important that the judicial system can identify and address such inappropriate conduct.

The bill provides that information relating to an outcome of a complaint may be released, unless disclosure would be contrary to the public interest having regard to a range of specified factors.

The commission must have regard to the potentially adverse impacts of disclosure to a complainant (or the public at large), and assess the extent to which disclosure may adversely impact the authority of a judge and their capacity to adjudicate.

Any public acknowledgements of substandard conduct may cause short-term discomfort to both the subject officer and their judicial colleagues. However, public confidence in the judiciary as a whole may be more severely impaired by its collective silence in the face of the behaviour of one of its members which is harmful both to people before the courts and to respect for the judiciary as an institution.

In appropriate circumstances, the maintenance of public confidence in the judiciary as a whole may require the collective and public assumption of responsibility for the behaviour of individual judges.

The potential of a court or the commission publicly acknowledging instances of inappropriate conduct is also an important means of encouraging officers to act appropriately and meet the expectations of their office. If the potential of such publicity affects behaviour, it would encourage the officer to act appropriately having regard to any guidelines about standards of appropriate conduct that may be approved by the commission. This helps ensure that proceedings over which the officer presides are conducted in a fair manner that meets the requirements of the charter.

Transparency also protects the integrity of the complaints resolution process.

To protect judicial independence and to avoid unwarranted interference with the judicial process, the deliberations of the commission are necessarily confidential and are controlled by judicial officers who may be closely connected with the officers subject to investigation.

The provision of information regarding the findings of the commission is an important aspect of the 'open justice' principle. If the commission refrained from releasing information about an investigation, it could deprive litigants of material necessary to assess whether they have, or will receive, an impartial or otherwise fair hearing. Were it subsequently disclosed (say, in a future report relating to the removal of the judicial officer) that such material was known to the members of the commission, but was actively withheld, such a revelation could have a deleterious impact on the public standing of the judiciary.

The disclosure of any corrective steps taken to deal with particular conduct may, in contrast, be a ready means to rebut any apprehension of bias which may otherwise arise from conduct which, quite separately from the commission process, may already be the subject of public criticism.

In the final analysis, judicial independence has both individual and collective aspects which must both be accommodated. The bill strikes a balance between ensuring the right of judicial officers to act, think, and speak freely in the exercise of the judicial role, while acknowledging that the judiciary, collectively, has a public role in ensuring that its membership adheres to the highest standards of integrity.

Proceedings before the commission —

A 'civil proceeding'?

The bill creates a unique form of professional self-regulation designed to ensure the independence and integrity of the judiciary.

Such administrative proceedings are sui generis (that is, unique at law) and are not properly characterised as a 'civil

proceeding' for the purposes of the right to a hearing by a 'fair and impartial' tribunal in 'criminal or civil proceedings'.

Nonetheless, were the investigations of the commission, investigating panel or investigator under the bill to be characterised as a 'civil proceeding', such processes would be compatible with the right to a hearing by a 'fair and impartial' tribunal under section 24(1) of the charter.

Impartiality

'Impartiality' for the purposes of section 24(1) is a state of mind or attitude relating to the issues or parties in a particular case. An 'impartial' tribunal decides matters in the absence of bias, whether actual or perceived, and whether that bias manifests through structural arrangements or is specific to the particular facts of a case.

The independence of the judiciary is maintained by the complaints process being directed by the judiciary.

The necessary corollary is that judicial officers will be investigated by their peers, with a key role for each head of jurisdiction in both initiating, deciding, and implementing recommendations regarding less serious matters, and referring for further investigation more serious matters.

While having (perhaps extensive) past dealings with a judicial officer subject to a complaint or part 4 referral, heads of jurisdiction are uniquely suited to deal with problematic judicial conduct.

Their role as coordinator of court business means that events which raise ethical issues are more likely to come to their attention, and their senior position allows them to deal with sensitive matters which may be of concern to other judicial officers.

While each head of jurisdiction may consider their own part 4 referral, and may be asked to implement a recommendation formulated following their own involvement, commission proceedings are not adversarial litigation. A head of jurisdiction does not decide whether their own part 4 referral is 'successful' and, if 'successful', how to implement the outcome.

Instead, the commission's mandate is to ensure compliance with high judicial standards of conduct. Its role is remedial and relates to preserving public confidence in the judiciary as a whole. All participants, including the judicial officer, the complainant, and the head of jurisdiction, should be seeking the most appropriate solution to any acknowledged problems.

Heads of jurisdiction therefore do not sit under the bill as 'judge, jury, and executioner'. Their involvement at multiple stages of the complaints process in matters not involving serious misconduct is a necessary extension of their existing managerial role within each court.

Where a matter is of sufficient seriousness that, if substantiated, the matter may warrant removal, then an investigating panel (in relation to judges, associate judges, magistrates and coroners) or an investigator (in relation to judicial registrars and non-judicial VCAT members) must be appointed.

Complete impartiality is guaranteed in such cases as neither the head of jurisdiction, nor any officer from the same court, may investigate a judicial officer of their court.

Where a head of jurisdiction is subject to a complaint, neither that officer nor an alternate member of the court or tribunal over which they preside may act at any stage of the complaints investigatory process. The head of jurisdiction, if necessary, may be counselled by a senior, eminent judicial officer or retired judicial officer from another Australian jurisdiction appointed specifically for that purpose.

For these reasons, proceedings before the commission are 'impartial'.

A fair hearing

A 'fair hearing' requires 'equality of arms' — both parties should enjoy a procedurally equal position to make their case.

The bill provides a comprehensive regime which allows a judicial officer to put their case and, in relation to an investigating panel that is conducting a hearing, by legal counsel. They will be afforded an opportunity to make comments at the most significant decision points that could lead to an adverse outcome.

A complainant who is to be declared vexatious under the bill will be provided notice and given an opportunity to make submissions.

It is important to stress, however, that a member of the public who initiates a complaint is not 'prosecuting' the officer and does not have a formal role in controlling proceedings.

Such involvement would risk compromising the independence of the judiciary by exposing judges to potential harassment or intimidation by disappointed litigants, as a process controlled by complainants could lead to judges ruling in such a way as to placate 'problem' litigants in the future.

Accordingly, a complainant under the bill is best equated with a complainant in a criminal trial, who has an 'interest' in the proceedings, but whose level of involvement will be determined to maximise the commission's ability to arrive at the key facts quickly, accurately and fairly.

For these reasons, the hearing is 'fair' notwithstanding that a complainant has a necessarily limited role.

A public hearing

Where the investigating panel or an investigator conducts an inquiry into conduct which, if substantiated, could warrant removal, the panel (or investigator) would determine whether the investigation should include an oral hearing.

Hearings of an investigating panel or investigator must be conducted in private unless the investigating panel or investigator determine that a public hearing will facilitate the conduct of the investigation or it is otherwise in the public interest.

The right to a fair hearing under the charter includes the right to a 'fair and public hearing'. The exclusion of the public from the hearing is consistent with the charter where the exclusion of the public is permitted by a law which is reasonable and otherwise proportionate to securing a legitimate public policy objective.

Hearings by an investigating panel or an investigator may canvass personal information (including health information),

the disclosure of which could compromise the authority of individual officers and the effective working of the courts or VCAT. It is therefore appropriate to provide that such hearings are private, unless otherwise ordered by the investigating panel or investigator.

If the investigating panel or investigator substantiate a complaint or referral and determine that facts exist that could amount to proved misbehaviour or incapacity such as to warrant consideration of the officer's removal, the report could become public. For instance, the report regarding a judicial officer is provided to the Governor in Council and would be tabled in parliament by the Attorney-General.

The commission is also empowered to publicly disclose information where the disclosure would be in the public interest.

An investigating panel and investigator will (to the extent authorised by the commission) have the statutory powers of a royal commission, including the power to prohibit the publication of material, where satisfied that this would facilitate the conduct of the inquiry or would otherwise be in the public interest.

The power to limit the publication of material is reasonable and necessary as information disclosed in a hearing may prejudice the ongoing investigation into the matter or, in limited circumstances, may be necessary because of the potentially disruptive effects of disclosure on the judicial process.

Published reasons

Under section 24(3) of the charter, decisions and judgements of a tribunal must be public unless disclosure is authorised by law or (where relevant) confidentiality is in the best interests of the child.

A decision of an investigating panel which concludes that there are grounds for the parliamentary removal of a judicial officer must be tabled in parliament by the Attorney-General.

Other decisions of the commission will be provided to the judicial officer, but may not be released in full to a complainant or the public generally if this would be contrary to the public interest.

The statutory limitation on the release of written reasons is necessary because of the potentially disruptive effects of disclosure on the judicial process which are more fully explained in the discussion of the right to free expression which follows.

2. Freedom of expression — section 15(2)

Every person has the right to freedom of expression, which includes the freedom to seek, receive, and impart information and ideas of all kinds.

A right to receive government information?

The right to 'receive' information may imply a right to compel the production of government-held information where an individual seeks information on a subject engaging the public interest or in which he or she has a legitimate interest. To the extent that such a right is implied by the charter, it would not be absolute and would be subject to justifiable exceptions for objective, proportionate and reasonable purposes.

To the extent that such a right is implied by the charter, the bill provides a comprehensive and targeted regime for the disclosure of materials generated by the commission process.

Internal limitations — confidentiality to maintain the integrity of the judiciary

An officer subject to a complaint or part 4 referral will be provided with reasons in relation to decisions that relate to their complaints.

As the complainant is not a 'party' but an interested person, they are advised of the final outcome of commission decisions and, except to the extent that disclosure is contrary to the public interest, information regarding the reasons for that decision.

Under the bill, preliminary investigatory steps and internal materials relating to the commission's complaints function will remain confidential, as is generally the case for material generated by investigatory and related bodies. Premature disclosure could compromise ongoing investigations and limit the participation of people of potential assistance who are willing to cooperate only on a confidential basis.

The commission will decide on disclosure having regard to a series of factors which weigh the public interest in the protection of confidentiality against the public interest in maintaining the integrity of the judicial system.

On account of this specific regime for the provision of information to the officer concerned, the complainant and the public at large, it has been necessary to exempt documents relating to the commission's complaints function from a range of Victorian legislation which would provide overlapping avenues of access.

Internal limitation under section 15(3)(a) — rights and reputations of other persons

The commission, in making decisions to authorise disclosure of material related to the complaints function, must have express regard to the privacy interests of any person.

This restriction on disclosure reflects the internal limitation of the right under section 15(3)(a).

3. Freedom from self-incrimination — sections 24(1) and 25(2)(k)

A person charged with a criminal offence cannot be compelled to testify against him or herself.

This right may also be a component of a 'fair hearing' under section 24(1) of the charter.

Direct and indirect use of compelled testimony

Commissions and boards of inquiry may compel evidence or testimony where necessary for an important public policy reason.

As with a royal commission, the commission is charged with investigating matters of wider public importance — in this case, misconduct and related matters involving senior officials in positions of public trust. Direct oral testimony may

be compelled by such bodies, which has the capacity to incriminate the person making the statement (self-incrimination).

However, it has been recognised that the freedom from self-incrimination under sections 24(1) and 25(2)(k) of the charter, while allowing a statement to be compelled, may prevent both the direct use of compelled oral testimony (direct use), and also the use of material which may be acquired through subsequent investigations which are initiated by such forced disclosures (derivative use).

On this view, the right against self-incrimination prohibits the use of evidence in future criminal proceedings which could only be discovered because of compelled testimony, while still allowing:

> evidence which could have been discovered without such testimony;
>
> evidence which would, or would probably, have been discovered even without the testimony; and
>
> evidence discovered independently of the testimony.

Under the bill, an investigating panel or (to the extent that the commission permits) an investigator may exercise the powers of a royal commission under the Evidence (Miscellaneous Provisions) Act 1958.

These powers include the power to summon people and compel answers even though production may tend to incriminate the person required to provide material or give evidence.

The bill provides that any information provided, or document or thing produced through such processes will not be admissible against that person in any subsequent civil or criminal proceedings, except for proceedings relating to perjury or the giving of false evidence.

This position is consistent with the position adopted in relation to royal commissions and reflects the current arrangements for the investigation of judicial officers for serious misconduct under part 3AA of the Constitution Act 1975.

The bill does not, however, prevent the derivative use of such material. As such, it arguably limits the freedom from self-incrimination under sections 24(1) and 25(2)(k) of the charter.

Justifiable limitations under section 7(2) — derivative use of compelled material to protect the integrity of the judicial process

To the extent that this is a limitation of sections 24(1) and 25(2)(k) of the charter, it is a reasonable limit which can be demonstrably justified in a free and democratic society based on human dignity, equality, and freedom, having regard to the following relevant factors.

(a) Nature of the right —

The freedom against self-incrimination is a common-law principle of debated historic provenance. The modern right finds justification in the need to ensure that the Crown, and not an accused, is required to gather and adduce the material necessary to establish guilt. 'Roving commissions' engaged in 'fishing trips' to compel incriminating evidence are inconsistent with common-law concepts of a fair trial.

The freedom removes the 'trilemma' of subjecting a person to immediate punishment if they fail to answer a question, subjecting them to future punishment if they truthfully answer a question, or subjecting them to punishment for perjury for giving a false answer so as to avoid a future criminal trial.

The High Court has emphasised, however, that such underlying considerations are to be weighed differently depending on the circumstances. For example, the forced compulsion of oral admissions of guilt is more intrusive then the forced production of pre-existing documents or other materials. Inquiries which incidentally generate incriminating material in order to secure a broader public policy objective (say, inquiries in relation to police or other official corruption) are to be regarded differently to processes designed to directly adduce material solely to facilitate the future criminal prosecutions of identified individuals.

The nature of the right, as understood domestically, therefore seeks to balance the need for accurate truth finding against the inherently contextual need to maintain a fair state-citizen relationship.

(b) Importance and purpose of the limitation —

The bill will allow for evidence which is compelled by an investigating panel or investigator to form the basis of subsequent criminal investigation.

Evidence which could only be discovered because of compelled testimony may be used in subsequent criminal proceedings so as to ensure that evidence of serious wrongdoing in (or in relation to) judicial office can lead, where appropriate, to subsequent criminal convictions.

The commission process may uncover evidence of serious criminal wrongdoing which may lead, ultimately, to parliamentary dismissal. As an example, the judicial officer may directly admit or, following an initial (and perjured) denial, be cross-examined to the extent necessary to admit that they have accepted a bribe.

Such an admission may be the only source available to law enforcement to initiate a criminal investigation, as the actual decision-making processes of a judge following a public hearing are, in most instances, carried out privately and in the absence of public scrutiny. Law enforcement may therefore be deprived of the opportunity to 'independently' gather material relevant to a future criminal prosecution before or after a commission hearing.

Indeed, if there was a prohibition against derivative use of self-incriminating evidence, a tactical admission of wrongdoing by a judicial officer may 'sterilise' any future criminal investigation relating to disclosed misconduct.

The risk is that the integrity of the judiciary will be fundamentally undermined if judicial officers are dismissed from office but not prosecuted for serious criminal wrongdoing which is now publicly and openly acknowledged.

It is a central tenet of the rule of law and an inherent attribute of a just and democratic society that those who administer the law are, and are seen to be, subject to that same law. To prevent future prosecutions relating to misconduct in public

office on the basis of material which is now in the public domain risks undermining public confidence in the ability of the judiciary to discharge its functions competently, independently and with integrity.

Judges and other people subject to the bill exercise coercive and far-ranging powers, such as the power to imprison and to award significant monetary damages or penalties.

As with other individuals who voluntarily accept positions of public responsibility, judicial officers are subject to a necessarily higher expectation of public scrutiny. Such people must accept a greater level of accountability where they are found to have abused the responsibilities of public office or have otherwise brought that office into disrepute through improper or illegal behaviour.

(c) Nature and extent of the limitation —

The limitation on the right extends only to the use of derivative-use material.

Any actual admission of wrongdoing before the commission may not be used as admissions against the officer in subsequent criminal or civil proceedings.

The commission is not a law enforcement body. It is not set up as a parallel body to the courts designed to produce incriminating material in such a way as to circumvent protections which the same person, as a criminal defendant, would be afforded in a normal police investigation and criminal trial.

Critically, the commission will have the power to adjourn its proceedings to allow for criminal investigations and prosecutions to progress, where that is appropriate.

The bill does not require material discovered as a consequence of an inquiry conducted under the bill to be used in subsequent criminal proceedings. The use of any such evidence would be governed by the laws of evidence, which permit the exclusion of 'unfairly' obtained evidence if, in the particular circumstances, it can be demonstrated that the use of material is inappropriate.

(d) Relationship between limitation and purpose —

Having regard to the absence of less restrictive means to secure public confidence in the judiciary where evidence of criminal wrongdoing has entered the public domain, the limitation on the right proportionally reflects a legitimate public policy goal.

(e) Less restrictive measures to secure purpose —

Consistent with the need to prosecute officers on the basis of facts freely and publicly available (subject to exceptions regarding the direct use of incriminating evidence), there are no less restrictive means to secure this public policy objective.

3. Right to privacy — section 13(a)

A person has the right not to have their privacy 'unlawfully' or 'arbitrarily' interfered with.

Interference will not be 'arbitrary' if the restriction on privacy accords with the charter and is reasonable in the circumstances. Interference will not be unlawful if the law authorising the intrusion is circumscribed, precise and determined on a case-by-case basis.

Investigation of pre-judicial conduct

The bill provides for the investigation of pre-appointment conduct.

However, the commission must dismiss a complaint or part 4 referral if the conduct would not justify removal of the officer from office, or was disclosed in writing before the person's appointment.

In effect, the commission will only investigate matters which should have been disclosed at appointment which are relevant to a person's fitness to hold a position of public trust and responsibility. Any such interference with privacy relates only to a judicial officer's capacity to fulfil official duties and is therefore reasonable in the circumstances.

Investigation of extrajudicial conduct

The bill permits the commission to review conduct which takes place outside the courtroom. The commission must however dismiss a complaint or part 4 referral if such conduct could not affect the carrying out of official duties, or could not be considered to affect their suitability to hold office.

In this way, the bill ensures that any investigation into an officer's personal life is only permitted where the outcome bears on their ability to perform their official functions. Such intrusion is therefore reasonable.

Health requests

The bill will allow, subject to safeguards, for the commission to require an officer to undergo a medical examination when it considers this to be necessary and appropriate on the evidence before it. A registered medical practitioner may request that the officer provide evidence of their prior medical history in their possession as part of the examination.

There is an obligation to undergo the examination, but there is no direct lawful requirement to submit to treatment.

Other professions in positions of public trust, such as health practitioners, are similarly required to undergo health examinations to ensure that the public is not harmed by people operating at diminished capacity through medical reasons.

The human rights of the public can be interfered with when a judicial officer adjudicates at diminished capacity. For example, a person may be convicted and sentenced by a person with early onset dementia or Alzheimer's disease.

As the medical examination procedures ensure that the basic rights of the public are not violated in this manner, interference with privacy is reasonable in the circumstances.

Disclosure of commission outcomes

The bill makes provision for the potential disclosure of personal and confidential material relating to the personal affairs of an officer.

In relation to conduct which could justify removal of a judge or magistrate, such material must necessarily enter the public domain because the final decision for removal is vested in

Parliament, which must necessarily be informed about all matters relevant to the officer remaining in office.

In relation to less serious misconduct, the commission may withhold confidential information if it is in the public interest.

For example, if a particular problem identified by a complainant had a medical cause, it may be appropriate for the commission to advise the complainant that their complaint had been substantiated and that the judge was addressing the underlying medical matters, without revealing detailed information regarding the medical condition.

Information would not be released to a complainant in relation to matters that are referred back to the relevant head of jurisdiction where the commission has determined that the release is contrary to the public interest.

The decision to disclose personal or confidential information will be made on a case-by-case basis following a careful analysis of competing considerations.

Warrants, compelled oral evidence, and search powers

An investigating panel or (to the extent permitted by the commission) an investigator may exercise the power under section 19E of the Evidence (Miscellaneous Provisions) Act 1958 to enter and inspect any document or thing.

These powers may only be exercised in relation to the most serious allegations which would warrant removal, and only after the commission has determined that the allegations are sufficiently credible to warrant an investigation.

The power to compel evidence, including oral testimony, is a crucial aspect of the investigatory functions of the investigatory panel or investigator and is necessary for the appropriate resolution of complaints and part 4 referrals. Any intrusion into personal privacy advances clear statutory objects which secure the public interest in the proper administration of justice and so cannot be regarded as arbitrary. The power is clear and authorised by law.

These same reasons address any concern that the right to freedom of expression is unduly limited by the power to compel forced expression during investigations.

4. Freedom from discrimination — section 8(3)

Every person is equal before law and is entitled to the equal protection of the law without discrimination and has the right to equal and effective protection against discrimination.

Recommendations for removal

The bill provides a range of situations where people may be recommended for removal where facts exist that could warrant their removal on the ground of proved incapacity.

Similarly, appointed community members may be removed from the board of the commission if they are physically or mentally incapable of satisfactorily carrying out their duties.

The bill therefore authorises less favourable treatment for people with an impairment than those without, which prima facie constitutes 'direct discrimination'.

Justifiable limitations under section 7(2) — public interest

There is a compelling public interest consideration, as with other professions of public trust such as the medical profession, in ensuring that officers are not subject to an impairment, disability, illness or condition that results in the person being unable to perform their duties.

Judicial officers are not expected to be without any impairments, disabilities, illnesses or conditions. The principle grounds of removal specified in the bill generally require the issue of incapacity to be assessed at a high threshold — being whether there is incapacity which would warrant removal.

The bill provides a framework for integrating judicial officers with an impairment, disability, illness or condition back into the courtroom, where such a judicial officer can be accommodated without compromising the key responsibilities of judicial office.

For example, a recommendation to a head of jurisdiction could involve practical recommendations to allow a courtroom to be modified so that a judge with back problems can stand at the bench.

Any difference in the treatment of people with an impairment, disability, illness or condition under the bill is therefore limited to cases where a person cannot, even with reasonable adjustments by the court and the officer, effectively discharge their functions.

The limitation is therefore demonstrably justified.

Conclusion

In my opinion, the bill is therefore compatible with the charter.

Rob Hulls, MP
Attorney-General

Second reading

Mr HULLS (Attorney-General) — I move:

That this bill be now read a second time.

The Judicial Commission of Victoria Bill 2010 establishes for the first time an independent body to investigate the conduct of judicial officers in the Victorian justice system. The proposal represents a further move towards the modernisation of the administration of our courts by providing an investigation process which will deliver transparent examinations of complaints and concerns about the conduct of judicial officers.

Our community expects this approach to the administration of justice. A robust, independent and accountable judiciary is essential to the proper functioning of any democracy. While Victoria's judiciary is of the highest calibre, public confidence is naturally eroded if concerns about the conduct of any

individual judicial officer are not addressed in an appropriate way.

This landmark bill therefore establishes a new independent body which has the responsibility for investigating complaints and concerns regarding judicial officers, judicial registrars and Victorian Civil and Administrative Tribunal members.

Judicial officers adjudicate disputes that have critical and sometimes life-changing outcomes for the participants involved, including disputes between a citizen and the government or even the outcome of an election. The bill therefore takes into account the need to protect judicial independence, a key element of the rule of law and a means to secure impartiality, which is a necessary condition of a fair hearing.

Our judicial officers are bound by the law and their judicial oath, as well as existing accountability measures such as public hearings, appeal processes, the need to provide reasons for decisions and, in circumstances of grave misbehaviour or incapacity, the potential to be removed from office. However, this bill addresses the absence of any formal mechanism to deal with judicial conduct that, although of concern, falls short of misbehaviour or incapacity that would justify the removal of a judicial officer.

The bill builds on the government's vision of creating modern courts and tribunals in Victoria, recognising the increasing complexity of the law, that there is greater scrutiny of proceedings, and higher expectations from our community. The bill also implements my earlier commitment under justice statement 2 to review arrangements for handling complaints about judicial misconduct and unprofessional behaviour.

The bill draws on extensive consultations with the heads of courts, the Victorian Civil and Administrative Tribunal and the Judicial College of Victoria, following the release in November 2009 of the discussion paper *Investigating Complaints and Concerns Regarding Judicial Conduct*. These consultations provided crucial input into the development of this important reform. Participation in this process by our most senior judicial officers also demonstrates that modern judicial officers welcome open, transparent and accountable justice when examining their conduct.

Current approach in Victoria

Presently in Victoria, there are two methods for dealing with complaints and concerns about judicial conduct.

In cases where conduct may warrant removal from office, an investigating committee formed in accordance with the Constitution Act 1975 decides whether facts exist that could warrant removal. A judicial officer may be removed by the governor upon an address of both houses of Parliament by a special majority seeking removal due to proved misbehaviour by or incapacity of the judicial officer.

In cases of less serious complaints that do not warrant removal from office, there is currently no formal complaints process. In practice, the head of jurisdiction deals with these matters.

The bill combines processes for dealing with both serious and less serious complaints, and invests them in a single complaints body, thereby modernising the system and creating a more efficient and structured approach.

Judicial Commission of Victoria

The bill establishes an independent body known as the Judicial Commission of Victoria. The commission will have two divisions. The conduct division will investigate and hear complaints and concerns about judicial officers. The education division will provide for the education and training of judicial officers, judicial registrars and VCAT members, assuming the current responsibilities of the Judicial College of Victoria.

In order to maintain the commission's own accountability, consistent with all modern statutory corporations, it must also be subject to appropriate levels of scrutiny. Accordingly, the bill contains a number of mechanisms to ensure the accountability of the commission in relation to its operations and expenditure.

The board

The bill provides that the commission will have a board of ten members. The chair is the chief justice. Six members are the heads of the five courts in Victoria and the head of VCAT. The four remaining members are people of high standing in the community and are appointed by the Governor in Council on the recommendation of the Attorney-General. The Attorney-General will make these recommendations following consultation with the chief justice. The community members will be appointed for up to five years, with a maximum of ten years total service. At least two community members must have expertise in the delivery of educational services and organisational development. This will ensure that the board has an appropriate mix of skills and qualifications to ensure it carries out its functions and achieves its objectives. The inclusion of community members is crucial and further supports the bill's modernisation of our justice system.

The chief executive officer

The bill provides for the appointment of a chief executive officer who is responsible for the administration of the commission. The CEO has a significant role in ensuring that investigations are conducted in such a way as to give confidence to complainants and the public. Accordingly, it is important that the CEO is perceived to have sufficient independence from the executive as well as the judiciary.

The independence of the CEO will be protected by a number of means:

First, the CEO is a Governor in Council appointment that is made on the recommendation of the Attorney-General following consultation with the board.

Secondly, the CEO will be taken to be an administrative office head who has, on behalf of the Crown, all the powers and duties of an employer in relation to the public servants who work for the commission. Administrative office head powers are granted to the officers who exercise independent powers, such as the Victorian government solicitor**,** the chief parliamentary counsel and the child safety commissioner. However, their offices are able to operate efficiently by using certain corporate supports from the relevant department, such as departmental financial, payroll and human resource supports.

Thirdly, the commission provides an annual report that must be tabled in Parliament.

Fourthly, the CEO may, but is not obliged to, report to the Attorney-General on any matter relevant to the performance of the commission's functions.

Complaints process against judicial officers

Any member of the public may make a complaint to the commission about any conduct of a judicial officer whether or not the conduct was in court.

The commission may also receive and investigate referrals from the heads of jurisdiction and the Attorney-General. It is anticipated that referrals by heads of jurisdiction would ordinarily relate to matters that have not been resolved internally by the court or are sufficiently serious to warrant investigation by the commission. Referrals by the Attorney-General could occur where concerns have been raised by his department and are such that an investigation is warranted.

The commission has a duty to investigate complaints and referrals that are made under the act unless the complainant is vexatious.

The commission does not have any role to hear appeals or determine whether a court case involved an appellable error.

A complaint or referral may be made even though the matter is or has been the subject of an investigation by police or by any other law enforcement agency or regulatory body or has been prosecuted in a court. The commission is able to consider a complaint or referral whilst other investigations are under way.

The commission will take one of four actions in response to a complaint regarding a judicial officer:

it may dismiss the complaint on specified grounds, for example, because the complaint is frivolous or trivial or not in good faith;

it may determine that there is no further action required. This could occur if there was a valid complaint that has been resolved and no further action is necessary or the complaint relates to a relatively minor matter that occurred years ago;

it may refer the complaint to the relevant head of jurisdiction, with the option of making recommendations as to how the head could deal with the complaint;

it may refer the complaint to an investigating panel if it appears the complaint, if substantiated, could justify consideration of removal from office by Parliament.

These measures strike the appropriate balance between establishing a robust process to address concerns about judicial officers without interfering with existing mechanisms for judicial and appellate review under Victoria's justice system. This will ensure that there is a transparent system of accountability for judicial misconduct while at the same time protecting judicial independence.

Investigating panels

The bill provides that the most serious action the commission may take is to refer a matter to an investigating panel. The investigating panel is convened on each occasion as required by the commission. The panel is an independent body, taking over the position currently held by the investigating committee under part 3AA of the Constitution Act 1975.

An investigating panel has three members appointed by the commission, one of whom must be from a pool of four people nominated by Parliament, and two members who are current or former judges or magistrates in Australia. The process for nominating the pool of potential community members is modelled on the approach in New South Wales and recognises the vital role played by the panel. The people nominated by Parliament must not include lawyers. The bill provides that neither a serving judicial officer of the same court as the judicial officer under investigation, nor a member of the board, can be a member of the investigating panel. This protects the independence and impartiality of the investigations conducted by the panel.

In conducting its investigations, the investigating panel may hold private hearings, as well as receiving written submissions from the judicial officer. In appropriate circumstances, the panel may hold public hearings. The panel determines its own procedure when conducting hearings and is not bound by formal rules of evidence.

In cases that do not justify removal, a report is made to the head of jurisdiction. This report can include recommendations as to how the head of jurisdiction may deal with the complaint or concerns.

In order for a judicial officer to be removed, the investigating panel must first find there are facts that could justify removal of the judicial officer due to proved misbehaviour or incapacity. In such cases, a report must be presented to the Governor in Council and to the Attorney-General, who must cause the report to be laid before both houses of Parliament. The matter is then considered by Parliament.

The bill amends part 3AA of the Constitution Act 1975 to replace the current reference to 'investigating committee' with a reference to an 'investigating panel' and sets out the new procedures for removing judicial officers.

The bill maintains the current constitutional protections for judicial officers and does not change Parliament's role as the ultimate decision-maker invested with the power to remove a judicial officer. The bill therefore does not change the grounds for removal from office set out in part 3AA of the Constitution Act 1975.

Complaints against judicial registrars and non-judicial officers at VCAT

The bill adopts a modified process for complaints against judicial registrars and non-judicial officers at VCAT (Victorian Civil and Administrative Tribunal). This ensures that there is not an excessive burden placed on the heads of jurisdiction who are all members of the board. Due to the differing roles and functions of judicial registrars and non-judicial officers as well as the large number of non-judicial officers, particularly at VCAT, the commission may delegate its functions to a committee that operates within the commission to deal with these matters. The committee will comprise the relevant head of jurisdiction (such as the president of VCAT), a judicial member and a non-judicial board member. The committee, as the delegate of the commission, could appoint the investigator and refer complaints and referrals to that investigator.

In each case, the investigator may dismiss the matter on the same grounds as the commission. If they are of the opinion that the matter or any part of it is substantiated and there are facts that could justify removal of the officer due to proved misbehaviour or incapacity, this must be reported to the Attorney-General. If the matter is substantiated in any part, but does not warrant consideration for removal, the matter must be referred to the relevant head of jurisdiction of that officer.

Powers of heads of jurisdiction

The bill also expands the powers of the heads of jurisdiction to enhance their ability to manage their courts and to respond to the recommendations of the commission. The powers include the ability to stand down an officer if grounds may exist for the removal of the officer, it is appropriate to do so in the public interest and the commission is investigating the matter and determined that it should proceed with the investigation.

If the head of jurisdiction receives a substantiated complaint, he or she may also direct the officer to participate in professional development or continuing education or training.

Health concerns

Importantly, the bill also deals with health investigations of judicial and non-judicial officers. If the Attorney-General or head of jurisdiction is of the opinion that an officer may be suffering from an impairment, disability, illness or condition that may affect the performance of the officer's duties, the head of jurisdiction or Attorney-General may request the commission to investigate the matter. The commission may, if it considers it appropriate, request the officer to undergo a medical or psychological examination. If the officer refuses to undergo the examination, the matter may be referred to the investigating panel or investigator, which could find that the non-cooperation

of the officer could justify consideration of their removal from office.

If the medical examination discloses that an officer is suffering from an impairment which affects his or her performance, but the impairment is not sufficiently serious to warrant removal from office, the commission may refer the matter back to the head of jurisdiction with recommendations as to how the matter should be dealt with.

A health issue which amounts to incapacity can be grounds for removal from office. However, health matters are only of concern if they directly impact on the ability of an officer to perform his or her duties. It is no concern of the commission if an officer has a disability or is less than perfectly physically fit, if this does not impair their performance.

Judicial education

The bill repeals the Judicial College of Victoria Act 2001 and incorporates the current functions of the Judicial College of Victoria within the commission.

In 2001, the government established the judicial college and it has since become a leader in judicial education. It continues to develop innovative programs, which it shares with other judicial education organisations in Australia and New Zealand. The education programs include a continuing professional development scheme for all Victorian judicial officers.

The strong success and reputation of the judicial college will continue as a key function of the commission in its education division. The two members of the board who must have expertise in the delivery of education services or organisational development will ensure that the conduct functions of the commission do not dilute the education functions.

This reform will enable information obtained as part of the complaints process to inform the content of education programs. It will also enable the knowledge used in education programs to assist in the investigations and decisions made by the commission about judicial complaints.

Conclusion

In conclusion, I note my appreciation for the support of the Law Institute of Victoria, the Victorian Bar and members of the judiciary for the establishment of a judicial commission and for their participation in the consultation on the 2009 discussion paper and the development of the bill.

Our judiciary is fundamental to the delivery of a fair and efficient justice system. It is essential that citizens have confidence in the justice system, as well as confidence in the judicial officer who is handling their particular case. Fortunately, the quality of Victoria's judiciary is very high. The establishment of the systematic and transparent process provided for in the bill will contribute to maintaining public confidence in our courts.

The right to a fair hearing is now enshrined in section 24 of the Charter of Human Rights and Responsibilities 2006, which provides the right to have a charge or proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing. Those who participate in our justice system, whether they are defendants, litigants, victims or witnesses, expect nothing less. It is important therefore that mechanisms are put in place to support our justice system to achieve this outcome.

The bill sets new standards to ensure the accountability of Victoria's judiciary while protecting its independence and fulfilling our vision of a modern justice system in Victoria.

I commend the bill to the house.

Debate adjourned on motion of Mr CLARK (Box Hill).

Debate adjourned until Thursday, 16 September.

FIRE SERVICES COMMISSIONER BILL

Statement of compatibility

Mr CAMERON (Minister for Police and Emergency Services) tabled following statement in accordance with Charter of Human Rights and Responsibilities Act:

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

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

Overview of bill

The purpose of the bill is to:

establish the position of the fire services commissioner and provide for the functions and powers of the fire services commissioner;

amend the Forests Act 1958 to make the position of the chief fire officer in the Department of Sustainability and Environment a statutory provision; and

make related amendments to the Emergency Management Act 1986, the Country Fire Authority Act 1958, the Metropolitan Fire Brigades Act 1958 and the Forests Act 1958.

Human rights issues

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

Certain provisions of the bill engage the right to privacy under section 13 and the right to a fair hearing under section 24 of the charter.

Section 13 — privacy and reputation

Section 13(a) of the charter protects a person's right not to have his or her privacy, family, home or correspondence interfered with in a manner that is unlawful or arbitrary. The secrecy of personal information lies at the heart of the privacy right because of its direct relevance to the choices or circumstances of an individual's personal life over which he or she is responsible and autonomous. The protection of privacy through confidentiality of documents is not, however, absolute. Disclosures that are authorised by law and not arbitrary are permissible under the charter.

Clause 28 provides that public servants or persons employed by a fire services agency have no obligation to maintain secrecy and no restriction on the disclosure of information where that information is required by the fire services commissioner (commissioner) under section 27 (for the purpose of developing or reviewing plans, standards or procedures). Clause 27 provides that the commissioner may require a fire services agency to provide any information that the commissioner reasonably believes is necessary for the purposes of developing or reviewing a fire services reform actions plan, certain performance standards and incident management operating procedures. Clause 44 amends section 21F of the Emergency Management Act 1986 to provide that the emergency services commissioner may require any agency to provide any information that the emergency services commissioner reasonably believes is necessary to prepare or review a standard for the prevention or management of emergencies prepared under section 21D of that act, or to monitor compliance with such a standard.

To the extent that this information may relate to information about individuals, any interference with the right to privacy is not arbitrary. Each commissioner requires this information in the interests of public safety and is bound by the Information Privacy Act 2000.

Clauses 47 and 57 respectively amend section 81A of the Country Fire Authority Act 1958 and section 45A of the Metropolitan Fire Brigades Act 1958 by substituting references to the emergency services commissioner with the fire services commissioner. While these clauses do not create any new powers of disclosure of information, they respectively provide that the authority and board may disclose or publish information. The provision does not permit the disclosure or publication of information that could lead to the identification of an individual, except certain information may be disclosed to a member of the police force if the board is satisfied that the disclosure is reasonably necessary for the purpose of the investigation of an offence. The provision of access to personal information by police in the limited circumstances provided by the legislation is essential for police to be able to properly investigate and prosecute offences. The limited intrusion on individual privacy occasioned by the disclosure of information in accordance with the amendment is reasonable and is not arbitrary. Therefore, these provisions are compatible with section 13(a) of the charter.

Section 24 — fair hearing

Section 24(1) of the charter provides that a person who is a party to a civil proceeding has the right to have the proceeding decided by a competent, or independent impartial court or tribunal after a fair and public hearing.

In *Kracke v. Mental Health Review Board & Ors* (General) [2009] VCAT 646, Bell J held that the right to a fair hearing in section 24 of the charter is not limited to judicial proceedings but can include administrative proceedings. His Honour observed that whether the right applies to administrative proceedings falls to be assessed on a case-by-case basis. In Kracke, Bell J noted that, in assessing compliance with the right, regard may be had to the whole decision-making process, including reviews and appeals.

Clause 9 provides that the Governor in Council (Governor) may suspend the fire services commissioner from office on the grounds of misconduct, neglect of duty, inability to perform duties of office, or any other ground that would make the commissioner unfit for office. The commissioner must be removed from office by the Governor if each house declared by resolution that the commissioner ought to be removed from office. The Governor must act in accordance with principles of natural justice, and the decision to suspend is amenable to judicial review. I am satisfied that this provision is not inconsistent with section 24 of the charter.

Clauses 33 and 50 (new section 61C, Forests Act 1958) respectively provide that the commissioner and the chief fire officer of the Department of Sustainability and Environment are not personally liable for any thing done or omitted to be done in good faith in the exercise of a power or discharge of a duty or in a reasonable belief that the act or omissions was in exercise of the power or discharge of duty. However, any liability arising from such an act or omission respectively attach to the Crown and the Secretary to the Department of Sustainability and Environment. Therefore, the right is not limited.

Conclusion

I consider that the bill is compatible with the Charter of Human Rights and Responsibilities because to the extent that some provisions do raise human rights issues, these provisions do not limit human rights.

Bob Cameron, MP
Minister for Police and Emergency Services

Second reading

Mr CAMERON (Minister for Police and Emergency Services) — I move:

That this bill be now read a second time.

The government established a royal commission to inquire into the Black Saturday bushfires that devastated the Victorian community on 7 February 2009. A key aim in establishing the commission was to learn the lessons from this unprecedented tragedy so that measures could be taken to ensure that future bushfires did not cause such catastrophic loss.

The commission delivered its final report on 31 July this year. Among its recommendations, the commission proposed:

> The state enact legislation to achieve two specific ends:
>
> appoint a fire commissioner as an independent statutory officer responsible to the Minister for Police and Emergency Services and as the senior operational firefighter in Victoria;
>
> make the chief fire officer of the Department of Sustainability and Environment a statutory appointment.

The government supports that recommendation and this bill delivers on that commitment.

The bill establishes the office of the fire services commissioner as a Governor in Council appointment. The Premier has already announced that Mr Craig Lapsley will be Victoria's first fire services commissioner.

In accordance with the royal commission's recommendations, the fire services commissioner will have two principal roles.

First, the commissioner will be the permanent state controller responsible for the planning and preparation and overall response of the fire agencies to major fires. To provide flexibility and to cater for the escalation in the scale of fires, the bill amends the Emergency Management Act 1986 to:

> assign the commissioner the role of state controller of the overall response to potential or actual major fires (including for forecast dangerous fire-risk days);
>
> empower the commissioner to assume control from one of the fire services agencies' chief officers of the response to a major fire (or a fire with the potential to become a major fire);
>
> allow a chief fire officer to transfer control of the response to a potential or actual major fire to the commissioner; and
>
> permit the commissioner to appoint one of the fire chiefs as the state controller.

In addition, the bill gives the commissioner the power to delegate the state controller responsibility. This delegation power will facilitate what the royal commission envisaged would be standing delegations to the chief officers of the fire services agencies for many level 3 fires, such as for urban firefighting.

In this context, it is important to note the royal commission concluded that there was no compelling evidence for the merger of the three fire service agencies and that such a move may indeed undermine the individual strengths and specialisations of the agencies. The government shares that view. Further, the commission acknowledged the importance of volunteers in Victoria's fire and emergency management response. The bill recognises the enormous contribution of volunteers to this state's firefighting capacity by requiring the fire services commissioner to take their importance into account in performing his or her functions.

Second, the fire services commissioner will be responsible for driving a reform program to improve the fire services agencies' operational performance, which the royal commission considered an absolute priority. This reform program will be focused on enhancing the operational capacity and capability of the fire services agencies and in particular their ability to work together.

In accordance with the royal commission's views, the bill requires the commissioner to drive this reform program through:

> the development of a rolling three-year reform action plan;
>
> the setting of performance standards for each fire service agency; and
>
> the establishment of incident management operating procedures.

In developing these measures, the fire services commissioner is required to consult with the agencies and take into account their available resources and any existing procedures. The bill also amends:

the fire agencies' legislation to impose reporting obligations on the agencies in terms of their performance against standards and progress in implementing the reform action plan; and

the Emergency Management Act 1986 to require the emergency services commissioner to monitor the performance of the fire services agencies against the standards and provide quarterly reports to the fire services commissioner.

Under the bill, the fire services commissioner must provide the minister with an annual report, which the minister is required to table in the Parliament. Importantly, for transparency and accountability purposes, the annual report will include a report on progress against the fire services reform action plan and the agencies' performance against the standards set by the fire services commissioner.

The bill amends the Forests Act 1958 to make the chief fire officer of the Department of Sustainability and Environment a statutory position. This statutory recognition is designed to elevate the status of this position as the royal commission recommended.

I commend the bill to the house.

Debate adjourned on motion of Mr McINTOSH (Kew).

Mr CAMERON (Minister for Police and Emergency Services) — I move:

That the debate be adjourned until 15 September.

Mr McINTOSH (Kew) — On the question of time, I make it perfectly clear that the opposition is not opposing this shorter than usual adjournment period for two reasons. Firstly this will facilitate the government business program. Due to the condolence motion on Tuesday there was an inability to move bills that day. Doing so would have perhaps enabled a number of bills to be second read on Wednesday, meaning debate on them could have been anticipated the following Wednesday. Because of that condolence motion there has been a hiccup in the government business program, and this and other bills will be adjourned to the Wednesday, with a shortened adjournment period.

Having said that, I add that one of the other major reasons the opposition supports this is that the establishment of the office of the fire services commissioner was a clear recommendation of the royal commission. The government has moved swiftly to make an announcement about the person who will be appointed to that office, Craig Lapsley. Most importantly, to ensure that the whole thing is brought in as expeditiously as possible we are happy to facilitate this shorter than normal adjournment. Again I emphasise the importance of moving quickly on the bushfires royal commission's recommendations.

In summary, on the question of time we do not oppose the shorter than normal adjournment period of some 13 days to 15 September; this is firstly to facilitate the government business program and secondly because of the urgency of the implementation of the bushfires royal commission's recommendations.

Motion agreed to and debate adjourned until Wednesday, 15 September.

ROAD SAFETY AMENDMENT (HOON DRIVING) BILL

Statement of compatibility

Mr PALLAS (Minister for Roads and Ports) tabled following statement in accordance with Charter of Human Rights and Responsibilities Act:

In accordance with section 28 of the Charter of Human Rights and Responsibilities, I make this statement of compatibility with respect to the Road Safety Amendment (Hoon Driving) Bill 2010.

In my opinion the Road Safety Amendment (Hoon Driving) Bill 2010, as introduced to the Legislative Assembly, is compatible with the human rights protected by the charter. I base my opinion on the reasons outlined in this statement.

Overview of the bill

The bill:

a) extends the vehicle impoundment, immobilisation and forfeiture scheme in part 6A of the Road Safety Act 1986 to the following offences:

i. driving with a blood or breath alcohol content of 0.10 or higher (for the second or subsequent time) contrary to sections 49(1)(b), (f) or (g) of the Road Safety Act 1986; and

ii. driving with drugs present in blood or oral fluid (for the second or subsequent time) contrary to sections 49(1)(bb), (h) or (i) of the Road Safety Act 1986; and

iii. unlicensed driving (for the second or subsequent time) contrary to section 18(1) of the Road Safety Act 1986 (except in

circumstances where the person merely failed to renew their driver licence or permit);

b) strengthens the way the motor vehicle impoundment, immobilisation and forfeiture scheme in part 6A of the Road Safety Act 1986 operates with respect to the following offences:

i. disqualified driving (for the second or subsequent time) contrary to section 30(1) of the Road Safety Act 1986; and

ii. driving at 70 kilometres per hour or more over the applicable speed limit (or 170 kilometres per hour or more where the speed limit is 110 kilometres per hour) contrary to rule 20 of the road rules or section 65B of the Road Safety Act 1986; and

iii. dangerous driving under section 64(1) of the Road Safety Act 1986 in circumstances where a vehicle is driven at 70 kilometres per hour or more over the applicable speed limit (or 170 kilometres per hour or more if the speed limit is 110 kilometres per hour);

c) enables police under part 6A of the Road Safety Act 1986 to immediately immobilise or impound a motor vehicle for seven days upon detection of a tier 1 relevant offence or a tier 2 relevant offence;

d) provides that, under part 6A of the Road Safety Act 1986, on a finding of guilt for:

i. a second or subsequent 'tier 2 relevant offence'; or

ii. any 'tier 1 relevant offence'—

e) the court must, on the application of the police, order immobilisation or impoundment of the relevant motor vehicle for 28 days;

f) facilitates the use of steering wheel locks as a new method of motor vehicle immobilisation;

g) provides police with additional powers to search premises for the purposes of locating and accessing a motor vehicle that is to be impounded, immobilised or forfeited;

h) provides that when an impoundment or immobilisation order or a forfeiture order is sought with respect to a motor vehicle, the police may concurrently apply for a search warrant to facilitate access to the vehicle;

i) provides police with power to question adult persons as to the whereabouts of a motor vehicle to facilitate the impoundment, immobilisation or forfeiture of that vehicle;

j) facilitates the sale or disposal of forfeited motor vehicles and uncollected impounded motor vehicles by extinguishing third-party interests;

k) ensures that applications for "exceptional hardship" to avoid orders for the immobilisation, impoundment or forfeiture of a motor vehicle are granted only in appropriate cases; and

l) amends the Melbourne City Link Act 1995 to provide the minister administering that act with power to revoke, in whole or in part, a road declaration made under that act.

Human rights issues

Section 12 — Freedom of movement

Section 12 of the charter provides that every person lawfully within Victoria has the right to move freely within Victoria and to enter and leave it and has the freedom to choose where to live.

Extension of vehicle impoundment, immobilisation and forfeiture scheme to certain drink-driving, drug-driving and unlicensed-driving offences

The bill provides that part 6A of the Road Safety Act 1986 will apply to three new categories of offences which were not previously subject to vehicle impoundment, immobilisation or forfeiture. These include:

a) driving with a blood or breath alcohol content of 0.10 or higher (for the second or subsequent time) contrary to sections 49(1)(b), (f) or (g) of the Road Safety Act 1986;

b) driving with drugs present in blood or oral fluid (for the second or subsequent time) contrary to sections 49(1)(bb), (h) or (i) of the Road Safety Act 1986; and

c) unlicensed driving (for the second or subsequent time) contrary to section 18(1) of the Road Safety Act 1986 (except in circumstances where the person merely failed to renew their driver licence or permit).

The imposition of impoundment, immobilisation or forfeiture sanctions with respect to a motor vehicle restricts the use of that vehicle for transport purposes and therefore engages the right to freedom of movement.

However, the right to freedom of movement is not limited because the affected person(s) are free to use other forms of transport such as walking, cycling and public transport. In addition, if an affected person continues to hold a driver licence or permit, then that person is free to drive an alternate vehicle.

It is noted that in many cases the imposition of an impoundment or immobilisation sanction will not directly affect the offender's ability to drive a vehicle because that person is already prohibited from driving a motor vehicle. The person may be unlicensed (and disqualified from applying for a licence) or may have had his or her licence or permit suspended. For example, in the case of repeat drink and drug-driving offences, the offender's licence or permit will be suspended or cancelled under part 5 or part 7 of the Road Safety Act 1986.

It is also noted that it is generally possible for persons substantially affected by the imposition of vehicle immobilisation, impoundment or forfeiture sanctions to make an application on the grounds of "exceptional hardship" for

either the release of the relevant vehicle or to prevent the immobilisation, impoundment or forfeiture of the vehicle from occurring. If a successful application is made, then the vehicle can continue to be used for transport purposes.

Revocation of road declarations

The insertion of a power in the Melbourne City Link Act 1995 to revoke a road declaration engages the right to freedom of movement because the revocation or partial revocation of a road declaration means that the affected land will cease to be a public highway and therefore public rights of access to the land will be altered. In the present case, the power to revoke a road declaration or part of a road declaration is restricted to areas of land that are surplus to the requirements of City Link. The act of revoking road declarations that apply to surplus land will allow that land to be used for alternative purposes. The altering of rights of public access to certain parcels of surplus land does not limit the right to freedom of movement because the public will still be able to move freely within Victoria, including travel along City Link and adjacent roadways.

Section 13(a) — Privacy

Section 13(a) of the charter provides that a person has the right not to have his or her privacy, family, home or correspondence unlawfully or arbitrarily interfered with.

Extension of vehicle impoundment, immobilisation and forfeiture scheme to certain drink-driving, drug-driving and unlicensed-driving offences

The bill provides that certain drink-driving, drug-driving and unlicensed-driving offences are to become subject to the motor vehicle impoundment, immobilisation and forfeiture scheme in part 6A of the Road Safety Act 1986.

If a vehicle is to be impounded, immobilised or forfeited due to the commission of one of these offences, then the search and seizure powers set out in division 2 of part 6A (search and seizure without a warrant) and division 4 of part 6A (search and seizure with a warrant) will apply. The exercise of search and seizure powers engages the right to privacy.

However, the exercise of the abovementioned search and seizure powers are authorised by law and, for the reasons given below, are not exercised in an arbitrary manner. Therefore the right to privacy is not limited by this reform.

The exercise of the search and seizure powers are confined to those circumstances where there is a reasonable belief that a vehicle of interest is located at particular premises. Furthermore, a number of safeguards are in place to ensure that the search and seizure powers are exercised appropriately. Where a vehicle is seized under division 2 of part 6A (without a search warrant), a senior police officer must review the circumstances of the impoundment or immobilisation within 48 hours, to ensure that there were reasonable grounds for impounding or immobilising the vehicle. Also, appeal rights are available to persons whose interests are substantially affected by the impoundment or immobilisation and they may apply to the Magistrates Court for an order that the motor vehicle be released on the ground that the impoundment or immobilisation is causing, or will cause, exceptional hardship to the applicant or another person.

Where a search is conducted under a search warrant issued under division 4 of part 6A, an application for the search warrant must be made to the Magistrates Court and may only be made where the police believe on reasonable grounds that the motor vehicle of interest is or may be in or on specified premises within the next 72 hours. The person that executes the warrant must report back to the Magistrates Court as to the outcome of the execution of the warrant.

Expanded search powers

The bill provides police officers with additional powers to search premises without a search warrant. These include the ability:

a) to enter a motor vehicle for the purpose of affixing a steering wheel lock immobilisation device; and

b) solely for the immobilisation, impoundment or forfeiture of a vehicle under part 6A of the Road Safety Act 1986:

   i. to enter on land and enter any part of a building where vehicles are stored (excluding parts of buildings or dwellings used for residential purposes);

   ii. to open any unlocked doors or panels or open unlocked places and move (but not take away) anything that is not locked or sealed to get access to the vehicle; and

   iii. to search the premises to locate a vehicle that is reasonably believed to have been used to commit a "tier 1 relevant offence" or a "tier 2 relevant offence" if the premises are:

   the garage address of the vehicle; or

   another premises where the vehicle is believed to be present.

The exercise of these search and entry powers engages the right to privacy. However, the exercise of these powers are authorised by law and will be exercised only in limited circumstances as described above. The powers are quite limited and carefully tailored to the purpose for which they are necessary, that is, gaining access to a vehicle in order to immobilise or impound it or to seize a vehicle that is to be forfeited to the Crown. For example, where the police exercise the abovementioned search and entry powers with respect to business premises, entry will only be permitted during business hours. Therefore the right to privacy is not limited by this reform.

Police power to question adult persons as to whereabouts of a vehicle

The police power to question adult persons as to the whereabouts of a vehicle may engage the right to privacy.

However, the exercise of that power will be authorised by law and will not be exercised in an arbitrary manner. The exercise of the power is constrained to the narrow purpose of locating a vehicle that is to be immobilised, impounded or forfeited. Furthermore, any information provided to the police cannot be used against the person providing the information in any civil or criminal proceedings (other than where it is alleged that the person has provided information to the police that is false or materially misleading). Since the questioning powers are authorised by law and, for the reasons given above, cannot

be exercised arbitrarily, the right to privacy is not limited by this reform.

Section 15(2) — Freedom of expression

Section 15(2) of the charter provides that every person has the right to freedom of expression which includes the freedom to seek, receive and impart information and ideas of all kinds, whether within or outside Victoria and whether orally, in writing, in print, by way of art or in another medium chosen by him or her.

Police power to question adult persons as to whereabouts of a vehicle

Given that the right to freedom of expression includes a right to not be compelled to express information, the power of police to question adult persons as to the whereabouts of a vehicle engages the right to freedom of expression.

Section 15(3) of the charter provides that the right to freedom of expression may be subject to lawful restrictions reasonably necessary to respect the rights and reputation of other persons or for the protection of national security, public order, public health or public morality.

In this case, the purpose of the limitation of the right to freedom of expression is to assist police in locating vehicles that are to be immobilised, impounded or forfeited. This is necessary to impose sanctions on offenders to prevent and discourage unsafe driving behaviour that threatens public safety on Victoria's road network. Therefore, the restriction of the right to freedom of expression is appropriately limited on 'public order' grounds in accordance with section 15(3) of the charter. The reasonableness of that restriction is further considered below.

(a) the nature of the right being limited

The right to be limited is the right to not be compelled to express information. Information is required to be provided if the person is an adult and if they have relevant knowledge as to the whereabouts of the relevant vehicle.

(b) the importance of the purpose of the limitation

The limitation is very important because it will assist police to locate vehicles for the purpose of vehicle impoundment, immobilisation and forfeiture when confronted with uncooperative persons who are concealing or are complicit in the concealment of the location of the relevant vehicle and are thereby thwarting the imposition of an important road safety sanction.

(c) the nature and extent of the limitation

The limitation of the right to freedom of expression is confined to requiring the expression of information as to the whereabouts of a specified vehicle. This is therefore a very narrow limitation. Furthermore, the use of the information that is provided is tightly controlled. That information cannot be used in any civil or criminal proceedings against the person who provided the information (other than where it is alleged that the person has provided information to the police that is false or misleading in a material respect).

(d) the relationship between the limitation and its purpose

The limitation is directly linked to its purpose which is to protect public safety.

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

The proposed measure has become necessary because police have repeatedly been frustrated by offenders who deliberately conceal the location of relevant vehicles to prevent the imposition of immobilisation, impoundment and forfeiture sanctions. There are no less restrictive means of achieving the stated purpose.

Section 20 — Property rights

Section 20 of the charter provides that a person must not be deprived of his or her property other than in accordance with law.

Extension of vehicle impoundment, immobilisation and forfeiture scheme to certain drink-driving, drug-driving and unlicensed-driving offences

The bill provides that certain drink-driving, drug-driving and unlicensed-driving offences will become subject to the vehicle impoundment, immobilisation and forfeiture scheme in part 6A of the Road Safety Act 1986, and therefore the search and seizure powers set out in divisions 2 and 4 of part 6A of the Road Safety Act 1986 will apply with respect to vehicles used in the commission of those offences (or a substitute vehicle). Furthermore, the restrictions on the sale, disposal, registration and transfer of registration of a vehicle set out in division 3 of part 6A will apply to the relevant vehicle. Both the exercise of search and seizure powers and the sale, disposal and registration restrictions engage the right to property.

However, the right to property is not unlawfully or arbitrarily interfered with. The limitations placed on the sale, disposal, registration and transfer of registration of a vehicle are authorised by law and are only imposed in narrow circumstances where certain serious road safety offences are alleged to have been committed.

Expanded search powers

The bill provides police with additional powers to search premises without a search warrant. These include the ability:

a) to enter a motor vehicle for the purpose of affixing a steering wheel lock immobilisation device; and

b) solely for the immobilisation, impoundment or forfeiture of a vehicle under part 6A of the Road Safety Act 1986:

i. to enter on land and enter any part of a building where vehicles are stored (excluding parts of buildings or dwellings used for residential purposes);

ii. to open any unlocked doors or panels or open unlocked places and move (but not take away) anything that is not locked or sealed to get access to the vehicle;

iii. to search the premises to locate a vehicle that is reasonably believed to have been used to commit a 'tier 1 relevant offence' or a 'tier 2 relevant offence' if the premises are:

the garage address of the vehicle; or

another premises where the vehicle is believed to be present.

The exercise of these search and entry powers engages the right to property. However, the exercise of those search and entry powers are authorised by law and will not be exercised in an arbitrary manner. For example, where the police exercise the abovementioned search and entry powers with respect to business premises, entry will only be permitted during business hours. Therefore the right to privacy is not limited by this reform.

Extinguishing security interests to facilitate the sale or disposal of a forfeited or uncollected impounded vehicle

The bill provides that security interests in forfeited vehicles and uncollected impounded vehicles will be extinguished to facilitate the sale or disposal of those vehicles. The extinguishment of a security interest engages the right to property. However, the right to property is not limited because the extinguishment of the security interests is authorised by law and only occurs in narrow circumstances where a vehicle has been forfeited to the Crown or where a vehicle has been impounded but not collected by the registered operator. Furthermore, although security interests will be extinguished, the persons holding those interests will, where the vehicle is fit for sale, still be eligible to have their interests paid out when the proceeds of sale are distributed according to the current priority order set out in section 84ZS of the Road Safety Act 1986.

Section 24(1) — Fair hearing

Section 24(1) of the charter provides that a person charged with a criminal offence or a party to a civil proceeding has the right to have the charge or proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing.

Seven-day impoundment or immobilisation of vehicles upon detection of an offence

The imposition of vehicle impoundment or immobilisation for seven days (rather than the current 48-hour period) by a police officer limits the right to a fair hearing since a form of punishment is being imposed for alleged criminal behaviour before any finding of guilt by an independent tribunal such as a court.

It is submitted however, that, for the reasons given below, the limitation is reasonable and demonstrably justified in a free and democratic society.

(a) the nature of the right being limited

The right to a fair hearing implicitly requires that no punishment for criminal behaviour be imposed unless charges are brought and they are determined by a competent, independent and impartial court or tribunal after a fair and public hearing. The imposition of a vehicle impoundment or immobilisation sanction for seven days under division 2 of part 6A of the act occurs prior to any finding of guilt by a court and therefore limits the right to a fair hearing.

(b) the importance of the purpose of the limitation

During the period from January 2003 to November 2004, hoon driving behaviour contributed to 41 serious collisions in which 28 people were killed. This revelation was a significant impetus for the creation of the Victorian vehicle impoundment scheme. It has been acknowledged since the commencement of the scheme that immediate sanctions for hoon driving offences play a critical role in discouraging unsafe driving behaviour.

The imposition of vehicle impoundment or immobilisation for seven days upon the detection of a 'tier 1 relevant offence' or a 'tier 2 relevant offence' by police allows for the immediate removal of an unsafe driver from the road and also provides a significant deterrent to that person and other drivers from engaging in unsafe driving behaviour.

(c) the nature and extent of the limitation

The limitation of the right to a fair hearing is constrained by a number of safeguards to ensure that it is not imposed inappropriately. Firstly, section 84M of the act provides that any decision to impose a 7 day impoundment or immobilisation sanction must be reviewed by a senior police officer within 48 hours of the impoundment or immobilisation being imposed.

Secondly, appeal rights exist under section 84O of the act where a person substantially affected by the seven-day impoundment or immobilisation sanction can seek the release of the vehicle on exceptional hardship grounds. It is acknowledged that even if an urgent appeal application was submitted to the Magistrates Court immediately after the imposition of the impoundment or immobilisation, it would be unlikely that the court would hear and determine the appeal immediately. Therefore a successful appeal would most likely result in a shortening of the seven-day impoundment or immobilisation rather than complete avoidance of the sanction.

Thirdly, section 84R of the act provides that in the event that a person is found not guilty of the alleged offence (or any other 'tier 1 relevant offence' or 'tier 2 relevant offence' arising out of the same single set of circumstances) or where charges are not proceeded with, the Crown is liable to refund any designated costs paid by any person and the motor vehicle (if not already recovered by the registered operator or any other person entitled to the possession of it) must be immediately released without any designated costs payable by the person seeking recovery of the vehicle.

(d) the relationship between the limitation and its purpose

The limitation of the right to a fair hearing is directly linked with its primary purpose which is to protect the public from unsafe drivers.

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

It would be possible to factor in some delay period before the impoundment or immobilisation could take effect to ensure that the right to appeal under section 84O could be exercised prior to the sanction taking effect. However this would reduce

the effectiveness of the legislation in deterring unsafe driving practices.

Section 25(1) — Right to be presumed innocent

Section 25(1) of the charter provides that a person charged with a criminal offence has the right to be presumed innocent until proved guilty according to law.

Seven-day impoundment or immobilisation of vehicles upon detection of an offence

The imposition of vehicle impoundment or immobilisation for seven days (rather than the current 48-hour period) prior to any finding of guilt by a court engages and also limits the right to be presumed innocent since a sanction is being imposed by police officers for alleged criminal behaviour without any formal finding of guilt.

It is submitted however, that, for the reasons given below, the limitation is reasonable and demonstrably justified in a free and democratic society.

(a) the nature of the right being limited

The right to be presumed innocent implicitly requires that no punishment for alleged criminal behaviour be imposed until a person is proven guilty according to law. The imposition of a vehicle impoundment or immobilisation sanction for seven days under division 2 of part 6A of the act occurs prior to any finding of guilt by a court and therefore limits the right to be presumed innocent.

(b) the importance of the purpose of the limitation

The imposition of vehicle impoundment or immobilisation for seven days upon the detection of either a 'tier 1 relevant offence' or a 'tier 2 relevant offence' by police allows for the immediate removal of an unsafe driver from the road and also provides a significant deterrent to that person and other drivers from engaging in unsafe driving behaviour.

(c) the nature and extent of the limitation

The limitation of the right to be presumed innocent is constrained by a number of safeguards. Firstly, section 84M of the act provides that any decision to impose a seven-day impoundment or immobilisation must be reviewed by a senior police officer within 48 hours of the impoundment or immobilisation being imposed.

Secondly, appeal rights exist under section 84O of the act where a person substantially affected by the seven-day impoundment or immobilisation sanction can seek the release of the vehicle on exceptional hardship grounds. It is acknowledged that even if an urgent appeal application was submitted to the Magistrates Court immediately after the imposition of the impoundment or immobilisation sanction, it would be unlikely that the court would hear and determine the appeal straight away. Therefore a successful appeal would most likely result in a shortening of the seven-day impoundment or immobilisation rather than complete avoidance of the sanction.

Thirdly, section 84R of the act provides that in the event that a person is found not guilty of the alleged offence (or any other 'tier 1 relevant offence' or 'tier 2 relevant offence' arising out of the same single set of circumstances) or where charges are not proceeded with, the Crown is liable to refund any designated costs paid by any person and the motor vehicle (if not already recovered by the registered operator or any other person entitled to the possession of it) must be immediately released without any designated costs payable by the person seeking recovery of the vehicle.

(d) the relationship between the limitation and its purpose

The limitation of the right to be presumed innocent is directly linked with its primary purpose which is to protect the public from unsafe drivers.

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

It would be possible to factor in some delay period before the impoundment or immobilisation could take effect to ensure that the right to appeal under section 84O could be exercised prior to the sanction taking effect. However this would reduce the effectiveness of the legislation in deterring unsafe driving practices. It is important that persons that disregard public safety by committing serious traffic offences are removed from the roads as quickly as possible.

Section 25(2)(k) — Right to not be compelled to incriminate oneself

Section 25(2)(k) of the charter provides that a person charged with a criminal offence is entitled not to be compelled to testify against oneself or to confess guilt.

Police power to question adult persons as to whereabouts of a vehicle

The bill provides police with power to question adult persons as to the whereabouts of a vehicle. This coercive power engages the right to not be compelled to testify against himself or herself or to confess guilt.

However because the bill also provides an immunity whereby any evidence provided by the questioned individual cannot be used in any civil or criminal proceedings against that person (other than in proceedings where the person is being charged with providing false or materially misleading information) it is submitted that the right to not be compelled to incriminate oneself is not limited.

Conclusion

I consider that the bill is compatible with the Charter of Human Rights and Responsibilities. Provisions of the bill engage with, but do not limit, rights conferred by sections 12, 13(a), 20 and 25(2)(k) of the charter. The provisions of the bill that limit human rights under sections 15(2), 24(1) and 25(1) of the charter are reasonable and proportionate.

Tim Pallas, MP
Minister for Roads and Ports

Second reading

Mr PALLAS (Minister for Roads and Ports) — I move:

That this bill be now read a second time.

This bill makes a number of amendments to further enhance the vehicle impoundment scheme set out in

part 6A of the Road Safety Act 1986 that commenced operation on 1 July 2006. That scheme was introduced by the government to deal with the menace of 'hoon' driving.

The scheme provides for the imposition of vehicle impoundment, immobilisation or forfeiture sanctions. Those sanctions may be imposed for a number of serious road safety offences which currently include:

dangerous driving;

careless driving;

speeding offences where a vehicle is driven at more than 45 kilometres per hour or more over the applicable speed limit (or 145 kilometres per hour or more if the speed limit is 110 kilometres per hour);

deliberately losing traction;

street racing offences;

deliberately or recklessly entering a level crossing when a train is approaching;

refusing to stop when directed by police;

making unnecessary noise or smoke;

not having proper control of a vehicle; and

driving while disqualified (for a second or subsequent time).

The scheme relies on graduated sanctions to punish and deter hoon drivers. A first offence may result in the impoundment or immobilisation of a vehicle for 48 hours. A second offence may, in addition to an initial 48-hour impoundment or immobilisation sanction, result in a further court imposed impoundment or immobilisation sanction of up to three months in total. A third offence can, in addition to an initial 48-hour sanction, result in the court ordering the forfeiture of the vehicle.

Since the scheme commenced operation, over 11 400 motor vehicles have been impounded and 17 vehicles have been forfeited to the Crown. The imposition of vehicle impoundment, immobilisation and forfeiture sanctions for hoon driving offences has proven to be effective in discouraging dangerous driving behaviour. Up to 15 April 2010, 94 per cent of detections of hoon driving offences were in relation to first-time offenders, 5 per cent of detections related to second-time offenders and 1 per cent of detections related to third-time offenders.

The Road Safety Amendment (Hoon Driving) Bill 2010 will further enhance the vehicle impoundment scheme and extend the road safety benefits that it provides to all Victorians.

One of the key reforms contained in the bill is the extension of the vehicle impoundment scheme to drink and drug driving offences.

Drink driving and drug driving continue to be a significant threat to safety on our roads. Drink driving contributes to around 20 per cent to 30 per cent of driver deaths on Victoria's roads each year. Drug driving, where one or more illicit drugs are present, is found in approximately 40 per cent of driver deaths each year.

The government's Arrive Alive 2008–2017 road safety strategy contained a commitment to examine tougher sanctions for recidivist drink drivers, including extension of the vehicle impoundment scheme to those offenders.

The first action plan 2008–10 of Arrive Alive included a commitment to review penalties for drink and drug-driving offenders to appropriately reflect the risk to the community and ensure that penalties are aimed at, and are recognised by the community as, achieving improved road safety.

That review has determined that penalties for drink and drug driving are currently inadequate and that the vehicle impoundment scheme should be extended to recidivist drink-driving and drug-driving offenders.

The bill therefore provides that vehicle impoundment sanctions will be available in those cases were a driver is detected with a blood or breath alcohol concentration of 0.10 or higher for a second or subsequent time or where a driver is detected with drugs present in his or her system for a second or subsequent time. The offence of driving unlicensed for a second or subsequent time will also become subject to the vehicle impoundment scheme.

The operation of the vehicle impoundment scheme with respect to these new offences will be altered slightly from the usual graduated approach described in my earlier remarks. A first offence will not result in any vehicle impoundment sanctions because they are already subject to heavy financial and licence loss penalties, and the focus of these impoundment reforms is on recidivist offenders. However, as with other offences already covered by the vehicle impoundment scheme, a second offence may, in addition to short-term immediate roadside impoundment or immobilisation, result in up to three months vehicle impoundment or

immobilisation. A third offence may lead to forfeiture of the vehicle to the Crown.

Speeding is another menace on our roads that needs to be tackled with firm action. Speeding and inappropriate travel speeds directly contribute to at least 30 per cent of deaths on Victoria's roads each year. More can be done to further discourage this high-risk behaviour.

The first action plan 2008–10 of Arrive Alive included a commitment to review penalties for speeding to ensure that they more accurately reflect the risk to the community and ensure that the sole objective of these penalties is aimed at, and is recognised by the community as, achieving improved road safety.

That review has determined that tougher sanctions are required for extreme speeding offences. The bill therefore provides that where a driver is detected driving at 70 kilometres per hour or more over the applicable speed limit or at a speed of 170 kilometres per hour in a 110-kilometres-per-hour speed zone, that driver will face vehicle impoundment or immobilisation sanctions for up to three months for a first offence. Such a sanction is normally reserved for a second offence under the vehicle impoundment scheme. Also, for a second extreme speeding offence, the court will be empowered to order the forfeiture of the vehicle. That sanction is normally reserved for a third offence under the vehicle impoundment scheme.

Driving while disqualified or suspended remains prevalent and a serious threat to road safety. Studies in Victoria have found that disqualified or suspended drivers are overrepresented in high-severity crashes causing injury. For the years 2005–06 to 2007–08, the average number of persons sentenced in the Magistrates Court for driving while disqualified was 2685 and an average of nearly 5000 persons were sentenced for driving while their drivers licence was suspended. The Sentencing Advisory Council's April 2009 report on driving while disqualified or suspended noted that these offences were the most commonly proved in the Magistrates Court after theft.

Accordingly, the bill will toughen the vehicle impoundment and forfeiture sanctions for disqualified driving offences. It provides that a second offence may result in up to three months vehicle impoundment or immobilisation and a third offence may result in forfeiture of the vehicle. This differs from the current scheme which treats unlicensed driving in a more lenient fashion than other vehicle impoundment offences. The current scheme requires a third offence before three months vehicle impoundment or immobilisation can be imposed and requires a fourth offence before forfeiture sanctions are imposed.

As discussed earlier, the current graduated impoundment scheme sanctions start with the imposition of impoundment or immobilisation of the vehicle by the police for a period of 48 hours. The bill provides that this initial impoundment or immobilisation period will be increased across the board to seven days. This change will apply to all offences to which the vehicle impoundment scheme applies. Increasing the initial impoundment or immobilisation sanction to seven days is expected to further deter dangerous driving behaviour as the immediate negative consequences of that behaviour mount up. In addition, offenders are less likely to able to conceal the sanction (and need to make alternative transport arrangements) from their families and friends who have the potential to intervene and so reduce further offending.

In addition, the bill provides that in all cases where a person appears before the court for an offence for which a three-month impoundment or immobilisation sanction may be imposed, the court will be required, upon a finding of guilt and upon the application of the police, to impose a vehicle impoundment or immobilisation sanction for at least 28 days. This will ensure that strong sanctions are imposed sending a strong message to road users that hoon driving behaviour has serious consequences.

The bill streamlines court processes by allowing the police to apply for a search warrant to facilitate access to the vehicle at the same time that the court imposes an impoundment, immobilisation or forfeiture sanction.

The bill also provides the police with limited powers to search premises without a search warrant for the purposes of locating and accessing a vehicle for the purposes of impoundment, immobilisation or forfeiture of the vehicle.

In recent years, the police have encountered attempts by persons to conceal the location of vehicles to prevent them from being impounded, immobilised or forfeited to the Crown. Such behaviour threatens to frustrate the operation of the scheme and also threatens the important road safety outcomes that the scheme provides. The bill therefore provides police with limited powers to question adult persons as to the whereabouts of a vehicle for the specific purpose of locating a vehicle of interest so that it can be impounded, immobilised or forfeited to the Crown.

The information provided by questioned persons will be kept in the strictest confidence and protections will be enshrined in the legislation to ensure that the information provided during police questioning cannot be used to the detriment of the questioned person in any civil or criminal proceedings (except where the person has provided false or materially misleading information). This reform will allow the police to do their work more effectively and help to prevent persons from thwarting the law by actively concealing the location of vehicles or refusing to cooperate with the police.

The bill also provides for a new form of vehicle immobilisation that involves the use of a specially designed steering wheel lock that is placed over the steering wheel of the vehicle. The act already provides for vehicle immobilisation with wheel clamps but vehicles immobilised with wheel clamps are difficult to move with a tow truck. The new steering wheel lock immobilisation method will provide greater flexibility as it has the benefit of allowing an immobilised vehicle to be towed to an alternative location. This may be necessary if, for example, the immobilised vehicle is creating a hazard to road users.

In order to facilitate the use of steering wheel locks for the purpose of immobilising vehicles, the bill provides police with power to enter a vehicle to install the immobilisation device. It also provides that at the end of the immobilisation period, the steering wheel lock must be returned to a designated police station. Steering wheel lock immobilisation is already widely practised in Tasmania and is reported to be working very well.

The bill also contains a number of measures aimed at speeding up the process of selling or disposing of forfeited cars or vehicles that have been impounded but remain uncollected by the owner for an extended period of time. The act currently provides a clear process for the sale or disposal of these vehicles but delays often arise where a security interest is held over the vehicle. The practice has been to seek the consent of each security interest holder prior to the sale or disposal of the vehicle and this often results in significant delays to the sale process. Where a vehicle has been impounded, storage costs tend to build up over time, and this diminishes the amount of funds that are available to be paid to security interest holders if a vehicle is eventually sold.

In those cases where a vehicle is fit for sale, the act sets out a clear priority system for the distribution of the proceeds of that sale. Government costs associated with the sale, immobilisation and impoundment of a vehicle are paid first. Next, persons that have a security interest in the vehicle are paid. If any proceeds of sale remain, then, in the case of an uncollected impounded vehicle, the proceeds of sale are paid to the owner of the vehicle. In the case of a forfeited vehicle, the remaining proceeds of sale are paid into the consolidated fund.

In order to facilitate the efficient sale or disposal of vehicles, the bill provides that security interests in vehicles that are to be sold or disposed of will be extinguished. This extinguishment is not absolute, because if the vehicle is sold, the former security interest holders will still be entitled to payments from the distribution of funds according the usual priority system that I have just described. That is, once government costs are paid, they will be next in line. The speedy sale of vehicles will enable Victoria Police to clear vehicles from impoundment areas more quickly. It will also benefit security interest holders, because speedy sale will mean that the cost of vehicle immobilisation and impoundment will be minimised as far as possible. More funds will therefore remain for payment to those persons.

As stated earlier, surplus funds from the sale of forfeited vehicles are paid into the consolidated fund once all government costs are paid and all payments to security interest holders have been made. It is the government's intention that in the future, any surplus funds that make their way into the consolidated fund will be used to assist victims of crime in accordance with the provisions of the Victims of Crime Assistance Act 1996. This assistance plan will be delivered through an administrative arrangement where appropriations for the purpose of assisting victims of crime will be increased by an amount equal to the value of the surplus funds generated. No specific legislative amendments are required for this arrangement to be implemented.

The bill limits the circumstances where an impoundment or forfeiture sanction can be avoided by an offender on 'exceptional hardship' grounds. The bill provides that applications by offenders to retain their vehicles or for the early release of their vehicles on 'exceptional hardship' grounds will not be considered in those cases where the offender has already been disqualified from driving or has had his or her driver licence or permit suspended due to the severity of the offences that were committed. Also, the bill clarifies the circumstances in which arguments relating to travelling for employment purposes can satisfy the 'exceptional hardship' test.

The bill also amends the Melbourne City Link Act 1995 to provide the responsible minister with power to revoke a road declaration made under that act, in whole

or in part, in relation to land that is not required for City Link. This will enable surplus land that is not required for City Link to be used for non-road purposes.

The measures in this bill will contribute to the effective and efficient operation of the vehicle impoundment scheme. The passage of this legislation will play an important role in the deterrence of unsafe driving behaviour and will help to make Victorian roads safer for everyone.

I commend the bill to the house.

Debate adjourned on the motion of Mr MULDER (Polwarth).

Mr PALLAS (Minister for Roads and Ports) — I move:

That the debate be adjourned until 15 September.

Mr McINTOSH (Kew) — On the question of time I want to make it perfectly clear that to facilitate the government business program — as I said before in relation to the lost sitting day for the condolence motion for the late Jim Kennan — the opposition is prepared to shorten the normal adjournment time, which is of course two weeks. However, I emphasise that this should not be taken as a precedent. These are exceptional circumstances in which we are prepared to facilitate the government business program. The fact that the bill is dealing with the scourge of hoon driving also perhaps allows us to — I should not say enthusiastically, as that will be up to the party room — willingly look at expediting this bill a little.

Motion agreed to and debate adjourned until Wednesday, 15 September.

EDUCATION AND CARE SERVICES NATIONAL LAW BILL

Statement of compatibility

Ms MORAND (Minister for Children and Early Childhood Development) tabled following statement in accordance with Charter of Human Rights and Responsibilities Act:

In accordance with section 28 of the Charter of Human Rights and Responsibilities, I make this statement of compatibility with respect to the Education and Care Services National Law Bill 2010.

In my opinion, the Education and Care Services National Law Bill 2010, as introduced to the Legislative Assembly, is compatible with the human rights protected by the charter. I base my opinion on the reasons outlined in this statement.

Overview of bill

The bill creates a nationally consistent framework for the delivery of high-quality outcomes in education and care services in all states and territories in Australia. Developed in accordance with the National Partnership Agreement agreed to by the Council of Australian Governments, the bill establishes an Australia-wide licensing and regulatory system for such services. Its objectives are to:

ensure the health, safety and wellbeing of children attending education and care services;

improve the education and developmental outcomes for children attending education and care services;

drive continuous improvement in the provision of quality education and care services, including preschool services;

improve the efficiency and effectiveness of the regulation of education and care services;

promote national integration and shared responsibility between participating jurisdictions and the commonwealth in the regulation of education and care services; and

improve public knowledge about and access to information about the quality of education and care services.

Human rights issues

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

Privacy

Section 13(a) of the charter protects a person's right not to have his or her privacy, family, home or correspondence interfered with in a manner that is unlawful or arbitrary.

Declaration of conflict

Clause 238 engages the right to privacy by requiring members of the Australian Children's Education and Care Quality Authority Board to declare any interests which could conflict with their duties as a member of the board. Clause 256 imposes a similar duty on the chief executive officer of the national authority.

In some circumstances, these clauses may require the disclosure of private or personal information. However, I consider that such disclosure is neither unlawful nor arbitrary. Disclosure need only occur in defined circumstances, and such disclosures are essential to ensure the proper functioning of the board and the authority. I therefore consider that these clauses are compatible with the right to privacy under section 13(a) of the charter.

Prohibition on employment

Clause 182 states that the regulatory authority may issue a prohibition notice to a person involved in the provision of an approved education and care service if it considers that there may be an unacceptable risk of harm to children if the person were allowed to remain on the premises or to provide education and care to children. The prohibition notice

prohibits any involvement in an education and care service. In considering whether to issue such a notice, the regulatory authority must give the person an opportunity to make written submissions, and must have regard to those submissions in coming to its final decision.

The equivalent right (to private life) under article 8(1) of the European Convention on Human Rights (ECHR) has been held to comprise, to a certain degree, the right to establish and develop relationships with other people. For that reason, broad measures banning individuals from employment have been found to limit this right where they affect an individual's ability to develop relationships with the outside world to a very significant degree and create serious difficulties for them as regards the possibility to earn their living (see, for example, *Sidabras and Dziautas v. Lithuania* (Application nos. 55480/00 and 59330/00)).

It is unnecessary in this context to decide whether the privacy right in the charter is of similar reach. The measures in the bill are not comparable to the more far-reaching restrictions that have been found to engage article 8(1) of the ECHR. The prohibition is limited to employment in a specific industry, and is not of a kind that will give rise to social stigmatisation of the sort comparable to that arising in many of the European cases. It is clearly reasonable to restrict a person's access to employment in this area where they may be an unacceptable risk to children. Indeed, this would be required by the right of children in section 17 of the charter to such protection as is in their best interests. I therefore consider that clause 182 is compatible with the right to privacy under section 13(a) of the charter.

Sharing of information between jurisdictions

Clauses 27, 31, 42, 75, 80, 101, 131, 150, 153, 221, 223, 228, 267, 271, 281 and 322 provide for the sharing of information between bodies in different jurisdictions in a range of circumstances. I consider that any interference with the right to privacy occasioned by these clauses is neither unlawful nor arbitrary. Information may only be shared for particular purposes related to exercising functions under the bill. The sharing of such information is necessary to ensure the regulatory bodies and government agencies are able to access all information necessary to effectively regulate the education and care industry. Further, clause 263 provides that for the purposes of the national quality framework, the commonwealth Privacy Act 1988 applies as a law of the participating jurisdiction. Clause 273 also imposes a duty of confidentiality on persons exercising functions under the bill in relation to protected information (meaning information that is personal to a particular individual and that identifies or could lead to the identification of that individual, where that information came to the person's knowledge because or in the course of exercising functions under the bill). I therefore consider these clauses to be compatible with the right to privacy in section 13(a) of the charter.

Collection and use of information

Clauses 227 and 261 grant the national authority and regulatory authority the power to collect, hold and use information obtained under the bill regarding the provision of education and child-care services, including information about outcomes for children and information about providers of education and care services in each participating jurisdiction. The clauses also provide that, subject to the commonwealth Privacy Act 1988, the authorities may collect, hold and use information about providers of education and care services, family day care educators and certified supervisors.

Not all information dealt with under these provisions will be of a private nature. However, to the extent that these provisions do relate to private information, any interference with the right to privacy will be neither unlawful nor arbitrary. The provisions only relate to information obtained by the regulatory authority or national authority under the bill itself. Any use of that information will be restricted to legitimate purposes under the bill, and, as mentioned above, the Commonwealth Privacy Act 1988 applies, as well as a duty of confidentiality in relation to personal information. The collection, retention and use of such information is necessary to effectively regulate the provision of education and care and related services for children, as it allows the regulatory and national authorities to make decisions and carry out their functions in regulating the industry with the best information possible. This enables those bodies to protect the rights and interests of children by ensuring they are receiving appropriate care and education. I therefore consider these provisions are compatible with the right to privacy under section 13(a) of the charter.

Protected disclosures

Clause 296 provides that a person may disclose information or documents to the regulatory authority pursuant to a request under the national law or where the person making the disclosure has a reasonable belief that an offence against the national law has been or is being committed. This may result in the disclosure of private or confidential material. However, I consider that any interference with the right to privacy occasioned by this clause is neither unlawful nor arbitrary. The circumstances in which material may be disclosed are clearly defined, and the clause is necessary to ensure that persons are able to alert the regulatory authority to breaches of the national law without fear of reprisal. I therefore consider that this clause is compatible with the right to privacy in section 13(a) of the charter.

Publication of information

Clauses 153, 160, 180, 195, 225, 227, 266, 267, 268, 270, and 280 provide that in particular circumstances the regulatory authority or national authority may publish information or otherwise make that information available to the public. Such information includes registers of approved providers, approved education and care services, and certified supervisors, and information about the national quality framework, including ratings and prescribed information about compliance with the national law. The regulatory authority may also publish information about enforcement actions taken under the bill, but that information must not include information that could identify a person other than an approved provider or certified supervisor.

Not all information dealt with under these provisions will be of a private nature. However, to the extent that these provisions do relate to private information, any interference with the right to privacy will be neither unlawful nor arbitrary. The type of information that may be published is clearly specified, and the publication of that information serves the necessary purpose of ensuring that parents and other members of the public are able to make informed decisions regarding the provision of education and care services to their children. I therefore consider these provisions

are compatible with the right to privacy under section 13(a) of the charter.

Powers of entry, inspection, search and seizure

Various provisions of the bill grant powers of entry, inspection, search or seizure. These provisions are considered below.

Clauses 46 and 311 enable the regulatory authority to enter at any reasonable time the premises of services applying for service approval for the purpose of inspecting the premises or inspecting the policies and procedures of the service. Clauses 89 and 96 enable the regulatory authority to inspect the premises and the offices of an applicant for a service waiver or a temporary waiver.

Clause 197 provides that an authorised officer may, at any reasonable time and for specified purposes, enter and inspect any premises at which the officer believes on reasonable grounds an approved education and care service is operating or being coordinated. The authorised officer may be accompanied by any assistants reasonably required, and under clause 198 may also be accompanied by a person authorised by the national authority. The authorised officer may inspect various items at the premises and may take photographs or make other recordings or copies of anything at the premises. Further, the authorised officer may take any document or other thing at the premises likely to be being used in the provision of education and care services, and may ask questions or request documents. Documents or other items taken under this section must be returned within seven days.

Clause 199 provides that an authorised officer of the regulatory authority may investigate an approved education and care service if he or she reasonably suspects that an offence may have been or may be committed against the bill. The authorised officer may enter the premises of the approved provider at any reasonable time and exercise any power set out in clause 5(2) of schedule 2 (these include powers relating to searching premises, documenting and taking items for analysis, and requiring the occupier to provide information or otherwise assist in the conduct of the investigation). There is no requirement to apply for a search warrant. Clause 200 provides a similar power in relation to the principal office or any other business premises of an approved provider, however such searches cannot take place without the consent of the occupier.

Clause 201 provides that an authorised officer may, under the authority of a search warrant, enter certain premises at which the authorised officer believes an education and care service is operating in contravention of the bill, or at which the authorised officer believes there are documents or other evidence of the commission of an offence under the bill. The authorised officer must have reasonable grounds for such a belief. Warrants under this section are issued in accordance with schedule 2 by the Magistrates Court. A warrant authorises the authorised officer to enter, inspect and search premises, and to copy or take any document or thing at the premises, as well as to require the occupier to provide information or otherwise assist in the conduct of the investigation.

'Premises', under these provisions, extends to a residence at which an education and care service is operating, and to parts of a family day carer's residence that are used to provide care or education to children on behalf of a family day care service.

Most of the above clauses will operate in relation to business premises (as opposed to private residences), and occupiers of such premises would have a limited expectation of privacy. However, even if the exercise of the powers in these clauses will interfere with a person's privacy, home or correspondence, such interference is lawful and is not arbitrary. The powers are necessary to monitor compliance with the regulatory scheme and are limited to that purpose. In addition there are a number of protections contained in the bill, including a requirement that certain inspections occur at a 'reasonable time'; the return of items seized during inspections and searches; the provision of access to the occupier to things seized during a search; and a limit on the exercise of such powers at unlicensed premises without a search warrant. The powers under clauses 199, 200 and 201 are also necessary to ensure the detection and prosecution of offences against the act, which helps to ensure the protection of children in education, care and family day care services.

Accordingly, I consider the provisions are compatible with s 13(a) of the charter.

Requirements to provide information

Clauses 11, 14, 22, 37, 39, 40, 44, 45, 54, 56, 59, 64, 88, 89, 95, 96, 107, 110, 119, 129, 139, 141, 142, 145, 150, 152, 154, 159, 186, 191, 197, 199, 200, 201, 204, 205, 206, 214, 215, 216, 269, and 311 each provide that persons must provide information in specified circumstances to the regulatory authority or national authority. The circumstances in which information must be provided include: for the purposes of approvals, certifications, or ratings under the bill; for the purposes of variations, suspensions, transfers, or reviews of such approvals, certifications or ratings; for the purposes of temporary waivers or service waivers; for the purposes of applications to lift prohibition notices; and for the purposes of monitoring and enforcing compliance with the bill or regulations. Information that must be provided under the bill is in some circumstances likely to include personal details, and may include information regarding an applicant's criminal history, medical condition or financial status. It is particularly likely that persons will be required to provide personal information where the regulatory authority is assessing whether they are 'fit and proper' to provide education and care services to children.

To the extent that information required under these provisions relates to individuals, these provisions engage the right to privacy under section 13(a) of the charter. However, in my view, any interference with the right to privacy is neither unlawful nor arbitrary. The instances in which information is required to be shared are specifically defined in the act. The provisions are necessary to respect the rights of children by ensuring that the authorities are able to make informed decisions about the fitness of particular persons to provide, engage in, or be present at the premises of child education and care services, to monitor compliance with the bill and regulations, and to provide accurate information to the public and to parents of children receiving education or care about the quality of education and care services. Further, when exercising jurisdiction in Victoria, both the regulatory authority and the national authority are public authorities for the purposes of section 38 of the charter. When seeking information under the bill, the authorities and their officers

will therefore be required to act in accordance with human rights.

Clauses 35 and 83 identify circumstances where an approved provider must provide the regulatory authority with the identity and contact details of all parents of children who attend an education and care service. These clauses engage the parents' right to privacy. However, I consider that any interference with the right to privacy is neither unlawful nor arbitrary. The circumstances in which such information is to be provided are clearly defined in the legislation, and the purpose of sharing the information is to ensure that the regulatory authority is able to keep parents informed of any changes to the approval status of an approved provider or education and care service. This ensures that parents are able to make informed decisions regarding where their children receive education and care services.

I therefore consider that these provisions are compatible with section 13(a) of the charter.

Freedom of expression

Section 15 of the charter provides that every person has the right to freedom of expression. This includes the right to seek, receive and impart information and ideas of all kinds.

Section 15(3) provides that special duties and responsibilities attach to the right of freedom of expression under section 15 of the charter and the right may be subject to lawful restrictions reasonably necessary to respect the rights and reputation of other persons, or for the protection of national security, public order, public health or public morality.

Clause 104 engages the right to freedom of expression by providing that it is an offence to knowingly advertise a service as an education and care service if that service has not been approved. To the extent that this clause restricts the right to freedom of expression, it comes within section 15(3) as it is reasonably necessary to protect public health and the rights of others. Services that have not been approved cannot be guaranteed to meet the standards provided in the national quality framework, and so could potentially pose a risk to the health, safety and wellbeing of children in their care. This provision both protects the best interests of children and promotes public health by ensuring people can make confident and informed choices about services that can be entrusted with the care of their children.

The right to freedom of expression also includes the right not to express oneself.

As discussed above under the privacy right, various clauses in the bill provide that persons must provide information to the regulatory authority or national authority. Other clauses within the bill require the display of ratings information and other prescribed information at the premises of education and care services.

Clauses 199, 200, 201, 206, 215, and 216 all provide that the regulatory authority or its authorised officers may require persons involved in the provision of education and care services or family day care services to answer questions, produce documents or provide information in certain circumstances. These provisions only apply for the purposes of monitoring compliance, gathering information relating to the cancellation or transfer of an approval, conducting a rating assessment, or investigating suspected offences under the bill.

Clause 204 provides that an authorised officer of a regulatory authority may, if a person is, or is reasonably suspected of, committing an offence against the bill, require that person to state and supply evidence of their name and residential address. Clause 205 provides that an authorised officer may, if he or she reasonably suspects that a person is employed at an education and care service or family day care service and has not attained the minimum age specified by the regulations, ask the person their correct age and ask the person to provide evidence of their stated age. The authorised officer may also require the person to provide their name and residential address.

Clauses 172 and 313 impose requirements on approved providers and declared approved services to display certain information regarding their service, including their rating.

Further, clauses 35, 39, 56, 59, 75, 80, 83, 114, 121, 173, 174 and 306 impose requirements to notify the regulatory authority of certain events or information. For example, the regulatory authority must be notified of any change in name of an approved provider and of any appointment or removal of a person with management or control of an approved provider. Clauses 35, 36, 37, 38, 69, 83, 84, 85, and 86 also provide circumstances where the regulatory authority or the approved provider may or must notify parents of children attending an education or care service of certain events relating to the approval status of the approved provider or education and care service. Clause 189 further requires parents to be notified if a child is removed from the premises of an education and care service in emergency circumstances.

Most notably, clause 174(1) provides that approved providers of education and care services must notify the regulatory authority of any serious incidents at the service and any complaints alleging that the safety, health or wellbeing of a child is being compromised while that child is attending the service, or that the national law is being contravened.

To the extent that these provisions engage the right not to express oneself, I consider that they fall within section 15(3) of the charter. In this case, the provisions are necessary to ensure the safety and wellbeing of children in children's services by enabling the effective monitoring and enforcement of the regulatory standards. Accordingly, I consider that the provisions are compatible with the right to freedom of expression.

Right to take part in public life

Section 18(2)(b) of the charter provides that every eligible person has the right, without discrimination, to have access on general terms of equality to the Victorian public service and public office. 'Discrimination' for the purposes of the right means discrimination within the meaning of the Equal Opportunity Act 2010. The discrimination must be on the basis of one of the attributes set out in section 6 of the Equal Opportunity Act 2010.

Clause 254 enables the board of the Australian Children's Education and Care Quality Authority to terminate the appointment of the chief executive officer (CEO) of the authority for a range of reasons. Relevantly, these include for 'physical or mental incapacity that significantly impacts upon the ability of the chief executive officer to perform the role'. This clause engages the right to take part in public life by potentially restricting a person's access to public office.

A 'physical or mental incapacity' is likely to constitute a defined attribute of 'impairment' in the Equal Opportunity Act 2010. However, in my view, clause 254 will not result in either direct or indirect discrimination under that act. A CEO with a physical or mental incapacity will not be treated differently because he or she has an impairment, but rather because he or she has become unable to perform the functions of a CEO. Section 20 of the Equal Opportunity Act 2010, which requires that an employer make reasonable adjustments for a person with an impairment, unless the person or employee cannot adequately perform the genuine and reasonable requirements of the employment even after the adjustments are made, continues to apply. I therefore consider that this clause is compatible with the right to take part in public life under section 18(2)(b) of the charter.

Property

Clauses 197, 199, 200, and 201 enable the seizure and retention of certain items by authorised officers for the purposes of monitoring compliance with the bill and gathering evidence of offences against the bill. Time frames for the return of that property are set out under clauses 197(3) and 202. A court may also extend time frames under clause 203 in defined circumstances.

In my view, any deprivation of property occasioned by these provisions will be lawful, and therefore compatible with the right to property under section 20 of the charter.

Right to a fair hearing

Section 24(1) of the charter provides that a person who is a party to a civil proceeding has the right to have the proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing.

Immunity clauses

Clause 289 provides a personal immunity against legal liability to members of the board of the national authority, committees of the board, the ratings review panel, the regulatory authority, and members of the governing body of the regulatory authority.

Where an immunity clause restricts a person's ability to access a court by effectively removing a person's ability to bring an action in court due to the absence of an appropriate defendant, the right to a fair hearing may be engaged. However, in this case, a person's access to the courts will not be hampered as liability is transferred to either the national authority or, in the case of the regulatory authority or members of its governing body, to the state of Victoria. I therefore consider that clause 289 is compatible with the right to a fair hearing under section 24(1) of the charter.

Decision-making processes

In *Kracke v. Mental Health Review Board & Ors* (General) [2009] VCAT 646, Bell J concluded that the right to a fair hearing is not confined to proceedings of a judicial character and can apply to civil proceedings which are of an administrative character. In Kracke, Bell J noted that, in assessing compliance with the right, regard may be had to the whole decision-making process, including reviews and appeals.

Parts 2, 3 and 4 provide for the granting, variation, transfer, suspension, and cancellation of provider and service approvals and the granting, amendment, suspension, or cancellation of supervisor certificates. Part 7 provides for the issue of compliance notices and prohibition notices, and the suspension of family day care educators, as well as providing for certain emergency measures (such as the emergency removal of a child from an education and care service where there is an immediate danger to the child's health, safety or wellbeing). Following Kracke, to the extent that these decisions relate to individuals, the right to a fair hearing may be engaged by these provisions.

I have considered the process of decision making set out in these parts and in part 8, which provides for the review of these decisions, and consider that the processes are compatible with the right to a fair hearing. Affected persons often have the opportunity to make submissions to the original decision-maker (see clauses 26, 32, 71, 78, 124, 178, and 183). In many cases, the decision-maker must provide reasons for the decision (see clauses 16, 50, 66(3), 113, and 143). Further, except in the case of decisions made to respond to emergency circumstances (see decisions under clauses 171, 179 and 189), decisions which affect the rights of persons operating under the bill are generally subject to internal review under clauses 190 and 191, and external review under clause 192 and 193. Judicial review is also available. I therefore consider that parts 2, 3 4, and 7 are compatible with the right to a fair hearing under section 24(1) of the charter.

Right to be presumed innocent

Clause 25 provides that the regulatory authority may suspend a provider approval if the approved provider has been charged with an indictable offence. This provision may engage the right under section 25(1) of the charter to be presumed innocent until proven guilty according to law. However, in my view, the provision does not limit the right. It does not affect the criminal proceeding relating to the person. Nor does it presume that person to be guilty. Rather, it is simply a precautionary measure which protects children from exposure to persons charged with indictable offences, who may be unsuitable or inappropriate to engage in the provision of education and care services, until the matter is resolved. The suspension can only be in place for six months. Further, clause 26 provides that prior to any suspension, the person charged with the offence has the opportunity to make a written submission to the regulatory authority providing reasons why the suspension should not take place. I therefore consider that clause 25 is compatible with the right to be presumed innocent under section 25(1) of the charter.

Clause 208 provides that a person must not, without reasonable excuse, fail to answer questions, or produce documents, as required by an authorised officer, or fail to assist an authorised officer in conducting an investigation under a search warrant. Clause 209 provides that a person must not, without lawful authority, destroy or damage any notice or document given, prepared or kept under or in accordance with the bill. By including the words 'without reasonable excuse' and 'without lawful authority' these provisions impose an evidential onus on an accused to adduce or point to evidence that goes to the excuse or authority. These clauses, read in conjunction with section 72 of the Criminal Procedure Act 2009, impose an evidentiary burden on the accused.

In my view, these provisions do not inappropriately transfer the burden of proof, because once the defendant has adduced or pointed to some evidence, the burden is on the prosecution

to prove beyond reasonable doubt the absence of the exception raised. Furthermore, the burdens do not relate to essential elements of the offences and are only imposed on the accused to raise facts that support the existence of an excuse or lawful authority. Courts in other jurisdictions have generally taken the approach that an evidential onus on an accused to raise a defence does not limit the presumption of innocence. However, even if these provisions limit the right to be presumed innocent in section 25(1) of the charter, the limitation would be reasonable and justifiable under section 7(2). The defences of reasonable excuse and lawful authority that are provided relate to matters within the knowledge of the accused and, if the onus were placed on the prosecution, would involve the proof of a negative which would be very difficult.

Right not to be tried or punished more than once

Section 26 of the charter provides that a person has the right not to be tried or punished more than once for an offence in respect he or she has already been finally convicted or acquitted in accordance with the law.

Clause 31 provides that the regulatory authority may cancel an approval if a provider has been found guilty of an indictable offence or an offence against this law.

Clause 314 provides that when determining whether to suspend or cancel an approval under part 2 or part 3, the regulatory authority may take into account any non-compliance by an approved provider with a former education and care services law that occurred in the period of three years prior to commencement.

The right in section 26 of the charter has been interpreted as applying only to punishments of a criminal nature and does not preclude the imposition of civil consequences for the same conduct. I do not consider that the consequences under these clauses are penal in nature so as to engage section 26. Their purpose is not to punish the convicted person, but to protect children by ensuring that only appropriate persons are able to engage in the provision of education and care services. I therefore consider that these clauses are compatible with the right not to be punished more than once under section 26 of the charter.

2. Consideration of reasonable limitations — section 7(2)

Right to equality

Section 8 of the charter provides that every person is equal before the law and is entitled to the equal protection of the law without discrimination. 'Discrimination' for the purposes of the equality right means discrimination within the meaning of the Equal Opportunity Act 2010. Under the Equal Opportunity Act, 'direct' discrimination occurs where a person treats someone with an attribute less favourably than the person treats someone without that attribute, or with a different attribute, in the same or similar circumstances.

Clause 106(2) provides that a person cannot be granted a supervisor certificate enabling them to work as a supervisor in an education and care service until they are 18 years of age. The provision amounts to a prima facie discrimination on the attribute of age. However, the discrimination is a reasonable limitation on the right for the reasons set out below.

(a) the nature of the right being limited

The prohibition of discrimination is one of the cornerstones of human rights instruments and this is reflected in the preamble to the charter. However, the right is not absolute and can be subject to reasonable limitations in section 7 of the charter.

(b) the importance of the purpose of the limitation

The purpose of the limitation is to ensure that persons who supervise education and care facilities have the necessary maturity to engage in the activity. It is important for the proper care and education of children in these services that supervisory positions be limited to persons of legal adult age. The limitation aims to prevent harm to children, and therefore serves to give effect to the best interests of the child, a right protected by section 17 of the charter.

(c) the nature and extent of the limitation

The right is limited only to the extent a person aged under 18 years of age is prohibited from being granted a supervisor certificate.

(d) the relationship between the limitation and its purpose

Age limits necessarily involve a degree of generalisation, without regard for the particular abilities, maturity or other qualities of individuals within that age group. In this clause, age is being used as a proxy measure of the maturity and capacity of an individual to act responsibly, which is necessary in this situation. It is reasonable for Parliament to set an age limit reflecting its assessment of when most persons will have sufficient maturity to ensure responsible decisions are made by those in a position to supervise education and care services.

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

There is no less restrictive means reasonably available to achieve the purpose of ensuring that minors are not allowed to act as supervisors in education and care services.

I therefore consider that the limitation on the right to equality imposed by clause 106(2) is demonstrably justifiable in a free and democratic society.

Freedom of movement

Section 12 of the charter provides that every person lawfully within Victoria has the right to move freely within Victoria and to enter and leave it, and has the freedom to choose where to live.

The right to move freely within Victoria is not dependent on any particular purpose or reason for a person wanting to move or stay in a particular place. It encompasses a right not to be forced to move to, or from, a particular location. The right includes freedom from physical barriers and procedural impediments.

Clause 170 limits the right to freedom of movement by prohibiting the presence of 'unauthorised persons' at an education and care service or family day care service unless they are under the direct supervision of an educator or staff member.

Clause 171 further limits the right by providing that the regulatory authority may make a direction that an 'inappropriate person' be excluded from a care or education service. An 'inappropriate person' is a person who may pose a risk to the health, safety and wellbeing of a child attending the service, or whose behaviour or state of mind is such that it would be inappropriate for that person to remain at the premises while children are present (for example, a person under the influence of drugs or alcohol).

Clause 215(1)(c) also limits the right to freedom of movement by providing that the regulatory authority may by notice require a person who is or has been an approved provider, a certified supervisor or a staff member of an education and care service to appear before the authority at a time and place specified in the notice, for the purpose of giving evidence or producing a document specified in the notice.

These provisions limit the right to freedom of movement under section 12. However, the discrimination is a reasonable limitation on the right for the reasons set out below.

(a) the nature of the right

The right to freedom of movement is not regarded as an absolute right in international law and can be subject to reasonable limitations.

(b) the importance of the purpose of the limitation

The purpose of the limitations in clauses 170 and 171 is to ensure that children at education and care services are protected from exposure to unauthorised or unsuitable persons. The limitations aim to prevent harm to children, and therefore serve to give effect to the best interests of the child, a right protected by section 17 of the charter.

The purpose of the limitation in clause 215(1)(c) is to allow the regulatory authority to obtain information necessary for it to efficiently regulate children's services. The ability to secure the presence of a person to provide information is essential to the effective administration of the regulatory authority's functions in licensing and regulating children's services. By ensuring high-quality education and care services, this too serves to give effect to the best interests of the child.

(c) the nature and extent of the limitation

The limitations in clauses 170 and 171 limit inappropriate and unauthorised persons' access to the premises of education and care services. The clauses do not otherwise interfere with the freedom of movement. Further, although inappropriate persons will be entirely excluded from such premises, unauthorised persons will still be able to be present on such premises if they are supervised by an educator or staff member.

Directions excluding inappropriate persons are intended to be used as an emergency measure of limited duration. A person who considers they have been wrongly subject to such a direction will be able to seek judicial review of that decision. Further, the regulatory authority, in making the decision, will also be bound to give proper consideration to human rights in order to comply with section 38 of the charter.

Clause 215(1)(c) limits a person's freedom of movement to the extent that a person may be compelled to be physically present before the regulatory authority at another location for a specified time for the purpose of giving evidence or producing documents.

(d) the relationship between the limitation and its purpose

The limitations imposed are directly and rationally connected to their purposes.

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

In my opinion, there are no less restrictive means available to achieve the purposes of the limitations.

I therefore consider that the limitations on the right to freedom of movement in clauses 170, 171 and 215(1)(c) are demonstrably justifiable in a free and democratic society.

Cultural rights

Section 19 of the charter provides that all persons with a particular cultural, religious, racial or linguistic background must not be denied the right to enjoy his or her culture, to declare and practise his or her religion, and to use his or her language.

Clause 166 of the bill prohibits the use of any form of corporal punishment by family day carers. There is no exception. This may engage the right to enjoy culture or to practise religion under section 19. In the UK case of *R (Williamson) v. Secretary of State for Education and Employment and Others* [2005] 2 AC 246, the House of Lords found that a prohibition on corporal punishment in schools was considered to amount to a limitation on the claimant's rights to practise their religion. However, the House of Lords found that the limitation was justified.

Clause 166 also provides that it is an offence for an approved provider, nominated supervisor, staff member or volunteer at an education and care service, or a family day care educator to subject a child to 'any discipline that is unreasonable in the circumstances'. This too could potentially limit cultural rights if a form of discipline traditionally used by a particular religious or cultural group were regarded as 'unreasonable'.

The limitation on 'unreasonable' discipline could arguably be considered too 'vague' to impose a limitation on a human right. As the Scrutiny of Acts and Regulations Committee noted in their comment on a similar provision in the Children's Legislation Amendment Bill 2008, the European Court of Human Rights has said that a provision that limits a right:

> '… cannot be regarded as a "law" unless it is formulated with sufficient precision to enable the citizen to regulate his conduct: he must be able — if need be with appropriate advice — to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail'.

(*Sunday Times v. the United Kingdom* [1979] 2 EHRR 245, 271)

However, I note that the court went on to say that:

> '… consequences need not be foreseeable with absolute certainty: experience shows this to be unattainable. Again, whilst certainty is highly desirable, it may bring in its train excessive rigidity and the law must be able to

> keep pace with changing circumstances. Accordingly, many laws are inevitably couched in terms which, to a greater or lesser extent, are vague and whose interpretation and application are questions of practice'.

In the present case, guidelines will be issued to assist those engaged in the education and care of children to determine what constitutes 'unreasonable' discipline in the circumstances. Further, in Victoria there are existing provisions prohibiting this type of conduct, so educators and carers will already be familiar with the boundaries of reasonable discipline. I therefore consider that the provision is sufficiently precise to enable a limitation to be imposed on a human right.

The prohibition on corporal punishment and unreasonable discipline may therefore limit the right to religious and cultural rights under section 19 of the charter. However, I consider that the limitation is reasonable, for the reasons set out below.

(a) the nature of the right

The right to enjoy cultural rights under section 19 is not regarded as an absolute right in international law and can be subject to reasonable limitations.

(b) the importance of the purpose of the limitation

The purpose of the limitation in clause 166 is to protect children from the potential harm that can result from the infliction of physical violence or unreasonable discipline against young children. The limitation therefore serves to give effect to the best interests of the child, a right protected by section 17 of the charter.

(c) the nature and extent of the limitation

The limitation prohibits all forms of corporal punishment and unreasonable discipline in education and care services.

(d) the relationship between the limitation and its purpose

The limitation imposed is directly and rationally connected to its purpose.

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

In my opinion, there are no less restrictive means available to achieve the purpose of the limitation.

Accordingly, in accordance with the judgement in Williamson, I consider that any limitation on rights imposed by clause 166 is demonstrably justifiable in a free and democratic society.

Self-incrimination

Section 25(2)(k) of the charter provides that a person charged with a criminal offence is entitled not to be compelled to testify against himself or herself or to confess guilt.

Part 9

Part 9 of the bill includes a range of clauses which compel persons involved in the provision of education and care services to answer questions and provide documents or information in certain circumstances. These provisions are described below.

Under clause 199, an authorised officer who reasonably suspects that an offence may have been or may be committed against the bill may require an occupier of education and care services to give the authorised officer information to help in the conduct of the investigation (pursuant to clause 5(2)(g) of schedule 2). Clause 201 provides the same power to an authorised officer exercising powers under a search warrant.

Clauses 204 and 205 provide that an authorised officer may in defined circumstances request specified persons to state and supply evidence of their name, residential address and age. Clause 206 also provides that an authorised officer may, by notice, require an approved provider, certified supervisor, staff member of an education and care service, or family day care educator, to provide information specified in the notice.

Under clause 208, it is an offence to fail to: answer a question asked by an authorised officer; provide a document or information required by an authorised officer; or assist an authorised officer exercising a search warrant. However, the privilege against self-incrimination is expressly preserved by clause 211. That clause states that it is a reasonable excuse to refuse to comply with a requirement of an authorised officer to answer a question or produce information if to do so might tend to incriminate the individual. Further, clause 212 provides that the authorised officer must advise the person of the effect of clause 211, ensuring that he or she is aware that the privilege against self-incrimination is not abrogated.

The provisions preserving the right against self-incrimination do not extend to the production of documents that are required to be kept under the bill, or to the giving of the individual's name or address. However, clause 211(3) provides both a direct and derivative use immunity for such documents, providing that any information obtained directly or indirectly from the documents is not admissible in a criminal proceeding (except proceedings under the bill) or in any civil proceedings. In relation to the provision of a person's name or address, I further note that in my opinion, such information does not constitute information that would 'tend to incriminate', and so the privilege against self-incrimination does not arise in these circumstances.

The privilege against self-incrimination also arises in relation to clauses 215 and 216. Those clauses provide that the regulatory authority may require a person involved in the provision of education and care services to answer questions, provide information or produce documents. The regulatory authority may only exercise these powers if it reasonably suspects that an offence has or may have been committed against the bill. Under section 219, a person is not excused from answering a question, providing information or documents on the ground that the answer, information or document may tend to incriminate the person.

A direct and derivative use immunity is provided for answers given and information disclosed under these provisions. This means that answers and information provided under clause 215 or 216, and any information obtained directly or indirectly because of those answers or information, are not admissible against the individual in a criminal proceeding (other than proceedings under clause 218) or in any civil proceedings. The immunity may be claimed if the individual objected at the time on the grounds that providing the information or giving the answer might incriminate him or

her, or if the individual was not warned that they were able to object on such grounds. These requirements are consistent with the fact that, at common law, in order to exercise the privilege against self-incrimination, a person needs to claim the privilege at the point of the refusal to testify.

At the time the person is required to provide information under clauses 199, 204, 205, 206, 215, or 216, he or she will not have been charged with an offence. On this basis the right in section 25(2)(k) of the charter would have no application. However, the Supreme Court has said that the right is also an aspect of the right to a fair trial protected by section 24 of the charter. The decision in *Re Application under the Major Crime (Investigative Powers) Act 2004* [2009] VSC 381 (Major Crime) holds that this right, as protected by the charter, is at least as broad as the privilege against self-incrimination protected by the common law. It applies to protect a charged person against the admission in subsequent criminal proceedings of incriminatory material obtained under compulsion, regardless of whether the information was obtained prior to or subsequent to the charge being laid.

In my view, the clauses under discussion generally do not limit the right not to incriminate oneself. I have reached this view for two reasons. First, the privilege against self-incrimination has not been extended so far as to protect persons from providing information necessary for the monitoring and enforcement of compliance in relation to a regulatory regime. Second, the direct and derivative-use immunities provided under clauses 211 and 219 protect persons from the use of any self-incriminatory answers or information (or information derived from those answers or information) in criminal or civil proceedings. As the information cannot be used against a person as evidence in a criminal proceeding, it cannot be said to 'incriminate' that person. Therefore, the privilege against self-incrimination is not limited.

However, clauses 211 and 219 provide for two minor exceptions to the direct and derivative-use immunities. To the extent that those exceptions apply, the right not to testify against oneself may be limited. For the reasons set out below, I consider that any limitation on the right not to testify against oneself imposed by part 9 of the bill is demonstrably justifiable under clause 7(2) of the charter.

(a) the nature of the right

The right not to testify against oneself is an important right under the charter. However, as acknowledged by Warren CJ in Major Crime, the right may be subject to reasonable limitations so long as they can be demonstrably justified.

(b) the importance of the purpose of the limitation

The purpose of the limitation is to ensure that the regulatory regime under the bill can be adequately monitored and enforced, with the ultimate aim of protecting children from being exposed to substandard or unregulated education and care services. The limitation therefore serves to give effect to the best interests of the child, a right protected by section 17 of the charter.

(c) the nature and extent of the limitation

As discussed above, the direct and derivative-use immunities provided under clauses 211 and 219 mean that the right not to incriminate oneself is largely undisturbed by part 9 of the bill.

There are, however, two exceptions which allow some types of self-incriminatory information to be used in certain types of proceedings. The relevant exceptions are:

(1) Clauses 211(3) and 219(3) provide that documents required to be kept under the bill, or information obtained from those documents, may be admitted into evidence in criminal proceedings under the bill (see clauses 211(3) and 219(3).

(2) Clause 219 provides that information disclosed under clauses 215 or 216 may be admitted as evidence in criminal proceedings under clause 218. Clause 218 provides that it is an offence to hinder or obstruct the regulatory authority in exercising a power under clause 215 or 216.

I note that both these limitations apply only to persons who voluntarily participate in the provision of education and care services, which is a highly regulated industry. They do not apply to members of the general public. In relation to the first exception, I further note that at common law, the privilege against self-incrimination in relation to existing documents is weaker than the protection that applies to oral testimony: *Environment Protection Authority v. Caltex Refining Co. Pty Ltd* (1993) 178 CLR 477, 502. This is particularly so in the case of documents that are required to be kept as part of a regulatory regime: *R v. Fitzpatrick* [1995] 4 SCR 154, at [54].

(d) the relationship between the limitation and its purpose

In my opinion, the limitation imposed is clearly directly and rationally connected to its purpose.

In relation to the first exception referred to above, which relates to documents that are required to be kept under the bill, it is necessary that such documents are available to be used as evidence in proceedings under the bill for the purposes of enforcing the regulatory scheme. Without those documents, it would be very difficult to prove breaches of many of the regulatory obligations under the bill, particularly those obligations which require record keeping. Further, the only documents affected are those which the bill specifically requires must be kept, so it is appropriate that they be available in proceedings under the bill.

In relation to the second exception, which relates to the use of information in proceedings under clause 18, there is again a clear connection between the limitation and its purpose. Clause 18 prohibits a person from obstructing or hindering the regulatory authority in exercising a power under clause 215 or 216. The relevant information may in itself form the obstruction or hindrance if it is false or misleading. Therefore, although that information may tend to incriminate the person, it is nonetheless necessary that it be admissible as evidence under clause 218.

As such, both these clauses facilitate the proper enforcement of the regulatory regime by enabling successful prosecutions for failure to comply with the regime in specific circumstances.

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

In my opinion, there are no less restrictive means reasonably available to achieve the purpose of the limitation.

For the reasons set out above, I consider that the limitation on the right not to testify against oneself is demonstrably justifiable in a free and democratic society. The limitation is necessary to ensure the proper enforcement of the regulatory regime and by doing so to protect the best interests of children. It only applies in very limited circumstances. I therefore consider that part 9 is compatible with section 24 and section 25(2)(k) of the charter.

Requirement to notify

As noted above, clause 174(1) provides that approved providers of education and care services must notify the regulatory authority of a range of matters, including any serious incidents at the service and any complaints alleging that the safety, health or wellbeing of a child is being compromised while that child is attending the service, or that the national law i

s being contravened. This provision may engage the right to privilege against self-incrimination in section 25(2)(k) of the charter. However, as above, I note that the privilege has not previously been extended to the type of mandatory reporting required under these provisions. Accordingly, I consider that the right not to incriminate oneself is not limited by clause 174(1). However, if I am wrong, I consider that the importance of ensuring children are protected from harm means that any limitation imposed by this clause is reasonably justifiable in a free and democratic society.

Conclusion

I consider that the bill is compatible with the charter.

Maxine Morand, MP
Minister for Children and Early Childhood Development

Second reading

Ms MORAND (Minister for Children and Early Childhood Development) — I move:

That this bill be now read a second time.

This bill will provide for new nationally consistent standards to ensure high-quality children's services across Australia.

The Education and Care Services National Law Bill is a significant milestone in achieving national standards in the provision of quality early education and care in long day care, family day care, preschool and outside school hours care.

In December 2009 the Council of Australian Governments agreed to the national partnership agreement on the National Quality Agenda for Early Childhood Education and Care.

The major element of the agreement was the establishment of a jointly governed unified national quality framework (NQF) for early education and care and school-aged care which replaces existing separate licensing and quality assurance processes.

The new national quality framework will become operational from 1 January 2012 and will provide for improved staff-to-child ratios, higher staff qualifications, the introduction of a quality ratings system based on a national quality standard, the establishment of a new national body and the establishment of a national licensing system.

It is vital that children's services are of a consistently high quality in a time when more children are spending more time in education and care services across Australia.

The Brumby government has been committed to the process of national reform for many years and has been a key driver for change through the COAG process.

Victoria's plan to improve outcomes in early childhood, released in 2007, identified the economic and social benefits of a quality early education and care experience for children.

Research has demonstrated the importance of the early years in a child's brain development and on their future intellectual and social potential.

The lifelong benefits of quality early childhood education and care are well documented and have created an obligation on all of us to ensure children are given the best possible start in life.

It has been identified in numerous studies that children who have positive early childhood experiences in stimulating, nurturing environments have better outcomes throughout their life.

It has also been demonstrated that quality early education will have a positive impact on developing better self-esteem, better educational outcomes and fewer health and social problems.

Population growth and modern workforce participation patterns, including more women working more hours, mean more children are attending education and care services than ever before.

There has been a significant increase in women's workforce participation, with more than 60 per cent of mothers with dependent children now in paid jobs compared to 40 per cent in 1985.

Across Australia, the proportion of children using formal child care has increased from 14 per cent in 1996 to 23 per cent in 2009.

The average time children are spending in care has also increased. In 2004 children attending long day care did

so for an average of 19 hours per week. This has increased to an average of 26 hours in 2009.

This bill represents our government's continuing commitment to ensure that Victorian children are given the best opportunity to reach their full potential.

The introduction of a single national quality standard for children's services will ensure the same high-quality standards are met across Australia.

Increased staff-to-child ratios will give each child more individual care and attention, and higher staff qualifications will ensure staff have the skills to lead activities that help children learn and develop.

The introduction of a new national and transparent ratings system will allow families to have access to information relating to the quality of early childhood education and care services so they can make informed choices about their child's care.

The establishment of a new national body will ensure the national quality standard is applied across the country and a more streamlined regulatory approach will reduce the regulatory burden for services.

The national law has been developed in cooperation with every state and territory and the commonwealth under the auspices of the Ministerial Council for Education, Early Childhood Development and Youth Affairs.

It has considered submissions from key stakeholders including representatives of long day care, preschool and out of school hours care providers, parents, employees and child health experts.

The commitment of all parties to these reforms and the collaborative manner of the development of the law is the reason that we have before us a bill that will produce real benefits for children, parents and service providers across Australia.

The national law also continues the approach implemented in Victoria with the amendments to the Children's Services Act in 2008 and the Children's Services Regulations 2009.

Key features of the national law include:

Improving quality and providing access to information

The primary focus of the national law is on ensuring the safety, health and wellbeing of children and providing the optimal conditions at the beginning of their educational and developmental journey.

Long day care, preschool, outside school hours care and family day care providers across Australia are required to be licensed to provide education and care for the children attending their services.

The national law integrates both education and care into early childhood services and establishes a public rating system for services, based on the new national quality standard.

The new national quality standard will contain seven quality areas that will be defined in the associated regulations:

educational program and practice, including the development of programs based on an approved learning framework and taking into account each child's strengths, capabilities, culture, interests and experiences;

children's health and safety;

physical environment;

staffing arrangements, including mandated educator-to-child ratios and qualifications;

relationships with children;

collaborative partnerships with families and communities; and

leadership and service management.

Services will receive a rating for each quality area and an overall rating.

These ratings will be published to inform parents and the community about how well services are providing education and care to children.

Compliance with this law

The bill provides for a strong set of compliance and enforcement tools that vary according to the nature of the issue.

This includes a range of powers for the regulatory authority to prosecute for prescribed offences, issue penalty notices and compliance notices, negotiate enforceable undertakings, suspend or cancel approvals and certifications and undertake emergency actions such as closing or evacuating services.

This range of compliance options ensures the most appropriate and proportional response to any issue that may arise.

The right to internal and external review of decisions of the regulator guarantee the principles of natural justice apply at the same time as ensuring the safety, health and wellbeing of children.

Eliminating duplication and reducing the regulatory burden

A key objective of the national law is to reduce the significant duplication that exists under the current national and state or territory-based regulatory, licensing and approval systems. It will introduce a system of nationally consistent approval processes for providers and services.

The current overlapping functions of the National Childcare Accreditation Council and state or territory regulatory authorities will be streamlined into a two-tier administrative and regulatory system overseen by the ministerial council, which will have overall responsibility for the system.

The new Australian Children's Education and Care Quality Authority will be responsible for the implementation and ongoing administration of the national quality framework and will have a key role in monitoring and promoting its consistent application across Australia.

The second tier of the system is the state and territory regulatory authorities. The regulatory authority remains accountable to its state or territory ministers and will continue to be the main point of contact for services through its operational responsibility for the national quality framework.

The national quality framework includes two types of approval: provider approval, by which a person is permitted to provide an education and care service; and service approval, which permits the provision of a service at a particular premises.

Under the national quality framework, an approval to provide an education and care service is valid in all participating jurisdictions. This means a person or organisation will not have to receive separate approval for each state or territory in which they wish to operate.

In regard to family day care, it is the scheme or service, and not the individual family day care educator that is subject to provider and service approval.

A certification process is also in place for supervisors of a service, whereby the holder of a supervisor certificate is deemed fit and proper to manage the day-to-day operation of a service. Like approved providers, these supervisors will have their certification recognised nationwide, which is an important reform as Australia's workforce becomes ever more mobile.

A nationally consistent approval process for services and supervisors ensures the same minimum requirements must be met across Australia.

Provision is also made for the different circumstances under which service providers operate across Australia with a system of waivers that will allow providers to continue to operate and deliver services to their communities under strictly controlled conditions.

Services that are not currently under the scope of the national quality framework, such as occasional care, three-year-old activity groups and limited hours services at sport and leisure services will continue to be fully or partially regulated under the Children's Services Act 1996.

For those providers that operate services that fall within the national quality framework as well as services that are to remain within the state and territory regulatory regime, such as occasional care, approvals will also be streamlined.

As an example, a provider that operates a long day care service and an occasional care service at the same premises will not be required to seek separate approvals.

To further reduce regulatory burden, existing approved providers and services and certified supervisors will be moved over in a seamless transition from the old system to the new.

Regulations

The regulations to accompany this law are currently being developed and will be subject to consultation in the near future.

These regulations will provide further detail on the national quality standard, the assessment and rating system, staff to child ratios and fees associated with the national quality framework.

Further bills

A further bill will be considered by Parliament next year that will address the consequential amendments to the Children's Services Act 1996 and consequential amendments to Victoria's statute books, and to provide for the associated children's services licences under the new national law.

Conclusion

It is vital that high quality education and care services are available to children and their families.

This bill provides for a new national approach to the regulation, assessment and quality improvement for education and care services.

It provides the right balance between quality and affordability of children's services by focusing on improving the quality of education and care services, providing greater access to information about the quality of services, and reducing the regulatory burden on services.

The cooperative approach to the development of this national law creates a shared responsibility for improving children's educational and developmental outcomes.

In Victoria we have a proud record of commitment to high quality, safe, affordable children's services and in hosting this national law, we are demonstrating our ongoing commitment to ensuring children and families benefit from this important national reform.

I commend this bill to the house.

Debate adjourned on motion of Mr DIXON (Nepean).

Debate adjourned until Thursday, 16 September.

TOURIST AND HERITAGE RAILWAYS BILL

Statement of compatibility

Mr PALLAS (Minister for Roads and Ports) 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 Tourist and Heritage Railways Bill 2010.

In my opinion, the Tourist and Heritage Railways Bill 2010, as introduced to the Legislative Assembly, is compatible with the human rights protected by the charter. I base my opinion on the reasons outlined in this statement.

Overview of the bill

The bill creates a modern regulatory scheme to provide for the sustainability of the tourist and heritage railway sector.

To do this, the bill:

establishes a register of tourist and heritage railway assets;

modernises land tenure and asset allocation arrangements in the sector; and

establishes a voluntary registration scheme for tourist and heritage railway groups.

The asset register will provide a central information source that records detailed information about rail assets used, managed and controlled by tourist and heritage rail groups. The information will be collected by an appointed registrar. The bill also allows groups and individuals to voluntarily list privately owned rail assets on the asset register to maximise information-sharing opportunities in the sector.

Information about state-owned assets listed on the asset register will be available to the general public. Information on voluntarily listed assets will be available to tourist and heritage operators registered with the voluntary registration scheme.

The bill facilitates the replacement of current land agreements for groups operating on Crown land vested in VicTrack with modern community lease agreements comprising common core terms. Existing orders in council made under the Transport Act 1983 will also be replaced with leases. This will provide land tenure security for groups and promote transparency, fairness and consistency in the sector.

The bill also provides for the replacement of existing rail asset agreements with standard leases. Currently, these agreements are largely informal. Assets will not be redistributed; rather, the leases will confirm existing asset arrangements.

The voluntary registration scheme will enable the central organisation of training and education, more strategic and equitable distribution of grants and better access to industry knowledge. Initiatives will be delivered through the scheme. An advisory committee appointed by the director of public transport will provide advice on these initiatives to ensure they target the needs of the sector. The committee will also provide general advice on tourist and heritage rail matters.

Human rights issues

Inclusion of information about assets on the asset register

Section 13(a) — privacy

Section 13(a) provides that every person has the right not to have his or her privacy, family, home or correspondence unlawfully or arbitrarily interfered with.

Clause 10 requires the registrar to list 'the owner' of each rail asset listed on the asset register. For an asset voluntarily listed on the register, the tourist and heritage railway operator that is the custodian of the asset must provide this information to the registrar to have the asset included on the asset register.

Most tourist and heritage rail assets are owned by either the state or tourist and heritage railway operators (which are incorporated associations or companies limited by guarantee). The charter, applying only to natural persons, does not apply to these bodies.

However, in the tourist and heritage railway sector, some rail assets used by tourist and heritage railway operators are owned by individuals.

These provisions may engage a person's right to privacy because they require the disclosure of information of a personal nature. However, in my opinion, the right is not limited because any interference is lawful and not arbitrary. Under clause 14(1), the registrar must not include information about a rail asset owned by an individual in the asset register unless he or she is satisfied that the owner has elected to include the asset (and consequently their own information as the asset owner) in the register. The owner can therefore choose whether or not they participate in the scheme. As such, clause 10 does not, in my opinion, limit the right to privacy of an asset owner.

Clause 11 requires the registrar to make divisions of the asset register available for inspection. Division 1 of the asset register, which will contain information about state-owned rail assets, must be made available to the general public. Division 2, which will detail information about assets owned by tourist and heritage railway operators, must be made available to operators registered with the voluntary registration scheme. Division 3, which will detail information about assets owned by individuals and used by tourist and heritage railway operators, must also be made available to registered operators.

The right to privacy is not engaged in relation to divisions 1 and 2, as they will not contain any information about individuals (rather, they will contain details about associated incorporations and the state). Division 3, by containing information about the individual that owns the listed asset, may engage the right to privacy.

However, as I have discussed above, this does not limit the right to privacy of an individual that owns a rail asset listed on the register. The individual has the right to choose whether or not to list information about any asset the individual owns on the register.

Inspection of premises for purposes of compiling or maintaining the asset register

Clause 16 of the bill allows the registrar, or a person authorised by the registrar, to conduct an on-site inspection of railway premises if the registrar reasonably believes that state-owned assets are held on those premises. This power may engage the right to privacy.

However, the definition of 'railway premises' specifically excludes a 'residential premises', protecting a person's home and family. Clause 16(3) of the bill also requires that the registrar notify the tourist and heritage operator using the railway premises of the proposed date and time of the inspection. The operator must give written consent to the inspection and confirm the date and time of the inspection before it can be carried out. In my view, these restrictions on the registrar's inspection power ensure that a person's right to privacy is not limited.

Information on the tourist and heritage railway group register

Clause 23(1)(e) provides for the person nominated by the tourist and heritage railway operator to be the contact person for the operator and for the registrar to record that person's name on the tourist and heritage railway group register. This clause potentially engages the right to privacy. However the provision of this information is voluntary and is not publicly searchable. In addition, the disclosure of information is of a very minor nature and does not go beyond what is already required of public officers under the Associations Incorporation Act 1981. Accordingly, in my view, the right to privacy is not limited.

Section 20 — property rights

Section 20 provides that a person must not be deprived of his or her property other than in accordance with law. A deprivation of property is in accordance with the law when the deprivation occurs under powers conferred by legislation which is formulated precisely and will not operate in an arbitrary manner.

Clauses 19(2)(h) and 20(4)(g) of the bill provide that land and assets leased to tourist and heritage railway operators under the bill can be reclaimed by the lessor (in this case, VicTrack). Clauses 19(1) and 20(2) provide that VicTrack can only lease land and assets under the bill to tourist and heritage railway operators. As such, these reclamation rights do not engage property rights under the charter. A tourist and heritage railway operator is an incorporated association or company limited by guarantee. The charter does not apply.

Similarly, clause 34(2) of the bill provides for the revocation of an order in council made under the Transport Act 1983 that allows a person to occupy a railway for the purposes of a tourist railway. It is intended that these orders will be replaced with leases under the bill. The right of revocation is currently contained in section 247(3) of the Transport Act. Again, the five groups that currently operate tourist railway services by order in council are incorporated associations or companies limited by guarantee. The charter does not apply.

Conclusion

I consider that the bill is compatible with the Charter of Human Rights and Responsibilities. Provisions of the bill engage, but do not limit, the right to privacy conferred by section 13(a) of the charter.

Tim Pallas, MP
Minister for Roads and Ports

Second reading

Mr PALLAS (Minister for Roads and Ports) — I move:

That this bill be now read a second time.

Introduction

This bill aims to ensure the sustainability of the tourist and heritage rail sector in Victoria. It creates a best practice regulatory framework that promotes the role of tourist and heritage rail groups as a unique and vital part of our integrated transport system.

The bill supports the valuable contribution of the sector to the social, cultural and economic fabric of Victoria. It renews and strengthens the legislation that applies to tourist and heritage rail groups, mobilising the modern policy framework established in the Transport

Integration Act 2010. The bill will ensure the sector continues to prosper and is positioned to meet future challenges.

Policy context — integrated thinking

The government is currently undertaking an active and ambitious review and modernisation of all transport legislation in Victoria — the first holistic review in almost 25 years. The cornerstone of this review has been the recent passage of the Transport Integration Act.

The bill is aligned to the Transport Integration Act's new vision and shared objectives for transport in Victoria. This vision is one of an integrated and sustainable transport system.

A sustainable transport system works to secure ongoing economic, social and environmental benefits for the state. It must promote social outcomes and economic prosperity. The transport system should also support the health and wellbeing of individuals and communities.

The tourist and heritage railway sector makes vital and significant contributions in these areas. Victoria's tourist and heritage railways positively contribute to community spirit and conserve Victoria's heritage for future generations. The groups provide a foundation for local and regional community involvement and make major contributions, both directly and indirectly, to community wellbeing.

The railways also attract local, regional and international tourism, benefiting local business and employment.

The bill renews and modernises legislation applying to the tourist and heritage rail sector to ensure the sector is equipped to make these social and economic contributions both now and in the future.

The tourist and heritage railways sector

The groups that comprise the sector are diverse, but all groups within the scope of this bill share common characteristics.

They are active rail operators with strong heritage objectives, and they attract patronage from tourists and visitors. Indeed, tourist and heritage railways attract more than half a million visitors each year, bringing clear economic value to the state.

Their operations run under not-for-profit organisational structures and revenue from visitors is of primary importance. Typically, the groups draw heavily on volunteers. They also rely on donations, government grants and external funding for capital projects as well as for day-to-day activities.

Tourist and heritage rail operators keenly restore, preserve and operate heritage and other unique types of trains and trams. Approximately 3500 people are actively engaged in operational rail and tram preservation activities in Victoria — as employees, as members and as volunteers.

The sector's story, collectively, is one of success. Victorians can be justly proud of their tourist and heritage railways and the social, economic and cultural benefits they bring to the state.

This bill supports these important not-for-profit groups to promote their ongoing viability. Entities that operate historical or heritage-related rail and tram services primarily as a tourist activity are given new settings under the bill. This includes better arrangements relating to land and asset use, and access to a voluntary registration scheme that will promote improved performance and business practices.

Challenges facing the sector

Operators of tourist and heritage railways and tramways have a long history of resourcefulness and accomplishment. They have built experience and resources over time. Their achievements and their strengths must be recognised.

At the same time, future challenges need to be met to ensure the sustainability of the sector.

Currently, many groups in the sector face a lack of clarity and consistency in relation to their land tenure arrangements, including their land occupancy rights and responsibilities. Groups also encounter difficulties in managing heritage rail assets, including those owned by the state.

The bill aims to deal with these longstanding issues by modernising current settings. The bill provides for the clarification of current land and asset arrangements and aims to empower groups to perform their business management functions effectively.

By establishing a contemporary regulatory framework, the bill facilitates sector sustainability and gives groups opportunities to grow. It also provides a foundation that will allow the sector to build on its strengths and achievements, and continuously improve.

The government has consulted extensively with tourist and heritage railway operators in developing these

reforms. The sector fully supports the introduction of this targeted bill that aims to address their unique situation.

Key features of the bill

The bill provides for new land and asset arrangements in the sector. It establishes an improved, consistent land tenure scheme for tourist and heritage railway operators using Crown land vested in VicTrack. Land arrangements will be crystallised in new 'community leases' that relate specifically to the needs and obligations of tourist and heritage railway operators. These new 'community leases' will replace current, outdated land arrangements including orders in council, and existing leases and licences from VicTrack.

Asset leases covering state-owned assets will also be implemented in the sector, giving groups surety over the assets so central to their operations.

New land and asset lease arrangements will be contemporary and consistent. They will clearly define rights and responsibilities.

The bill establishes a register of tourist and heritage assets, providing a central source of asset information. This will maximise information-sharing opportunities in the sector and support the work of operators in preserving and maintaining their assets and their operations.

The bill also establishes a voluntary registration scheme for tourist and heritage railway operators. Access to training and development packages will be available to registered operators through the scheme. This will help groups to function more effectively in a regulatory environment that has necessarily become more complex over time. In establishing the scheme the bill supports effective business management — a key factor for any sustainable organisation.

The Department of Transport will administer the voluntary registration scheme. The costs of running the scheme will be modest and will be largely absorbed by the department. In recognition of the financial challenges faced by tourist and heritage operators and in keeping with the industry sustainability theme of the bill, any costs to operators will be small.

In addition, the bill will provide groups with better and more equitable access to funding assistance. The bill will not affect current funding arrangements or preclude groups from receiving government grants or benefits through current sources. The bill will, however, ensure that funding is provided to groups in a more transparent and accountable manner.

Conclusion

The settings established by the bill will assist the sector to meet future challenges. They will help groups to develop and maintain critical competencies to manage their operations. However, the new framework will still ensure the independence of the organisations and allow them to work towards their own successes.

Overall, the bill provides a contemporary, practical platform on which the sector can develop with confidence. Its innovative framework creates modern, practical settings for the tourist and heritage railway sector. These settings demonstrate the government's commitment to support and sustain the sector both now and for the benefit of future generations.

I commend the bill to the house.

Debate adjourned on motion of Mr McINTOSH (Kew).

Debate adjourned until Thursday, 9 September.

BAIL AMENDMENT BILL

Statement of compatibility

Mr HULLS (Attorney-General) 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 Assembly, 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.

Rob Hulls, MP
Attorney-General

Second reading

Mr HULLS (Attorney-General) — I move:

That this bill be now read a second time.

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; and

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 on motion of Mr CLARK (Box Hill).

Debate adjourned until Thursday, 9 September.

PERSONAL PROPERTY SECURITIES (STATUTE LAW REVISION AND IMPLEMENTATION) BILL

Statement of compatibility

Mr HULLS (Attorney-General) 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 Assembly, 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.

Rob Hulls, MP
Attorney-General

Second reading

Mr HULLS (Attorney-General) — 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.

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 on motion of Mr CLARK (Box Hill).

Debate adjourned until Thursday, 9 September.

SUBORDINATE LEGISLATION AMENDMENT BILL

Statement of compatibility

Mr HULLS (Attorney-General) 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 Subordinate Legislation Amendment Bill 2010.

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

Overview of bill

The purpose of the bill is to amend the Subordinate Legislation Act 1994 (SLA) to promote greater scrutiny of legislative instruments. The bill proposes to extend many of the requirements which currently apply to statutory rules, so that they also apply to other subordinate instruments of a legislative character (legislative instruments).

The bill will:

require legislative instruments which are likely to impose a significant economic or social burden on a sector of the public to undergo a regulatory impact assessment (through the preparation of a regulatory impact statement or RIS) and public consultation;

require new legislative instruments to be tabled in Parliament;

require new legislative instruments to be published in the *Government Gazette*;

require ministerial certificates, including human rights certificates, accompanying both statutory rules and legislative instruments to be tabled in Parliament and scrutinised by the Scrutiny of Acts and Regulations Committee (SARC);

allow SARC to recommend disallowance of a legislative instrument in certain circumstances; and

allow certain legislative instruments to be exempt from the consultation and regulatory impact statement requirements, in order to focus resources on high impact legislative instruments, and to allow for overriding public interest considerations.

These amendments will provide greater transparency and accountability in the creation of legislative instruments. They will provide an opportunity for the public to comment on the efficiency and effectiveness of regulatory proposals which are likely to have a significant impact.

Human rights issues

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

The right to take part in public life under section 18

Section 18(1) of the charter provides that the right to participation in public life includes the right, and the opportunity, without discrimination, to participate in the conduct of public affairs, directly or through freely chosen representatives. One component to the right to political participation is the right to public involvement in the law-making process. This right is based on article 25 of the International Covenant on Civil and Political Rights. In *Doctors for Life International v. Speaker of the National Assembly and Others* [2006] ZACC 11, the Constitutional Court of South Africa interpreted article 25 as requiring governments to provide for public participation in the law-making process by permitting public debate and dialogue with elected representatives.

This bill enhances the right to take part in public life by facilitating public participation in the law-making process. A key function of the bill is to extend the public consultation process to cover high-impact legislative instruments. The bill increases the community's enjoyment of the right to direct participation in the conduct of public affairs by:

ensuring members of the public who are likely to be affected by a proposed legislative instrument can comment on the instrument and associated regulatory impact statement; and

requiring the government to publicly justify the regulatory and human rights impacts of legislative instruments through the creation of human rights certificates and regulatory impact statements.

The bill also protects and promotes the right to public participation through freely chosen representatives, by creating new obligations for legislative instruments, and certificates accompanying statutory rules and legislative instruments, to be tabled in Parliament and scrutinised by SARC.

Freedom to receive and impart information and ideas under section 15(2)

Section 15(2) provides that every person has the right to freedom of expression which includes the freedom to seek, receive and impart information and ideas of all kinds.

The freedom to receive and impart information and ideas under section 15(2) of the charter has been held not to create a positive obligation on the government to create documents, collect data or disseminate information which has not been sought (*XYZ v. Victoria Police (General)* [2010] VCAT 255).

The bill goes beyond what is required to uphold the freedom to receive and impart information and ideas, by including a new obligation for the government to prepare regulatory impact statements and to table certificates associated with legislative instruments, including human rights certificates.

The bill also includes a new requirement for legislative instruments to be published in the *Government Gazette*. This enhances the public's access to legislative instruments and thereby strengthens the community's ability to participate meaningfully in public affairs.

Increased protection for human rights generally

By providing for the tabling and scrutiny of human rights certificates, the bill ensures high-quality human rights analysis occurs throughout the public sector and ensures increased respect for human rights in the creation of legislative instruments. The bill also provides stronger protection for human rights by giving SARC the power to recommend disallowance of part or all of a legislative instrument if it considers it is incompatible with the charter.

In addition, the increased enjoyment of the right to take part in public life, as provided for in the bill, will have a positive effect on the community's enjoyment of human rights generally. This is because affected members of the public will have a greater opportunity to comment on the human rights impacts of proposed high-impact legislative instruments. Issues arising out of the public consultation process will then inform a human rights assessment of the proposal.

Exemptions

The application of the new requirements for public consultation and increased parliamentary scrutiny is affected by certain exemptions. Accordingly, the bill allows for:

specified classes of instrument to be excluded from the definition of legislative instrument;

ministerial certificates exempting legislative instruments from public consultation requirements; and

regulations exempting legislative instruments from all or some of the SLA requirements.

While these exemptions affect the scope of the new public consultation requirements for legislative instruments, I do not consider that these exemptions limit the political rights discussed above. These rights allow for Parliament to have discretion in determining how best to fulfil its duty to facilitate public involvement.

An exemption certificate can only be issued under certain circumstances that are set out in the bill, including that the minister is of the opinion that the proposed legislative instrument would not impose a significant economic or social burden on a sector of the public. The other exempt circumstances set out in the bill are deemed to be situations where it is either unnecessary to undergo a consultation process or counterproductive to the proper and efficient functioning of government to undergo a consultation process, such as in a situation of public emergency. Any exemption certificate must specify the reasons for the exemption. The Premier may also issue an exemption certificate on the grounds that, due to the special circumstances of the case, the public interest requires that the proposed legislative instrument be made without complying with the new requirements for public consultation and scrutiny. This exemption certificate also requires the reasons for the issuing of the certificate to be specified.

I consider that these exemptions reflect a balance between promotion of the right to participate in public life, to the greatest extent possible, and the efficient use of government resources for the scrutiny of proposed legislative instruments that are likely to impose a significant burden on the public. Accordingly, the bill does not limit or restrict the existing enjoyment of the right to participation in public affairs, the freedom to receive and impart information, or any other rights.

Conclusion

I consider that the bill is compatible with the Charter of Human Rights and Responsibilities because it does not limit any human rights under the charter. Instead, the bill creates a new avenue for the enjoyment of the right to participate in public life under section 18 of the charter and protects and promotes the freedom to receive and impart information under section 15(2) of the charter.

John Brumby, MP
Premier

Second reading

Mr HULLS (Attorney-General) — I move:

That this bill be now read a second time.

Efficient and effective regulation is essential to improving the competitiveness of the Victorian economy while meeting community needs. Victoria has a history of excellence in regulatory reform. The Subordinate Legislation (Review and Revocation) Act 1984 placed Victoria at the forefront of such reform by being one of the first jurisdictions in the world to legislate for the provision of a regulatory impact statement (RIS). The Subordinate Legislation Act 1994 again introduced significant changes to the regulation making process. This included the requirement that responsible ministers ensure that independent advice is obtained as to the adequacy of RISs and that the responsible minister ensure that the requirements of the act have been met, including that RISs adequately assess the impact of regulations.

There have been considerable developments in Victoria's regulatory framework over the years. These include the establishment of an independent regulatory review body known as the Victorian Competition and Efficiency Commission (VCEC), the development of the business impact assessment process which scrutinises primary legislative proposals and the Reducing the Regulatory Burden initiative. In 2006, the Victorian government was one of the first jurisdictions in Australia to introduce regulatory targets with the Reducing the Regulatory Burden initiative. We are on track to cutting the net administrative burden of red tape by 25 per cent. Accordingly, in September 2009, the government set a bigger target of reducing regulatory burden by $500 million per annum by July 2012, including substantive compliance costs and delay costs.

These developments demonstrate our commitment to reducing the regulatory burden and have helped maintain Victoria's business competitiveness. Now is the time to introduce the next stage of regulatory reform to continue our leadership in this area. The reforms proposed in this bill confirm Victoria's longstanding commitment to best practice regulation by extending the existing quality assurance processes and providing Parliament with a greater ability to scrutinise the decisions made by the government.

The bill builds upon Victoria's position as a leader in regulatory reform and extends the current scrutiny of the Subordinate Legislation Act to legislative instruments that are made under a power delegated by Parliament. The bill also implements the government's response to the Scrutiny of Acts and Regulations Committee's (SARC) inquiry into the Subordinate Legislation Act and takes into account the views expressed through the public consultation process. The reforms included in the bill will enhance the transparency of the making of legislative instruments, provide more opportunity for public feedback and enable parliamentary scrutiny of government decision making. While this significantly increases scrutiny of government action, this government is not afraid of being open, transparent and accountable.

Currently, the Subordinate Legislation Act subjects statutory rules (or regulations) to scrutiny. Subordinate legislation — that is, laws made in circumstances where the Victorian Parliament has delegated the law-making power to another person or body — is a vital regulatory tool. The act currently applies a range of scrutiny and consultation processes to some, but not all, types of subordinate legislation made in Victoria.

The changes in the bill will mean more types of subordinate legislation that have a significant burden on the public will be the subject of analysis, public consultation and scrutiny through the regulatory impact statement (RIS) process. There will be a consistent level of scrutiny for all subordinate legislation based upon an instrument's potential impact, rather than its legal form. This will increase opportunities for identifying better regulation and help to prevent the introduction of unnecessary regulatory burden.

To do this, the bill introduces a process for legislative instruments that parallels the existing process for statutory rules under the act.

An exposure draft of the bill was released for public consultation late last year for a period of 60 days. The Victorian government's response to the public consultation has also been released and is available on the Department of Premier and Cabinet website. A total of 15 submissions were received, all of which have been carefully considered by the government. Seven submissions strongly or generally supported the proposed changes while no submissions specifically opposed the proposed changes, although several submissions raised particular issues about the proposed changes.

Many issues raised during the public consultation relate to the implementation of the reforms to ensure its success in achieving the desired goals. However, one important change to the bill has been made as a consequence of consultation.

The trigger for the RIS requirements of the act will be revised from 'appreciable economic or social burden' to 'significant economic or social burden'.

The terminology in the act is being modernised. The reference to 'appreciable burden' being changed to 'significant burden' provides a more modern terminology and aligns with the business impact assessment process for primary legislative proposals required under the *Victorian Guide to Regulation*. SARC has indicated that this change will not unduly affect the scrutiny process.

Guidelines made under the act (known as the *Premier's Guidelines*) and the *Victorian Guide to Regulation* will continue to provide support to the interpretation of what constitutes a significant burden. Under this reform, the definition will be made clearer and more robust to ensure that the RIS process better targets instruments that have a significant impact. The Premier will issue revised *Premier's Guidelines*, and the Treasurer and the Premier will also issue a revised *Victorian Guide to Regulation* to assist in the interpretation of what constitutes a significant burden.

Victoria has used the RIS as a tool to rigorously assess regulatory proposals contained in statutory rules since 1985. The RIS process has been shown to improve the quality of regulation. The VCEC helps identify, and reports on, improvements to regulations as a result of the RIS process, such as where lower cost or more effective alternatives have been identified while still meeting policy objectives. VCEC notes these successes in reducing the burden of regulation in its annual reports. The adequacy of the analysis contained in the RIS for legislative instruments will be independently assessed by the VCEC, as is currently the case for statutory rules.

The bill requires the RIS and the proposed legislative instrument to undergo a minimum public consultation period of 28 days. While this has been standard practice for statutory rules, in many cases this will be the first time that the public can comment on other types of proposed subordinate instruments. Public consultation on proposed legislative instruments will increase government accountability and transparency by exposing the merits of decisions, assumptions and analysis used to make those decisions.

The bill also recognises that it may not be practical or desirable to subject all delegated instruments to the RIS process. It therefore provides for a sensible system of ministerial exemptions which mirrors the current system for statutory rules. This will allow the RIS process to target those instruments that have the most significant impact on the community, as well as ensuring that public safety is not compromised. For example, exemptions can be provided if the proposed legislative instrument is of not more than 12 months duration and is necessary to respond to: a public emergency; an urgent public health or safety issue; or potential or actual significant damage to the environment, resource sustainability or the economy.

The bill elevates the standard of scrutiny for legislative instruments to either the standard of the Subordinate Legislation Act or the instrument's authorising act, whichever provides the greatest level of scrutiny. For example, a legislative instrument that is required to undergo 60 days consultation in its authorising act will still undergo the 60 days consultation instead of the 28 days provided for by the Subordinate Legislation Act. VCEC will continue to undertake independent assessments of the adequacy of analysis to ensure a consistent level of rigour in analysis.

Another feature of the bill is a major enhancement of Parliament's ability to scrutinise subordinate legislation. The bill will generally require that, when a legislative instrument is made, a copy of the legislative instrument and any accompanying ministerial exemption certificate must also be laid before each house of the Parliament.

To further improve parliamentary scrutiny of legislative instruments, SARC's role will be extended to ensure that those responsible for making legislative instruments comply with the new requirements. The bill gives SARC the power to recommend the whole or partial disallowance of a legislative instrument to Parliament, as is currently the case for statutory rules.

Currently SARC can make recommendations to Parliament in relation to statutory rules on a very broad range of grounds. To offset the likely increase in SARC's workload due to the proposed reforms, the bill provides more targeted grounds of review in relation to legislative instruments. Under the bill SARC can report to Parliament regarding whether a legislative instrument:

appears to exceed the power authorised by the enabling act or statutory rule;

without clear authority in the enabling act or statutory rule, has retrospective effect, imposes penalties, shifts the burden of proof to an accused, or provides for subdelegation of delegated powers;

is incompatible with the charter of human rights; or

has been prepared in substantial or material contravention of the act or the Premier's guidelines.

To assist instrument makers, the government will prescribe in regulations under the act a list of:

legislative instruments subject to the act;

legislative instruments exempt from specified requirements of the act; and

administrative instruments, which are not subject to the requirements of the act.

The lists aim to capture as many instruments as possible; however, they are not intended to be exhaustive. The lists will provide an easily accessible source for instrument makers to refer to when considering whether or not their instrument must undergo the scrutiny processes under the act.

To further support departments and to enable a smooth transition to the new regime for legislative instruments, a two-year transitional period from the commencement of the new legislative instrument requirements is provided for in the bill. During this two-year transitional period, no legislative instrument can be

invalidated on the basis of an incorrect assessment of legislative character. The government will endeavour to meet the new requirements of the act from their commencement. However, the government considers that the risk of mischaracterisation of instruments will be highest in the early stages of implementation, during which departments and agencies will be adjusting to the new regime.

A final feature of this bill is the improved protection of human rights. Currently ministers prepare human rights certificates for statutory rules. The bill will extend this requirement to legislative instruments. Human rights certificates will also be required to be lodged with SARC and tabled in Parliament for both statutory rules and legislative instruments.

The Subordinate Legislation Amendment Bill 2010 represents the government's leadership in regulatory scrutiny and its continuing commitment to transparency and accountability.

I commend the bill to the house.

Debate adjourned on motion of Mr CLARK (Box Hill).

Debate adjourned until Thursday, 9 September.

Remaining business postponed on motion of Mr WYNNE (Minister for Housing).

ADJOURNMENT

The SPEAKER — Order! The question is:

That the house do now adjourn.

Public transport: Doncaster electorate

Ms WOOLDRIDGE (Doncaster) — I rise to ask the Minister for Public Transport to genuinely investigate the provision of rail services to Doncaster residents. While I welcome the news that improved bus services will finally begin in October, after years of community and opposition campaigning to get Doncaster area rapid transit services under way, these changes fall well short of the recommendations of Sir Rod Eddington that the frequency and hours of operation should be similar to tram and train services in surrounding municipalities. The city of Manningham is the only metropolitan council area that has no type of rail service, and residents are still being short-changed in terms of public transport choices. This government has chosen to give only one choice to Doncaster residents — a bus service. As a result, public transport patronage in the city of Manningham is approximately 15 per cent below the Melbourne average and less than the neighbouring municipalities that have fixed rail.

Rail services could be the train or a tram. While there is considerable debate on extending the no. 48 tram to Doncaster Shoppingtown, the state government has dismissed the idea, saying the Doncaster Road gradient is too steep. In 2006 the then Minister for Public Transport also asserted that the cost would be $60 million, but when I asked in Parliament for further details of the costing the response was, 'This project has not been scoped or costed in detail'. The Manningham City Council, led by a former ALP staffer as mayor, has felt compelled to take on the state government's role and has done a couple of studies; however, the conclusions focused on the fact that the Brumby government would not support the tram so the idea should not be further pursued.

Another option is a rail line to Doncaster. Rail was first considered over 100 years ago with a plan for a link from Kew to Doncaster running along what is now the Eastern Freeway, but in 1982 the Cain government announced that it did not intend to build the railway, despite having already paid out millions in land and compensation payments, and it subsequently sold the land. A 1991 study by Professor Bill Russell recommended the building of a rail line between Doncaster Shoppingtown and Clifton Hill. Sir Rod Eddington argued in 2008 that a rail link would not provide value for money.

However, the Eastern Transport Coalition, representing seven eastern councils including Manningham, recently presented to this government a 60-metre-petition with more than 13 000 signatures calling on it to address the significant gaps in the provision of and planning for public transport in the eastern suburbs, including a commitment from the government for a full and public feasibility study for a heavy rail line to Doncaster. The Public Transport Users Association, which was set up in 2004, has long advocated for a heavy rail line to Doncaster, as well as an extension of the no. 48 tram, arguing that it is the only way we can reduce car trips in the north-east and provide a decent alternative for Manningham residents.

It is clear there is considerable difference of opinion and competing studies with varying views on this issue, but there is widespread community support for further public transport options for Doncaster residents. I call on the government to undertake a detailed feasibility study on rail options for Doncaster, focusing on what additional rail-based public transport will meet the needs of Doncaster residents. To do anything less is to treat Doncaster residents with disdain.

Housing: homelessness strategy

Ms HENNESSY (Altona) — I raise a matter for the attention of the Minister for Housing, who is also the Minister for Local Government. The action I seek is for the minister to take steps to increase the provision of housing for homeless people in my electorate. At the last census over 20 000 people were recorded as homeless in Victoria. Of this number some are sleeping in parks and cars, some are residents in crisis or rooming house accommodation and some are couch surfing and have no stable lodgings.

People can become homeless for many reasons, including a lack of affordable housing, losing a job, the breaking down of a relationship, family violence and mental health challenges. We know that more and more families are becoming homeless as prices in the private rental market continue to soar. According to the Real Estate Institute of Victoria the vacancy rate in the inner city is hovering at around 1.5 per cent. This means that if you are on a low income, it is practically impossible to find a rental property. Some low-income people in my electorate are struggling to find safe, good-quality, affordable housing in the private rental market. As a result we have seen more families resort to rooming house accommodation. Rooming house accommodation varies greatly in quality, safety and amenities. We know that some rooming houses run by community house providers such as Yarra Community Housing are very good. However, there are some private operators that run substandard rooming houses.

As members of the house are aware, the Brumby government is taking action to improve the standards in the rooming house sector and seeks to boost the supply of good-quality rooming house accommodation. The $77.2 million committed by the Brumby government to tackle this problem is currently being spent on a range of programs, including the building of 200 new properties under the Nation Building program, the provision of intensive case management to assist up to 400 families to move out of rooming houses, the introduction of new minimum standards for all rooming houses, a private rental brokerage program and purchasing rooming houses to be run by the Office of Housing or the community sector to provide better quality options for homeless people. The rooming house reforms will significantly improve the range of accommodation options for homeless people as well as provide more support for people in rooming houses.

For people who are homeless in my electorate and right across the state the first and most crucial thing they need is access to good-quality long-term housing. We know that the impact of churning through the homelessness system and moving from place to place is detrimental to the health and wellbeing of vulnerable people. Furthermore, it is an insult to their dignity. The action I seek from the minister, who I am happy to see is in the house this evening, is that he take steps to increase the provision of housing for homeless people in my electorate and right across Victoria.

Buses: Geelong–Colac service

Mr MULDER (Polwarth) — The matter I wish to raise is for the attention of the Minister for Public Transport and relates to a proposed bus service to cater for university students living in the Colac region but being educated at Deakin University in Geelong. My office has been contacted by students and parents outlining their concerns, especially in relation to students having to wait around for hours to catch a train service back to Colac after completing their day's studies.

Having had discussions with bus operators, I understand that a sticking point may well be the fact that a bus service leaving Colac in the morning would have the vehicle and driver idle in Geelong until the afternoon service returned to Colac. On that basis I would ask the minister to investigate the possibility of a cooperative approach among our regions' bus operators to assess if it would be possible for a driver from Colac to be engaged by one of the Geelong operators throughout the day in order to deal with the down time between the arrival and departure of the bus from Colac. Naturally driver fatigue laws would have to be considered as part of any proposal.

History tells me that the members of Bus Association Victoria are responsible and community-minded citizens, with many of the operations being handed down from generation to generation. If you are going to get a cooperative approach to a community problem, your starting point would be the bus operators. It may well be simply a matter of two operators cooperating in order to arrive at a positive outcome for Colac and district students. Any investigation should also consider the plight of students from the Birregurra and Winchelsea areas.

Student course enrolments at Deakin's Geelong campus at Waurn Ponds show that in 2009 it had 34 students enrolled from the Colac, Colac East, Colac West and Elliminyt areas alone. Some of these students take the early train to Geelong, but as I pointed out earlier they endure a long wait for the evening train home. Currently the morning V/Line train leaves Colac for Geelong at 7.02 a.m., with return trains leaving Geelong at 2.15 p.m. and 7.31 p.m. I would expect any

examination of a proposed bus would also consider the ability to cater for additional train services on the Geelong–Warrnambool line, but I understand the complexities surrounding the current lack of passing loops and the requirement to provide pathways for freight trains.

Frankston Hospital: funding

Dr HARKNESS (Frankston) — Tonight I raise a matter for the attention of the Minister for Health. The action I seek is that the minister ensure that Frankston Hospital continues to access state-of-the-art medical equipment. I am aware that the hospital is particularly keen to replace a number of beds as well as pumps and ventilators. I am also very well aware that the minister is cognisant of the extremely high standard of care provided at Frankston Hospital. In fact Peninsula Health is the only health service to win the prestigious Premier's health service of the year award on not one but two occasions.

The stage 1 redevelopment of the hospital, completed in 2002, has delivered a whole range of things for the hospital, including a new 60-bed general adult ward, a new 15-place observation ward for the emergency department, new integrated maternity facilities, a 13-cot special-care nursery and a new 17-bed paediatric unit. An amount of $45 million in capital funding was provided in the 2007–08 state budget, and work on this important second stage of the hospital rejuvenation is drawing to a conclusion. It will certainly benefit the patients, surgeons, doctors and nurses at Frankston Hospital, allowing them to enjoy a whole range of new facilities by the end of the year at the latest. This stage will include two additional surgical theatres, refurbishment of the existing four theatres, a new surgical reception and waiting area, a new centralised 33-bed and 7-chair recovery suite, a new 13-bed intensive care unit, new cardiac angiography facilities and much more.

I must take the opportunity to congratulate the chair of the board, Barry Nichols, and his colleagues as well as the chief executive, Dr Sherene Devanesen, and all the staff and volunteers, including the wonderful pink ladies at the hospital, for all the hard work they do. They have been doing an absolutely tremendous job providing a busy and well-functioning hospital, which is also a busy work site. This is not without its challenges, and they have been doing a remarkably great job.

However, it is not just new buildings that are important in delivering high-quality health care. It is also what is funded in terms of what goes into the buildings, and it is crucial to have the best possible and best quality medical equipment. I am aware the Brumby Labor government has committed $225 million over four years to replace medical equipment throughout hospitals and to help upgrade buildings and engineering infrastructure. Additional equipment at Frankston Hospital will certainly allow the nursing and surgical staff to provide the best possible patient treatment and diagnosis. I reiterate to the minister the importance, as a part of this commitment, of ensuring additional funding for Frankston Hospital so it can continue for many years to come to provide the quality health services that are so needed by residents in my electorate of Frankston.

Lord Nelson Park, St Arnaud: clubhouse

Mr WALSH (Swan Hill) — The issue I want to raise tonight is for the Minister for Community Development in regard to an application in the minor category to the community facility funding program. It is for a project called A Clubhouse for the Community at Lord Nelson Park in St Arnaud. It is to replace an old shed which was badly damaged in a windstorm last summer and is now very unsightly and barely usable, with one end so badly twisted the doors at that end will not open.

The shed, at the end of the football ovals, is used by the hockey club, with about 100 players playing hockey in winter. In the summer it is used by the little athletics club at St Arnaud with about 50 young people involved. It is used too by the junior cricket club; its members play cricket on the hockey field over summer. It is used also by the senior cricket club to store its equipment, because the shed is adjacent to the practice nets at that end of the ground.

Both the primary and secondary schools at St Arnaud also use this facility for their school sport. Each year there is a large inter-school cross-country event held at St Arnaud, and something like 800 competitors per year come to St Arnaud for it. The shed is at the start and finish line and is used for all the administration on that day.

The new building will be about 12 metres long and 6 metres wide and will have a 3.5-metre veranda at the front to provide some protection from the elements through the year. The total cost of the project is $60 000. The Northern Grampians Shire Council is putting in $10 000, the hockey club is putting in another $10 000 and the grant application is for $40 000. The project missed out in the last round of funding; it was felt there was not enough community involvement. However, with the addition of the cricket club and the little athletics club the shire is very hopeful of getting a

positive result. I look forward to a positive outcome from the Minister for Community Development on this very important project for the young people of St Arnaud.

Narre Warren-Cranbourne Road: duplication

Ms GRALEY (Narre Warren South) — The matter I wish to raise tonight is for the attention of the Minister for Roads and Ports and concerns Narre Warren-Cranbourne Road in my electorate. The action I seek is that the minister request that VicRoads review the needs of the local community in terms of access to a duplicated Narre Warren-Cranbourne Road.

The City of Casey is a fast-growing area. The high rate of population growth has resulted in the need to urgently upgrade and expand road and transport infrastructure in the local area. The Brumby Labor government's Victorian transport plan provides $1.9 billion for this purpose, which is a significant commitment to Melbourne's outer suburbs. The Baillieu Liberal opposition has pledged to scrap this plan, which will mean no road improvements for the outer suburbs. With the duplication of Clyde and Hallam roads now funded in the state budget and under the Victorian transport plan, Narre Warren-Cranbourne Road is the highest priority for a duplication project.

The duplication of Narre Warren-Cranbourne Road from the Princes Highway to Pound Road has been completed; it was a $29.4 million project. These are very expensive road projects. The remaining 4 kilometres from Pound Road to Thompson Road must now be duplicated. This one-lane stretch of road has seen a lot of development in the past, and there is development planned into the future, including the planned major redevelopment of the Casey Central Shopping Centre.

Over the past four years I have received many emails, letters and phone calls from local residents, all in favour of the duplication of Narre Warren-Cranbourne Road. Scott Hughes has said to me:

> … I believe the road is in desperate need of duplication. Key reasons for this being the increased growth in new estates being established all the way to Cranbourne and now beginning on the eastern side of the road. Also, the impending redevelopment of Casey Central shopping centre which will increase heavy vehicle traffic during a long construction and then higher traffic numbers when the centre opens. It is vital this road is ready for these developments.

Similarly, Jim Dodge wrote to me and said:

> My main concern is Narre Warren-Cranbourne Road from Pound Road through to Thompson Road. This now become a complete nightmare during peak times — The traffic is at a standstill from Pound Road to Ormond Road. Last week it took me 25 minutes to travel from Pound Road to Thompson Road.

These are two of many similar messages from my constituents.

In 2009 this stretch of road recorded 25 500 vehicles per day — a rate that is expected to climb to between 45 000 and 55 000 by 2031, which is effectively double. The congestion on Narre Warren-Cranbourne Road causes a lot of frustration. I commend VicRoads for taking on the issues raised by my local residents at a recent public meeting, especially the issue of entering and exiting Hillsmeade and Galloway drives, timing delays at the traffic lights at the corner of Narre Warren-Cranbourne Road and Littlecroft Avenue, and Country Fire Authority access for the new fire station. I ask that the minister request VicRoads to review the needs of the local community in terms of the need for access to a duplicated Narre Warren-Cranbourne Road.

Planning: Malvern electorate

Mr O'BRIEN (Malvern) — I raise a matter for the attention of the Minister for Planning, and the action I seek is for the minister to amend planning policies that are imposing inappropriate high-rise, high-density developments across my electorate.

The Brumby government has a fetish for development along transport corridors. We have seen this with its planning schemes and its Melbourne 2030 policies. What is concerning is that as a result of Labor's neglect of transport infrastructure, including roads and public transport, areas cannot cope with existing resident numbers. Imposing high-density developments will only exacerbate this problem and further threaten local amenity.

I recently spoke to the house about the concerns of residents in the vicinity of a development proposal at 590 Orrong Road in Armadale which seeks to place around 500 apartments on what is currently an office site near Toorak station. However, as any local resident can tell you, boarding a train from that station during peak hour is hard enough as it is due to overcrowding. This is a government that has planning policies that do not recognise its failures in infrastructure, particularly in transport.

Recently I have been contacted by a number of very concerned local residents regarding a planning application for 857 Dandenong Road, Malvern East. This site currently houses a one-storey service area for New Oak Ford. What is proposed in its place is:

> … an eight-storey building containing 118 student accommodation units, a shop at ground level, 16 car spaces and 30 bicycle spaces. The application also seeks a reduction in the car parking requirements.

By my calculations this proposal provides fewer than 0.14 car spaces per unit and barely 0.25 bicycle spaces per unit. For this government to believe that students do not drive cars and do not ride bikes shows how out of touch it is. The sorts of dispensations which are sought in this application in relation to car parking will ensure that all the local residential side streets will become traffic hazards for local residents. The ability of existing local residents to park their cars, to have visitors and to safely access their homes will be threatened if this proposal goes ahead. But because this site happens to be near a tram line and is not too far from a train station, the Brumby government's planning policies encourage this sort of thing to go ahead, and hang the consequences for all the existing residents.

In fact as recently as 31 August the Minister for Planning said in the other place:

> … what is common along Toorak Road between Punt Road and Orrong Road is probably that it is medium density.

I am advised that — —

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

Housing: affordability

Ms CAMPBELL (Pascoe Vale) — I raise a matter for the attention of the Minister for Housing, and the action I seek is that he continue to work for more affordable housing within the city of Moreland and to work alongside the council, private providers and his office as well as my office in any attempt to increase affordable housing in Moreland.

At the outset I want to congratulate and recognise the minister's commitment to and results in providing affordable housing and increasing the availability of housing stock. I acknowledge and applaud the economic stimulus measures which have resulted in vast improvements to numbers and quality of affordable homes. It is an initiative that was undertaken by a state Labor government and a national Labor government — something we should never lose sight of. It is Labor that delivers affordable housing, and this minister has been integral to that.

I have had an interesting email from the Hotmail account of Mr T. Jones. It is a fascinating email that is very detailed. I have forwarded it to the minister, and I have suggested to him that it would be a good idea if we place on record in this Parliament some of the suggestions that have come from the Hotmail account of Mr Jones. In his email to me he wrote that it is important that there be affordable housing within the federal electorate of Wills and the state seat of Pascoe Vale, and I agree with Mr Jones about that. He pointed out also that in the 2006 census many people were recorded as being homeless in Moreland; Mr Jones is a very well-informed man. He also quoted the National Housing Supply Council's 2008 supply report. He stated:

> … the number of social housing required to keep pace with low and medium household growth against actual projected social housing dwellings are increasingly becoming a bigger gap.

He then went on to say:

> The national affordable housing agreement commits governments to ensure that people who are homeless or at risk of homelessness achieve sustainable housing and social inclusion.
>
> For many members of our community this most basic human need has become attainable or has been put — temporarily and/or permanently — beyond their reach.

That is something that would be of concern to the minister. It is of concern to me, and I am sure it is of concern to people on our side of the house. I ask the minister to explain to us what he is doing for affordable housing.

Mount Martha: beach protection

Mr MORRIS (Mornington) — This evening I again want to raise the saga — and unfortunately it has become an epic saga — of the Mount Martha Beach North situation. It has been at least five years in the making and probably more than that, and despite some activity, and there certainly has been some activity in recent months, unfortunately there has been no tangible improvement in conditions at all.

The matter I raise this evening is for the attention of the Minister for Environment and Climate Change, and it is in relation to the distressing state of Mount Martha Beach North. The action I seek is that the minister immediately put in place an effective coastal protection measure or measures that will meet the government's commitment to restore the beach. I have raised this issue on many occasions over the last three and a half years, most recently yesterday during a 90-second statement. The action, which has been required for some time, has now become critical.

As far back as July 2008 a consultant's report from GHD indicated that in its view, and these are its words not mine, 'The cliffs at Mount Martha Beach North pose an unacceptable risk'. A number of options have been canvassed in various reports commissioned by both the Department of Sustainability and Environment

and some groups of local residents and beach users. Several options have been proposed, including the construction of a groyne or an artificial reef to replace the natural reef which formerly protected the beach but has now worn away.

The decision was made to go ahead with the transport of sand from Mount Martha Beach South. The relocation of some 15 000 square metres of sand was supposed to be supplemented by cliff stabilisation works, including geotextiles, a sandbag wall and a safety fence, plus reinstatement of public access. It appears that despite the indication that 15 000 cubic metres of sand would be moved, only about 9500 cubic metres has in fact been relocated since April, and there have been no other works.

The situation now is that all this sand appears to have gone and the water is back up to the cliff. There have recently been cliff collapses at Daveys Bay in the north of my electorate and on the southern section of the esplanade. We need to get something done. We need to know the minister has a plan that works. We need to know what his intentions are and what work has actually been done compared to works promised. We need to know whether the minister will consider if his plan so far is working, what the other options are and whether the groyne and the artificial reef options need to be revisited, but most of all we need a quick response because we simply cannot run the risk of the cliff collapsing further.

Diamond Hills Preschool: funding

Ms GREEN (Yan Yean) — I wish to raise a matter for the attention of the Minister for Children and Early Childhood Development. The action I seek is for her to give consideration to funding the Diamond Hills Preschool, through the Nillumbik Shire Council, under the 2010–11 Children's Capital program renovation and refurbishment grants.

Diamond Hills Preschool provides a nurturing, stimulating, educational, play-based program where the children are an integral part of a fun, developmentally appropriate early childhood curriculum. Diamond Hills Preschool is based in Greensborough and is a well-known and respected preschool within the Nillumbik shire. What makes Diamond Hills Preschool so special, and I have seen this firsthand on my numerous visits, is that it offers a warm, creative environment with long-serving staff who are committed to individual children's early education.

The preschool is a family-oriented centre, has innovative programs and is in a quiet location. It is well equipped and has a large playground, including a wet river play area. An added bonus is the kindergarten rabbit called Smudge. The preschool has ample parking and air conditioning and is committed to a SunSmart policy. It has dedicated volunteer committee members.

Diamond Hills Preschool is also in a great education precinct. Nearby is the magnificent Apollo Parkways Primary School, which has recently been upgraded with state and federal money. The Diamond Valley Special Developmental School is nearby and so is the Northern Melbourne Institute of TAFE, which has a campus at the rear of the centre.

I want to thank the minister for her commitment, and indeed the commitment of the Labor government, to capital upgrades at Whittlesea and Diamond Creek and for the not one but five children's centres in my electorate, including one in South Morang and one in Mernda which was recently opened by the minister. There is also one under construction at Lorimer next to Doreen Primary School. We have two other centres at the planning stage in Whittlesea and Hurstbridge. I believe we have a great record of investment in our children and their services, and I urge the minister to consider funding proposals from the Nillumbik Shire Council.

Responses

Mr WYNNE (Minister for Housing) — The member for Altona raised with me the pressing question of homelessness. I thank her for raising this matter and for her strong advocacy over a very long time for supporting the most vulnerable in our community. As we know, the government is committed to ensuring that all Victorians have safe, secure and affordable housing.

We are taking very significant actions to support low-income and vulnerable Victorians. It is quite appropriate that the member for Altona points out that people become homeless for a whole range of reasons and that the homeless population is very diverse. Young people are becoming homeless, families become homeless and older people, as well as single adults, fall into homelessness. We know that members of each of these groups require different responses to solve their homelessness and to ensure that they do not fall back into homelessness.

The member for Altona referred to some of the initiatives that are currently under way to increase the supply of rooming house accommodation and provide support for individuals and families currently living in rooming houses. The Foley review of rooming house

standards did excellent work, and our government made a fantastic commitment to implementing all of its recommendations. Not only was it an excellent review which made very tangible recommendations but there was also a very strong financial support package to ensure that we deliver in full on the outcomes of the Foley review.

I am pleased to advise the member for Altona that the Office of Housing has purchased a rooming house in Altona as part of the $10.7 million commitment from the Victorian property fund, which was part of the Foley review. This rooming house will be rebuilt to create around 70 new self-contained apartments for vulnerable people in the member's electorate. Importantly, these new homes will have supports attached to ensure that tenants have access to the services they need to sustain their tenancies.

Whilst this development will start very shortly, as the member for Altona knows very well there is another iconic supportive housing project that opened only two weeks ago. Two weeks ago I, along with the Premier, was incredibly proud to be part of our government as we opened our first Common Ground project at 660 Elizabeth Street in Melbourne. This $56.8 million project is tangible evidence of this government's deep commitment to addressing homelessness. The Common Ground project is a new apartment building that provides 131 new homes for vulnerable Victorians; 65 of those homes are for chronically homeless people, 66 units are for a mix of singles and families on low to moderate incomes and a further 30 apartments will be for low-income families.

The crucial thing about this facility is that there will be 24-hour on-site staffing to ensure safety and security, support staff providing case management services to individual tenants on site, a range of communal facilities, health services and tenancy management. What do we know about these Common Ground supportive housing facilities? We know from the experiences in the United States, where there have been extensive longitudinal studies of supportive housing, that when you put in place safe, affordable and secure housing for vulnerable people, when you wrap around those people — and we are talking about chronically homeless people who have had successive episodes of homelessness — the range of on-site services that they need, whether they be drug and alcohol services, mental health services, medical services or employment services, those people sustain their tenancies, get better and go on to live productive lives. This is a crucial aspect of our supportive housing model.

We understand that when you make that investment up front and sustain people's tenancy and they get better, they do not constantly cycle through homeless services or the range of broader interventions of the state, whether they be interactions with the criminal justice system, the prison system, the casualty wards of our hospitals or our mental health institutions. These are tangible savings that accrue to the state through that form of intervention. We know this because of the longitudinal studies that have been done in the United States. With the Common Ground project in Elizabeth Street we intend to undertake a similar longitudinal study to ensure that what we are calling the Melbourne model of Common Ground achieves similar outcomes.

The 70-unit supportive housing development that we will be constructing at Altona is again another example of what we are doing, albeit on a different and smaller scale. It is not a high-rise building but a broader campus style of redevelopment. We will be able not only to provide high-quality services to many vulnerable people in the electorate of the member for Altona but also to learn from the Common Ground experiences at 660 Elizabeth Street and ensure that we are in a position to do more of these projects going forward.

I also indicate to the member for Altona and the house that we will be announcing a new 10-year strategy for homelessness in the next couple of weeks; the final touches are being put to that strategy. I know that members will be very keen to see the government's policy direction going forward. We are very committed to supportive housing models, whether they be at Elizabeth Street, in Altona or in other opportunities that we are looking for right across metropolitan Melbourne and in regional Victoria as well.

The member for Pascoe Vale is another person with an extraordinary history of commitment to the most vulnerable in our community. She is a great supporter of public and social housing, and she has raised an issue concerning her electorate of Pascoe Vale. She pointed me to a very well-researched document from a person who has obviously done extensive research in this area. Toby Jones wrote to her — she has provided me with his correspondence — seeking to address housing policy in both a broader sense and specifically targeting some issues in the electorate of Pascoe Vale.

The member rightly indicates that the Real Estate Institute of Victoria, even in its most recent data, suggests to us that private rental vacancy rates are still at a very acute level, at about 1.5 per cent. It is one of the tightest private rental markets we have seen in metropolitan Melbourne and in regional Victoria in more than a decade. It is an extremely tight market.

That is why the record investment by our government of $510 million and our partnership with the federal government under the stimulus package are so important. That money goes towards building projects like 660 Elizabeth Street in the city, projects like the one I have just spoken about in relation to the member for Altona and other projects right across the state, with one-third of the stock in regional Victoria and two-thirds of the stock in the Melbourne metropolitan area. Over the next two years we will build 6500 units of housing, which is a fantastic outcome.

I was delighted to join the member for Pascoe Vale only a few weeks ago when we opened Munro Manor, which is a beautiful facility in her electorate. There are 24 brand-spanking-new units for single people in Munro Street, Coburg, as a result of a $5 million project and a beautiful partnership between the government and one of our great housing providers, Yarra Community Housing. Twenty-four tenants now call these first-class apartments home. Based on the number of visits the member for Pascoe Vale has already paid to welcome the new residents into Munro Manor, I know a great sense of community has already been established.

In addition to the $510 million investment and our partnership with the Gillard government, we are also embarking on an ambitious building program, whether it be in Frankston, in the eastern suburbs of Melbourne, in Swan Hill or in Mornington. Right across Victoria we are undertaking a fantastic building program as part of the stimulus package. That is supplemented by the nearly $100 million that was provided to the government for the repair and upgrading of existing public housing properties. As I indicated to the house earlier, Victoria has exceeded its target for upgrades by almost half. We were required to upgrade 5600 properties, but instead we have been able to upgrade 9000.

In the electorate of Pascoe Vale we have spent close to $1 million to upgrade and repair 103 public and social housing properties. For example, 17 properties in Hadfield received internal and external painting, new floor coverings, roof and structural works and ad hoc repairs to things like kitchen and bathroom cupboards to breathe further life into those apartments, which will give them — —

An honourable member — Hot-water heaters!

Mr WYNNE — I will come to hot-water heaters in a minute; don't worry about that. These improvements will breathe life into some of those run-down stocks. I thank the member for the opportunity to briefly touch on, if I can with your indulgence, Speaker, part of that upgrade program, because on occasions one has to upgrade the hot-water services. I am delighted that the Leader of The Nationals has taken such a keen interest in the upgrade program for our housing stock — I know he is a keen advocate of that — and indeed that he has a new-found interest in climate change. It is an excellent thing that the Leader of The Nationals has finally found climate change to be an issue, and the 650 units of water heaters that we are going to be purchasing over the next two years have to be purchased and exchanged for old water heaters in areas where, not surprisingly, there is no gas. If there is no gas, I guess you have to have electric hot-water systems so people have got hot water.

I welcome the interest of the Leader of The Nationals in these hot-water facilities that we are refurbishing our public and social housing properties with, and I ask the Deputy Leader of The Nationals to inform his boss that not only will we be purchasing the 650 new electric hot-water appliances but also they will be 5-star energy rated. I am delighted with his interest not only in public and social housing but also in ensuring that we protect the environment.

I will finish with the matter raised by the member for Pascoe Vale. Her letter writer, Mr Toby Jones, indicates that there are major issues around affordability and vacancy rates in the private rental market. Our partnership with the federal government around the national rental affordability scheme is going to put 7500 units of private rental housing, subsidised at 20 per cent below the market value, into the private rental market, and that is going to make a huge difference to vacancy rates going forward, I believe.

To wrap that together, there will be 7500 units of subsidised private rental housing and 6500 units of public and social housing over the next two years, which is a fantastic social outcome for some of the most vulnerable in our community and an important and continued boost to the Victorian economy. It indicates good times ahead for housing.

The member for Doncaster raised a matter for the Minister for Public Transport seeking a feasibility study on rail options for the Doncaster catchment of her electorate, and I will make sure the minister is aware of that.

The member for Polwarth raised a matter for the Minister for Public Transport in relation to bus services connecting to the Colac region for students studying at Deakin University, seeking some greater frequency in relation to that service.

The member for Frankston raised a matter for the Minister for Health seeking the minister's support for refurbishment of medical equipment, pumps, ventilators and beds at Frankston Hospital. I will make sure the minister is aware of that request.

The member for Swan Hill raised a matter for the Minister for Community Development seeking facility funding for Lord Nelson Park at St Arnaud, where there is already some joint fundraising with the council and the local community but another $40 000 is required. I will make sure the minister is aware of that matter.

The member for Narre Warren South raised a matter for the Minister for Roads and Ports seeking advocacy for the duplication of the Narre Warren-Cranbourne Road between Pound Road and Thompsons Road. I will make sure the minister is aware of that request.

The member for Malvern raised a matter for the Minister for Planning seeking that the minister amend his planning policy in relation to densities around transport hubs. I will make sure the minister is aware of that matter.

The member for Mornington raised a matter for the Minister for Environment and Climate Change seeking the minister's support for the refurbishment of the Mount Martha north beach and wanting further coastal protection measures for that beach area.

Finally, my colleague the member for Yan Yean raised a matter for the Minister for Children and Early Childhood Development seeking financial support for the Diamond Hills Preschool in the Shire of Nillumbik. I will make sure the minister is aware of that funding request.

The SPEAKER — Order! The house is now adjourned.

House adjourned 6.59 p.m. until Tuesday, 14 September.