PARLIAMENT OF VICTORIA

PARLIAMENTARY DEBATES (HANSARD)

LEGISLATIVE COUNCIL

FIFTY-SIXTH PARLIAMENT

FIRST SESSION

Thursday, 26 June 2008

(Extract from book 9)

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By authority of the Victorian Government Printer

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The Lieutenant-Governor

The Honourable Justice MARILYN WARREN, AC

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Minister for Housing, Minister for Local Government and Minister for Aboriginal Affairs	The Hon. R. W. Wynne, MP
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Legislative Council committees

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

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

Select Committee on Public Land Development — Mr D. Davis, Mr Hall, Mr Kavanagh, Mr O'Donohue, Ms Pennicuik, Mr Tee and Mr Thornley.

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

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

Joint committees

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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: Dr S. O'Kane

MEMBERS OF THE LEGISLATIVE COUNCIL

FIFTY-SIXTH PARLIAMENT — FIRST SESSION

President: The Hon. R. F. SMITH

Deputy President: Mr BRUCE ATKINSON

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Mrs ANDREA COOTE

Leader of The Nationals:
Mr PETER HALL

Deputy Leader of The Nationals:
Mr DAMIAN DRUM

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

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THURSDAY, 26 JUNE 2008

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Thursday, 26 June 2008

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

BUSINESS OF THE HOUSE

Legislative Council: appointments

The PRESIDENT — Order! I advise the Council that, pursuant to section 18 of the Parliamentary Administration Act 2005, the Clerk has appointed Dr Stephen Redenbach as Assistant Clerk — Committees and Mr Andrew Young as Assistant Clerk — House and Usher of the Black Rod. These appointments are effective from 1 July 2008.

PETITION

Following petition presented to house:

Abortion: legislation

To the Legislative Council of Victoria:

The petition of certain citizens of the state of Victoria draws to the attention of the Legislative Council proposals within government to remove legal protection for children before birth in Victoria.

Unborn babies are the most vulnerable and defenceless members of our society and, as such, need the full protection of Victorian law. Abortion kills unborn children and often permanently damages their mothers.

The petitioners therefore request that the Legislative Council rejects any move to decriminalise abortion in Victoria.

By Mr FINN (Western Metropolitan) (1282 signatures)

Laid on table.

PLANNING: MINISTERIAL INTERVENTION

Statement 2007–08

Hon. J. M. MADDEN (Minister for Planning), by leave, presented statement on ministerial intervention in planning matters, May 2007 to April 2008.

Laid on table.

ENVIRONMENT AND NATURAL RESOURCES COMMITTEE

Impact of public land management practices on bushfires in Victoria

Mr VINEY (Eastern Victoria) presented report, including appendices, together with transcripts of evidence.

Laid on table.

Ordered that report be printed.

Mr VINEY (Eastern Victoria) — I move:

That the Council take note of the report.

As all members would know, in 2006–07 Victoria was subject to extensive environmentally disastrous fires — disastrous not only environmentally but also in their impact on local communities in many parts of Victoria. The Legislative Council resolved that the Environment and Natural Resources Committee inquire into the impact of public land management practices on bushfires. The Council subsequently resolved in July 2007 to include in the inquiry a reference on the consequent impact of bushfires on the June and July 2007 Gippsland flood, which caused further devastation in the Gippsland region. The committee received some 257 submissions, 1719 pro forma submissions, and evidence from 202 witnesses representing 139 organisations. The committee held 17 public hearings.

On behalf of the committee I would like to express my gratitude to all those people who shared a lot of knowledge, information and experiences with the committee to make this report what it is. It is an outstanding piece of work that looks at the impact of public land management on bushfires in Victoria. Some of the witnesses shared very personal experiences, and on many occasions in those public hearings I found it deeply moving to hear about the impacts. Many communities were affected not only by the 2006–07 fires and floods but they had also been previously affected by the fires in 2002–03. Our community over the last 10 years or so has been subjected to substantial fire impacts.

In particular, the report deals extensively with the issue of prescribed or ecological burning. When you undertake these inquiries, like everyone you have a particular view. I would have to say that my experience with this inquiry changed my view and opinion. I came to this inquiry with a set of views about the need for prescribed burning, but to the extent that that needs to

occur, my views changed. I changed my opinion because of the evidence before the committee; it was overwhelming in terms of how the bush and our natural environment in Victoria needs to be managed. The fact is that that environment is dependent in large measure on fire for regeneration and for biodiversity.

That view was substantially influenced by a private trip I took to Western Australia, when I took the opportunity to meet with people in the relevant department there and to learn how it managed its forests with a much higher level of prescribed or ecological burning than we have been doing in Victoria.

Also the committee subsequently travelled as a committee to Western Australia. I went with it and had the opportunity of taking some field trips with representatives of that state's department. That was also reinforced by some of the field trips that I did in Victoria, when I saw how fire had not been used adequately in the Mallee and certainly in East Gippsland.

That, together with the evidence of Kevin Tolhurst and other experts given to the committee by people who fight fires, by the CFA (Country Fire Authority), by farmers and local communities, was invaluable. I was also struck by the fact that over many thousands of years the Australian bush has regularly burned either by natural event or by Aboriginal burning.

The committee has made recommendations. There is a range of operational matters, but in my view the most significant recommendation of the committee is for a substantial increase in the amount of prescribed and ecological burning in our forests — a tripling of the amount of burning that needs to occur each year.

This will have significant resource implications for the Department of Sustainability and Environment and obviously the government, but it is undeniable that the cost to the community of not substantially increasing the amount of prescribed burning will be far greater than the cost of increasing prescribed burning in the way that the committee has recommended.

In saying that, I would like to acknowledge, as the committee has done in its executive summary section on prescribed burning, that the substantial increase in the amount of prescribed burning in Victoria recommended by the committee will have a significant impact on communities in regional and country Victoria. It will have an impact not only from the smoke effects and other matters, but of course whenever you have prescribed burning, there will inevitably be escapes.

It is absolutely inevitable that there will be escapes and fire events that will be caused, or can be shown to be caused, by the prescribed burns not operating as was planned or by a sudden change of weather conditions that was unexpected; these things will occur. They can be managed, but they will occur. So we recognise in the report that our recommendations will have a substantial impact on the community but we believe that the level of prescribed burning that needs to occur will be of such benefit to the community and to the environment that we all need to work together to ensure that this change takes place.

There are other recommendations in relation to flood events and the impact of fire events on floods. If anyone wants to see how a combination of fire and a substantial rainfall event can impact on the landscape and on the community, they only need to have a look at Licola, where rivers changed course and where the amount of silt material that was dumped into the valley was absolutely mind-boggling. There are recommendations in that area.

The report also deals with a whole range of factors, including the need to engage the community and stakeholders in the processes of managing fire better, and there are certainly some findings that recognise that the impact of climate change will not only increase the need for ecological and prescribed burning but may also require a different approach to the timing of those burns.

I would like to acknowledge all of the committee staff, who worked incredibly hard on this report and contributed greatly to what we now have before us. I also want to acknowledge their great work in helping all members of the committee through what have been very complex processes and sometimes difficult public hearings, and the field trips that we did. Lastly, I would like to thank all of the other members of the committee — the Chair, John Pandazopoulos, and Deputy Chair, Craig Ingram, in the other place, and all other members of the committee.

If members take the trouble to look through this report and see the work that has gone into it and the rationale in it for recommending a change in the level of prescribed burning, as we have, I am sure they will see that this report has the potential to make a big difference in the management of bushfires in Victoria.

Mrs PETROVICH (Northern Victoria) — I would like to begin my contribution today on the impact of public land management practice on bushfires by firstly thanking the communities across Victoria that made contributions to this comprehensive inquiry. I would

also like to commend the Environment and Natural Resources Committee (ENRC) and Chair John Pandazopoulos, who showed remarkable dedication to a large number of hearings and site visits across Victoria.

The terms of reference of this committee involved looking at public land management. The first related to the effectiveness of prescribed burning on both Crown and freehold land. The second was the manner in which it was conducted and how the application codes of practice were employed. It really talked about the impact of the wildfires we had in 2006–07, their effect on water quality, and a large number of other terms of reference which related to the interface of human activity in those public land areas and also the impact on those who live alongside those tracts of land.

As we heard earlier, the committee received 257 submissions, 719 proforma submissions, and evidence from 202 witnesses representing 139 organisations at 17 public hearings. Those hearings were extensive. I would like to run through the dates and the locations, because I think it is important that we acknowledge where these hearings were held. It gives an idea of the breadth of the inquiry, but it also gives an understanding of how many of these communities were affected and made significant contributions. The hearings started on 4 June 2007 and finished just recently. I think 29 November 2007 was the last one in Omeo, and we had another one in April this year in Melbourne. There were a number of hearings in Melbourne, and we attended Kinglake, Halls Gap, Dunkeld, Bairnsdale, Heyfield, Traralgon, Macedon, Ouyen, Warburton, Mansfield, Mount Beauty and Omeo.

We also conducted a large number of site inspections, looking at those areas that had been burnt. It became increasingly clear to the committee that we had seen a culture that had not really embraced prescribed burning in the way that was required. It was very enlightening to have actually made the number of site visits and heard from the number of people that we did. I would personally like to thank and commend all of those members of the public who gave their time to tell their stories. This was not a cleansed version of the truth; it was very real and enlightening. It was sometimes devastating to hear about the personal experiences of these people who had suffered the fear of waiting for fire, and the experiences of some communities which had also had fire, floods and mudslides go through, and the after effects of that, their struggles and how they dealt with those things at the time and in the aftermath. These people had been to hell and back, and I think because of that they made sure this committee had no choice but to take heed of the weight and passion of their very personal experiences. Many of the contributions and visuals, photos and pictorials presented to this inquiry will have an impact on me for the rest of my life. One picture that sticks in my mind is that of a wedge-tailed eagle that was blinded and burnt and was in a terrible state, and a number of other photos of terribly burnt animals that people had photos of. One of the bravest things I saw was a photo, which was shown to me after a hearing by a guy in the Mitta Valley, of his son standing alongside a pumper, with the flames 30 or 40 feet above them, with the hoses going, trying to beat back what was probably an unstoppable fire.

We heard from groups in the Howqua Hills, and I would like to commend Graeme Stoney, a former member of this place, and his wife, Wendy, and Charlie Lovick and the crew up there, who gave very real accounts of how they managed fire and I think probably showed the way forward in traditional ways of protecting property, some of which were perhaps a little unconventional at the start of that hearing, which I think have now become accepted practices and will be clearly demonstrated as a way forward in our report.

There are also some very passionate stories of people from Licola who were trying to deal with clean-ups. At the time we were in Bairnsdale and Traralgon, and a number of them drove for 5 hours over washed-out bridges to get to those hearings; because of that, many had to travel in four-wheel drives. We could not get to Licola at that time because the town was flooded. That was as a result of the intensity of the fire, burning topsoil and the substructures of plants being down to such a level that when we had that incidence of heavy rain it washed everything down the hillside like water running on glass, which devastated the communities around there. I will talk a bit more about that later.

It was very clear from our earliest hearing that there was a culture in Parks Victoria and the Department of Sustainability and Environment (DSE) that had over time become fearful and concerned about being able to complete prescribed burns. It is a culture of overmanagement and restriction in many respects that had made their position untenable. In many respects I feel sorry for those officers who were trying to do their work under very difficult conditions.

We had some difficulty at the start of these hearings in convincing DSE officers that the committee needed to have them at the hearings. In fact they were absent from the first hearing at Kinglake, but after some discussions

we had full and frank participation from the department.

We need to understand, and I hope this report makes it very clear, that there is a responsibility on governments in creating more national parks — and nobody is opposed to that — to manage them. They also need the resources to be managed. Otherwise high levels of fuel are allowed to build up. Combined with drought and climate change, and no-one is denying we have had some very strong evidence that Australia is getting much warmer and much drier, under the right conditions — and we know about lightning strikes being acts of nature — these unmanaged forests can be hit by ferocious and destructive fires like we experienced during 2002–03 and 2006–07.

One of the good things is that we have looked at pre-European settlement and post-European settlement. The committee acknowledges that fire is a natural part of the Australian landscape and that the fire regimes which were produced out of cool burns by traditional land users pre-European and post-European settlement — where they burnt and grazed and selectively logged our forests — produced much more open and more easily managed forests, with less ladder fuel, which is the fuel that builds up around the trunks of trees and woody shrubs and which greatly contributes to our fuel loads. Because of the lack of management and lack of resources we have subsequently seen intense fires, and our once naturally open forests have become heavily overgrown. The true nature of the forests has changed significantly.

After these fires the saplings grow very closely. That affects the hydrology and the water catchments; also woody shrubs and weeds grow, forming additional fuel, so we compound the problem. If we do not manage our forests, we will continue to have these incidents. This is going to take a long time, make no mistake. If we do not start to effectively manage our forests, we will continue to have these megafires every summer, until we are left with no forests, until we have no wildlife and until we have no flora and fauna at all.

It is good to note, and I think it is a warning to all governments, that the impact of this change of practice would seem to have occurred because of a cultural shift in understanding, and that might be the politically correct, environmentally sensitive, friendly media-pushed approach to ‘Do not burn it; leave it alone; leave it natural’. We know that is not good for our forests. We know that the nature of our forests requires cool fire to regenerate and they require mosaic burns, just as our indigenous people used to do. When they left an area they would set the bush alight to keep it open. They created good areas so that wildlife could move and graze in preparation for when they came back or the next group of people came through. We have forgotten all of that, and locking up the bush simply does not work. If we are going to preserve and protect our natural environment, our catchments and our wildlife, we need to change our culture and we need to understand that fire is not bad. That is going to require a change in attitude from this government and from the community, the Department of Sustainability and Environment, Parks Victoria and maybe some sections of the Liberal Party as well.

An indication of the culture of some of these organisations was reflected during the very first hearings we held in Melbourne. We asked some fairly difficult questions at that hearing. One witness whose evidence we were looking forward to hearing did not appear at the Kinglake hearing, which was very disappointing for us, but thankfully we have moved on from there.

Some fantastic research work has been done by such people as the Stretton Group, and the committee acknowledges the work done by Dr Kevin Tolhurst, who is a senior lecturer in fire ecology and management at Melbourne University. The committee also looked at studies on hydrology post-bushfire presented by Dr Patrick Lane, a senior research fellow in the school of forest and ecosystem science at Melbourne University. Some very strong evidence indicates that cool mosaic burns and thinning vegetation around catchments can have positive effects on the management of the environment. Our water storages in our catchment areas drop by 40 per cent after bushfires due to dense revegetation and intense sapling growth. Saplings ultimately do not produce good forests, but they certainly drop the watertable and reduce the amount of water that goes into our water storages for about four or five years.

Colleen Wood, a wildlife carer at the Southern Ash Wildlife Shelter, raised some significant issues, which I would like to put on record today, for the management — or lack of it — of wildlife after bushfires. Currently no system provides for that. Wildlife carers spend large amounts of their own money in caring for and, at times, euthanasing these animals. That issue needs to be raised and remains unresolved.

The committee members managed to work very well together under the guidance of John Pandazopoulos, the member for Dandenong in the other place, and he is to be commended for that. A very interesting note was put at the top of one section of the report. It states:

> The committee notes that its recommendation for a substantial increases in prescribed/ecological burning may have a significant impact on the community and require a cultural change in some community attitudes. It believes this increased level of prescribed burning will be of such benefit to the environment and the Victorian community that a unified commitment to promoting this change is essential.

I would like to highlight some of the findings of the committee. A number of very good recommendations from the committee relate to taking a broad approach to the issue of bushfires, which I believe will assist rural people in particular and people who live in interface areas between public and private land to make their summers and late autumns a bit more comfortable and protected. During the bushfire season of 2002–03 an area of approximately 2.3 million hectares was burnt. While the full analysis of the ecological damage caused by this has not been completely understood, we know that it has certainly caused significant threats to biodiversity in the long term.

We have made recommendations that significantly increase the number of hectares to be burnt from 130 000 hectares to 385 000 hectares. If that is not achieved it is to be done in subsequent years. If for some reason the burning regimes are not achieved — and we know in some years it is not easy — then these issues need to be picked up in the following years.

We also make some acknowledgement about thinning of trees in areas as part of silviculture and forest management. One finding talks about the use of grazing as a compatible use in fire management in conjunction with other methods that could be used by area managers to help mitigate extensive growth. We also talk about the replacement of water which is taken from stock and domestic water storages for essential use, because there have been a number of grey areas around that where people have not been able to claim back that vital water.

There is also a pertinent recommendation which I believe will bring some peace and may dispel the comment that is so often made by rural people that the Department of Sustainability and Environment (DSE) and Parks Victoria are the neighbours from hell, which usually refers to the problems associated with fencing issues. There is now a provision and a recommendation that there be compensation for re-fencing.

I would like to touch on a couple of areas which were raised during our hearings and are of grave concern to me as a person who has had a lot to do with the Country Fire Authority over my lifetime. One of the areas of concern was that currently we have no centralised, linked IT system between Parks Victoria, DSE and CFA. When you are dealing with the sorts of catastrophes that these people are trying to work under, it is absolutely disgraceful that we do not have that linked IT system which makes communication easier and allows the transfer of information to all of those people who should be, and are, working hand in glove.

The other issue that we have come across is that mapping is poor and in many cases the maps do not align. The alignment of maps is fundamental in communication to ensure the safety of people trying to work in those conditions. As part of our recommendations to burn more, we need to give people the tools they need to do their job. It is a fundamental principle.

The committee had a number of site inspections, as I said. We went across to Western Australia, which was held up as a state that does good prescribed burning. We were told that historically Victoria had the no. 1 agencies in this regard, but unfortunately that is no longer the case. We hope to make that the case again. We want to be the very best at public land management for all the right reasons. I hope the recommendations in this report will seriously assist in implementing the requirements for these agencies to become no. 1 again. It will be a very great shame for the state of Victoria and all those who have made contributions if this report is not implemented in full.

In closing, I would like to again commend the committee and members of the community who travelled many hundreds of kilometres, in some instances, to attend these hearings, and the members of Parliament who also made contributions; contributions were also made by Philip Davis and also David Koch at various hearings. I also commend the questions that were asked by members of the Liberal Party and The Nationals, which I thought were very driving questions. I think at the start of the hearings there was a view among the committee that ended up very different in the final outcome. Had it not been for some of the more difficult and probing questions, we may not have come to that point.

The situation was made very clear when we spoke to people such as Mark and Patricia Coleman from Licola. They gave us a very full and frank analysis of what they and a number of other people across Victoria had been through. Obviously it is not one-size-fits-all in places like the Mallee. We heard from Alec Dowlsey, Wayne Eggleton and Ray Stone, who were representatives of the Hattah Association. They understand that prescribed burning, which burns pretty hot at times, is very good for that country as it responds quite well to the burning. We know that the more delicate areas, the mountain

areas and some areas in between, need the cool mosaic burn to be able to recover. It is not a one-size-fits-all approach; there are some sensitivities involved.

If people take the trouble to read this report, they will understand by the level of work done and submissions made that there is good scientific and historical knowledge to support the recommendations in this report. I would certainly recommend that people read it. As I said, if the government does not acknowledge the work that has been done, it would be a great disappointment to me; but also if some of these recommendations are not taken seriously, it will be to the detriment of all Victorians and our biodiversity.

Motion agreed to.

ELECTORAL MATTERS COMMITTEE

Conduct of 2006 Victorian state election

Mr SOMYUREK (South Eastern Metropolitan) presented report, including appendices, together with transcripts of evidence.

Laid on table.

Ordered that report be printed.

Mr SOMYUREK (South Eastern Metropolitan) — I move:

That the Council take note of the report.

In doing so, I would like to thank the executive officer of the committee, Mark Roberts, and the staff, Dr Natalie Wray and Nathaniel Reader, for their diligence and professionalism throughout the inquiry process. I would also like to thank the opposition members for their cooperation and bipartisanship on the committee, including the deputy chair, Mr Michael O'Brien, the member for Malvern in the other place; Mr Murray Thompson, the member for Sandringham in the other place; and Mr Peter Hall, who was with the committee for most of the process and who made a good contribution. I would also like to thank Philip Davis, who came in right at the end and made a very good contribution. We look forward to more good contributions from Mr Davis.

I also thank all who provided submissions and appeared before the committee. The committee was pleased that a diverse cross-section of the community was able to participate in the inquiry and offer their views. The Electoral Matters Committee heard evidence from young people, older people, indigenous people and people from culturally and linguistically diverse backgrounds as well as people from new and emerging communities, people experiencing homelessness and people with disabilities. As part of this inquiry, the EMC considered a number of pertinent issues which were raised in submissions and public hearings by stakeholders.

In response to this evidence, the EMC has made a number of recommendations to build on Victoria's strong track record in electoral administration. The evidence presented in this report clearly demonstrates the benefits of regular scrutiny of parliamentary elections in Victoria, including increasing the transparency and accountability of the conduct of the Victorian state election. I believe the recommendations presented by the EMC will enhance electoral administration and voter participation in Victoria. I commend the report to the house.

Motion agreed to.

PAPERS

Laid on table by Clerk:

Members of Parliament (Register of Interests) Act 1978 — Summary of Variations notified between 9 October 2007 and 25 June 2008.

Multicultural Affairs — Whole of Government Report, 2006–07.

Office of Police Integrity — Report on investigation into Operation Clarendon, June 2008.

Special Investigations Monitor — Report pursuant to section 62 of the Major Crime (Investigative Powers) Act 2004.

Subordinate Legislation Act 1994 — Minister's exception certificate under section 8(4) in respect of Statutory Rule No. 65.

MEMBERS STATEMENTS

Liberal Party: Gippsland federal candidate

Mr P. DAVIS (Eastern Victoria) — It is a pleasure to rise today to make a comment about what will be perhaps an historic moment this coming Saturday. In Gippsland we are about to elect a new federal parliamentary representative, who will be, I think, the fifth in the federal seat of Gippsland. We obviously have a great longevity — it must be the country air! In Gippsland we have a choice at this forthcoming election, and the interesting choice is the Liberal candidate, Rohan Fitzgerald, who is an outstanding young family man with four boys under 15 years of

age. He is very involved in his local community as a volunteer in various sporting and community activities and has a professional background in health administration.

He has been talking a lot in the last three months about local services, including the Maffra hospital and the Traralgon post office; infrastructure projects such as the duplication of the Princes Highway, where the federal Labor Party has only committed to widening the highway; the cost of living, particularly petrol prices; and supporting local industry and jobs, particularly in the timber and energy industries. Rohan Fitzgerald will make a fine representative of the people of Gippsland in the federal Parliament, and I wish him the very best at Saturday's election. Whoever is elected, I am sure they will understand their duty to the people of Gippsland.

Industrial relations: national employment standards

Ms PULFORD (Western Victoria) — The Rudd Labor government recently released its 10 minimum working conditions — that is, the national employment standards. These are: maximum weekly hours of work, the right to request flexible working arrangements, parental leave, annual leave, personal or carers leave and compassionate leave, community service leave, long service leave, public holidays, notice of termination and redundancy pay, and the issuing of a fair work information statement. These 10 conditions will form the basis of all workplace agreements under the new federal industrial relations system.

WorkChoices had the so-called Australian fair pay and conditions standard, with five minimum conditions, but if you held them up to the light you could see that they were paper thin. WorkChoices' Australian workplace agreements allowed pay and conditions to be stripped away without compensation, severely impacting many of our most vulnerable workers. Under Labor's plan, this modern, simple safety net of 10 conditions is guaranteed by law.

The Liberal Party claims to have had an epiphany about the western suburbs in the past three weeks, but I am quite confident that from Koroit to Kororoit it will long be remembered as the party of WorkChoices.

Maroondah: electoral review

Mr ATKINSON (Eastern Metropolitan) — I wish to express some concern about the decision of the Victorian Electoral Commission in regard to the electoral representation review for the Maroondah City Council. I support the position that the council took in a letter to the Honourable Richard Wynne, the Minister for Local Government in the other place, seeking a formal review of the decisions of the VEC.

The VEC's decisions followed an extensive consultation process, similar to that conducted in most municipalities in regard to the representation of ratepayers and residents on councils. In Maroondah's case there was significant community interest in the review, leading to a great number of submissions and a very reasoned and constructive proposal by the City of Maroondah. Much of the information that was provided to the VEC seems to have been ignored in the final decision, which was greeted with a great deal of concern in the area. Many people have the view that the exercise might have been more about ensuring Labor representation is increased in the city than about properly representing the interests of residents.

Jane McGrath

Mr ELASMAR (Northern Metropolitan) — I wish to place on record my heartfelt condolences to Mr Glenn McGrath on the occasion of the death from cancer of his beautiful wife, Jane — a life cut too short. Now two small children have been deprived of their loving mother at such a young age.

I have spoken about cancer in this house before, and this just brings home to all of us again that cancer does not discriminate against rich or poor, plain or beautiful. Mrs McGrath was a magnificent fighter for the cause of cancer research. I commend her courage and determination to live her life as a shining example to others who have been diagnosed with this terrible disease. My deepest sympathies go out to Mr McGrath and his young children.

Bayside: indigenous sculptures

Ms PENNICUIK (Southern Metropolitan) — On Saturday Bayside City Council unveiled three indigenous sculptures that have been made at sites along the foreshore by indigenous artists Ellen Jose and Glenn Romanis. The works are the *Barraimal (Emu) Constellation* at the end of North Road, Brighton, and the *Ancient Yarra River with Bunjils Eggs* at Red Bluff Cliffs, both by Glenn Romanis; and the *Boon Wurrung Blossom* at Ricketts Point, by Ellen Jose.

As Bayside mayor Andrew McLorinan has explained, each sculpture is based on stories written by Boonerwrung elder Carolyn Briggs. They demonstrate a direct relationship with the Bayside coastal environment and are accompanied by signage that

provides insight into the social customs of indigenous people.

I was so pleased to be able to attend the unveiling of the *Barraimal (Emu) Constellation* and was very inspired by its beauty and simplicity. As artist Glenn Romanis explained to us, it mirrors the Emu constellation that is directly above it in the night sky at this time of year. I am looking forward to visiting the other two works in the very near future.

The project was funded through the 2006 Commonwealth Games Getting Involved grants program. I would like to congratulate Bayside City Council, its cultural heritage committee, the artists and all those who worked on this very special project that will help to promote and preserve the indigenous history and stories of the Boonerwrung people.

Mansfield Autistic Centre: funding

Mr DRUM (Northern Victoria) — I have recently been contacted by a couple of families with children with autism, and their plight is heartbreaking. A lady in Bendigo contacted me about trying to get some of the services she needs for her high-functioning 10-year-old son with autism. The services she requires can only be met through the Mansfield Autistic Centre. That school is federally funded; the state government does not play a funding role for it. It is a shame the state government feels that it does not have to contribute to that school, which relies solely on federal funding, as I said; the school delivers some of the most basic life skills that no other service is able to deliver.

The same applies to a lady from Sale who contacted me. She is desperate to get her son toilet trained. To have a nine-year-old son who is still unable to get himself to and from the toilet is an enormous impost on that family. Again, the organisation that could deliver those skills is the Mansfield autism service. However, two-year waiting lists apply to both those families.

Port Fairy Community Services Centre

Ms TIERNEY (Western Victoria) — On Monday of this week the Brumby Labor government announced a $500 000 contribution to the establishment of the Port Fairy Community Services Centre. This new facility will include the relocation of the Port Fairy Kindergarten with programs for up to 60 children; it will provide for an additional 30 child-care places, maternal and child health immunisation, early childhood intervention and a broader range of family and community services. The Port Fairy Community Services Centre will be a one-stop shop for children's services.

The facility is primarily targeted at children and families but will provide a range of services to meet the varied needs of residents of all ages. It will be seen as a community hub, providing opportunities for residents of the town to connect and network.

I would like to mention the Moyne Shire Council for its forward thinking and foresight in developing this proposal; it is clearly committed to this project and has made a very significant financial contribution of $1.8 million. I would particularly like to thank the community members on the community services steering committee, its chair, Cr Di Clanchy, and the mayor, Ken Gale. I was very pleased to have the opportunity to personally thank them earlier this week in Port Fairy.

This project is a perfect adjunct to the newly redeveloped Port Fairy Consolidated Primary School which I officially opened five weeks ago. This has been reinforced in this morning's Warrnambool *Standard* by Brett Stonestreet, Moyne Shire Council chief executive officer, who was quoted as saying that another feature of the Moyne shire and Port Fairy is that it will be attractive to young families to live there. Members would be aware of Port Fairy's appeal to retirees and tourists, but now Port Fairy will be a place of choice — —

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

Bail justices: travel expenses

Mr RICH-PHILLIPS (South Eastern Metropolitan) — I have been contacted by a member of the Dandenong independent honorary bail justices regarding allowances for bail justices. Under the present arrangement bail justices are on call at all hours to attend police stations as required. It is a legal requirement for a bail justice to attend if a person is to be released on bail outside of court sitting hours. There is no remuneration for this service and no allowance to compensate for travelling costs, whereas a designated independent third person is paid a $10 allowance to attend at police stations when required to sit in on interviews.

In the past, bail justices have been able to absorb the travelling costs associated with providing this necessary community service; however, record fuel costs have now made this virtually impossible for some bail justices to continue to provide this service. If bail justices withdraw their service, a person charged with

an offence will be forced to spend time in the cells until they can face a magistrate during an in-session court hearing.

I raised this matter with the Attorney-General in 2006 and was advised that the matter was under review as part of a broader review of the Bail Act being undertaken by the Victorian Law Reform Commission. The VLRC completed its review of the Bail Act in October 2007, but the government is yet to respond.

One of the recommendations made by the VLRC was that:

> The Department of Justice should institute a reimbursement system for bail justices based on the model used by the Office of the Public Advocate to reimburse independent third persons. Reimbursement should only be made to bail justices who conduct one or more hearings throughout the year.

Given rising travelling costs and the pressure on suburban police stations, I call on the Attorney-General to address this anomaly and ensure bail justices can continue to provide their important service to the community.

Australian Labor Party: Kororoit candidate

Mr SOMYUREK (South Eastern Metropolitan) — I wish the ALP and its candidate Marlene Kairouz the very best of luck in the Kororoit by-election on Saturday. Marlene is a very good candidate who has impressed many in her time on council and as mayor. Marlene is recognised as being a hard-working and caring representative; she has worked in the western suburbs for many years, representing the working people of the west.

It is disappointing that the so-called Independent candidate, Les Twentyman, who previously swore black and blue not to accept any help from unions or other third parties in the event that he ran for Parliament — because he did not wish to have any debts — has now accepted money from a renegade union and a renegade union official, Mr Dean Mighell. Mr Twentyman has severely compromised himself by accepting funding from these people, and he is fast becoming a Labor Party stooge. He is now also being recognised in the electorate as becoming a Liberal Party stooge.

Rail: Epping–South Morang line

Mr GUY (Northern Metropolitan) — That was absolutely pathetic!

In this, my last members statement for the first half of 2008, I rise to again reflect community frustration and anger over the complete failure of the Labor government to build the Epping–South Morang railway extension.

Labor has lied, misled, deceived and hoodwinked the community for far too long — from claims that the 3-kilometre project would cost $300 million to claims that sections of the Hurstbridge line 12 kilometres away needed to be duplicated for the extension to occur; it has been a litany of lies. Labor's latest is that $10 million allocated in the budget is for this project. Indeed, it is not: it is for the Keon Park duplication works.

The facts are that the Whittlesea growth corridor is one of the fastest growing areas in Australia. From 2002 to 2020 there will be an additional 40 000 people — which is the population of Shepparton — living in this corridor. To service this growing community there needs to be a new railway line in the form of an extension of the Epping line along the former Whittlesea railway line reservation to South Morang. Documents obtained under freedom of information show the project will cost only $18 million in today's terms, so it is affordable and needed.

The community wants this project carried out, and I pay tribute to the South Morang Railway Alliance and its leadership through Darren Peters. The Whittlesea council wants this project done, and I pay tribute to the City of Whittlesea for standing up to the Labor government to demand this project. And more importantly, the coalition stands by its commitment to build this line at once. The only group of people who will not build the railway now are the Labor Party. Local people should remember this fact now and in November 2010.

Lake Mokoan: Winton wetlands

Ms BROAD (Northern Victoria) — I wish to take this opportunity to welcome the announcement last Friday by the Minister for Water in another place, Tim Holding, that the Brumby Labor government has committed up to $20 million to restore the former Winton wetlands after Lake Mokoan is decommissioned, in partnership with the Benalla Rural City Council and the future land use steering committee.

This means that Labor is taking action to provide water security for communities across Victoria and delivering on our promise to return Lake Mokoan to natural wetlands. I also welcome the commitment again that no irreversible decommissioning works will be undertaken at Lake Mokoan before offset measures are

implemented for irrigators, and I welcome the participation of the Victorian Farmers Federation in those discussions.

It is a fact that Lake Mokoan is Victoria's most inefficient water storage and loses 3 in every 4 litres released into the Broken irrigation system, or twice the amount of water Shepparton uses every year. The decommissioning project will deliver between 45 and 54 billion litres in water savings annually. It is a disgrace that the Liberal Party and The Nationals continue to support wasting water that Victorians cannot afford to waste and play on the fears of local communities and families.

Lake Mokoan: Winton wetlands

Ms DARVENIZA (Northern Victoria) — I also would like to make a statement on the recent announcement by the Minister for Water in the other place regarding the Lake Mokoan restoration project. I was pleased to be in Benalla with the minister last week when he announced a commitment of $20 million to restore the former Winton wetlands after Lake Mokoan is decommissioned.

I also welcome the minister's undertaking that no irreversible decommissioning works will be undertaken at Lake Mokoan before the offset measures are implemented for irrigators, and it also pleasing to see the progress that has been made in discussions around this matter with the Victorian Farmers Federation and the affected irrigators on the offset package.

Lake Mokoan is one of the state's most inefficient water storages; it loses 3 litres in every 4 litres released into the Broken irrigation system, and the decommissioning project will deliver between 45 billion and 54 billion litres of water savings annually. That will improve environmental flows by maintaining reliability of irrigation supply.

The future land use strategy will take up to eight years to complete, and will include the restoration of former Winton wetlands; the development of bike paths, boardwalks, signage and picnic facilities; as well as the first stage of a visitor interpretive centre at the tourism precinct — —

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

Students: outcomes

Mr EIDEH (Western Metropolitan) — My electorate is the most socially disadvantaged in the state, as is shown in Australian Bureau of Statistics unemployment figures and even in the pages of one of the two most popular atlases used in schools today. So it was wonderful news indeed when the Minister for Education in the other place announced that a record number of students from my electorate had gone on to university, a result that I believe all members would welcome.

In 2003, some 30 per cent went to university, but this year that number rose to 36 per cent, and I believe it will continue to grow in the years ahead. These inspirational students in my electorate have the resolve to strive, to achieve and to become successful. They believe in better futures just as their parents do for them and just as the Brumby Labor government is dedicated to achieve with them. That is why we have established a $1.9 billion fund to rebuild, to renovate and to improve all government schools. That is why we have employed over 8000 extra teachers since 1999 and why we are working also with the federal government to strengthen trades and technical training across Victoria.

I have met many of these young people, and I honestly believe Victoria will be an even better place to be in the future with them in our society. My electorate is better off with them and with the investment of the Brumby Labor government in their education and our future.

STATEMENTS ON REPORTS AND PAPERS

Auditor-General: *Performance Reporting in Local Government*

Mrs PEULICH (South Eastern Metropolitan) — I would like to make a few comments on *Performance Reporting in Local Government*, the Auditor-General's report dated June 2008. Local government is a very important sector, as no doubt all members not only of this chamber but of the other place and other parliaments realise. In fact, for a long time local government has been the springboard of many political careers. Some approach service in local government as a career; for others it is a genuine concern and care for involvement with their local community, so it goes without saying that many are presented with other opportunities and are elected as members of either a state or federal Parliament.

In 1992, when I was elected to this place after having served in local government for three years, it was interesting that 62 per cent of the members of the government of the day, the Kennett government, had a local government background. It is a very large sector; it is one that many say is the closest to the community. It currently collects over $5.7 billion in revenue

annually and manages assets valued at more than $47 billion. That is a lot of money, much of which comes through rates collected by councils from ratepayers. The level of rates imposed is often a point of contention, particularly as budgets are being struck.

It is a report that no doubt many members will find of interest, and many councils should be encouraged to take note. It is a report that looks at the issue of accountability for the management of these assets and the delivery of services, which is obviously fundamental to good governance. It is an audited performance reported by councils. Certainly there are very serious concerns raised by this report, which reflects a situation of drift that this government has allowed to occur in local government for some time, or certainly since it took government.

For much of that time the local government minister was Bob Cameron in the other house, who is now the Minister for Police and Emergency Services. His approach was very much a hands-off one on the sector and is in large part the reason why the sector has drifted and been found wanting by this particular audit. Performance reporting by councils changed in 2004–05 with the passage of this government's Local Government (Democratic Reform) Act 2003. The act introduced then the concept of key strategic activities and required councils to prepare a four-year council plan containing strategic objectives and indicators to measure achievement.

Strategic planning was not something new to the sector, but it was formalised in this particular act, and many councils have done a very good job. The audit objective was to assess the effectiveness of council reporting in the three years since the reforms had been introduced and whether that performance information was useful.

It was interesting that this was formalised in the act, but before that, under the previous regime, as a member of the Liberal Party's parliamentary local government committee I was involved in adopting a format of reporting on performance by councils in a very ready format which allowed comparisons to be made on outputs, on things like rates collected, on capital investment and so forth — which this government scrapped.

I believe that was a retrograde step because it took away the discipline and the capacity of the community to compare performance of their council with that of others, and for councils to compare themselves with others. It made them less accountable. It meant, I believe, a loss of opportunity to deliver better assets, better infrastructure and better services to the community.

Looking at some of my local councils, let me say that I have not located a single case where a council was held accountable for insufficient reporting procedures, and yet this government, under the forecast bill, wants to beef up its capacity to dismiss councils. It cannot take the action of dismissing councils without actually making sure that their performance can be assessed and reported on and that councils can be held accountable in an open and transparent way. This government has failed, and this report is long overdue.

Auditor-General: *Maintaining the State's Regional Arterial Road Network*

Mr HALL (Eastern Victoria) — This morning I want to make some comments on the Auditor-General's report *Maintaining the State's Regional Arterial Road Network*, which was tabled in the Parliament this week. Again, I want to start by thanking the Auditor-General for providing the Parliament and the people of Victoria with a very useful document. This will be of great interest, particularly to those in country Victoria, where regional arterial roads are certainly the lifelines of many communities.

The report contains some good news and some bad news. The good news, first of all, is that it acknowledges that VicRoads is generally performing okay within the financial constraints imposed upon it. I want to concur with that view. My relationship with VicRoads, at a regional level, has always been a very productive one and I have been able to work with VicRoads managers and their staff in a constructive way to bring about some good outcomes in my electorate. The bad news in this report is the underfunding by government of road maintenance. It is suggested in the report that there is now a backlog of some $100 million worth of road maintenance work to make the arterial road network serviceable. The report expresses some sincere concerns about what will happen in the future if the underfunding issue is not addressed.

The impact of road funding is felt most keenly, as I said, in country Victoria, and the report itself highlights that of the 22 000 kilometres of arterial road network in Victoria, 19 000 kilometres are in country Victoria. People who live in the city see major projects being developed, like CityLink and EastLink — which is about to open this weekend — which are off the budget of VicRoads. They are not of great assistance to people in country Victoria. Some of them we certainly use

when we come to Melbourne but not on the same regular basis as those who live in the city.

For country people the arterial road network is the lifeline of many rural communities. They use arterial roads to transport their goods, to deliver services and to maintain social connections. The alternatives to using the road network are very limited. Much of regional Victoria is serviced by little public transport. There are many road projects in the electorate that I represent, the Eastern Victoria Region, which desperately need improvements and upgrading. I will mention some of those quickly.

The Hyland Highway is the major road between Traralgon and Yarram. For a long time there have been community calls to upgrade and improve that road, yet we cannot get the funding for that improvement agreed to by government. I would concur with the strong views expressed in the past, particularly by people from Yarram, that it seems ludicrous that we have to wait until accidents happen before that road actually qualifies as a priority project for VicRoads. The duplication of the Princes Highway east has been a topical subject in recent times, and indeed the plans to duplicate the highway between Traralgon and Sale seem a long way off, particularly as the federal government is not prepared to put its hand in its pocket to match what was announced by the previous federal coalition government.

I want to make quick mention of a couple of roads in the far east of Victoria. The Omeo Highway — Victoria's no. 1 highway — was the first highway declared in the state of Victoria, and I again point out to members, as I have on many other occasions, that 27 kilometres of that road still remains unsealed. We can get no commitment from government to provide the funding for the completion of the seal on that particular road. The Omeo Highway would be a very convenient link for tourists between the north-east of the state and Gippsland, but tourists are largely prevented from using that road because people who hire vehicles are unable to get insurance coverage for taking those vehicles over unsealed roads. It is a significant detriment to tourism in eastern Victoria. The same can be said about the Benambra-Corryong Road, of which about 70 kilometres remains unsealed. It should be sealed; a good connection between the north-east and Gippsland would then be enhanced. In terms of improvements to the Great Alpine Road — and again, I have raised this in this house just recently — people are asking, 'Where is the plan?'. We know there is a piecemeal approach towards improving that road. There is some work going on at the moment but that has largely been funded by the previous federal government. There has been little contribution by the state government, and I have called on the government to provide us with a plan for an upgrade and improvements of that Great Alpine Road.

I think chapter 3 of this report, which defines some of the challenges ahead, is also useful. I strongly urge the government to take note of the Auditor-General's report, to look at those challenges but, more importantly, provide the $100 million funding backlog for maintenance improvements.

Victorian Law Reform Commission: civil justice review

Mr SCHEFFER (Eastern Victoria) — The Victorian Law Reform Commission's report on the civil justice review is, as with so many initiatives taken by the Attorney-General, a product of the 2004 justice statement. Increasingly the justice statement, which sets out the vision and direction for the modernisation of Victoria's justice system, is proving to be a seminal policy document. The justice statement identified criminal law and procedure, civil disputes, the courts and the legal profession as key areas needing considered and thorough review, and the statement identified the protection of human rights and the redress of disadvantage as among the important outcomes of that review.

In 2006, as part of the implementation of the justice statement, the Attorney-General provided terms of reference to the Victorian Law Reform Commission to identify the objectives and principles of the civil justice system that should guide and inform the rules of civil procedure in the context of the objectives of the justice statement. In particular, the commission was asked to look at ways to achieve procedural consistency across jurisdictions as well as to simplify and update civil procedures. The commission was asked to see how costs to litigants and government might be reduced and to give thought to making sure that our civil justice system is fairer, more efficient, direct and easier to understand and that it promotes public confidence by being more accountable.

The commission was asked to consult widely and to talk to the courts, the legal profession, business interests, governments and others who have a stake in the justice system and the improvement of the justice system.

The civil justice review report identifies 12 priority issues, including how people go about preparing themselves for a legal dispute that they are becoming involved in; how they conduct themselves; how

disputes that are not resolved in court are settled; how legal cases are prepared before they reach court; the role of experts; group or class actions; who pays for court services; how people experiencing disadvantage can be supported to access justice; and how the justice system deals with unmeritorious or vexatious claims.

The commission also looked at the goals of the civil justice system, the context in which the system operates and how well it performs, so it is a big canvas. The commission has made 177 recommendations. The recommendations — I will not go through all of them — propose a range of expectations that should be required of people who are in a dispute that looks as if it is going to end up in court so that parties to potential civil litigation take responsibility for themselves.

The recommendations identify a number of specific and legislated steps that should be followed, including the clarification in writing of claims, an exchange of information, the development of a protocol on how the dispute can be managed and evidence that there have been reasonable attempts to resolve the dispute.

Other recommendations address how parties in civil litigation should conduct themselves. The commission recommends that new provisions should be enacted that can improve standards of conduct in civil proceedings and that require verification of allegations that are made in pleadings, so that lawyers and parties to a dispute are required to prove that allegations made have merit. There should be overriding obligations on those engaged in civil litigation, and penalties should apply when those involved breach these obligations.

The commission makes a number of recommendations relating to the use of alternative dispute resolution (ADR) processes. The commission believes the civil justice system could be improved by making a wider range of ADR options available to the courts and that more effective use should be made of industry dispute resolution schemes. The report also recommends that lawyers and judicial and court officers should be provided with more education about the appropriateness of ADR processes in dispute settlement.

The commission also makes recommendations relating to the power of courts to make orders concerning the conduct of proceedings to make sure that justice is administered in the public interest and that it meets the objectives of the judicial system.

The commission believes the disclosure of relevant information before a trial commences will enable those involved to get a better understanding of the dispute in the expectation that this will help the parties reach a resolution. This is a 700-plus page report, and it is impossible to cover it adequately in so short a time, but it is an important document. I commend it to the house.

Tourism Victoria: report 2006–07

Mr P. DAVIS (Eastern Victoria) — I wish to make some comments in relation to the Tourism Victoria 2006–07 annual report in relation to nature-based tourism and note that in my view that report deals inadequately with the subject. I look forward to future reports from Tourism Victoria that will deal more effectively with what is clearly a significant and emerging area of tourism activity and one for which, for regional areas particularly, there are very significant implications.

I wish particularly to remind the house — I have already alluded to this in the last sitting week, but I remind the house and the Minister for Tourism and Major Events in the other place — that the Australian Tourism Exchange trade show in Perth was the opportunity for the announcement that the Victorian south-east coast would be officially designated as one of eight national landscapes, joining with the other Australian landscapes. The Australian coastal wilderness is predominantly my interest, but others include the areas of Kakadu, the Red Centre, the Flinders Ranges, the Australian Alps, the Blue Mountains, the Green Cauldron extending from Byron Bay to the Gold Coast, and another Victorian landmark, the Great Ocean Road.

The coastal wilderness is that area of eastern Victoria and south-eastern New South Wales, including the Croajingolong National Park, and importantly for me it is notable that in regard to this initiative of Tourism Australia and Parks Australia the Victorian government has been all but silent. I have not heard anything from the Premier or the minister, nor the state's counterpart organisations, Tourism Victoria and Parks Victoria. But it has to be made to work because it is a great marketing opportunity and we need to capitalise on it.

The Minister for Tourism and Major Events announced that the government would contribute 44 per cent of the funding for a new Gippsland peak tourism body, leaving the other 56 per cent to be contributed in unspecified proportions by the six Gippsland councils, Parks Victoria and local tourism businesses. This is of some concern because it is an open-ended commitment so far as the local tourism business industry is concerned, which may struggle to be able to provide the necessary support. Nevertheless it is a welcome

opportunity to pull together the tourism interests in Gippsland.

I think there is a problem also with this announcement in that it lacks detail on the function and role of the proposed peak body, but nevertheless I have suggested a need for a collaborative program with New South Wales to take advantage of the declaration of the coastal wilderness landscape. But more needs to be done.

The Croajingolong National Park falls within the coastal wilderness and is a World Heritage listed area, and yet until very recently — in fact as a general reminder from me to the Minister for Environment and Climate Change — it has not been managed in a way that would entice visitors and encourage word-of-mouth promotion. In fact, park facilities and signs are in a state of disrepair.

There is a lack of effective visitor signs on the Princes Highway at Mallacoota, and VicRoads has been less than helpful in accommodating a signage proposal put forward by the Mallacoota and District Business and Tourism Association. National parks and land management is singularly lacking. As we have heard from members of the parliamentary Environment and Natural Resources Committee in speaking to the tabling of the bushfire inquiry report today, there is much to be done in improving public land management, in particular in terms of preventive burning and maintaining access tracks. Indeed, one of the major obstructions to the further development of nature-based tourism is the fact that our land managers in Victoria have allowed our forest tracks to run into disrepair.

All this points to a need for a comprehensive and integrated plan for tourism promotion and the development in the east of the state of a comprehensive plan to capture the opportunities by being part of the national landscapes project.

Auditor-General: *Implementation of the Criminal Justice Enhancement Program (CJEP)*

Mr ELASMAR (Northern Metropolitan) — I rise to speak on the Auditor-General's report on the implementation of the criminal justice enhancement program. Firstly, the Brumby Labor government has confirmed and demonstrated its commitment to achieving a database system that will allow the criminal justice authorities to access information that will enable them to perform their statutory obligations and duties in a more effective and efficient manner.

The purpose of the enhancement program system is to allow up-to-the-minute exchange of information between the Victoria Police, the Office of the Director of Public Prosecutions, Victoria Legal Aid, the County and Magistrates courts, and Corrections Victoria. Without up-to-date information criminals are more likely to escape justice and judges will be unable to pronounce appropriate sentencing.

We as a government have the responsibility to protect our community against thugs and criminals to the very best of our ability. To enable the government to do that a comprehensive system of storing data and making it timely began in 1999. The necessity for this data system was relevant and self-evident then, as it is today.

Technology is a wonderful thing. We live in the age of cyberspace and the technological superhighway. Our children today are more familiar with computer games and chat rooms than comic books and toys. Technology affects all aspects of our lives. Data information systems are critical to the success of any enterprise and, while that statement is true, it is also probably one of the most expensive tools we use today.

The Victorian justice portfolio is becoming increasingly under pressure to maintain standards of security and probity by ensuring confidentiality of that information. The enhancement program needs to be completed to be fully effective. Reading the report I am aware of the inherent difficulties with new technology and its mind-boggling obsolescence. This is also a factor that cannot be ignored. When we buy a new mobile phone, within a few months it is obsolete and something new has taken its place.

The government recognises that adequate resources for this important enhancement program need to be ongoing. The issues that have been identified in the report and the recommendations contained in it include the rationale and the solutions towards building an efficient, integrated, comprehensive system of data exchange.

People in our community have expectations from us, their elected government, that human life and property are a high priority. They expect that we, the government, will provide our judiciary with tools to do the job and to set real goals that are achievable. The report identifies the issues and the solutions to achieve improved justice outcomes.

I commend the recommendations contained in the report to the relevant ministers and to this house.

Auditor-General: *Accommodation for People with a Disability*

Mrs COOTE (Southern Metropolitan) — The report I would like to speak on today is that of the Office of the Victorian Auditor-General, *Accommodation for People with a Disability*, which was tabled in this chamber on 28 March 2008.

This is a recurring theme that I have spoken about on many occasions, and I reiterate to this house how important it is for us as a community, and certainly as members of Parliament and legislators, to make certain that the most vulnerable Victorians within our community are properly and adequately catered for.

Victorians living with a disability face significant barriers to social and economic participation in the community, and these barriers are exacerbated by the difficulties that people with a disability experience in accessing adequate and appropriate care and support.

I am pleased see the now Minister for Environment and Climate Change in here, knowing that he had responsibility for this sector and was very cognisant of the needs of the people in the sector, and I hope he takes those continuing concerns to his cabinet whenever he gets an opportunity. It is therefore salutary to see what was said in the Auditor-General's report and, as this government continues to remind us, the Auditor-General is supposedly giving transparency, so presumably any of these findings will be things that the government will see with a great deal of clarification and will do something about.

The recommendations include, for example, that the Department of Human Services (DHS) should:

> provide focused support, guidance and resources to facilitate the development of individualised plans by service providers. This should involve:
>
> > adopting a team-based approach to preparing plans, comprising relevant support and professional staff on-the-job training.

I want to make mention here of individualised plans. This is a term that is used a lot, but it is my understanding from the people involved that this is not happening in reality and that people's individual needs are scarcely looked at, and that is an indictment in itself.

People in the disability sector should have a sense of confidence that they will be provided for and their individual needs serviced, particularly those of their elderly parents. As I have said here before, it is the elderly parents who are looking after their sons and daughters with disabilities who want some certainty into the future that they will be provided with adequate funding and dealt with compassionately and with proper professional plans and backup.

This is a theme that is continuous throughout this accommodation for people with a disability report. It says in the introduction by the Auditor-General:

> Victorians living with a disability face significant barriers to social and economic participation in the community. These barriers are exacerbated by the difficulties people with a disability experience in accessing adequate and appropriate care and support.

Which is exactly what I said before. In the executive summary the report deals with the unmet demand for support. It is this unmet demand that continues to be elusive for this government. It makes the right noises but it does not address the fundamental issues. We are talking about a huge number of individuals concerned with unmet demand, and it needs to be properly audited and identified and something done about it. Any additional support will be welcome, and any government of any political persuasion needs to get to the bottom of this and sort it out once and for all.

Under the heading 'Unmet demand for support' the report states:

> DHS is unable to provide support for all those requesting it (unmet demand is around 1370 people or 30 per cent), yet demand is increasing by around 4 per cent to 5 per cent annually and DHS has not accurately quantified future support needs or the associated need for resources. The reactive nature of DHS's response to accommodation needs, combined with the stringent prioritisation criteria, is likely to continue, and therefore perpetuate a crisis-driven system.

In this day and age a crisis-driven system is not appropriate. It is not acceptable, and I encourage the minister to look at the details encompassed in the Auditor-General's report and finally do something about the situation.

Victorian Child Death Review Committee: report 2008

Mr THORNLEY (Southern Metropolitan) — I rise to speak on the annual report of inquiries into the deaths of children known to child protection 2008. Tragically, this is a rather timely topic given recent events — the tragic deaths in Brisbane and the horrific cases of neglect identified in Adelaide in recent times.

This report does not make easy reading. There were 15 children known to child protection authorities in the state of Victoria last year who are now dead — and that is, judging by the numbers on page 17 of the report, for better or worse, about average over the last decade —

obviously from a range of causes, and those are outlined in the report.

This is the end of the process. The committee to investigate child deaths is obviously not the first or most important part of the child protection process, but it is an important part so that we take the time to analyse what has caused these tragedies, what could or should have been done to prevent them and, hopefully, at least learn and change as a result of what we have learnt from that analysis. This is important work. Obviously the protective and preventive work in the first place is even more important.

It is probably unsurprising that much of what is found here is consistent with what we know from other arenas. Page 35 of the report talks about the predominance of the coexistence of parental characteristics of family violence, substance abuse and mental illness. That probably does not surprise people, but it does highlight the criticality of dealing with a multiple set of concurrent causes and problems and the importance of not having single, isolated, siloed, vertical solutions to one part of the problem if you are not going to deal with the other parts of the problem. There is no point in talking about child protection in isolation from talking about mental health, substance abuse or family violence. We talk about this at the Brotherhood of St Laurence a lot, and the same is true about things like homelessness. Unless you attack all of the layers of disadvantage that are compounding upon each other, you are unlikely to get a solution. Frankly, the effort to simply try and solve one layer is largely wasted. Part of the frustration we have in many of these fields is that we diligently try and attack one part of the problem — and we face the same challenges with indigenous issues — without attacking all of the parts of the problem that are concurrent, and this report highlights that state of affairs. Organisations in this area such as the National Association for Prevention of Child Abuse and Neglect have been highlighting the importance of that for a while.

Another related matter is also addressed on page 35 — that is, the importance of a single data structure which can be accessed by all of the professionals in all of the relevant fields so that you can understand all of these things that are happening within these families. It would mean that mental health professionals are aware of what the child protection professionals are up to, are aware of what is happening with the homelessness agencies or the substance abuse people so that there is coordinated understanding and effort. There is clearly an opportunity and a necessity for us to see the development of those sorts of universal data platforms. With Web 2.0 and modern technology, that is surprisingly cheap and easy to do. A lot of the time governments try to have what we in the IT business call big-iron solutions to these things, with massive system integration efforts when what can be done with simple internet technology is quicker, cheaper and better. There is a lot of opportunity there.

Importantly the report also goes on to identify some best practice learnings of where the child protection process has worked effectively. It gives a comforting case study, an example of a family and a young girl who were the beneficiaries of that best practice environment. In conclusion, I know about the work of people such as Bernadette Burchell and her team at the Children's Protection Society, who have been pioneering some of this integrated service development, which services the parents' and the family's needs as well as the child protection needs concurrently. The new integrated centre they are building is very exciting, and I hope in the future we will see a reduction in the numbers because of that learning and those innovative approaches.

Auditor-General: *Maintaining the State's Regional Arterial Road Network*

Mr O'DONOHUE (Eastern Victoria) — I am pleased to make a contribution on the Auditor-General's report on maintaining the state's regional arterial road network. I would like to echo the comments made by Mr Hall. By and large in my dealings with VicRoads its staff have been prompt and courteous and have worked with me. The great issue that has been identified in the report is by and large not what VicRoads does, but the resources it has at its disposal. It is worth noting that 90 per cent of all trips are made by road and that the government has failed to live up to its stated policy of increasing the percentage of trips made by public transport to 20 per cent by 2020. Our public transport system is at crisis point when we are nowhere near the figure of 20 per cent of trips. Despite the Minister for Roads and Ports often identifying buses as a form of public transport, which they are, the reality is that the number of people catching buses every day as a percentage of total trips is very small indeed.

Roads are a critical component of freight movement and the movement of people for a variety of reasons. The Auditor-General found that the condition of regional and rural roads has continued to deteriorate in recent years, that maintenance funding has failed to keep pace with inflation and that there is an ever-ageing asset base. This will be a significant challenge to Victorian taxpayers and road users alike in years to come, because many of the roads and bridges that we

use today were designed for a time when B-doubles did not exist, when cars were smaller and trucks in particular were much smaller. Significant investment will be required over the coming years to ensure that the bridge network in particular can remain in use to allow heavier trucks to use them.

It has been identified in the house that the West Gate Bridge has needed significant reinforcement to allow larger trucks to use it, but that bridge is only one of thousands that need additional investment. Indeed the Auditor-General said:

> a significant catch-up program and a substantial increase in recurrent maintenance funding are required …

He went on to say:

> Without further action the condition and the performance —

of roads and bridges —

> will deteriorate and this will become increasingly clear to the travelling public.

Mr Hall spoke of a number of roads that need urgent attention in our mutual electorate, particularly in its eastern area. A number of roads require significant investment in the urban-rural interface. As the population growth has exploded in the urban interface area the road investment has not matched that explosion of population. A number of roads throughout the city of Casey and the shire of Cardinia — and in Baw Baw, Bass Coast and Yarra Ranges — need either duplication or significant upgrade to cope with what is now either an urban environment or at least a semi-urban environment. That is a great challenge for this government, but unfortunately it has failed to deliver the investment required, not to expand the road network but just to maintain it. The Auditor-General has identified that the new assets that have come on line have not come with additional maintenance funding for the life of those roads, which really has short-changed Victorians and shows a failure to understand basic infrastructure maintenance, and that is an indictment of this government. We face significant challenges. We need to keep pushing down the road toll and to maintain our assets, and the government must spend more to maintain our road and bridge infrastructure.

Mallee Catchment Management Authority: report 2007

Ms BROAD (Northern Victoria) — I wish to speak on the Mallee Catchment Management Authority annual report 2007. In doing so I wish to acknowledge the chairperson, Joan Byrnes; all members of the board of management; the chief executive officer, Jenny Collins; and its staff for their work and commitment to ensuring that natural resources in the region are managed in an integrated and ecologically sustainable way in the face of what must be regarded as considerable challenges. I also acknowledge all the committee members and volunteers who have participated in programs to implement the Mallee regional catchment management strategy as well.

I will outline the key features of the Mallee Catchment Management Authority region for members of the house who might not be familiar with it. The Mallee CMA area covers approximately 3.9 million hectares, which is almost one-fifth of Victoria, which is about half of Northern Victoria Region, the electorate that I represent. The regional population is approximately 65 000 people, and the major urban centre is the Rural City of Mildura, which is continuing to grow apace. From Mildura the region stretches through Ouyen to Birchip and across to the South Australian border, so it is a very large area indeed. It is also very important to Victoria because the Mallee region produces half of Victoria's wheat under normal conditions — if we ever see those again — the majority of dried fruits in the state, 30 per cent of Australia's wine grapes, 70 per cent of Victoria's table grapes, as well as significant quantities of other crops as well. As members would be aware, many of these horticultural sectors have faced challenges, certainly through the reporting period for this report, 2006–07. That challenging set of conditions has continued through to this day.

In speaking to this report I might also pay attention to the considerable efforts that the Mallee Catchment Management Authority has made in the name of community engagement. I am pleased to say that the Mallee CMA is a community-driven and accountable organisation. It relies on high levels of community engagement through implementation committees and other systems to ensure regional community ownership and commitment to the priorities in the regional catchment strategy. These key commitments include promoting community engagement, supporting the original Landcare network and enhancing indigenous engagement. The many programs that deliver these objectives include Landcare, biodiversity action plans, frontage action plans, indigenous programs, the environmental mapping and planning project, and the Mallee environmental employment program, which have all been instrumental in building community capacity and knowledge.

Just to give some examples of the outstanding results of this community engagement, some 7000 people were involved in the Waterwatch program during the reporting year, which is outstanding. There are

27 Landcare groups in the Mallee CMA region, all of them active. As well as that — and I think these things are connected — the Mallee CMA has delivered a new and much-improved website, which gives easy access to up-to-date information for the whole community and assists in communicating with the community. Those outstanding results for community engagement are reflected in actions like improving that website.

I would also like to refer to an important achievement through the reporting period — that is, during that period the CMA and the Department of Primary Industries — —

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

Auditor-General: *Maintaining the State's Regional Arterial Road Network*

Mr VOGELS (Western Victoria) — I, too, want to make a few comments on the Auditor-General's report which was tabled in the house yesterday, *Maintaining the State's Regional Arterial Road Network.* Victoria's arterial road network is critical for the state — we all know that. It carries about 90 per cent of personal trips, and about 80 per cent of our freight is carried on these arterial roads.

The number of vehicles on the road and the freight carried on the roads have increased enormously in the last decade or so. I can see this from personal experience. I come to Melbourne regularly to attend Parliament when it is sitting. When I was elected to this place in 1999 it used to take me approximately 3 hours to get from Scotts Creek, where I live, to Parliament. Now it would take me 5 hours if I tried to get here on a Tuesday. I do not bother to do that any longer, because if there is an accident or a truck has broken down on the West Gate Bridge, you just do not get here 3 hours later. I now always travel down on the Monday evening because of the increase in traffic volume.

The Auditor-General says that most of Victoria's arterial road network is in rural and regional Victoria, but there are 22 000 kilometres all up, and about 19 000 kilometres of it is in rural and regional Victoria. There are approximately 6000 bridges in Victoria.

This is a damning report. In today's *Herald Sun,* for example, an article entitled 'Roads falling apart' by Geraldine Mitchell and Holly Ife states:

> Victoria's main roads are falling apart and putting lives at risk because of a lack of state government funding, the Auditor-General has found.

The end of the article says:

> Premier John Brumby said maintenance of rural roads was not just a state issue.

What a cop-out! Local government keeps saying to the state government, 'Can you please help us with our local road network, our infrastructure, our bridges?'. We always hear from this Labor government that local roads are a council responsibility, not a state responsibility. The Premier is probably trying to say, 'These arterial road networks are the responsibility of the federal government, and yes, we will put in a little bit. Local roads are the responsibility of state government; they are not our responsibility either'. What is the government standing for? It is a damning report.

I do not blame VicRoads for this. It is not getting the funding. The Auditor-General clearly points out it is getting approximately the same amount of funding it received 10 years ago. As I said, we all know that there are more cars on the road, and we also know that more freight is being carried on the road, and the trucks carrying it are getting bigger, therefore causing more damage.

VicRoads is responsible not only for the pavement — that is, the bit of road we drive on — but it is also responsible for thousands of bridges, pathways, barriers and walls; roadside assets including engineering features such as traffic signs, cuttings on embankments, roadside revegetation, traffic signs, pavement markings, street lighting, traffic signals and electric road signs.

This report says that only 56 per cent of the $300 million that is put into maintaining our road infrastructure is actually spent on roads, so 44 per cent of it goes on those other assets that VicRoads is also responsible for. In other words, 56 per cent of the $300 million is spent on 22 000 kilometres of roads, which works out to be less than $7000 a kilometre, which is a pittance. Members should know that to fix up just a minor road the cost will be about $100 000 a kilometre, so it is not good enough to spend just $7000 per kilometre. The state government needs to lift its game.

Another disappointing part of the report is that a lot of VicRoads managers, people who have been working for VicRoads for many years, are leaving, resulting in a brain drain. That eventually leads to bad decision making. Engineers who are working for VicRoads are saying, 'I'm getting out of here', because they can see the problems ahead of them. They know what needs to be done, but the money to be able to do it properly is

not forthcoming, so a lot of them are leaving VicRoads and looking for greener pastures.

Finally, this is a damning report. I do not blame VicRoads for it; it is basically held at the mercy of the government.

Deakin University: report 2007

Ms TIERNEY (Western Victoria) — I rise to make a statement on the Deakin University annual report 2007. It is a pleasure to stand and make a contribution here on the achievements of Deakin University, as I have witnessed firsthand a number of announcements of many exciting accomplishments and future endeavours of that university.

Recently I have attended two major events, the first being the announcement by Premier Brumby of the development of jobs that will flow as a result of the relationship between Deakin University and Satyam; and secondly, the opening by Prime Minister Kevin Rudd of Victoria's first regional medical school.

The success of Deakin University is evident to all those involved: the education fraternity who witness Deakin's increasing level of academic achievement; the research fraternity with Deakin's tag as one of Australia's primary research institutions; and those with a passing interest in its performance by the numerous announcements and achievements commonly seen in the media — not just in Geelong but through the electorate and also in Melbourne.

From reading the 2007 report I would like to bring attention to some major positive elements that may not necessarily require or warrant big announcements or media coverage, but positives that signify the relevance of Deakin University to Victoria — the positives that signify that Deakin University is absolutely committed and in touch with the needs of Victoria, particularly rural and regional Victoria.

As the report states, one of Deakin's core commitments is to:

> work in partnership with local communities in Burwood, Geelong and Warrnambool, and with governments, industry, business and the professions, to advance the interests of Victoria and Australia; to champion equity and access; and to be committed to providing flexible teaching programs; distance and online education; workplace-based learning and continuing education; and research and teaching programs that advance the needs of south-central and south-western Victoria.

Some of the targets set and achievements accomplished in the reporting period advance this core commitment, such as: the heads of agreement that was established with the University of Ballarat to collaborate on joint initiatives central to university education and research in regional Victoria, which is just an incredible bonus for Western Victoria Region. Another is obtaining Australian Medical Council accreditation of Deakin's graduate entry bachelor of medicine-bachelor of surgery degree, which has established Victoria's first regional medical school. It in turn will teach students the skills to work in rural and regional Victoria and deliver the best possible health care for the area.

Deakin has also strengthened its partnerships with local communities by signing a memorandum of understanding with the City of Greater Geelong and is working together on a whole range of social, cultural and economic development issues in the area.

I would like to mention the ongoing commitment to making sure there is a pool of students on the campus who come from rural areas, as well as lower socioeconomic areas. Deakin's own statistics show that 20.7 per cent of the students are from regional areas: this is 3.3 per cent above the state average and just under 3 per cent above the national average.

Like a number of other providers, Deakin University is particularly interested in the advancement of indigenous education. During the reporting period Deakin was successful in securing a $1.4 million indigenous scholarship program. Deakin is also awarding up to 21 scholarships to indigenous students to address the current shortage of Aboriginal early childhood teachers to work in kindergartens and day-care settings.

I have been particularly pleased with the groundbreaking university industry collaborations that Deakin has been setting. It is a major demonstration of what can be achieved in the region. Deakin University continues to excel in partnerships and positioning itself over and over again to be at the centre of a range of transformations that are occurring in academia, vocational training — —

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

Victoria University: report 2007

Mr EIDEH (Western Metropolitan) — In Western Metropolitan Region there are some amazing educational institutions. One of them is Victoria University, whose 2007 report I wish to address today.

Victoria University was originally created when a number of smaller post-secondary facilities were combined to offer an improved educational future for

its students, most particularly targeting its own region of the west. While the university accepts students from anywhere, as with all other universities, the bulk of its staff and students reflect the diverse multicultural community that is Western Metropolitan Region and thus mirrors the people of Victoria.

I wish to acknowledge that the Australian Universities Quality Agency has commended Victoria University's commitment to Western Metropolitan Region. Over the years this university has grown and developed into a fine university with a range of educational courses and a growing number of graduates who are contributing significantly to Victorian society.

In 2007 the university expanded its business and law programs, created new faculties in vocational education and in further education to stem the growing skills crisis that the Minister for Skills and Workforce Participation has spoken about in the other house, and further improved its administration and its forward planning. As a direct result of its striving for true excellence, Victoria University was given a 3 star award for being one of the very best training providers in the nation.

I am also impressed to note in the report that the university was named as having the best community engagement collaboration program, an amazing achievement that stands as testament to the true depth of its staff and its leadership. That's not bad for a university that a former vice-chancellor of Melbourne University once said we did not need!

In 2007, 66 doctorates were awarded, along with almost 6500 awards in the critical TAFE sector and well over 5000 in higher education. However, this brilliant university went further to give even more back to the community. Victoria University actively supports its staff being involved in local community events. It has also been very active in promoting the Women's Health Network in the West program. It has participated in water-saving research programs, investigated the economics of the pharmaceutical industry, participated in other research aimed at improving home-based smoke detectors, and much more.

As a committed Bombers fan, despite how our team has performed this year, I will not speak about the excellent sports performance research scholarships that the university has with the Western Bulldogs football club.

The university heeded the concerns about the need for more skilled graduates when it created its vocational education faculties of workforce development and technical and trade innovation. In fact, Victoria University has worked tirelessly to further develop, strengthen and extend its relationships with industry and business — such that the highly regarded *Australian Financial Review* published an article on its front page which declared Victoria University as 'leading the charge' towards industry experience for its students.

This shows Victoria University's commitment towards ensuring that its graduates are job ready when they leave university. This university has over 47 000 local and international students. It has almost 800 award programs. The majority of its students come from the region itself, and over 40 per cent of the students are from a non-English-speaking background. Staff and students represent some 90 nationalities.

The Victoria University 2007 annual report and 2007 achievements annual report show quite clearly that the investment this government has made across a number of areas in this university has been very well spent. I am honoured to have such a quality educational body in my electorate, and I am proud that it is delivering success for its students. On behalf of the people of Victoria, thanks to its efforts we will all be winners in the years ahead.

CANCER AMENDMENT (HPV) BILL

Statement of compatibility

For Mr JENNINGS (Minister for Environment and Climate Change), Hon. T. C. Theophanous 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 Cancer Amendment (HPV) Bill 2008.

In my opinion, the Cancer Amendment (HPV) Bill 2008, as introduced to the Legislative Council, is compatible with the human rights protected by the charter. I base my opinion on the reasons outlined in this statement.

Overview of bill

The purpose of the bill is to amend the Cancer Act 1958 ('the act') to enable reports of tests in relation to precursors to cancer, such as human papilloma virus (HPV), to be forwarded to organisations that maintain a prescribed register. HPV is recognised as a necessary factor in the development of nearly all cases of cervical cancer. Testing for HPV is now a critical part of the management of women with screen-detected abnormalities of the cervix. In future, it may be desirable for other precursors to cancer to be reported on and recorded as part of a cancer screening program. In addition, these provisions will provide a legislative framework for reporting test results of other precursors to cancer should it become desirable to capture these in future.

Human rights issues

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

Section 13(a): right to privacy

Section 13(a) of the charter provides that a person has the right not to have his or her privacy, family, home or correspondence unlawfully or arbitrarily interfered with.

I consider that clause 4 of the bill engages but does not limit the right to privacy because the interference with privacy is not unlawful or arbitrary.

Clause 3 of the bill will extend the definition of 'cancer test' in section 59(1) of the act to include a test for cancer 'or any of its precursors'.

Clause 4 of the bill will make related amendments to sections 62(4), (5)(c) and (9)(b) of the act to ensure that references to 'cancer' in these sections also apply to 'precursors to cancer'.

The interference with privacy is not unlawful because the bill enables the Victorian cervical cytology register to lawfully collect and record women's test results for HPV. If in future, it is considered desirable for other precursors to cancer to be reported and recorded on a prescribed register, the bill will only support the capture of test results where a prescribed register is established to record such information.

The interference with privacy is not arbitrary because of the safeguards provided in the act. The proposed amendments are in the context of an existing regime in the act which enables people to object to the inclusion of their information in such registers, requires that they be informed of their right to object and limits disclosure of information in the registers to certain specified circumstances (sections 62(3), (4) and (6) of the act). The proposed amendments are considered to be reasonable from a privacy perspective because they appropriately balance health-care considerations with patient privacy.

Section 9

Section 9 of the charter provides that every person has the right to life and the right not to be arbitrarily deprived of life.

I consider that the bill promotes the right to life because the amendments will facilitate best practice screening and treatment of women who have a higher cervical cancer risk associated with the human papilloma virus.

2. Consideration of reasonable limitations — section 7(2)

As the rights under the charter which the bill engages are not limited by the bill, it is not necessary to consider the application of section 7(2) of the charter.

Conclusion

I consider that the bill is compatible with the charter because, although the bill engages the right conferred by section 13 of the charter, it does not limit that right. In addition, it promotes the right conferred by section 9 of the charter.

GAVIN JENNINGS, MLC
Minister for Environment and Climate Change and Minister for Innovation

Second reading

Ordered that second-reading speech be incorporated on motion of Hon. T. C. THEOPHANOUS (Minister for Industry and Trade).

Hon. T. C. THEOPHANOUS (Minister for Industry and Trade) — I move:

That the bill be now read a second time:

Incorporated speech as follows:

I am pleased to introduce this bill to the house. The Brumby government has nominated cancer as one of its major health priorities, and this bill represents another step in this important commitment.

Victoria has a strong track record of investment and innovation in cancer prevention, treatment and research. This has resulted in world-leading increases in survival rates — that is, people living for five years disease free — from 48 per cent in Victoria in 1990, to the 2004 level of 61 per cent.

Despite this record, cancer remains Victoria's biggest killer, and the cause of immense suffering for the community. Today 70 Victorians will be told they have cancer — and around one in three Victorians will develop cancer before the age of 75.

Today the bill I introduce seeks to reduce the impact of one cancer — cervical cancer — which we know affects approximately 1900 Victorian women each year.

The bill seeks to amend the Cancer Act 1958 to enable the Victorian cervical cytology register to lawfully collect and record women's test results for human papilloma virus, commonly known as HPV. The primary objective of this amendment is to facilitate best practice in cervical cancer screening and the treatment of women with screen-detected abnormalities of the cervix, and to ensure Victoria is able to meet new guidelines issued by the National Health and Medical Research Council in July 2006.

Cervical cancer incidence has declined dramatically since the late 1980s, when the organised national cervical screening program was introduced. Victoria has one of the highest participation rates in cervical screening in the country, which is reflected by the continuing decline in mortality from cervical cancer. At one death per 100 000 women, this rate is now among the lowest in the world.

As Victorians we can be proud of the quality screening services developed and available in this state. PapScreen Victoria created highly successful awareness campaigns which have been adopted by other states. The Victorian Cytology Service is the only publicly funded cytology service in Australia, performing about 300 000 Pap tests a year. It is at the centre of testing, diagnostic work and screening, but also conducts important research. The Victorian Cytology Service auspices the Victorian cervical cytology register and has recently won the contract to establish the national HPV

immunisation register. This register will support the national HPV vaccination program. This highlights the outstanding work of the Victorian cervical cytology register in terms of cancer control.

Recent research has identified a strong link between HPV and cervical cancer. Whilst most women with HPV will not develop cervical cancer, research indicates that HPV is a necessary factor in the development of the vast majority of cases of cervical cancer. This new evidence has seen the introduction of an HPV vaccination program in Australia in April 2007. This program provides free vaccination against certain high-risk strains of HPV to all women and girls aged between 12 and 26.

Another impact of this new evidence is the inclusion of testing for HPV as a critical part of the management of women with screen-detected abnormalities of the cervix under the national guidelines: *Screening to Prevent Cervical Cancer — Guidelines for the Management of Asymptomatic Women with Screen-Detected Abnormalities*.

The new guidelines state that where a woman has had a high-grade abnormality of the cervix, the results of HPV tests, together with follow-up Pap tests, will determine her future management. To enable compliance with the new guidelines, the results of HPV tests need to be reported to the Victorian cervical cytology register so that the register can send out appropriate reminder letters to women as part of their post-treatment screening following a colposcopy.

Whilst the act currently enables results of tests for cancer to be forwarded to a prescribed register such as the Victorian cervical cytology register, the definition of 'cancer test' does not extend to tests for 'precursors to cancer', such as HPV. This bill will broaden the definition of 'cancer test' to enable tests for precursors to cancer to be reported to and recorded by a prescribed register.

There are a range of other precursors to cancer apart from HPV. For example, colorectal adenoma, ductal carcinoma in situ and skin lesions that may progress to malignant melanoma are all conditions which are considered to be precursors to various forms of cancer.

As knowledge increases in the area of cancer prevention and screening, it may become desirable in the future for other precursors to cancer, apart from HPV, to be reported to and recorded on a prescribed register as part of a cancer screening program.

This bill will provide a legislative framework for reporting and recording test results of precursors to cancer other than HPV. However, it will only support the capture of information about other precursors to cancer where a prescribed register is established to record this information. This will avoid the unnecessary capture of test results that do not serve to improve health outcomes for Victorians.

The proposed amendment maintains current provisions in the act which require that people are informed of their right to object to their test results being recorded, to opt off the register, or not have their information reported to the register in the first instance. The amendment appropriately balances health-care considerations with patient privacy.

Clause 1 sets out the main purposes of the bill. Clause 2 is the commencement provision. Clause 3 amends the definition of 'cancer test' in section 59(1) of the Cancer Act 1958 to include a test for a precursor to cancer. Clause 4 ensures that references to cancer in sections 62(4), (5)(c) and (9)(b) of the Cancer Act 1958 also apply to 'precursors to cancer'. Clause 5 provides that the bill be repealed on the first anniversary of its commencement.

This bill is an example of the government's ongoing commitment to preventing cancer.

I commend the bill to the house.

Debate adjourned on motion of Mr D. DAVIS (Southern Metropolitan).

Debate adjourned until Thursday, 3 July.

WILDLIFE AMENDMENT (MARINE MAMMALS) BILL

Statement of compatibility

For Mr JENNINGS (Minister for Environment and Climate Change), Hon. T. C. Theophanous 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 Wildlife Amendment (Marine Mammals) Bill 2008 ('the bill').

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

Overview of bill

The bill amends the Wildlife Act 1975 ('the act') to implement Victoria's commitments to the Natural Resources Management Ministerial Council in respect of whales, dolphins and seals, to provide long-term business certainty for marine mammal tourism operators, to improve the protection of whales in emergency situations and to otherwise simplify and improve the operation of the act.

Human rights issues

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

The bill engages three of the human rights protected by the charter.

Section 12: freedom of movement

Section 12 of the charter establishes the right for every person lawfully within Victoria to move freely within Victoria and to enter and leave it and have the freedom to choose where to live.

The proposal in clause 25 (proposed sections 81(3) and (4)) for authorised officers to be able to direct persons or vessels to cease approaching, or move away from, whales for up to 500 metres could lead to limitations on the right to freedom of

movement in circumstances where such a direction is given. A person's freedom of movement would be limited where they might otherwise have continued to freely approach the whale or remained in the vicinity of the whale, as the case may be.

Section 25(1): the right to be presumed innocent

Section 25(1) provides that an individual charged with a criminal offence has the right to be presumed innocent until proved guilty according to law.

Clause 25 (proposed section 81(6)) provides that a person who has been given a direction by an authorised officer under proposed sections 81(3) or (4) must comply with the direction unless the person has a reasonable excuse for not doing so.

Because proposed section 81(6) imposes an evidential burden on the accused should they wish to raise the defence of reasonable excuse, it may be viewed as a 'reverse onus' provision. Courts have found that provisions of this kind may limit the right to be presumed innocent until proven guilty, because they effectively require an accused to point to facts which establish their innocence, rather than leaving the entire evidential and legal burden of proving guilt with the prosecuting authority. This may engage section 25(1) of the charter.

The defence of reasonable excuse in proposed section 81(6) does not rely on any presumed facts, nor requires an accused to disprove any elements of the offence, nor imposes a legal burden on an accused to prove any fact. In accordance with section 130 of the Magistrates' Court Act 1989, an accused may present or point to evidence which merely raises a reasonable possibility that they have a reasonable excuse. Upon the defendant doing so, the legal onus of disproving the existence of a reasonable excuse beyond reasonable doubt falls to the prosecuting authority.

Accordingly, it is arguable that the right to be presumed innocent is not limited by proposed section 81(6). However, to the extent that it may be, the limitation is reasonable and justifiable, having regard to the factors in s. 7(2) of the charter, as explained under part 2, below.

Section 20: property rights

Section 20 of the charter provides that a person must not be deprived of their property except in accordance with law. A deprivation of property is in accordance with law where the deprivation occurs under powers conferred by legislation pursuant to a law which is formulated precisely and is not arbitrary.

Clauses 27 and 30 of the bill provide for the issuing of whale and seal tour permits. While the act already provides for the variation, suspension and cancellation of whale tour permits, clause 30 inserts new provisions (sections 85J, 85K and 85M) of this kind in relation to seal tour permits. The provisions to be inserted by clause 30 may engage the right to property to the extent that such permits are 'property' within the meaning of section 20 of the charter. However, the preferred view is that when permits of this kind are varied, suspended or cancelled by the same body that issued the permits (which is the case here), then the right to property under the charter is not engaged. This is because the permit would be granted pursuant to a regulatory regime which encompasses the ability to alter conditions, suspend or cancel permits in certain circumstances, all of which would be consistent with section 20 of the charter.

Even if the right to property were engaged by these provisions, the right is not limited. The discretion to cancel licences is not arbitrary: it may be exercised if a licence condition has not been complied with, the licence-holder has not complied with wildlife protection laws or for seal protection purposes. If a licence is suspended, the licence-holder may make a submission to the secretary to review the decision (section 85L), may make further submissions if it proposed that the licence be cancelled (section 85M), and may subsequently seek a review of a decision to suspend or cancel a permit (existing section 86C(1)(c)). Permits held by current whale tour operators will be protected by transitional provisions in clause 34 of the bill.

Part 2. Consideration of reasonable limitations — section 7(2)

To the extent that the bill results in a limitation of the right to freedom of movement, I consider that the limitation will be reasonable, in accordance with section 7(2) of the charter. I provide the following reasons for this view.

Section 12: freedom of movement

(a) The nature of the right being limited

The right to freedom of movement protects against restrictions on people's ability to move freely within the state.

(b) The importance of the purpose of the limitation

The purpose of proposed sections 81(3) and (4), which will provide authorised officers with a power to direct a person or vessel to cease approaching within 500 metres of, or to move up to 500 metres away from, a whale is to promote human safety and the welfare and conservation of whales by enabling a buffer zone to be created around a whale in critical situations. Human safety and the welfare and conservation of whales are both of high importance.

(c) The nature and extent of the limitation

A limitation on freedom of movement will only occur when an authorised officer gives a direction to a person or vessel to cease approaching, or to move away from, a whale. The conditions precedent to an exercise of power under proposed sections 81(3) or (4) mean that the circumstances in which a direction is given will be relatively few; directions are only expected to be given under these proposed sections in emergency or other critical situations.

Further, when a direction is given, its application will be limited to an area no greater than 500 metres away from the whale in question, which will invariably be a very small part of Victoria in each instance. Moreover, a person will still be free to choose where to move to, provided it is at least the distance away specified by the authorised officer. Additionally, a direction will not affect people's ability to move between all other parts of Victoria. Having regard to the overall breadth and nature of the right to freedom of movement, and the factors outlined above, the extent of the limitation on the right is not significant.

(d) The relationship between the limitation and its purpose

The relationship between the limitation and its purpose is rational and proportionate. The bill stipulates that the ability to require people to cease approaching or to move away from the immediate vicinity of a whale can only be used for the purpose of promoting human safety or the welfare of a whale, and these purposes are directly promoted by the use of the power.

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

It would not be possible to ensure human safety and the welfare and conservation of whales by creating a buffer zone around a whale if there was no ability to require people to cease approaching or move away from the vicinity of the whale.

Accordingly, there are no less restrictive means reasonably available to achieve the purpose of the limitation.

Section 25(1): the right to be presumed innocent

(a) The nature of the right being limited

The right to be presumed innocent reflects a fundamental common-law principle. However, the courts have recognised that the right may be subject to limits and have held that the reverse onus provisions are more likely to be consistent with human rights if they require the accused to prove an exception, proviso or excuse rather than disprove an element of the offence; where the conduct regulated by the offence is generally unlawful; where the information required to exonerate the defendant is readily available to the defendant; and where the penalty is at the lower end of the scale.

(b) The importance of the purpose of the limitation

The purpose of the limitation of the right is to reduce the scope of the offence under proposed section 81(6). A person should not be guilty of an offence if they have a reasonable excuse for failing or refusing to comply with a direction of an authorised officer. Whether or not a person has such an excuse will be a matter peculiarly within the knowledge of the accused, such as whether the person or their vessel was unable to move due to physical inability or safety concerns particular to that person or vessel. In the absence of a requirement for an accused to point to facts relating to a reasonable excuse, it would be difficult, if not impossible, for a prosecuting authority to investigate and prove a negative, that is, the absence of any lawful excuse.

(c) The nature and extent of the limitation

The evidential burden in proposed section 81(6) only applies to the defence of reasonable excuse. It does not relate to the central elements of the offence — they must still be proved by the prosecuting authority beyond reasonable doubt. Further, it only places an evidential burden on the accused. Once the accused presents or points to sufficient evidence to raise the defence, the burden is on the prosecution to disprove the lawful excuse beyond reasonable doubt. If this is a limitation on the right to be presumed innocent, it is not a significant limitation.

(d) The relationship between the limitation and its purpose

The placing of an evidential burden on an accused to point to facts relating to a reasonable excuse is directly related to the purpose of providing a defence of reasonable excuse, thereby reducing the scope of the offence under proposed section 81(6).

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

It would not be possible to provide a statutory defence of reasonable excuse without requiring an accused to point to facts relating to a reasonable excuse. Accordingly, there is no less restrictive means available.

(f) Any other relevant factors

With reference to the factors noted under (a), above, it is relevant to note that the penalty for an offence under proposed section 81(6) is at the lower end of the scale relative to other offences (20 penalty units) and that information as to whether an accused has a reasonable excuse is likely to be readily available to an accused.

Conclusion

I consider that the bill is compatible with the charter because, although it does limit freedom of movement and it may limit the presumption of innocence, the limitations are in each instance reasonable under section 7(2) of the charter.

GAVIN JENNINGS, MLC
Minister for Environment and Climate Change

Second reading

Ordered that second-reading speech be incorporated on motion of Hon. T. C. THEOPHANOUS (Minister for Industry and Trade).

Hon. T. C. THEOPHANOUS (Minister for Industry and Trade) — I move:

That the bill be now read a second time.

Incorporated speech as follows:

Since its introduction, the Wildlife Act 1975 has provided for the protection, management and sustainable use of wildlife in Victoria. The Victorian government is committed to the continued sustainability of recreational and commercial industries associated with wildlife. This bill strengthens Victoria's legislation to improve the protection of whales, dolphins and seals by minimising adverse human interactions with these species. In doing so, the bill ensures the long-term sustainability of industries associated with whale, dolphin and seal tourism.

Victoria is fortunate to attract a diverse whale and dolphin population to our coastal waters. Blue whales, which are the world's largest mammals, gather at the Bonney upwelling, near Portland in western Victoria. Other whale species, including humpbacks and the large sperm whale, can often be seen off the coast near Warrnambool. Victorian waters also host numerous populations of common and bottlenose dolphins.

Victoria is also home to Australia's largest fur seal colony at Seal Rocks. Other key populations are present at The Skerries, Kanowna Island and Lady Julia Percy Island.

In recent years, the popularity and economic value of whale, dolphin and seal watching has increased. In turn, this has led to the development of new niches in marine mammal tourism. These include seal-watching, seal-interaction tours and whale watching from aircraft. These niches are largely unregulated, and this may lead to the disruption of marine mammal populations.

Social shifts have been driving these developments. There is a growing public understanding of the complexity of Victoria's marine ecosystems, which results in ever-growing public interest. There is also a natural and universal curiosity about the complex lives of whales, dolphins and seals. A flow-on effect of this rising interest and activity is increased pressure on marine mammal populations.

The government recognises the need to protect the future sustainability and development of marine mammal tourism industries in Victoria. In responding to the development of these niches, this bill builds upon the existing provisions of the Wildlife Act. The bill introduces new provisions to:

enhance the protection of our wildlife;

protect humans in their interactions with wildlife; and

support the development of new and innovative tourism.

I now turn to the bill.

All whales, dolphins and seals are currently protected under the Wildlife Act. Improved measures in this bill will ensure that any adverse effects from tourism or contact with commercial and recreational vessels are managed appropriately to ensure the long-term conservation of these iconic species.

As a member of the Natural Resource Management Ministerial Council — or the NRMMC for short — Victoria has endorsed the *Australian National Guidelines for Whale and Dolphin Watching 2005*. The amendments to part X of the act will enable Victoria to implement these guidelines through the establishment of additional measures to manage interactions with whales and dolphins.

Aircraft-based whale watching has the potential to significantly disrupt the normal behaviour of whales. Repeated disturbances may negatively affect feeding, reproduction, access to habitat and socialising. This can lead to negative consequences for the health of individual animals, as well as general population size and distribution.

To address these issues, the bill does three key things. Firstly, the bill introduces a permit system for aircraft-based whale-watching tour operators. Secondly, it enables control of the number of operators in environmentally sensitive areas — areas which are fundamental to the life cycle of whales, such as along the Bonney upwelling. Thirdly, it enables permit conditions to control the frequency of tours and manage the amount of time that an operator can spend in the vicinity of a whale. For these reasons, similar provisions already apply to sea-based whale watching such as whale swim tours.

Clause 27 of the bill implements these amendments by inserting a new and restructured division 2 of part X in place of the majority of the existing provisions. The redrafting of division 2 has enabled the new permit regime for aircraft-based whale-watching tour operators to sit alongside the existing provisions for the current sea-based permit regime. This has avoided the need for an all-new division 2A. As a result, the bill provides greater simplicity and accessibility in these provisions. The restructuring retains all of the existing provisions of division 2 and extends them to aircraft-based commercial whale tour operators. The bill implements these new policy objectives whilst enhancing the structure of the legislation.

The bill will also improve Victoria's ability to assist whales or dolphins in distress, such as during strandings and entanglements in fishing gear. Wildlife officers will be able to direct a person or vessel to cease approaching within 500 metres of, or move up to 500 metres away from, a whale or dolphin.

The Department of Sustainability and Environment is the key control agency for whale emergencies in Victoria. These new provisions will assist the department's wildlife officers in effectively managing these situations. The new emergency management powers will build upon the existing minimum approach distances for whales and dolphins for vessels, aircraft and people. The current minimum approach distance on the ground or water is 100 metres. This distance is inadequate in emergency response situations where rescue operations involve numerous rescue vessels. Strandings and entanglements tend to become public events and emotions can run high. Onlookers in recreational or commercial vessels can inadvertently hamper rescue efforts. The safety of onlookers, as well as media and pleasure-boat traffic, can also be an issue if a whale behaves unpredictably and moves quickly. Blue whales can power along at speeds in excess of 35 kilometres per hour.

The success of rescue operations is critical to the conservation and welfare of whales and dolphins. These new provisions will ensure that when faced with critical incidents, wildlife officers have the powers necessary to intervene. In turn, this will reduce the stress experienced by wildlife during these operations, and will provide safer working conditions for officers.

With a view to modernising Victoria's wildlife legislation, the bill also removes an outdated provision of the Wildlife Act. The provision — section 78(1)(b) of the act — provides for the issuing of licences to take or kill whales in the course of licensed commercial operations. Given Victoria's strong opposition to the commercial hunting of whales, the government has seen fit to remove this inappropriate provision from the act altogether. The provision will be repealed by clause 23 of the bill.

I now turn to another key aspect of the bill. In 2006, again as a member of the NRMMC, Victoria endorsed the *National Strategy to Address Interactions between Humans and Seals — Fisheries, Aquaculture and Tourism*. This is also known as the 'national seal strategy'. This bill will enable Victoria to implement the tourism component of this nationally agreed strategy.

Seal populations in Victoria are slowly recovering from overexploitation by furriers in the late 18th and early 19th centuries. Disruption during the breeding season may affect this recovery, especially when tourism occurs near 'haul-out' areas where pups may be trampled. Seals are vulnerable to

infectious diseases carried by domestic animals and may become dangerous when they lose their fear of humans as a result of feeding.

The bill introduces a framework for licensing commercial seal tourism operators. It introduces a power to make regulations for interactions between people and seals, as a means of implementing the national seal strategy.

To provide longer term certainty for small businesses, maximum permit terms for all types of marine mammal tourism under this bill will be 10 years. This is a significant increase on the existing two-year maximum. In doing this, the bill will contribute to regional economic development by providing commercial operators with clearly defined rights and responsibilities. Longer term operator permits will enable businesses to plan and invest in vessels and aircraft with greater confidence.

In accordance with national competition policy, it is important to ensure fair and equitable access to whale and dolphin watching tourism markets in areas where ecological sustainability requires the number of permits to be limited. In these cases, permits will be issued by a competitive tendering process. This will ensure that there is equal opportunity for access to permits by those who wish to enter the industry. The bill retains the existing provisions in division 2 of part X of the act which provide for public notice and will now also provide for community engagement around these processes.

These provisions will help contribute to the long-term viability of the whale and dolphin watching tourism industries in Victoria by ensuring that interactions between humans and iconic species are sustainable. The bill does not seek to limit the number of seal tourism operators.

With a view to streamlining the legislation, the bill also makes a range of amendments to simplify and improve the operation of the act.

The first of these amendments is to enable better protection of threatened species. The bill simplifies the offence regime which currently operates in relation to 'endangered wildlife', 'notable wildlife' and 'protected wildlife'. These three categories no longer reflect current wildlife classifications in Victoria and accordingly the bill will reduce the number of categories from three to two. The new categories are 'protected wildlife' and 'threatened wildlife'. The level of protection afforded to 'protected wildlife' remains the same, while 'threatened wildlife' will be given the highest degree of protection currently applicable to 'endangered wildlife'.

To remove inconsistencies, align policy objectives and further simplify the act and improve its accessibility and currency, the existing processes for declaring 'notable' and 'endangered' wildlife will be replaced by directly linking the definition of 'threatened wildlife' to the list of threatened species made under the Flora and Fauna Guarantee Act 1988. This amendment will also ensure consistency in the treatment of threatened wildlife under these two acts.

Although there is no change to the existing maximum penalties for related offences under the act, the consolidation of 'notable' and 'endangered' wildlife into 'threatened wildlife' will result in a greater number of species falling into the highest category of protection under the act. This means that higher penalties can apply to offences relating to some species. The government believes that the higher penalties are more consistent with the conservation status and significance of these threatened species, and will more accurately reflect the environmental cost of the offences.

The second of these amendments is concerned with simplifying and improving the way the act is used to manage and control wildlife. The bill does this by removing administrative duplication in the processes for the issuing of authorisations to control wildlife. Clauses 4(1) and 17 will avoid the need for researchers and rescuers to seek a separate authorisation to mark or identify wildlife in addition to an authorisation for their primary work.

Additionally, clause 4(2) will modernise authorisations to control wildlife by enabling the authorisation of non-lethal means to control wildlife. This will only apply for the purposes of mitigating damage to property or as part of a wildlife management program — such as the scaring of wildlife by use of noise or light. The bill refers to this with the generic term of 'disturbing'. This amendment will enable the use of more humane methods to control wildlife, in addition to the existing lethal methods permitted under the act. The use of non-lethal methods will reduce the incidence of damage to property and at the same time minimise harm to wildlife. Strict conditions will be imposed on these authorisations to ensure that the methods used are humane.

Clause 5 will further streamline processes by enabling particular classes of persons to carry out activities permitted under section 28A of the act by means of a single authorisation granted by the Governor in Council on the recommendation of the minister. This amendment will reduce red tape by removing the need for individual members of those classes of persons to make applications to the department under section 28A(4) of the act. Examples of classes of persons may include zoos, wildlife sanctuaries and schools.

The bill also makes a range of other minor amendments to the act to remove existing anomalies. Clause 22 relocates the existing offence in section 83 to a new section 77A. Relocating this offence will place it in a more appropriate part of the act, thereby again improving the accessibility of the act. Clause 22 also makes it clear that authorised officers can approach whales at closer than the minimum prescribed distance in the course of their duties. Clause 21 rectifies an anomaly in section 76(4) of the act where the act currently allows authorised officers to permit members of the public to carry out certain animal welfare acts in relation to whales — but the provision does not apply to authorised officers themselves. Clause 33 clarifies that the power to make regulations with respect to the entry of persons and their vessels or aircraft inside wildlife sanctuaries also applies to those persons' conduct while inside wildlife sanctuaries.

Together, these amendments enable Victoria to implement its commitments to the NRMMC, to provide greater protection for whales, dolphins and seals, to provide long-term business certainty for marine mammal tourism operators, to improve the protection of whales in emergency situations and to improve the operation of the act.

I commend the bill to the house.

Debate adjourned on motion of Mr D. DAVIS (Southern Metropolitan).

Debate adjourned until Thursday, 3 July.

APPROPRIATION (2008/2009) BILL and BUDGET PAPERS 2008–09

Second reading

Debate resumed from 25 June; motion of Mr LENDERS (Treasurer) and motion of Mr JENNINGS (Minister for Environment and Climate Change):

That the Council take note of the budget papers 2008–09.

Ms MIKAKOS (Northern Metropolitan) — It is with great pleasure that I rise to speak in support of the Appropriation (2008/2009) Bill and the budget papers. At the outset I congratulate John Brumby for his first budget as Premier of Victoria, and John Lenders for his first budget as Treasurer of Victoria. This is another fine Labor budget in a long tradition of fine Labor budgets that have been delivered to Victorians over the last eight years.

The 2008–09 budget takes action to deliver infrastructure, projects and services that are needed to secure our state's future. I am very pleased that the budget tackles pressing issues in areas such as health with a big focus in this year's budget on preventive health, a major rebuilding of our public schools, our transport system and community safety and addresses issues and new challenges such as climate change and our rapidly growing population. This budget also delivers new investment to regional Victoria and to Melbourne's high-growth suburbs, and has a significant package of support for Victoria's families.

I want to begin my contribution by focusing on A Fairer Victoria, which has been a hallmark of this Labor government over the last few years in delivering a social policy statement that has been designed to tackle systemic poverty and disadvantage in our community. Sadly many families and many individuals in our state are still struggling as a result of mental health, disability or other systemic poverty issues. I have been very proud to be a member of a government that has looked at addressing social justice and delivering greater support to these struggling families and struggling individuals, and I am pleased that there is a significant $1 billion investment in A Fairer Victoria in this year's budget.

Since the initiatives began three years ago the state government has already committed $3 billion to reduce disadvantage and make our communities more livable. A Fairer Victoria is unique in Australia as a long-term commitment to reducing disadvantage, making real gains through providing new early childhood services, creating initiatives to get young people back on track, reducing family violence, strengthening the mental health system, reforming disability services, helping seniors remain independent and giving new economic opportunities to our indigenous communities.

A highlight of this year's $1 billion A Fairer Victoria package is a $262 million investment in disability support and services, providing an additional 1000 early childhood intervention places and a further 150 support packages to help children with disabilities to attend kindergarten. The package also includes $111 million for the commencement of a broad program of service reform in the state's approach to mental health and a $25 million package to address family violence, including the development of a state protection plan.

This government has always said education is its no. 1 priority, and this year's budget confirms that commitment. The budget includes a boost of $815.6 million for Victoria's schools, kindergartens and child care. Schools in Northern Metropolitan Region, which I represent, have done very well out of this year's budget. The Brumby government has allocated $592.3 million to rebuild, renovate or extend 128 schools in communities across the state.

Among my local schools that will benefit from this allocation — in particular a commitment to update and renovate 25 schools — are Princes Hill Primary School and Reservoir West Primary School. In addition to this, the government has committed to the delivery of 11 new schools under the already announced Partnerships Victoria in Schools Package, which will see the construction of Maroondah central primary school. The government has committed to a significant school regeneration program, which includes $25 million for the Broadmeadows regeneration project. The budget also includes a $3.5 billion commitment that was announced late last year to build a years 11 and 12 centre at Fitzroy High School.

We have not forgotten about our all-important TAFE sector. We recognise that we have a skills shortage across the country, and we need to ensure that skills training is adequately provided for. As part of a $94 million investment in skills and employment, $10.5 million has been allocated for stage 1 of the redevelopment of the Northern Melbourne Institute of TAFE's Epping campus to help it cater for a growing demand for training, providing a specialist painting and plastering training centre and a new library in the student services building.

The budget also includes the significant commitment of a $49.9 million early childhood package. As part of this

package $2.6 million has been included to refurbish and renovate existing kindergartens in selected sites in school regeneration projects. This will include the construction of an early years centre in the new Broadmeadows Primary School site. There are many other initiatives dedicated to early childhood, in particular $29 million to create the 1000 early childhood intervention service places to support children with a disability or developmental delay, additional kindergarten inclusion support services placements, and an expansion of maternal and child health services to help mothers, babies, pregnant women and families across the state.

Health is also a very significant area of reform for this government, and we have always had a very strong commitment to improving our health system. The budget this year has allocated $1.8 billion to boost health through the delivery of more funding for elective surgery, outpatient appointments, emergency departments and the single biggest investment in ambulance services in Victoria's history.

As a result of this funding, across the state 60 000 extra patients will be treated in emergency departments, an extra 16 000 elective surgery patients will be treated, and there will be an extra 33 500 outpatient appointments. A sum of $466.9 million has been allocated to a hospital, mental health and aged-care capital works program that will deliver redevelopments and upgrades in hospitals and health services across Victoria. This includes $2 million for the planning and design of new and refurbished facilities at the Royal Victorian Eye and Ear Hospital and $5 million for the planning of a world-class cancer precinct at Parkville.

Recently, along with a number of colleagues, I visited the Peter MacCallum cancer hospital just down the road from Parliament House. I was very impressed at the world-class research that is going on in that hospital and the very good quality of compassionate care that hospital staff give to cancer patients. The budget provides a significant investment to target chronic diseases, in particular to boost cancer detection, prevention and treatment, which is something I warmly welcome. In particular the budget includes a $150 million cancer action plan, which aims to increase cancer survival rates by 10 per cent by 2015, saving an estimated 2000 Victorian lives. A sum of $24 million will go to reducing major risk factors and avoidable cancer deaths by investing in effective screening and early diagnosis, and $70.8 million will be provided to the Victorian cancer agency to link various cancer research projects in Victoria and fast-track know-how and research that can be turned around to deliver new life-saving treatment. An extra $25 million has been allocated to the development of the Olivia Newton-John Cancer Centre to bring together all facets of cancer care, research and training at one of my local hospitals, the Austin Hospital. It will be the first cancer wellness centre in the Southern Hemisphere and will cater for the psychological, spiritual and emotional needs of patients with cancer.

As I said at the outset, this budget is addressing the current challenges faced by our state. One of those is our booming population. Many people have been attracted to our state because of its strong economic growth, but we are also experiencing a significant baby boom at present.

For this reason the budget allocates significant funds to expanding our maternity units and services, particularly with a focus on our regional and suburban hospitals. As part of this commitment $2.5 million has been allocated to expand maternity services at one of my local hospitals, the Northern Hospital, adding six new beds to the maternity unit, providing for an extra 500 births per year. The $54.9 million that will be spent to expand maternal and child-health services across the state will include $42.7 million over four years to ensure that all babies and children receive check-ups and health support at key developmental stages up to the age of five, and $12.2 million to provide enhanced maternal and child-care services for babies and vulnerable families, particularly first-time mothers.

There will be $6.6 million allocated to match anticipated commonwealth funding for new screening initiatives for mothers at risk of postnatal depression. All of these measures are vitally important because we want to give babies and children the best start in life. All the research shows that kids who get the best start in those early formative years are least likely to experience educational and other developmental problems down the track.

The budget also includes a record expansion or level of funding for ambulance services, and as part of this many parts of my electorate will benefit. A total of 13 new peak-period units will commence in Abbotsford, Coburg, South Morang and Ivanhoe to boost ambulance services at busy times. Greensborough will get upgraded services involving the addition of paramedics. Eight new 24-hour paramedic teams are also included, including two based in Broadmeadows and Fawkner. A new MICA (mobile intensive care ambulance) single responder unit is to be introduced to 12 suburbs, including Bundoora, Coburg and Ivanhoe, and there will be a new 24-hour MICA peak-period unit for Richmond. In addition a further $2.1 million will provide 19 400 free transports for pensioners and

health-care card holders. These are importing expansions and improvements to our ambulance services, with a view to improving ambulance response times. That is critically important in an emergency situation.

Another aspect of the health budget that I want to comment on is the $37.2 million Victorian alcohol action plan, which will be used to address binge drinking and alcohol-related violence. This is something that I have spoken about before in this house and that I warmly welcome. As I have mentioned previously, I am a member of the parliamentary Drugs and Crime Prevention Committee. A few months ago members of that committee visited the Melbourne central business district area and had a look at some of our nightclub areas and the problems they have been experiencing with young people and binge drinking. It is important that we have this package that not only includes the 2.00 a.m. lockout and those types of measures but also has a very strong focus on liquor licensing compliance and education strategies to help reduce the incidence of binge drinking that occurs amongst young people in our community.

It is most important that the package provides support to general practitioners and other health-care workers to support early recognition and response to people with alcohol problems. Victoria Police is also receiving additional funding through the safe street public safety research and pilot evaluation to provide a deeper understanding of the triggers and precursors to street crimes. The 2.00 a.m. lockout in the cities of Melbourne, Stonnington, Port Phillip and Yarra is a measure that I have strongly supported. It is important that that be allowed to roll out, and we can evaluate the success of that strategy together with all the other elements of the package that I have just referred to.

One other aspect of the budget I also want to commend in particular is the fact that in the transport area, the government has made an allocation of $10.4 million for detailed design works for the Epping line to be prepared with a view to eventual extension of our rail network to South Morang. The development and design phase of this project will involve intensive environmental engineering and other technical investigations which are critical to determining the full scope and cost of the rail extension. The construction of the second rail bridge across the Merri Creek between Clifton Hill and Westgarth stations is now under way, which is an important part of enabling the rail capacity to be expanded on the Epping rail line.

There are many other aspects of the budget that seek to improve our transport system.

Business interrupted pursuant to sessional orders.

QUESTIONS WITHOUT NOTICE

Goodyear: Somerton plant

Mr DALLA-RIVA (Eastern Metropolitan) — I direct my question without notice to the Minister for Industry and Trade. When did the minister first become aware that the Victorian-based Goodyear tyre manufacturing plant was considering closure?

Hon. T. C. THEOPHANOUS (Minister for Industry and Trade) — I thank the member for his question. May I say that from the point of view of the government it is unfortunate that the company has decided to close the plant's operations. I want to comment on the context of jobs in that corridor, because while we are unhappy whenever there is a closure or there are job losses, there have been plenty of occasions when I have come into this house and indicated that initiatives of this government have resulted in new jobs being created throughout the state. This will always be a process where new jobs are coming on stream. Sometimes we lose existing jobs, but it is the overall number of jobs created in the economy that is the main factor we should be judged on. In that context, as the member knows, Victoria has put on more jobs than any other state over the last year, and we are proud of that record.

However, I am mindful of the fact that this will obviously have an effect on the employees of that company. I met with the chief executive officer of the company — I do not want you to hold me to the exact date — about two or three months ago, and we had some discussions then. It was indicated to me that the company was having difficulty maintaining its operations at Somerton, and there was a wide-ranging discussion about the difficulties the company had faced over many years and the decline in this area of tyre production, the take-up in tyre production and the significant competitive pressures the company was under. Those discussions commenced some time ago with me directly, but obviously the department has been liaising with the company since then.

I was disappointed but certainly not surprised to hear the announcement of the closure by the company. To put it into some context, the government has sought and received from the company assurances that it will look after its employees in so far as their pay entitlements are concerned. The company has also assured us that it will be offering job placement and retraining help where it is needed.

The government will also offer the company's employees assistance through its Skill Up retraining scheme. We are confident, however, of the future of manufacturing in Victoria, including in the auto industry. Recently we announced hybrid car manufacturing coming into Victoria, which is a big boost for the industry, but Mr Dalla-Riva might recall that prior to that I announced that Ford was making a very large investment, probably in the order of $1.8 billion ultimately, to commence the construction of Ford Focus vehicles at its Broadmeadows plant. While I recognise that that followed a reduction in jobs in Geelong, 300 new jobs will be created as a result in the Broadmeadows plant.

But that is not the only thing happening in the Hume corridor. The government has been able to negotiate a new location for Melbourne Markets, which will be in the Epping area, and that will result in a couple of thousand jobs locating into that region as well.

Mr Guy — They are existing jobs.

Hon. T. C. THEOPHANOUS — I am talking about that region as a region.

Mr Guy — They are existing jobs.

Hon. T. C. THEOPHANOUS — Some are existing and some — —

The PRESIDENT — Order! I remind the minister and members of the Council that this is not a debate, it is simply an answer. I ask the minister not to engage in responding to interjections or debate with any member of the house.

Hon. T. C. THEOPHANOUS — The Hume region is a growth region of Victoria. It is certainly an important manufacturing region not only of Victoria but, I might say, of Australia. In fact Melbourne's north currently provides about 30 per cent of Victoria's manufacturing output, and that equates to about 10 per cent of the nation's manufacturing output. It is and it will remain as an important manufacturing region. We regret that the closure has occurred, but it is being managed in the context I just outlined.

Supplementary question

Mr DALLA-RIVA (Eastern Metropolitan) — Given that in the minister's response it appears he is aware of the problems with the Somerton plant and the possibility of an impending closure, and given that we have heard recently of the assistance provided by the government to Toyota of around $35 million, why did he fail to act to save the 600 jobs that will now be lost?

Hon. T. C. THEOPHANOUS (Minister for Industry and Trade) — If Mr Dalla-Riva ever becomes a minister of the Crown, he will appreciate that decisions in the sort of portfolio that I have need to be made on a case-by-case basis and on the basis of securing the best long-term future for particular industries. The investment in the Toyota hybrid is a strategic investment which involves securing a long-term future in the production of green cars for this state. We always look at each proposal individually and make judgements about whether it is an appropriate expenditure of state money. It is not a recipe for an open chequebook; we have never treated it in that way. We do make strategic investments from time to time when we think they should be made.

In this particular instance the production of tyres has been declining over a number of years and is subject to enormous international pressure. The company involved had over a protracted period of time reduced its level of manufacturing. A number of local manufacturers had stopped contractual arrangements with the company, so it was facing an uncertain future. In those circumstances that company made a decision to discontinue its operations. We regret that decision and we are seeking to ensure that the workers are accommodated as much as possible — and of course we are working on ways of growing manufacturing in the state. We will continue to do that, and we are happy to rest on the record as having created an additional 90 000 jobs in Victoria last year, which is more than were created in any other state.

Planning: Glenelg

Ms TIERNEY (Western Victoria) — My question is to the Minister for Planning. I ask the minister to update the house on any recent progress made in addressing the significant planning challenges faced in the shire of Glenelg.

Hon. J. M. MADDEN (Minister for Planning) — I welcome Ms Tierney's interest in this matter. It is a matter of general public interest, and it should be a matter of interest to members of this chamber, because I know there have been requests in relation to some of these matters at Glenelg shire. To describe the operation of the planning system over a number of years at Glenelg as a shemozzle is probably something of an understatement, and I say that not as a criticism of the planning officers currently there, because the planning officers at the Glenelg Shire Council are doing their very best in difficult circumstances, but they are confronted by a number of inappropriate land zonings in Portland.

Today I want to announce that I am releasing the findings of two advisory committee reports that have considered subdivision applications in Rossdell Court, Victoria Parade, Jones Street and Hartwich Street. These advisory reports deal with four applications for residential subdivisions that I had to call in due to the potential for serious land-use conflicts with the port and port-related industries. Basically these were applications by people seeking to build residences on the very edge of the port precinct.

On the basis of the findings of the advisory committee panels I will not be granting permits for three of the four residential subdivision applications because they would present an unavoidable land-use conflict with the port of Portland and the port-related industries. In particular these reports found that future residents of these three sites would be adversely affected by noise from heavy vehicle traffic between the Alcoa smelter and the port along Madeira Packet Road.

However, I will be issuing a planning permit for one of the three sites — that is, the site at 3 Hartwich Street. This is already set within an existing residential development area and is not impacted to the same extent as the other sites. Another recommendation of the advisory committees was to rezone the land generally bounded by Rossdell Court, Madeira Packet Road, Edgar Street and Hislop Street as an industrial zone. I have written to the Glenelg council to seek its views on this matter.

I know members of this chamber have expressed interest, both in this forum and in committees of this place, in how this issue arose. Having done a fair amount of research in relation to this issue, because we were concerned that it should never have arisen, let me make the point that the residential rezoning of the land was by the former Kennett government and the sale of that land was approved by the former Kennett government months before it lost office in 1999. These are the key reasons an unavoidable — —

Mr Guy — Completely untrue!

Hon. J. M. MADDEN — I'll keep going, Mr Guy, because you may learn something again. These are the key reasons why an unavoidable land-use issue has arisen.

Mr Guy interjected.

The PRESIDENT — Order! Mr Guy is warned.

Hon. J. M. MADDEN — The previous Liberal government was responsible for this shemozzle. What is also interesting in relation to this matter — —

Mr Barber — On a point of order, President, standing order 8.02(2) says that questions should not ask for 'a statement or announcement of the government's policy'. It is now clear that is what that question was intended to elucidate. This would be more appropriately put into a ministerial statement, if the minister wants to make this announcement.

Hon. J. M. MADDEN — On the point of order, President, I like the fact that Mr Barber is trying — —

The PRESIDENT — Order! That is not a point of order. If the minister has a point of order, he should get to the point of order.

Hon. J. M. MADDEN — The point of order, President, is that this is not a policy announcement. This is actually a — —

The PRESIDENT — Order! That is not a point of order. The fact is that the minister is right, it is not a policy announcement. I remind the house that while the minister may want to make some formal announcement or statement to the house, it does not prevent any member debating that matter at an appropriate time. While Mr Barber is encouraged to continue to read the standing orders and digest them, on this occasion he is not quite right.

Hon. J. M. MADDEN — Can I just point out again that this is not a criticism of the current planning officers down at Glenelg, because they are doing their best under very difficult circumstances. They are also confronted with having to work through the issues facing land affected by the development plan overlay (DPO) 7 in the Portland-Narrawong coastal area. The current DPO7 controls were put in place — the current ones, which have often drawn levels of interest in this chamber — at the request of the council. These controls are there to manage the risk to people's property and potentially their lives in a highly sensitive area, arising from a development in an area that is subject to unqualified coastal recession. To clarify the technical issues, there is no point building on a location that might get swept away in a tidal surge and put people's lives at risk.

Mr Guy interjected.

Hon. J. M. MADDEN — I encourage Mr Guy to educate himself in this area in relation to climate change, global warming and tidal surges.

Can I point out in relation to these issues that to describe the situation at Glenelg as a shemozzle is an understatement, also because I am informed that in the order of between 300 and 340 permits were issued at

the Glenelg shire, and some would suggest they were issued outside the law. Each one of them was processed within 48 hours, they were processed with no third-party appeal rights and the common theme is a gentleman by the name of Bernie Wylder. He was the planner. And guess whom he is very good friends with and endorsed by as a council candidate? He is endorsed by the member for South-West Coast in the other place, Denis Napthine! What is particularly alarming in relation to this matter — —

Honourable members interjecting.

The PRESIDENT — Order! Mr Guy knows the standards I want in this chamber. His reference to the minister's comments or his statements as being gutless are inappropriate. I ask him to withdraw.

Mr Guy — I withdraw.

Hon. J. M. MADDEN — What is alarming — and most of this is public knowledge because it has been said in reports anyway — is that Mr Wylder is planning on running for council, having issued these permits. Can I just say, President — —

Mr Atkinson — On a point of order, President — —

The PRESIDENT — Order! The minister is now digressing from the question asked of him, and I ask him to get back to and be relevant to the question.

Hon. J. M. MADDEN — I make this announcement today to ensure that it is our priority to make sure councils do this strategic work, that they employ due process and that they abide by the law in issuing planning permits. I look forward to clarifying many of these issues. I also look forward to our departmental officers working with the Glenelg Shire Council officers to clarify these issues.

I look forward also to working with these councils to support them so they do not find themselves in this degree of difficulty again in the future. We want to continue to look after those who are involved in the planning process and to streamline the process, but not unduly and to the point where we find authorities opting outside the law. In this way we continue to make Victoria the best place to live, work and raise a family.

Schools: public-private partnerships

Mr BARBER (Northern Metropolitan) — My question is addressed to the Treasurer. It is in relation to the Partnerships Victoria updated standard commercial principles that he recently released. Section 14.2, headed 'Service standards and specifics' contains the statement:

> For example, a classroom or a prison cell must have a minimum level of lighting and temperature control and be clean.

I ask, I guess more generally: at what point will the school communities for the 11 public-private partnership (PPP) schools have the opportunity to have input into the service standards and specifics for their new schools, and likewise in relation to 10.4 in regard to the design and development process, and 15.2 in regard to the asset management plan?

Mr LENDERS (Treasurer) — I thank Mr Barber for his question and for his interest in the development of new schools and other public buildings under different procurement standards that this government has brought into place.

Mrs Peulich interjected.

Mr LENDERS — I will ignore Mrs Peulich's inane interjection and respond to Mr Barber's question about public-private partnerships (PPPs). I guess to put the issue of PPPs in context in answering Mr Barber's question, firstly, the government has standards for all public buildings in the state. Mr Barber referred to schools and in particular to the areas of cleanliness, size and lighting, and he also referred to those in respect of prisons. But I will confine my remarks to the schooling area in my capacity as representative in this place of the Minister for Education, and I will talk in more general terms about the PPP process as Treasurer. I will not talk about the prison component, because that is more appropriately addressed to my friend Mr Madden, the Minister for Planning, representing the Minister for Police and Emergency Services in this house.

But regarding procurement, we have standards for what we expect a school to be. As the house will be well aware, this government committed in 2006 to rebuilding, renovating or modernising every school in this state.

Mrs Peulich — Oh, yeah!

Mr LENDERS — In response, if members look at last year's budget, they will find 134 schools out of 1594 were dealt with in last year's budget, and a further 128 are being dealt with in this year's budget. Between the two of those alone, that means more than 250 schools in two budgets. If Mrs Peulich's maths, out of our good education system, actually stacks up, if she multiplies that by 10, she will actually find it more than exceeds the number of 1594 schools in this state. That

is fairly elementary mathematics, which I learnt at Trafalgar High School, and hopefully Mrs Peulich learnt at whichever school she graced in this state.

Mr Barber asked a question then about where communities have an input here.

Mrs Peulich interjected.

Mr LENDERS — I would find almost entertaining, if it were not tragic, Mrs Peulich's interjection about our closing them. This government has a policy, and it relates to Mr Barber's question about local school involvement, that no school will be closed unless the school community and the school council agree. A number of schools close, but it is after a resolution of the school council. That is unlike what occurred under the previous government, of which Mrs Peulich was a willing pawn, when it closed 300 schools without a skerrick of consultation other than within the Department of Education and the Department of Treasury and Finance.

Mr Barber asked what opportunities these new communities and schools have to be involved. It is a challenge in a policy sense for the government. If we are talking of an existing school, there are teachers, parents and students, and they are involved through a school council process for engagement. In new communities it is always a challenge, because there is not an existing school. The education department, through its regional office, will always establish a local consultative committee to start trying to engage potential parents, among other state stakeholders — adjoining schools and the like — for involvement in those sorts of discussions.

Given that Mr Barber is referring to the 11 schools in the PPP process, by definition they are new schools in growth corridors — I might add that they include places like the Kororoit electorate and places where this government was making investments well before a by-election was announced. The process is always one where the government seeks to engage, through the education department, local communities on input into schools. This will be a different process. It is a new process, because it involves public-private partnership and dealing with schools as a group. But I will take on notice for Mr Barber the specifics of a variation from the normal consultation process that may or may not occur in this particular process.

I can assure Mr Barber and the house that, unlike its predecessor, this government engages communities — whether they be existing communities — —

Mrs Peulich — Last century.

Mr LENDERS — Mrs Peulich says 'Last century'. The last millennium was the mindset, but it actually was last century when that government was in power, so we will continue to engage local communities on how to build these schools rather than close them, and I look forward to Mr Barber's supplementary question.

Supplementary question

Mr BARBER (Northern Metropolitan) — The Minister for Education's press release of 23 April says:

> Parents and local community members will have the chance to join the new school planning committees closer to the school openings to appoint the principals and help set the direction for the new schools.

Based on that, I had presumed that school communities were not having an input into these processes, so I am happy to receive that clarification.

My supplementary question is: when will the conditions contained in the PPP agreement be made public? Will it be before or after construction, before or after the opening of the school, before or after the school council is appointed or never, in a situation where the document remains commercial in confidence between the school council, which has to manage the contract, and the contractor?

Mr LENDERS (Treasurer) — I welcome Mr Barber's supplementary question. I am genuinely disappointed for Mr Barber that he did not take the opportunity at the Public Accounts and Estimates Committee hearing to ask the minister directly rather than through me as a mere humble conduit for the minister, as her representative in this house.

I am disappointed for Mr Barber, but what I will say to him is that we will continue as a government to engage local communities on matters of schooling. I know it is hard for some opposite — and I am not saying Mr Barber; I am talking the opposition here — to understand the concept of engaging local communities.

Mrs Peulich interjected.

The PRESIDENT — Order! Mrs Peulich!

Mr LENDERS — I know that in the eight delightful months that I had in the education portfolio, eight months that I thoroughly enjoyed because it was a great portfolio to be in, 1594 government schools had school councils — every single government school had a school council, without exception. That included parents, teachers, and most of them, not all, included community representatives as well as those two starting points.

What you have is engagement, and as Mr Barber correctly says, where you have new schools there is not an existing school community, by definition. If you are setting up a new school in Truganina or somewhere else in the western suburbs, what happens is that at that stage you have indications from parents as to whether they wish to send their children to that proposed new government school and you are seeking staff from the area, so it is always more problematic.

I can assure Mr Barber that this government will consult with stakeholders, and the key stakeholders here are potential parents and potential students. We will continue to consult with them at all stages of the process. Obviously the commercial aspects of public-private partnerships are treated like all other public-private partnerships, but the engagement with community is something we welcome and value because it is such a critical part of making Victoria an even better place to live, work and raise a family.

The PRESIDENT — Order! I remind the house that whilst it is understood that ministers in particular, when they are answering questions, should not overtly criticise parties, the opposition or members asking questions, it is extremely difficult for me to adjudicate on that when people constantly interject and make it very difficult for me to be even-handed. I will give licence to ministers answering questions when they are suffering a barrage of constant interjections that only encourage the sort of response they are currently giving.

Hon. T. C. Theophanous — Good ruling.

The PRESIDENT — Order! I thank Mr Theophanous.

Planning: ministerial intervention

Ms PULFORD (Western Victoria) — My question is to the Minister for Planning. Could the minister update the house on the Brumby government's record in delivering an open, accountable and efficient planning system?

Hon. J. M. MADDEN (Minister for Planning) — I welcome Ms Pulford' s interest in this matter and her particular interest in many planning matters. As this chamber would appreciate, our government is committed to a program of continued improvement in the planning system. We want to make sure that the planning processes are efficient and effective and that they also have the confidence of the community. An important element of giving confidence to the community is to make sure that the processes are open, transparent and accountable.

We are committed to a system that properly documents the reasons for decisions and particularly the reasons for ministerial interventions. We know that that is foreign to other parties in this place, but we are committed to that and have been since 1999, when we came into power and introduced ministerial guidelines for planning powers of intervention. Since we came to government we have had a record of keeping ministerial interventions in planning matters to a minimum, and I am very pleased with that.

A report has been tabled in Parliament this morning that shows there were 173 planning interventions in the 12 months to April 2008. Seventeen per cent of those interventions were for interim heritage or building height controls; around 40 per cent of the interventions were to make technical corrections to planning schemes or to fast-track the removal of redundant planning scheme provisions. This proves that the success of the new protocols announced in March 2007 to speed up the processing of redundant planning provisions has been particularly effective.

The Brumby Labor government maintains a strong record when it comes to keeping the number of ministerial interventions to a minimum, but unlike other governments that stripped councils of powers — —

Mr Jennings — Can you think of any?

Hon. J. M. MADDEN — They do spring to mind. Those other governments were not keen on working and were keen on sacking them, but we will continue to work with councils and local government to improve planning schemes where required.

We are proud of the work that we are doing and have done to remove redundant planning provisions whilst delivering on a transparent system that gives confidence to the community. This delivers a win-win for councils, industry and the community and will enhance Victoria to make it the best place — if it is possible to have an even better place if you are already the best — to live, work and raise a family.

Public transport: ticketing system

Mr D. DAVIS (Southern Metropolitan) — My question is to the Treasurer. I refer to the Treasurer's responsibility under the State Owned Enterprises Act. Will the Treasurer confirm to the house that he was advised on 7 September 2007 of the corporate plan of the Transport Ticketing Authority that drew his direct attention as the responsible minister to the ticketing

fiasco, and will he explain to the house what action he took to stem the haemorrhage?

Mr LENDERS (Treasurer) — I thank David Davis for his question. I am interested in his interpretation of 'responsibility under the State Owned Enterprises Act', because, as he well knows, as the minister I am the shareholder and the policy direction of the particular authority is directed by the Minister for Public Transport in the Legislative Assembly. She has quite clearly answered the substance of David Davis's question several times in the Legislative Assembly when asked the same question, either by the Leader of the Opposition, Mr Baillieu — Mr Davis's leader — or Mr Mulder, his next leader or Mr Guy's leader, as will be the case when it happens.

Certainly it is a serious question about how governments respond to these particular areas. I am not going to start in this house and be the first minister in the history of the Westminster system to start disclosing when meetings were held, getting my diary out for the benefit of David Davis, but his serious question is: was the government aware of some of the issues that arose with the Transport Ticketing Authority? The answer is yes, the government became aware of it and, led by the Minister for Public Transport, the government has managed its way through. Both she and the Premier have said in the Assembly how disappointed they were with how it was going, and the government acted. The government acted on the corporate structure of the organisation and on the personnel of the organisation — it has acted openly and transparently.

The work done by the Auditor-General on this is on the public record, because the Auditor-General was empowered to inquire into all matters of government and report on them, whether they be pleasant or unpleasant for the government. This is clearly one of those things governments do not enjoy and do not like, and we value the Auditor-General's report that makes recommendations to the government.

The government has responded, has dealt with the Transport Ticketing Authority, has openly and transparently shown to the community what is happening there. I stand by every answer given by the Premier and every answer given by the Minister for Public Transport. The government is moving forward. It is unhappy with what has happened, but it has a plan going forward to deal with what is a very difficult system. It is one that has been difficult in every single jurisdiction in the world. We wish it were not the case in Victoria and have acted to bring it into line.

Supplementary question

Mr D. DAVIS (Southern Metropolitan) — The Treasurer has a history of being evasive on questions about myki and the Transport Ticketing Authority and of refusing to answer the questions candidly back in April.

The PRESIDENT — Order! What is the member's supplementary question?

Mr D. DAVIS — In light of the Treasurer's letter I now ask: on what date did the Treasurer become aware of the developing myki fiasco, who briefed him and will he detail the precise actions that he took to fix the problem? What actions did he take?

Mr LENDERS (Treasurer) — I answered the substance of Mr Davis's supplementary question in my substantive answer.

Innovation: university research

Mr TEE (Eastern Metropolitan) — My question is to the Minister for Innovation. Can the minister inform the house how the Brumby Labor government is supporting Victorian innovation through the commercialisation of university research?

Mr JENNINGS (Minister for Innovation) — I thank Mr Tee for giving me the opportunity to answer a question. Following my brief reading of standing order 8.02 I can say that I will do my best to comply totally with that standing order. I think there is a good chance that I can, because the matter I am referring to is a matter that has been announced by the government as recently as when the Premier and I were in San Diego last week. We took the opportunity to provide some support and encouragement to some of the delegates who travelled with the Premier and me to that conference in San Diego, where we saw about 150 delegates from Victoria representing the interests of 66 institutions and start-up companies in the state that have an interest in biotechnology and demonstrating their capacities in a global marketplace.

Part of what we tried to achieve was to bring together some of those researchers and those involved in start-up companies to try and open up their commercial opportunities in developing clinical practices and trials to prove up our approach to medical science and to develop commercial realities. We created a forum where we brought some of these companies together with investors, such as large pharmaceutical companies and other corporations around the world to try to deal with this issue of how commercial partnerships are created, established and maintained.

Part of the announcement we made last week was to facilitate a trans-Tasman collaboration, which will see a partnering of jurisdictions in Australia — Victoria and South Australia — with the New Zealand government to provide a supportive framework. Each jurisdiction will contribute to a fund which will support the commercialisation of research activity that comes out of some of our major universities. In the case of Victoria it is Monash University, in South Australia it is three universities — Flinders University, Adelaide University and the University of South Australia — and in New Zealand it is the University of Auckland.

Most people who are well are of the biotechnology or research and development field know that there is fantastic expertise and capability coming out of institutions such as the ones I have mentioned. Increasingly we see the intellectual property that is being developed in these research institutions being taken to commercialisation by start-up companies that spin out of the university sector.

This fund, which will be supported by superannuation funds that have been coming out of Western Australia, so the Westscheme superannuation fund will provide a basis of pool funding that will be available to support the commercialisation of these enterprises. We see great talent in our university sectors, and we have great optimism for their capability to transfer their research into real and tangible outcomes to benefit our community in dealing with medical conditions, whether they be in neuroscience, cancer treatment or remedying many of the diseases and illnesses that bedevil communities around the world.

Not only is there is a great potential to make a difference to the quality of life of our citizens but also in this context the commercialisation of the therapeutic application of that research will benefit our institutions and commercial activity in the state of Victoria. The trans-Tasman fund will be a very tangible way in which that expertise can be taken further to commercialisation. The Premier and I were very pleased to be part of that announcement in establishing that capacity and that capability to support our researchers and our start-up companies.

Public transport: ticketing system

Mr D. DAVIS (Southern Metropolitan) — My question is again for the Treasurer. I refer to his letter dated 8 October 2007 to the chairman of the Transport Ticketing Authority (TTA), which states:

> I note that the corporate plan identifies some significant project risks for the timely delivery of the new ticketing system and that the TTA continues to work with the contractor to address the current issues. I understand the TTA meets regularly with the Department of Treasury and Finance … to provide updates on the status of the project implementation. I encourage this practice to continue in order for DTF to provide assistance where appropriate.

My question is: what are the significant project risks to which the Treasurer referred, and what was the precise assistance provided by DTF to the stricken TTA?

Mr LENDERS (Treasurer) — There was a day when people had very old-fashioned values and when one person wrote correspondence to another, that correspondence was private and confidential and people did not snoop at it and give it to the world. David Davis may not have lived in that same world. I will go through what David Davis has asked, but I think I have substantially answered his question in my response to his first — —

Mr D. Davis interjected.

Mr LENDERS — David Davis thinks he gives editorial provenance — —

The PRESIDENT — Order! Mr Davis has asked his question, and we would all like to hear the answer.

Mr LENDERS — What David Davis has said to the house is that I wrote to the Transport Ticketing Authority to comment on its plan. I do not think it takes rocket science to work out that its plan was not working.

Mr D. Davis — Fiasco!

Mr LENDERS — David Davis likes to talk down anything. I would suggest that if David Davis — —

The PRESIDENT — Order! This is exactly what I was alluding to earlier. If ministers are trying to answer the questions and people interject, then we are all over the shop. I ask Mr Davis to be cognisant of my earlier ruling.

Mr LENDERS — Let us look at what Mr Davis is actually saying about myki; let us spend a moment on process here. In my response to his first question I mentioned that the government was extremely disappointed at this; it gives the government absolutely no joy. But I also say that if David Davis had been a member of the Hong Kong Legislative Council when the Octopus system was being introduced to Hong Kong, his questions would have been very similar. If he had been a member of the United Kingdom House of Commons or the Greater London Authority when the Oyster card system was being introduced to London, his question would have been very similar. If he had

been a member of the Brisbane City Council — which has a Liberal majority, so he would feel very good and in an unique situation — he would find that when the go card system came up there some very similar things happened. If he had been a member of the City of Perth Council when the SmartRider card came up, he would have learnt some lessons — if he had been in San Francisco when TransLink came, in Ireland when the Luas was produced or in Melbourne when myki came up, he would have learnt a lot of things from them.

From the government's perspective, after a proposal was put forward, the Transport Ticketing Authority was looking at all these other schemes to learn best practice, and clearly the TTA was not succeeding in its mission to do all of those things. Of course what any prudent minister would then do is write to the authority and say, 'We do not think this is good enough'. Led by the Minister for Public Transport, Ms Kosky, we put new people on the board and appointed a new chief executive officer to the organisation. There is also a new relationship with Kamco, the company delivering the system for the authority. We have looked at what the Auditor-General referred us to. I would think it prudent for any minister, whether they be a public transport minister or a Treasurer, to offer to the Transport Ticketing Authority — the appropriate authority — the best staff and the best advice they could offer from their department and say, 'We would like a progress report on what is going on; we are monitoring what is going on and we want to work through this problem together'. Surprise, surprise — what the Auditor-General suggested we do.

I say to David Davis that when a project is struggling and is in trouble, as this one was — as the Premier has said, as the transport minister has said and I also say — the government acted to address this issue. We are getting all sorts of comments and a lot of wonderful adjectives from those opposite. They have obviously been looking at a thesaurus to get a few adjectives out here today.

Opposition members were shamed by Mr Madden when he talked of their shemozzle in local government. What they are seeking to do is point out all the errors — and good on them for pointing out the errors. Let me assure you, President, and the house, that the government has also been seeking the errors in the myki system, but it is also seeking solutions to fix those. My colleague Ms Kosky, the Minister for Public Transport in the other house, has already outlined to the Assembly the trials in Geelong; that is all on record so I will not go through that again. We have gone through the trials in Geelong, and we want this system up and running. It is a system that will give greater choice to people and will mean we deal with a greater number of people using our public transport system than ever in the history of this state. We will work through the problems with the Transport Ticketing Authority. We are on the road to getting this system up and running— later than we would like, disappointing though that may be. We look forward to addressing and fixing these issues.

While David Davis is very good at carping and pointing out problems, we are also going to identify problems, and we also have the solutions. We have two departments and the whole of government with their shoulders to the wheel to get this major ticketing system fixed and working, which is what the Victorian community expects us to do.

Supplementary question

Mr D. DAVIS (Southern Metropolitan) — In a letter to the Treasurer from the chairman of the TTA dated 7 September, the chairman states:

> … the corporate plan is based on our present strategies and forecasts which in this dynamic stage of the NTS —

new ticketing system —

> project may be subject to revision in the coming months. We will continue to update your officers of the NTS project's status throughout the year.

I therefore ask: what is the Treasurer's understanding of 'dynamic' as it pertains to the myki fiasco?

Mr LENDERS (Treasurer) — I have two choices: I can quote from the *Macquarie Dictionary*, which I assume Mr Davis has been looking for, or I can answer it seriously. Mr Davis likes to play with words. What I would rather do is concentrate on solutions to a project that has disappointed the government. I think I have clearly answered his question in my substantive response to his first question. Therefore I say to Mr Davis that we on this side of the house will be working to get a solution to the ticketing authority issues. He has seen the trials have commenced on this — trials that were not without some dynamic issues, you could say. We will continue to work through these issues to get a solution in place for commuters across the whole state.

It is interesting to note that under the previous government it was a ticketing system only for Melbourne. This is one for the whole state so there will be a seamless system. Whether you come from Mildura, Mallacoota or Melbourne, there will be a seamless system for V/Line, regional buses, regional rail and metropolitan trams. We will continue to work

through it. I look forward to finding a solution with the minister on this and not playing with words, as Mr Davis enjoys doing.

Western suburbs: government initiatives

Mr EIDEH (Western Metropolitan) — My question is also to the Treasurer, John Lenders. Can the Treasurer inform the house whether there have been any recent Australian Bureau of Statistics data that shows that the Brumby Labor government is making Victoria, in particular the western suburbs, the best place to live, work and raise a family?

Mr LENDERS (Treasurer) — I thank Mr Eideh for his question.

Mr Finn interjected.

Mr LENDERS — Mr Finn says, 'Give it a rest'. I tell you what, President: the only people who have given it a rest were in the 81 per cent of the life of the state of Victoria when conservative parties were in government. That is when they gave the western suburbs a rest, because they did not go there, they did not care about it, they did not notice it. It was only when a by-election is on that people notice it.

Mr Eideh asks about Australian Bureau of Statistics (ABS) data on the western suburbs of Melbourne. I am very happy to go through those for the benefit of Mr Eideh and the house.

Mr D. Davis interjected.

Mr LENDERS — I hear the interjection from Mr Davis about Somerton. He is back at it again. Last week Kororoit was Koroit, out near Warrnambool. We are talking of the western suburbs and he is talking of Somerton. If he looks at a map he will see that Somerton is in the Broadmeadows electorate which, certainly Mr Pakula will know, Mr Eideh will know, Mr Madden will know and, I suspect, Ms Hartland will know, is in the north.

Mr Davis talks about the western suburbs and talks of Somerton. Somerton is actually in the north, not the west. It is in the Northern Metropolitan Region for this house. It is in a northern municipality. I guess it just reinforces my point — —

Honourable members interjecting.

The PRESIDENT — Order! The next interjector, and I do not care how many times they have interjected, will be out the door for 30 minutes.

Mr LENDERS — If we are talking of the western suburbs, the point I am making is: one needs to know where the western suburbs actually are. One needs to know how to pronounce the names of suburbs in the west before one makes too many comments on the western suburbs.

The ABS statistics have shown extraordinary growth in the western suburbs of Melbourne during the life of this government. We have seen 63 600 extra jobs created there during the life of this Labor government. We have seen the unemployment rate there drop from 9 per cent to 4.7 per cent, and we have seen the population grow during this time under Labor by more than 26 per cent.

We are seeing extraordinary growth. Most recently we have seen investment in roads, including the provision of $331 million for the Deer Park bypass. We have seen an extra 548 nurses employed in hospitals. We have seen a doubling in recurrent funding for hospitals, and this budget delivered $73 million for the second stage of the expansion of Sunshine Hospital. That was during the life of this Labor government. In the seven years before that, if we are talking of hospital expenditure, we saw the Essendon hospital — —

Mr D. Davis interjected.

Questions interrupted.

SUSPENSION OF MEMBER

The PRESIDENT — Order! I cannot begin to tell David Davis how disappointed I am in him as Leader of the Opposition and his unwillingness to demonstrate cooperation with the Chair. I will now use standing orders and remove him from the chamber for 30 minutes.

Mr D. Davis withdrew from chamber.

Questions resumed.

Mr LENDERS (Treasurer) — If we are talking of hospitals and hospital growth, this government has invested $73.5 million in the second stage of the Sunshine Hospital, in the budget, and in the seven years before we came to government we saw the Essendon hospital closed and the Altona hospital closed. If we are talking of commitment to the west, we build hospitals; we do not close them.

Mrs Peulich — On a point of order, President, in view of the action just taken — I am not reflecting on the Chair; that is within your prerogative — the minister is using this opportunity to debate the question

and obviously promote Labor's interests in the forthcoming by-election, which is a matter on which the opposition may be provoked to respond. It is a question of relevance.

The PRESIDENT — Order! I believe the minister is actually relevant to the question that he has been asked about the western suburbs. Whilst I appreciate that Mrs Peulich may not like the answer that is being given, that is irrelevant.

Mr LENDERS — If we are talking about ABS data for the west of Melbourne, during the eight-and-a-half-year life of this government — well before any by-elections were called — there are a number of statistics I can deal with for Mr Eideh. We have seen in the city of Brimbank — a large section of which is in the Kororoit electorate — the number of front-line police increase by 28 per cent in the eight and a half years. In the shire of Melton we have seen the number of front-line police increase by 23 per cent. We have seen the overall crime rate decrease — in Brimbank by 22 per cent and in Melton by 30 per cent. I can go through it — residential burglary is down 58 per cent in Brimbank, motor vehicle theft is down 57 per cent in Brimbank, and it is also down in the Melton municipality. We have seen unemployment come down, from 9 per cent in November 1999 to 4.7 per cent in May 2008. We have seen population growth, we have seen a greater number of services and we have seen a greater investment in health. What I can say is that the ABS data shows, for Mr Eideh, what we see — —

Mr Viney — On a point of order, President, I understand that the members of the opposition are not interested in the western suburbs, but I am actually interested in the answer and I cannot hear it because they are talking with one another and turning their backs on the Treasurer.

The PRESIDENT — Order! That is pretty close to a frivolous point of order.

Mr LENDERS — In concluding, the ABS data show that the western suburbs of Melbourne — the outer western suburbs of Melbourne in particular — have seen job growth. In fact we have seen 63 600 more people employed in the west of Melbourne than was the case in 1999, when there was a change of government. We have seen investment in hospitals, rather than the closure of the Essendon and Altona hospitals. We have seen investment in schools, investment in police and investment in health. The ABS data show that an investment in a community makes a difference. We have seen the investment. This government will continue to invest to make all of Victoria, and particularly the western suburbs, continue to be an even better place to live, work and raise a family.

Victorian Funds Management Corporation: staff

Mr RICH-PHILLIPS (South Eastern Metropolitan) — My question is to the Treasurer. I refer the Treasurer to the departure of the chief investment officer of the Victorian Funds Management Corporation, Mr Leo de Bever, because of excessive government interference. Can the Treasurer confirm that in the past nine months the global small companies, emerging markets and global large companies investment director, David Roberts, the hedge funds investment director, Keith Dickie, and the investment director, international equities, Elly Lumsden, have also all left the VFMC?

Mr LENDERS (Treasurer) — I thank Mr Rich-Phillips for his question and welcome questions at any time about the Victorian Funds Management Corporation (VFMC), a particularly robust organisation that this government has set up as an international centre of excellence because we wish to encourage investment to Melbourne. My colleague and friend Mr Theophanous, in his capacity as Minister for Industry and Trade, has actually led a mission recently to east Asia to try to encourage more financial sector services to come to Victoria, because Melbourne is a great place and Victoria is a great place to do business. The VFMC was specifically set up by the government of Victoria to — —

An honourable member — Which government?

Mr LENDERS — The VFMC was changed in 2006 by this government to make it a centre of excellence. Mr de Bever and a number of other people were part of that, where we expanded the capacity of the VFMC to do a lot of investments in house. As I am sure Mr Rich-Phillips knows, those investments — rather than go through other funds management, the VFMC does a lot of things in house — include that we as Victorians now actually own an airport in the UK and a tollway and, I think, a utility station in New Jersey and New York. We have broadened the investment pool so that whether it be our superannuants, whether it be our Transport Accident Commission and WorkCover beneficiaries, or whether it be others, they will have long-term investment security. The VFMC's returns have been at a rate of about 12 per cent per annum over the past five years,

despite the downturn in international and domestic equities over that period of time.

Mr Rich-Phillips asked a question about personnel within the VFMC. I can say that I wish Mr de Bever well. He came to Victoria and he certainly set a plan in place as chief investment officer of the VFMC. Of course when he goes, the acting chief investment officer, Mr Syd Bone, as chief executive officer, will resume that role. The organisation is now a centre of excellence. It is performing. I have read with interest the comments in the *Herald Sun* which were clearly taken out of context. What I can say to Mr Rich-Phillips is that I do not know about the other officials; there is a staff of about 50 at the VFMC. I do not exercise day-to-day management, which Mr Wells, the member for Knox in the other place, often suggests I do. So perhaps Mr Rich-Phillips and Mr Wells — yet again — have a different view on some of these things.

What I will say to Mr Rich-Phillips is that Mr de Bever has gone to be the chief financial officer or the chief investment officer of the Alberta superannuation fund. The Canadian province of Alberta, with a slightly smaller population than that of Victoria, is blessed with oil in such abundance that recently its Premier recently wrote a cheque to every single citizen of Alberta giving them Can$200 each because the state had too much money. That is a problem I would like to have as Treasurer of the state of Victoria. Needless to say, the province of Alberta in Canada has more than Can$80 billion in its investment fund.

From Mr de Bever's point of view, he has gone home. He was born in the Netherlands, which Mr Vogels and I would both appreciate, and in fact he is from the same province as Mr Vogels. Mr de Bever has gone back to his home country of Canada to administer a fund more than twice the size of the VFMC. I wish Mr de Bever well in that. But I can assure Mr Rich-Phillips that the VFMC in Victoria is performing well. It is an organisation I have a lot of confidence in, and it is one that I think Mr Rich-Phillips should probably aspire to himself, because its investments are actually quite good — what it has done in the equities market over the last period of time — in Victoria.

Supplementary question

Mr RICH-PHILLIPS (South Eastern Metropolitan) — I am surprised that the Treasurer does not seem to know that he has lost three investment directors from the Victorian Funds Management Corporation this year. He commented on the returns from the VFMC. Given that the Treasurer has previously denied micro-managing VFMC investments, will he now deny that government interference in VFMC decisions is cutting fund returns by the order of 2 per cent per annum?

Mr LENDERS (Treasurer) — I guess to explain fund returns, the Victorian Funds Management Corporation has returns from a number of areas. One amount of returns is from capital, one is from cash and one is from investment in equities. If the VFMC had, for example, invested only in QR Science Holdings, AGL Energy, CSR and BlueScope over the last nine months, it would have lost 19.3 per cent of its portfolio. The market as a whole has not done very well over that period of time and the VFMC, on its Australian equity returns, has actually lost 15.4 per cent.

The reason I use that group of four companies is that those investments are the companies that Mr Rich-Phillips owns shares in. Mr Rich-Phillips asks questions about the VFMC's particular performance, but the four companies he owns shares in have actually lost more than the VFMC over that same period of time. I suggest to Mr Rich-Phillips that people in glass houses should not throw stones.

Mrs Peulich — And how is that relevant?

Mr LENDERS — I take up Mrs Peulich's interjection, 'How is that relevant?'. I will say why it is relevant.

Honourable members interjecting.

The PRESIDENT — Order! I understand that it is the last question time before a significant break for the house — in fact I even understand there is a by-election on the weekend and that people are a bit excited — but I would just ask the house to settle.

Mr LENDERS — It is relevant because, as any member in this house would know — and a lot of members in this house own shares — and as anyone who owns shares would know, the stock market has actually taken a dive. The thing was that after the Wall Street subprime crisis hit, it rippled across the world and stock markets across the planet have taken a dive. The point I make is that the VFMC manages for the long term. As I said in my answer to Mr Rich-Phillips's substantive question, the VFMC over a five-year period has had returns of more than 12 per cent. If people wish to pick a short period of time and take things out of context, that is the relevance of using that particular portfolio of four shares. It happens to everybody. I have yet to hear of a fund in the world or an investor in the world in the last year who has not taken a bath on the equities market. That is the point of raising those four companies that Mr Rich-Phillips owns shares in.

The VFMC is a body set up to make investment decisions for government over a long period of time. It has benchmarks and targets to meet. It is judged against its own performance. Its senior management team's performance is judged against performance in these areas for the purpose of awarding bonuses. There are mechanisms in place, and the board of the VFMC is under the supervision of Mike Fitzpatrick, a widely acknowledged and respected financier in this state. There is a board that has the power to do that. It has its own management structures. I, as Treasurer, do not intervene in the individual investment decisions of the VFMC. I can assure Mr Rich-Phillips categorically of that.

If Mr de Bever has any issues with the state setting prudential guidelines for the VFMC and having a level of accountability and reporting to the Parliament, which he does not — as I said, this *Herald Sun* article has been taken out of context — then I say to Mr Rich-Phillips, 'Let's have a debate'. Do we want a laissez-faire arrangement where $40 billion of public money is being given to a group of people with no accountability to the Parliament and no accountability to the Auditor-General? I suggest that that is not something that his colleague Mr Wells in the other place advocates; Mr Wells wants me to intervene in the VFMC every second day, if you believe his press releases.

We have a balanced approach. We have set the VFMC up as an international centre of excellence. Since the reforms to the VFMC on 1 July 2006 we have boosted the board and boosted the staff to give it greater clout. Its mandate is investments that the Victorian government sector holds. What I say to Mr Rich-Phillips is that we will continue to monitor the VFMC and to take responsibility for the prudential guidelines, and we will continue to monitor whether this is a model that works, but it is part of an independent body within prudential guidelines that is managing a lot of money on behalf of a lot of Victorians for the longer term. To date it has had a return of 12 per cent over the last five years, which is better than inflation, better than Mr Rich-Phillips's portfolio and better than many of the superannuation funds that I know of.

Sunraysia: economic development

Mr DRUM (Northern Victoria) — My question is also to the Treasurer. Can the Treasurer update the house on any recent Australian Bureau of Statistics data that indicate that the Brumby Labor government is continuing to take action to deliver jobs and increased population in the Sunraysia region?

Mr LENDERS (Treasurer) — I thank Mr Drum for his question. I do not have the data at my fingertips but I can certainly assist him on a number of points regarding Sunraysia.

Mildura is one of the fastest growing inland cities in Australia. Mr Drum asks, 'What are you doing?'. I can say to Mr Drum that the Regional Infrastructure Development Fund, which his party voted against when it came into this house — the opposition voted against it — has invested tens of millions of dollars into the Sunraysia area to try and assist jobs growth in that area, which is very important and very significant.

Mr Drum asked about Sunraysia. Excuse my ignorance, but if I recall correctly, the reason the former member for Mildura in the other house, Russell Savage, won the seat from the coalition as an Independent was because the Kennett government closed the Vinelander line, the one train line to Sunraysia, whereas in this budget the government has invested money in upgrading the rail infrastructure to Mildura as an important starting point in getting a passenger rail service on that line.

Mr Drum asked about Australian Bureau of Statistics statistics. I can certainly say to Mr Drum and to the house that this government has not sold off the public transport system; we are actually reinvesting in it. We have reacquired the rail system, we are investing in freight and we have responded to Mr Fischer, a former federal Leader of The Nationals, in respect of the gold rail lines and investing money in the area. Our government continues to go to Mildura to engage the community, even though it is an area that gave us the lowest vote of anywhere in the state.

Mr Drum interjected.

Mr LENDERS — Mr Drum asked when I last went to Mildura. I was in Mildura recently for a community cabinet. I must admit that the time I was in Mildura before that was a far less pleasant experience; it was during the Nowingi long-term containment facility debate. But even in adverse times like that we are not afraid to go to places like Mildura. We like Mildura.

Mr Drum interjected.

The PRESIDENT — Order! Mr Drum!

Mr Drum — What?

Questions interrupted.

SUSPENSION OF MEMBER

The PRESIDENT — Order! I will tell Mr Drum 'What'! His interjections are totally inconsistent with my earlier rulings, and under standing order 13.02 I am now removing him for 30 minutes.

Mr Drum withdrew from chamber.

Questions resumed.

Mr LENDERS (Treasurer) — In conclusion, what we have seen is jobs growth across the whole of Victoria, particularly regional Victoria, during the life of this government, and Sunraysia has been part of that. Clearly the city of Mildura is the strongest growing part of Sunraysia. It is a growing inland city in which the government has invested heavily in infrastructure, in schools and in public services, whether that be the hospitals or the schools, in all of those areas. I welcome any question from Mr Drum on government assistance in regional Victoria. Our assistance to and our work with the Sunraysia community have made Mildura an even better place to live, work and raise a family.

Sitting suspended 1.09 p.m. until 2.19 p.m.

APPROPRIATION (2008/2009) BILL and BUDGET PAPERS 2008–09

Second reading

Debate resumed.

Ms MIKAKOS (Northern Metropolitan) — I am very pleased to make some further comments in relation to the budget. As I was saying before question time and lunch interrupted, this is a very good budget for Victoria and a particularly good budget for the Northern Metropolitan Region. I indicated to the house a number of funding initiatives included in the budget that will benefit families and individuals living in the Northern Metropolitan Region, and in particular a strong commitment in the key portfolio areas of education and health.

Listening to the contributions made by members of the opposition I noted a number of comments and criticisms of the budget. In particular they have indicated further areas for which they would have preferred to see the government outlay money. I find this particularly interesting in the context of the splurge-o-meter that we saw at the last state election, when the opposition made all sorts of spending commitments that would most likely have resulted in the Victorian budget going into deficit. We have seen the opposition take this irresponsible position again recently in the context of a by-election for only one seat, the Kororoit electorate, for which the opposition has made spending commitments of over $100 million. If we were to translate that across every electorate in Victoria, we would see what has been a very strong budget position in this state being reversed. We are strongly committed to retaining a budget surplus in the state. We have taken a financially responsible position. We have made budget allocations that focus on key priority areas, improving government infrastructure and services in key areas such as education, health, public transport, roads and community safety. We make no apology for doing this.

In the remaining time I have available to me I will briefly touch on some of the commitments the budget contains in relation to the planning portfolio. I take this opportunity to congratulate my colleague Justin Madden, the Minister for Planning, who is the lead minister in the new Department of Planning and Community Development, which has taken a groundbreaking approach to bringing about urban design and better sustainable principles in our planning processes, together with providing the infrastructure that is required in our growing and new suburbs.

The budget has a number of commitments in relation to the planning portfolio, in particular a very strong commitment of $51.9 million over four years to our transit cities programs in Broadmeadows, Dandenong and Geelong. For the next financial year the budget includes funding of $9.1 million for the Geelong transit city; $4.5 million for the Broadmeadows transit city, which happens to be in Northern Metropolitan Region; and $19 million for the Footscray transit city. That is an important commitment to improving our transit cities; and we also have a $7.3 million increase in transit cities projects in general.

In other planning areas there is an allocation of $6.8 million for strengthening Melbourne 2030 and $4.4 million for improving housing affordability. The minister has spoken on a number of occasions in this house about the importance of planning for the future and making sure that we have a plan for managing our population growth and keeping housing in this state affordable. That is in stark contrast to the lack of a plan by members of the opposition who have had a laissez-faire market approach to allowing those who are wealthy to purchase homes in Victoria.

We are also committed to protecting our green wedges and to ensuring that our growth happens in a sustainable way that protects what is best about our city and our state. I am pleased that the budget also has a

commitment to our heritage sites. In particular we recognise that places like the Trades Hall building in Carlton, St Paul's Cathedral in Melbourne's central business district, Kew courthouse and police station, and the former prison at Castlemaine are important cultural heritage locations that need to be repaired, improved upon and be there for future generations in this state, and the budget makes an allocation to enable repairs and conservation works to occur at each of these iconic heritage places.

In conclusion, this is a very good budget. It is a very good Labor budget that provides for not only improved services and infrastructure for Victorians but also looks after those who are most disadvantaged and in need. I commend the budget to the house.

Mr ELASMAR (Northern Metropolitan) — I rise with great pleasure to congratulate the Treasurer, John Lenders, and the Brumby Labor government for bringing down a budget that will continue to provide and in many instances enhance essential services to the people of Victoria. In particular I would like to initially focus on the massive increases to the education portfolio.

As members may know, I am a member of the parliamentary Education and Training Committee. The first thing I look for in the budget is its education allocation, and I have not been disappointed as the figure here is $815.6 million — a staggering amount of money. But is there a better way to ensure our state's future than to invest in our youth and education? The youth are our future.

I have visited many schools during the past year, and so I was delighted to see that money has been set aside to upgrade and improve the standards of our state school facilities. Princes Hill Primary School, located in Carlton, is a great example of government providing children with the environment to develop their artistic talents, together with a new library and visual arts facility designed to provide stimulation and inspiration for Victorian children who want to be filmmakers.

The multimillion-dollar injection to support early intervention for children with developmental disabilities shows that the Brumby Labor government is putting its money where its mouth is by allocating $29 million into providing not only 1000 extra places for these children but also recognising the need for early intervention for kindergarten-aged kids with special complex needs; and a further $1.8 million for the early childhood specialist workforce to upgrade their professional qualifications to enable them to provide more support to small children with learning disabilities. This is where we are proud of our budget, and we are proud of our Treasurer.

The government has targeted Victorian state school children, with the main emphasis being to give them a better chance of reaching their full potential and a great start in life.

I will speak about just some of the other key initiatives and positive aspects of this budget as they relate to my electorate, the Northern Metropolitan Region. I will do my best not to repeat what my colleague Ms Mikakos said in her earlier speech. I congratulate her for raising the issues of our electorate. We represent the region, we care about that electorate and we care about the constituents, and that is why we are talking about this magnificent budget.

In the area of public health there are massive monetary allocations — $702.9 million for hospitals to treat an extra 16 000 elective surgery patients, provide an extra 33 500 outpatient appointments and treat an extra 60 000 patients in emergency departments; $179.2 million to boost maternity and child services, including providing 14 new maternity beds and 18 additional special care nursery cots at suburban hospitals and improved early years care; and $186.7 million to boost ambulance services, delivering two new rescue helicopters.

There is $294.5 million in the budget for climate change initiatives to drive renewable energy and clean coal projects. My colleagues from the Greens must admit this is not a small amount of money to allocate. The Labor Party also believes strongly in ecology and conservation.

An allocation of $1.81 billion will improve health facilities. A cancer action plan will tackle early detection of cancer and a chronic disease program is aimed at screening, early diagnosis and prevention of chronic diseases. I know that many community health centres and local councils provide programs aimed at our senior citizens to enable them to stay in their own homes, but it is not enough to provide Meals on Wheels and home visits by day carers. Programs have been established to bring together diverse members of our community, to enhance their quality of life, and to maintain a focus on the health and wellbeing of our elderly citizens.

At the other end of the scale, a baby boom budget boost of $100.3 million has been allocated for young Victorian families, who will have access to additional maternity facilities, as well as the new $250 million Royal Women's Hospital. The biggest ambulance

investment in Victoria's history — a record $185.7 million — will be utilised to expand ambulance services for all Victorians.

A whopping $37.2 million has been allocated to address and implement the alcohol action plan. This is recognition of the fact that some of our young people are binge drinking their young lives away. We need to attack the culture that sees drunken teenagers being admitted to emergency rooms in hospitals across our state every weekend, if not every day. We all know that the recent introduction of the 2.00 a.m. curfew provoked more emails than we could shake a stick at, but interestingly enough, the other night I watched a teenager being interviewed on television who had witnessed a violent brawl outside a Melbourne nightclub in the early hours of the morning, and this young man had clearly changed his views on the necessity for such a trial. We are not being spoilsports; we are trying to minimise the dangers inherent in binge drinking, especially for the young and inexperienced drinkers in the community.

The other thing I would like to talk about is that the first time I heard of an extra $3000 being allocated for each first home buyer in a country area, I thought, 'What an excellent idea and excellent reward for our young people in Victoria'. When they buy a house in the country, not only do they get the first home buyer grant but on top of that they also get the reward of $3000 for moving into the country. I congratulate the Treasurer on this.

Another matter I would like to mention is that, as well as the support for early childhood and the disadvantaged and vulnerable children, there is more support to lift school performances. This important, targeted support for schools will be provided to schools to help lift the performance of all students in all schools. As a former teacher I know how important that is. I know this good budget is addressing this, and it will do well by the students. This budget is financially sound and provides Victorian families with ongoing opportunities that continue to make Victoria the best place to live and raise a family.

I could talk for hours about the whole budget, but what is important is to acknowledge all its positive aspects. I congratulate the Treasurer and the Brumby Labor government, and I commend the government's 2008–09 budget to the house.

Ms TIERNEY (Western Victoria) — I rise to speak in favour of both matters: the appropriation bill itself and the acceptance of the budget papers. As a member of Parliament representing a predominantly regional electorate, it has been and continues to be an absolute pleasure to relay the fantastic news that has come out of this 2008–09 budget to individuals as well as organisations across western Victoria.

Services such as health, education, police, emergency services, roads, rail, justice, community funding and water resources have all been addressed in what is undoubtedly a huge win for regional Victoria. I am particularly happy with the outcomes for Western Victoria Region.

Some of the key initiatives in the budget for health include $702.9 million for Victorian hospitals, which will treat an extra 16 000 elective surgery patients, 33 500 outpatient appointments, and an extra 60 000 patients in emergency departments. In addition to this we have $233.3 million for preventive health measures and cancer prevention and treatment and also $185.7 million to boost ambulance services, including two rescue helicopters, station upgrades and extra services.

To specifically address issues in western Victoria, this budget will provide $70.1 million for stage B of the Warrnambool hospital redevelopment on top of the $16 million that was included in the previous budget for stage 1A of the redevelopment. Recently a letter signed by Dr Napthine, the member for South-West Coast in another place, and Mr Koch and Mr Vogels was addressed and distributed to Warrnambool and district residents. This letter, authorised by Dr Napthine, included the following:

> During the 2006 state election campaign the Labor Party promised to fully fund stage 1 of the much-needed redevelopment of the Warrnambool hospital.
>
> In the recent state budget the Brumby Labor government has failed to deliver on its pre-election promise to the Warrnambool and district community.

Mr Koch — True.

Ms TIERNEY — This is an absolute outrage and is totally misleading. The Labor government made a 2006 election commitment of $90 million to the Warrnambool hospital redevelopment. In the two budgets brought down in this government's four-year term it has allocated and delivered $86.1 million to that redevelopment — and that is with two more budgets to go in the current term. How could it be said the government has failed to deliver on an election promise? That reasoning is beyond my understanding. I suggest to the members who signed that letter that they actually read not just this year's but last year's budget papers before they make false statements which not only mislead the good residents of Warrnambool and

outlying areas but seriously damage their own credibility.

On top of the $70.1 million for the Warrnambool hospital, the south-west will also share part of the record $185 million boost to Victorian ambulance services, with the south-west Victorian helicopter to be located at Warrnambool. This caused another lapse of eloquence, I would argue, from conservative members of Parliament from the south-west, prompting them to make the claim — which I have just heard again in the last couple of minutes — that the south-west helicopter money was being taken out of the Warrnambool hospital redevelopment money.

Mr Koch — Exactly.

Ms TIERNEY — Let me assure members — how many times to do they need to be told this? — that the record $185 million boost to Victorian ambulance services is all new money. No money is being taken out of the election promise of $90 million for the Warrnambool hospital redevelopment to be allocated to the helicopter service. It is absolutely misleading and mischievous of the opposition to claim that.

It is important that we also acknowledge the editorial of the Warrnambool *Standard* of 10 May 2008, which I think sums it up quite well:

> The Brumby government has delivered and deserves credit for recognising the needs in the region.
>
> …
>
> Even our conservative politicians would have to agree the ALP has become harder to criticise on regional issues.

I think it has become so hard for Mr Koch, Mr Vogels and Dr Napthine that they now have to actually make up their criticisms. All I can say is that the claims they are making are absolutely not connected with any form of reality. We are demonstrating that we are making sure we have resources and money for the people in the south-west. I am also delighted to say that, as well as the air ambulance of the south-west and Western Victoria Region, the area will also see funding to rebuild a number of ambulance stations and refurbish a number of others. These include Timboon, Anglesea, Avoca, Ballarat and Hamilton.

Services will also be upgraded to a number of areas. They include Anglesea, Apollo Bay, Colac and Timboon. It was announced just prior to the budget that the national farmer health centre will be established in Hamilton at a cost of $2.4 million. This will position Victoria as a national leader of farmer health and our commitment to coming to terms with the wellbeing and health issues that surround farmers and their families. We will be a significant leader on the national agenda in respect to those issues. It is not hard to understand why the major regional newspapers in western Victoria agree that the Brumby Labor government is delivering and deserves credit for recognising the needs of the region.

If we move from health to education, there are at least 10 schools in the Western Victoria Region that will be either totally replaced or modernised, continuing on the state Labor government's 10-year commitment to rebuild, renovate or extend every government school in every community in Victoria. Amongst the schools that will benefit from this budget's announcement are Horsham West — that is, the Haven primary campus — the Bacchus Marsh Primary School, the Anglesea Primary School, which will be completely relocated and built on a new parcel of land. We will also see stage 2 funded out of this budget for the Colac College and Colac High School amalgamation. Woady Yaloak, the Snake Valley campus, will also be included, and Koroit primary school stage 1, which has been long awaited, has got the tick and will also benefit. Lara Secondary College is also part of that suite of schools.

It is also interesting to note that the *Age* journalist David Rood, when he commented on the budget funding for education, wrote:

> With more than $590 million to be spent on rebuilding or renovating schools around the state, the Australian Education Union described the budget as solid, praising targeted intervention for children with disabilities.

The health and education areas continue to be top priorities of the Labor government. This budget succeeds in addressing those needs in regional Victoria.

While I am on health and education, I recall reading in the *Hamilton Spectator* a quote from the Leader of The Nationals in the other place, Peter Ryan, on 10 May. He said:

> It is disappointing to see the government has concentrated its expenditure on health, transport and education services in metropolitan areas this year.

Perhaps Mr Ryan has mixed up regional and metropolitan, because there is record funding for ambulance services, for example, in Victoria. There are capital upgrades in Hamilton and Avoca; there is an additional allocation of paramedics in Apollo Bay, Timboon and Anglesea. There are additional day crews in Kyneton and Woodend and, as I have already mentioned, there is the extra $70.1 million for the redevelopment of the Warrnambool hospital. There is

also $8 million to the Hepburn Health Service for the redevelopment of 15 high-care residential aged-care and primary care services. I have already mentioned the national farmers health centre in Hamilton. There is $11.4 million to improve dental health in rural and regional Victoria, and $5.5 million for the Ballarat Health Service to improve access and client amenity and to refurbish a community mental health facility. We also have $6 million for regional food kitchens to help seniors across the state to access affordable, high-quality and nutritious meals, and the emergency helicopter for the south-west. These provisions do not reflect the misleading comments that the Leader of The Nationals, Peter Ryan, has been making in the press in relation to this budget.

It is important that we look at the statement of the Treasurer, John Lenders, in the *Geelong Advertiser* on 7 May, because he is much more accurate than the Leader of The Nationals. Mr Lenders says:

> The Brumby government is taking action for working families in regional Victoria providing the best possible health services to help bridge the gap between city and country health.

This is only on the health front. Couple this with the 10 western Victorian schools which will be either modernised or replaced, the $110 million investment in the duplication of the Princes Highway west from Waurn Ponds to Winchelsea, and that is a significant boost. We also have $40 million for the Western Highway realignment of Anthonys Cutting — again, a very significant allocation. The budget provides $254.5 million towards the maintenance program for all regional rail lines under the country passenger rail initiative. It is hard to see how Mr Ryan conjured up the statement that was published in the *Hamilton Spectator*.

The content of this budget shows that the Brumby government is continuing to take action and to deliver a water plan that will ensure secure water supplies for communities across Victoria, for our farmers and for our rivers. It is heartening not only for regional Victoria but for all Victorians to see the government facing the challenges, taking responsibility, laying out a plan to secure Victoria's water supply, rather than watching the Liberal and National parties trying to hijack community groups, revert back to the old us versus them, city versus country style of politics to score cheap political points.

In this budget western Victoria will receive $10 million for 53 kilometres of the Hamilton–Grampians pipeline, which will transfer up to 2 billion litres of water savings from the Wimmera–Mallee pipeline to the Hamilton system. We also will see $99 million to fast-track the completion of the Wimmera–Mallee pipeline which will save more than 1 billion litres of water, and $20 million for the Geelong–Melbourne pipeline.

The Minister for Water in the other place, Tim Holding, is quoted as saying:

> This is a record investment in major water projects and will provide water security for Victoria for the next 50 years.

I again put the question to the opposition: where is its water plan? It does not have one and certainly does not show any indication of interest in formulating one for our population here in Victoria.

I move from health and education to tourism. One of the points in the budget that has been overlooked is the allocation of $13.3 million to rural and regional tourism. This is by far the largest dedicated contribution to this activity that this state has ever seen. Being part of the parliamentary Rural and Regional Committee, together with my colleagues I have been participating in an inquiry into tourism, and I am particularly pleased with this budget allocation because it will provide a whole range of activities that collectively we would love to see in this area. That is because this government understands that tourism is important to regional Victoria, assists in creating more jobs and injects a whole lot of dollars from outside of local communities into those regional communities.

The recent figures from Tourism Australia's international visitors survey completed in March 2008 show a 30.4 per cent increase in international overnight visitation to regional Victoria between 2000 and 2008. That included a 25.9 per cent increase in visitors to Daylesford and the Macedon Ranges and a 30.8 per cent increase in visitors to the Great Ocean Road. The economic benefits of those increases are enormous, so we have also allocated a further $8 million over the next four years to promote Victoria in key international markets. This demonstrates that Victoria, and regional Victoria in particular, is a great place to visit.

I have touched on the establishment of the National Centre for Farmer Health which is to be established in Hamilton as part of an overall package that was mentioned in a statement delivered by the Minister for Agriculture and the Premier prior to the handing down of the budget. I refer to a document called *Future Farming — Productive, Competitive and Sustainable*. The Future Farming strategy, which has been allocated funding of $204.6 million, will bring farmers and farming communities to a position where they are better suited and more able to meet the challenges they are facing at the moment and into the future. Part of this package — the strategy and the statement — includes:

$103 million to boost productivity through new technology and changes to farming practices; $42.7 million to upgrade sections of Victoria's rail freight network; and $12 million to support farmers and rural communities in securing their future and adjusting to change, including the National Centre for Farmer Health in Hamilton, which is being funded in conjunction with the medical school at Deakin University that I mentioned earlier today, and the Western District Health Service. There is also funding of $24 million to manage weeds and pests, including new action to assist farming businesses to strengthen land and water management.

To ensure the success of the strategy, the state government has assembled an advisory panel made up of a broad cross-section of respected industry professionals who will help drive the $205 million strategy. I believe the Minister for Agriculture needs to be congratulated, not only for coming up with the concept but also for being able to bring together a lot of people and stakeholders who are not traditionally or naturally a cohesive group. This is a significant step in making sure that we are starting to operate as a cohesive group, given the problems that people face in regional Victoria, particularly in Western Victoria Region.

The panel comprises Lyn Coulston, a plant nursery owner who would obviously have firsthand experience of how drought is impacting upon plants in regional areas; Gaethan Cutri, a stone fruit farmer; Christine Forster, a wool producer; Ian McClelland, the chairman of the Birchip Cropping Group; Stephen Mills, the chair of Goulburn-Murray Water and a dairy farmer; Jenny O'Sullivan, a primary producer; and Simon Ramsay, who — as we all know — is the president of the Victorian Farmers Federation. At the time the advisory panel was announced, the minister stated in a press release:

> The panel will work closely with the Brumby government to ensure agricultural industries continue to be involved in the delivery of key areas of the strategy.

It is pleasing to see that there are people at the coalface in regional Victoria who are involved in a whole range of activities and who will assist in the implementation of that package.

In the areas of community safety and justice, this budget again provides a record amount of funding. It has committed $1.75 billion to the Victoria Police budget and $657 million for community protection initiatives.

Mr Koch interjected.

Ms TIERNEY — A significant sexual violence prosecution unit has been established in Geelong. I thank Mr Koch for bringing that subject up now. This record funding is a huge coup for Western Victoria Region, with $2.6 million for the VICSES (Victorian State Emergency Service) critical asset replacement initiative going towards new heavy rescue trucks for Edenhope, Terang and Lorne. There is also funding for road accident rescue kits for Edenhope, Kaniva, Camperdown, Port Campbell and Maryborough, and funding for four-wheel drive trailer trucks for Balmoral and a flood rescue boat that will soon be delivered to Warrnambool as part of the $19.3 million initiative to boost the ports of Portland and Geelong under the maritime security program. There is also funding for a new corrections centre at the existing Ararat site, which will include a new 350-bed unit, as part of the $591 million Building Confidence in Corrections initiative.

I turn to initiatives in the Geelong region. As we all know, Geelong is a vibrant and growing city. It continues to thrive and expand, and this budget has invested in proportion to the age and growth of that great city. The new tax cuts — including a $422 million cut to stamp duty, a $490 million cut to land tax and the first home buyers grant — will significantly enhance Geelong's ability to continue to grow, particularly with the Armstrong Creek development coming on stream.

A *Geelong Advertiser* editorial had a few things to say about this on 7 May. It states:

> The region will benefit also from a boost to residential plans for Armstrong Creek in the form of grants of up to $12 000 for first home buyers setting up in the region and a 10 per cent cut in stamp duty thresholds. Payroll tax cuts of 5 per cent, lifting the land tax threshold by 10 per cent and cutting WorkCover premiums yet again … should also encourage investment and jobs.

Obviously all of this provides a healthy injection of funds not just for Geelong but for regional Victoria.

On top of this the budget will provide nearly $8 million for the cultural precinct stage 1 of the Geelong future city master plan. If members are interested in this, I urge them very strongly to go and see the plans and talk to the people involved, including those at the library, the city hall, the Geelong Performing Arts Centre and a number of other institutions in that strip, because it is a very exciting plan that I think will revitalise that section of the central business district of Geelong.

The budget also allocates $6 million to the Geelong innovation and investment fund and provides for a new mobile intensive care ambulance. There is also funding for improvements to the Geelong railway station.

Finally we have the money to be able to undertake that activity that many people have been talking about and working on for some time. The redevelopment will include a walkway that will assist TAC workers in moving from the station.

I have already mentioned the allocation of $8 million for a specialist sexual assault prosecution unit. Also, the Geelong Hospital will be part of the $26.3 million hospital energy supply project to ensure the continuity of critical health care services to six of Victoria's major public hospitals.

All of this is on top of the $110 million committed to the Princes Highway from Waurn Ponds to Winchelsea as the first stage in the duplication of the Princes Highway. When speaking to the *Geelong Advertiser* on 7 May, Cr Bruce Harwood said there was plenty of good news for the region in the state budget. The article states:

> Overall, Cr Harwood said while he could always argue for more money, Geelong had done well in the budget.

As I stated at the beginning of my contribution, this budget delivers for regional Victoria. It is a delight to relay the outcome of the budget to all the people I meet in Western Victoria Region. However, it is not an unusual budget in relation to regional Victoria. Regional Victoria is growing and growing as each Labor government budget is brought down. Let us compare the situation to 1999. Now there are 92 000 more people who call regional Victoria home. We now have more than 134 000 new jobs. Building approvals have doubled to $4.47 billion. We have a state government that has directly contributed $400 million through the Regional Infrastructure Development Fund to 172 infrastructure projects resulting in over $1.198 billion worth of new infrastructure investment.

This is a budget that is not just about dollars and cents, as Mr Atkinson raised last night. It is a budget that also delivers in community building. Let us not forget the Small Towns Development Fund, let us not forget Transport Connections, let us not forget community building initiatives, let us not forget all those things that are being put in place to engage our youth in healthy activities, including the Premier's Active Families Challenge and a number of other initiatives. This is a good budget for regional Victoria. It provides infrastructure, it provides resources for health and education and, at the very heart and soul of it, it cares about the people in regional Victoria and Western Victoria Region.

Mr D. DAVIS (Southern Metropolitan) — I am pleased to make a brief contribution to the cognate debate on the budget and the budget papers. In doing so, I indicate to the house that I intend to focus on one matter alone — that is, the government's measurement of greenhouse gas emissions and the government's accounting for Victoria's greenhouse gas emissions.

This week the release of the national greenhouse inventory showed that in 2006, the most recent figures available, Victoria emitted, on all the best estimates — and these are corrected figures — 120.3 million tonnes of carbon dioxide equivalent greenhouse gas. That is a very significant figure. It is greater than in 1999, when this government came to power and Victoria emitted 118 million tonnes of carbon dioxide equivalent. I have to say that this figure is part of a longer trend under this government of a steady increase in greenhouse gas emissions. It bumps around year to year, but if you look at the trendline you can see that there is a steady increase in carbon dioxide equivalent emissions.

It is 12.2 per cent over the base case and exceeds Victoria's share of the Kyoto target. In 2002 Labor promised that it would cut greenhouse gas emissions by 8.3 million tonnes. Since that promise the amount put into the atmosphere is 12 million tonnes over and above the levels at that time. In effect more than 20 million tonnes of greenhouse gas equivalent has been released into the atmosphere at a time when climate change is a significant challenge for our community.

I make this point because this government has been very good on rhetoric, very good on positioning, very good on spin on climate change and greenhouse gas emissions, but what has occurred is a release each year of a steady increase in greenhouse gas over the period of this government. To illustrate one of the reasons for that, I want to draw the house's attention to page 242 of budget paper 3, and to the environmental policy and climate change output group. That is an important group. It says that the department:

> … leads the development and implementation of strategic, whole-of-government responses to issues around environmental sustainability and climate change.

This is the group that sets the policy parameters, that pulls things in, that makes things work in terms of climate change response, and it is not doing a good job. One of the reasons it is not doing a good job in Victoria is that its output measures fail to fundamentally focus on the issue at hand, which is to reduce greenhouse gas equivalent emissions. The output measures include major policy papers, strategy reviews and research papers, and the total number of councils participating. The quality measure is the number of greenhouse gas response actions managed and administered. These are all input measurements of actions, but not outputs, not

outcomes, not results. These output groups should have measures in there that actually reflect outcomes for the community, or outcomes in this case for the environment.

I have made this point in the chamber a number of times, but I think it is a central point: unless we get this aspect of environmental measurement and environmental accounting right, we simply will not know the best ways to respond as a government, as a local community, as individuals, to the greenhouse challenge.

The report by the commissioner for environmental sustainability, Dr Ian McPhail, pointed to this lack of leadership. It is worth reiterating these points in the house, as I do often when I speak to groups about these issues. In the report tabled not long ago, Dr McPhail noted:

> Government leadership is required to signal the importance of incorporating environmental sustainability into government's business processes. To date this has not been evident. The lack of commitment has hindered more effective implementation support being established and individual agencies taking action.

If you cannot measure it, you cannot quantify it; you do not know how to respond. This government has 10 key groups in its program, plus the water agencies, plus Sustainability Victoria — but it is only a small part of the government sector. It is not the schools, it is not the hospitals, it is not the police stations — it is not all of those government agencies which should be setting an example for the community. The government has to lead in the task of reducing environmental gas emissions, and it has to do that constructively and in a way that gets an outcome for the community.

Dr McPhail went on to say in his report that the environmental reporting framework was pretty much a shambles. It is worth quoting this:

> Performance measurement and reporting remains an important component of the environmental management … being adopted by agencies. While monitoring and reporting programs within agencies have improved, challenges remain … These include the availability of trend data, limited reporting against targets, inconsistent methodologies and use of extrapolation and in some cases unrepresentative data and non-compliance with the government's financial reporting direction (FRD) 24B. It is acknowledged that to some extent this reflects the evolving nature of environmental performance reporting by government agencies —

and as I have said before, this is a process, but we are not making progress fast enough —

> however, there is a need to further develop the reporting guidelines, build IT tools and provide further education and training to improve data capture and whole-of-government reporting. This is the fourth year that agencies have reported their environmental performance —

this small cluster of agencies; not the whole of government in Victoria, I hasten to add —

> and independent verification of this data prior to its publication should be considered to ensure its correctness prior to its publication.

The reality is that this government does not know how much greenhouse gas it emits; it has no fundamental idea. It certainly does not have the level of detail and proper account of environmental carbon dioxide emissions to enable a proper program that could target successfully those areas where we could make the biggest difference for the least economic financial impact. Good measurement, good data and good accounting will lead to better outcomes in terms of environmental management and lower carbon dioxide emissions. Until this government starts to get this right, our emissions will continue to be a problem.

We face a huge challenge in the period ahead with environmental emissions trading. I will not say much about that today, but I will comment further on future occasions in this place. Emissions trading will be a significant challenge for Victoria, and the sooner we get our house in order at government level and at community level, the better.

Ms BROAD (Northern Victoria) — It gives me great pleasure to speak in support of the Brumby Labor government's 2008–09 state budget — a budget that delivers a massive $3.2 billion investment in infrastructure across Victoria. I take this opportunity to again extend my congratulations to the Treasurer, John Lenders, who I am pleased to see is in the house at this time.

This $3.2 billion investment demonstrates that the Brumby Labor government is taking action now on key services and infrastructure for working families. Working families across Victoria will benefit from the government's investment in schools, trains, roads, hospitals and other key services, as well as benefiting from the jobs and economic activity generated by these infrastructure projects.

This investment in key services and infrastructure comes on top of eight years of investment in livability — that includes key services and infrastructure — that have made Victoria a great place to live, work and raise a family. This is demonstrated by the fact that people are voting with their feet and choosing to live in Victoria, including, I am pleased to say, regional Victoria — as anyone who knows

anything about Mildura, to give just one example, will be aware.

Victoria's population boom is creating new opportunities and new challenges. The 2008–09 Brumby Labor government's budget is an action plan to maximise the opportunities and address the challenges of a growing population, while building on our investments in services and infrastructure for Victorian families over the past eight years.

In addition to providing a $3.2 billion investment in infrastructure across Victoria, the 2008–09 budget delivers on Labor's priorities. These include: delivering key services in health and education to meet the demands of Victoria's baby and population boom in growth suburbs and Victoria's regions; taking the pressure off working families across the state; increasing Victoria's business competitiveness; taking action on preventive health; investing to increase the capacity of Victoria's transport networks; positioning Victoria to seize on the climate of opportunities in a new climate-change economy; and delivering better services to our farmers. We know that this latter priority is particularly needed because of the very tough times that many farmers are facing and have faced for a long time.

Key initiatives in the 2008–09 state budget include: the $179 million boost to maternity and child services, including 14 new maternity beds and 18 additional special-care nursery cots, as well as improved early years care and education; $1.4 billion in tax cuts and reduced business costs, including cuts to stamp duty, land tax, payroll tax and WorkCover premiums; and $94 million to improve workforce skills. These cuts benefit businesses right across the state, including in regional Victoria.

There is new assistance to first home buyers, representing a 17 per cent saving — that is $2460 — on a medium first home, including stamp duty cuts and new eligibility for stamp duty and first home buyers assistance. I will come back to what this means in particular for regional Victoria.

Another initiative is the $1.8 billion investment in transport, delivering extra peak services in the metropolitan area and significant road projects and new transport services in regional Victoria; $815 million for education, including funds to rebuild, renovate or extend 128 schools; and an education reform program to lift standards for students. I will come back to some of the schools, particularly in northern Victoria, that are benefiting from this boost to education.

The budget has $702 million for hospitals to treat an extra 16 000 elective surgery patients, an extra 33 500 outpatient appointments, and an extra 60 000 patients in emergency departments right across Victoria; and $233 million for preventive health measures and cancer prevention and treatment. There is $37 million for an alcohol action plan to create safer streets and address excessive alcohol consumption — and some of my colleagues have spoken about that today.

There is $185 million to boost ambulance services, delivering two new rescue helicopters, station upgrades and extra services. One of those rescue helicopters will be based at Bendigo; that will be a very great boost to northern Victoria. An amount of $294 million has been allocated for climate change initiatives to drive renewable energy and clean coal projects; there is $657 million for community protection; there is $99 million to improve livability in the suburbs and regions; and, very importantly, there is a continuation of the government's commitment to A Fairer Victoria, a commitment to reducing disadvantage across Victoria so that people, no matter who they are or where they live, are assisted to overcome disadvantage. More than $1 billion is allocated in this year's budget to address disadvantage. An amount of $204 million has been allocated to deliver better services for Victorian farmers. I will come back to what that means in more detail.

The capacity for more than 2800 extra births every year will be delivered by the $179 million boost to maternity and child health services in the Brumby Labor government's 2008–09 budget. This action is delivering better maternity and child health services to all Victorian families. This is important when we take into account the fact that Victoria's population is increasing at a very great rate, with some 73 737 births recorded last year alone — the highest number of births since 1971. As I indicated earlier, this population boom is being experienced in regional Victoria as well as metropolitan areas.

Another key Labor initiative that will help young families with their newborns is funding of $42 million over three years to ensure that all babies and young children receive check-ups and health support at key developmental stages up to the age of five. A further almost $50 million has been allocated in a package to improve family day care, outside-school-hours care and kindergartens.

The $1.43 billion cut to taxes and business costs will also help Victoria's families by making it easier to purchase a home and generate jobs growth across the state. These cuts include a $422 million stamp duty cut,

a $490 million land tax cut and a $l70 million payroll tax cut. WorkCover premiums have also been cut by $352 million. As the Treasurer has noted, this is the biggest tax cut this decade, and it will help Victorian families to own their own homes as well as creating new jobs in businesses across the state, including in regional Victoria.

I said that I particularly wanted to come back to the assistance for first home buyers. This is because for the first time in Victoria the Brumby Labor government will offer a $3000 incentive above and beyond existing first home buyer assistance for purchasers of new homes in regional Victoria. That means the total assistance has been brought up to $15 000 for new home purchases in regional Victoria. This initiative by the Brumby Labor government again demonstrates Labor's commitment to growing Victoria's regions, and it will encourage many young families to choose to live and buy a new home in regional Victoria. It will also encourage young families who might be thinking of leaving Victoria's regional areas to stay, which is very important when it comes to skills retention.

To meet the needs of a growing population, the Brumby Labor government is also investing $1.8 billion into the state's transport network, including key public transport, road and freight projects; and freight is a very important issue in Northern Victoria Region. Key road projects under the government's $769 million roads package include $224 million to upgrade rural and regional roads. There will also be an investment of almost $240 million into freight and port access projects across the state.

The centrepiece of the Brumby Labor government's $815 million state budget boost for schools, kindergartens and child care is a $71 million reform package to provide more targeted support to schools to help lift the performance of students and provide incentives for a high-achieving teacher workforce. This investment is being coupled with $592 million to rebuild, renovate or extend 128 schools for the second tranche of the Victorian schools plan. This plan was promised at the last state election, and it is about ensuring that all children get the best start in life no matter where they live or who they are.

It is important to note that all of these initiatives are being delivered in Labor's 2008–09 budget following a period of sustained, disciplined economic management, beginning in 1999. The Brumby government is taking further action in this budget to ensure that the government can invest in the infrastructure Victoria needs into the future by setting a new surplus buffer of at least 1 per cent of revenue instead of $100 million per year. That means that by building infrastructure through the surplus Victoria can continue to have historically low levels of debt and maintain a AAA credit rating.

Farmers will see more benefits from the state budget, with $205 million for the Future Farming strategy to deliver better services to our farmers, to boost Victoria's agricultural research effort and to drive greater productivity, innovation and competitiveness in our farming sector. The Future Farming strategy represents a step up in support for our farmers and a new direction for farming in Victoria. We know that this step up is much needed after the very difficult time many farmers have been experiencing, particularly in Northern Victoria Region — and there is no end in sight for that yet.

As well as these key initiatives, funding in the 2008–09 state budget includes $600 million over six years for the food bowl modernisation project, as part of the $2 billion state and commonwealth irrigation modernisation project for northern Victoria which will capture around 425 billion litres of additional water annually when it is complete. There is $99 million to fast-track completion of the Wimmera–Mallee pipeline, which will save more than 100 billion litres by replacing 17 000 kilometres of open channels with 8800 kilometres of closed pipes. There is $18 million for regional councils over four years to reduce the impact of water unbundling on council rates, which has been a massive exercise.

As well as this, there is a $635 000 contribution to the Murray-Darling Basin Commission. There is a contribution of $33 million for the solar hot water rebate. This is a scheme in regional Victoria, announced earlier this year, which is due to start on 1 July. It means that households in regional and rural Victoria will be able to claim a rebate of up to $2500 from the Brumby Labor government for the installation of a solar hot water unit.

We also see initiatives like $10 million to upgrade VFL (Victorian Football League) clubs across Victoria — that is very important in country and regional Victoria. There is $13 million over four years for the tourism sector in regional Victoria, creating jobs and injecting millions of dollars into regional economies.

We also see $26 million to build new energy-efficient relocatable classrooms for schools across regional Victoria. I know these are going out at a great rate because I keep having to move off the road to make way for them as I drive around regional Victoria.

The 2008–09 state budget is great news for Northern Victoria Region because the Brumby Labor government is taking action to make Victoria's regions the best place to live, work and raise a family. In addition to the initiatives I have already outlined, I would like to briefly mention a number of initiatives that are particular to northern Victoria. They include funding of $16 million for the national logistics and driver skills training centre near Wodonga; funding for the new rural dental chairs in Mildura and Wodonga as part of an $11.4 million initiative to improve dental health in rural and regional Victoria and reduce avoidable dental treatment, especially for children; funding for a new primary industry centre at Goulburn Ovens Institute of TAFE, otherwise known as GOTAFE; funding of new equipment and vehicles for State Emergency Service units and Country Fire Authority brigades, including $12.8 million to replace more than 10 400 of the CFA's emergency hand held and vehicle radios — and I know that he is very welcome; and funding for the modernisation and upgrading of schools including Grahamvale Primary School and Werrimull P–12 School. In addition there is $8 million for a new Wodonga South Primary School and the second stage of the modernisation of Chaffey College — two schools which I have visited in recent times and which are keenly awaiting the spending of the allocated funds. As well as that there is $8 million towards completing stage 3 of Wallan Secondary College.

There are also road accident rescue kits for Warracknabeal, a flood rescue boat for Swan Hill — and I think its residents wish they had some floods right now; expanded dispute resolution services in regional Victoria, including the Loddon-Mallee region; $3.3 million for the modernisation of Wangaratta West Primary School; road accident rescue kits for Cobram and Rutherglen; $30 million for extra track at Craigieburn to reduce the bottleneck with V/Line trains — —

An honourable member interjected.

Ms BROAD — Do I need to wind it up? I have been watching that clock carefully, and I am just under 20 minutes.

I will just mention the $1 million for the planning and development of the Alexandra District Hospital redevelopment and the road accident rescue kits for Euroa. The budget funds many more individual initiatives for northern Victoria, and I know they have been welcomed by the beneficiaries.

I conclude by saying the Labor government's eight years of investment in livability, key services and infrastructure have made Victoria a great place to work, live and raise a family. The budget is an action plan, as all those initiatives have demonstrated, to maximise the opportunities and address the challenges of a growing population by providing the best possible services and infrastructure to families, including those in regional Victoria. There is even more information available about the 2008 budget, which I encourage members to examine, on a terrific website that can be accessed through www.premier.vic.gov.au. I commend the bill to the house.

Mr DRUM (Northern Victoria) — I am grateful for the opportunity to make my contribution to the budget debate, and I understand I do not have long to get it on the record. It has been interesting to listen to speakers from both sides of the house talk about the benefits or inadequacies of the budget. We have tried to look at the areas that affect our local regions, and in our opinion the budget certainly has not provided significant funds for northern Victoria. As a member for Northern Victoria Region and a resident of Bendigo, that has taken precedence in my thoughts about how I would rate the budget the government has just put forward.

The government has made some noise about the new accident and emergency centre that is planned for the Bendigo region. That is fine — it will be appreciated — but in the same breath I point out that Bendigo desperately needs a brand-new hospital. That will be a significant investment by this government. We need the government to push through the process it is currently undertaking as quickly as it can, to reach a decision and make an announcement that will back the Bendigo community with the new hospital it so desperately needs.

Recently in nearly every year Bendigo hospital effectively runs out of money because the current WIES — weighted inlier equivalent separation — system allocates certain operational funding from the government on an annual basis, and that money is linked to the money that is made available through the accident and emergency system, so if there happens to be a large influx of patients through the accident and emergency department and they need a procedure or to find a bed for the night, that money comes out of the money for the elective surgery waiting lists, which balloon out to an unacceptable level. Again the government has been found wanting because of its inability to find a suitable funding model for the health sector in regional Victoria. The government has yet to make any decision about whether it will fund a new hospital for the city of Bendigo — and it is not just for

Bendigo, because we know the service area covers so many smaller towns around central Victoria. Many residents in the nearby area rely on the services they can get at Bendigo Hospital, because those services are no longer available in the smaller towns.

In relation to education, the government has fought with the teachers for much of 2008, finally reaching an agreement with them just prior to the budget. Effectively the government has done a deal that has excluded the non-government schools, so now we have the situation where the Victorian Catholic education system alone is about $100 million worse off than a comparable education system in New South Wales; in fact, Catholic College Bendigo is $1.48 million worse off than a comparable school in New South Wales. Somehow or other the parents of the 1700 Bendigo children who happen to go to Catholic College Bendigo have to find an additional $1.48 million each and every year because this government refuses to fund Catholic education at the same level as does, for example, the government of New South Wales.

In relation to the Bendigo Regional Institute of TAFE (BRIT), the teachers are about to go on strike yet again because of the poor remuneration that has been put up for teachers at TAFE colleges throughout Victoria. If we want to compare the national average of recurrent funding for the TAFE colleges of Victoria with the national average for funding allocated to other TAFE college systems around Australia, there is a $70 million shortfall.

The government that purports to have education as its no. 1 priority spent most of this year arguing with its own government system; it refuses to deal with the Catholic sector; and it refuses to fund the BRIT and TAFE sectors. Apprentices who are employed in regional Victoria cannot get in to the TAFE colleges to receive their training. What sort of government have we got where, in the middle of one of the worst skills shortages ever recorded in Victoria, young boys and girls are given apprenticeships, yet they cannot get into a TAFE to do their training? They end up giving up on their formal qualifications and becoming trades assistants. Private providers out there in the sector need the Victorian government to step up and allocate training places, but the government refuses to train the young people who are employed in the sector; they cannot receive their training.

We hear so much in this chamber about the first home owner scheme. Ms Broad brought up this matter and said how well off young Victorian couples are because they can get around $15 000 in assistance through the combination of the state government's first home owner scheme, the federal government's first home owner scheme and now the new regional $3000 package for first home owners in regional Victoria. The fact remains that if you happen to live in New South Wales, you do not pay stamp duty on your first home. You are far better off if you happen to live in New South Wales.

If you happen to live in Moama, you are already better off than if you live in Echuca because you do not pay stamp duty on your first home anyway. South Australia is the only other state that, like Victoria, charges anyone purchasing their first home. New South Wales, Queensland and Western Australia do not do it, but Victoria takes money with one hand and gives back dribs and drabs with the other. The fact is the federal government allocation for first home owner grants is applicable right across the nation, but stamp duty is waived by all the other states with the exception of Victoria and to a much lesser degree South Australia, which charges only a minimal amount of stamp duty — I think, 50 per cent of what Victoria does.

Victoria is being an Indian giver if it stands up and talks about what it is doing for first home owners in regional Victoria, because the amount of money it takes back is far in excess of the amount of money it hands out. Victoria is still miles in front when it comes to taking taxes or revenue off our young people as they enter into home ownership.

Obviously the biggest issue per se in regional Victoria this year has been the water issue surrounding pipelines running from Colbinabbin into Bendigo and from Bendigo into Ballarat, and now the government is talking about a pipeline from the Goulburn River to Sugarloaf Reservoir.

Now we find out that the government through its water authorities in Bendigo is planning to have water bills reach $1000 per household in the near future. It explains this is because we need to pay for the pipelines that will have been put in place in regional Victoria. The government rides into town, makes huge announcements about how it is going to spend $70 million and $38 million on pipelines and how it is going to turn Bendigo into a Garden of Eden, in the words of the Minister for Regional and Rural Development in the other place. Residents there had better get ready to mow their lawns, to get their gardens up and running! The minister would have to be the most irresponsible, headline-grabbing member of Parliament that I have ever had to deal with. It is most irresponsible to even suggest running a pipeline from an empty Lake Eildon without taking due consideration of all that involves.

This project goes further down that path by taking more water out of a dry system and sending it to Bendigo, and it is the most hated project in regional Victoria. It is a pipeline for which up to $5 million will be offered as a bribe to community organisations that have been in any way affected. People can take any part of the $5 million that they can get their hands on, but they have to sign an agreement with the government that they will become an advocate for the project. They might have to write letters or they might have to go on the radio to tell everybody what a great project it is. Effectively it is the government's way of silencing any critics on this project.

There has been a truckload of promises by the government which, as we heard previously, has been bypassed in this budget. As I raised with the Treasurer today during question time, there is nothing in this budget for Mildura, there is nothing in this budget for Swan Hill and there is nothing in this budget for anything north of Bendigo. It is a shame that the Treasurer has turned his back on northern Victoria in this budget.

It is a shame that the government has not been able to keep promises in relation to a rail link to Leongatha and the standardisation of the rail to Mildura. It is a shame that it has not been able to keep its promises in previous budgets and previous elections. What we have found out is that this government will say and do anything in the lead-up to an election, but once the election has been won then all of a sudden it is a different argument being put forward. It seems that we will never see the train return to Leongatha, irrespective of the promises made by the government. It seems that we will never see the standardisation of the rail line to Mildura, irrespective of the promises that have been made at previous elections. We in regional Victoria will simply have to put up with whatever this government throws as scraps because the government believes its power base is here.

During the last sitting week we heard the government ask why it should invest in regional Victoria when 80 per cent of the revenue through taxation is derived in the Melbourne metropolitan area. If that is to be the public policy of this Labor government then it will also be damned by it as it tries to win support in regional Victoria.

Ms DARVENIZA (Northern Victoria) — I am pleased to rise to speak on the budget papers and the 2008–09 appropriation bill. I would also like to take this opportunity to congratulate the Treasurer, John Lenders, on his first budget as Treasurer. Of course it is also John Brumby's first budget as Premier. It is a very good budget.

Given that I have a limited amount of time, I will take up a couple of the issues raised by Mr Drum during his contribution. He talked about transport. The Brumby Labor government continues its very strong investment in regional rail networks, and in this budget we have seen $254.5 million for ongoing maintenance of the regional rail network, including $7.4 million for the Bendigo corridor safety improvements and a further $22.6 million for the maintenance and operations of the new V/Locity train carriages. There is a significant contribution in this budget to rural and regional transport.

The government has rebuilt the regional rail network, adding more than 400 weekly services to V/Line timetables since 1999, with patronage at record high levels across the state. So the investment in this budget, which builds on the investments in previous budgets, is reaping dividends. The fact that Mr Drum comes in here and says that we are not doing anything about transport in regional Victoria simply means that he has not had a good look at the budget papers.

The government has slashed fares for V/Line services by an average of 20 per cent, and there are an additional 22 new V/Locity carriages on order which will deliver major capacity improvements right across Victoria. Maintenance of the regional fast train network is absolutely essential to ensuring that these popular services continue to be a convenient as well as an affordable travel option for people who are travelling to and from our regional areas. As we know, we are seeing increased growth in regional Victoria as more and more people see regional Victoria as a great place to live, to work and to raise a family. More people are seeing regional Victoria as a great place to visit and as a holiday destination.

I would also like to pick up on Mr Drum's comments in relation to water. The 2008–09 state budget delivers $865 million in funding for key water projects right across Victoria — a record investment in major water projects that will provide water security for Victoria over the next 50 years. This is about the Brumby Labor government taking action to deliver water plans that will secure water supplies for communities across Victoria for our farmers as well as for our rivers. Climate change, 11 years of drought and the lowest stream flows in our history mean that Victoria can only secure its water through water savings and by creating new water. The Brumby government has a comprehensive water plan that delivers the right balance of savings and creates new water as well as

sharing that extra water between farmers and towns as well as the rivers.

In this budget there is $600 million over six years for the food bowl modernisation project as part of a $2 billion state and commonwealth government irrigation modernisation project for northern Victoria, which will capture approximately 425 billion litres of additional water annually. That is water that is currently lost through seepage, leakage and overrun from our antiquated irrigation system in northern Victoria. There is an allocation of $10 million for the 53 kilometre Hamilton–Grampians pipeline; $99 million to fast-track the completion of the Wimmera–Mallee pipeline, which will save more than 100 billion litres by replacing 17 000 kilometres of open channels with 8800 kilometres of closed pipe; $18 billion for regional councils over four years to reduce the impact of the water unbundling on council rates; $117.4 million for the first stage of the $3.1 billion desalination plant at Wonthaggi to be recouped from Melbourne Water; as well as a contribution of $635 000 by the government to the Murray-Darling Basin Commission.

Our government has a water plan. We have a water plan that is all about securing water for Victoria — for our farming communities and our rivers, as well as for our towns and our cities. Mr Drum comes in here and says that we are doing nothing about water. This government is not just praying for water. We are stepping up to the plate. We have a plan, and we are implementing that plan. We will save water that is currently lost from our antiquated irrigation system and we will also provide new water and greater water security.

I will go now to the budget and particularly the areas of the budget that affect my electorate of Northern Victoria Region. We know that the 2008–09 budget really delivers on Brumby Labor government priorities. They are: delivering key services in health and education to meet the demands of Victoria's baby boom and population growth in our suburbs as well as in regional Victoria, including my region of Northern Victoria; taking the pressure off working families across the state; increasing Victoria's business competitiveness; taking action on preventive health; investing to increase the capacity of Victoria's transport networks; positioning Victoria to seize on opportunities in the new climate change economy; and delivering better services to our farmers. I know previous speakers on the government side, both Ms Broad and Ms Tierney, went into some detail on all of those priorities for the Brumby Labor government in this budget.

Education has been the no. 1 priority and it remains the no. 1 priority for our government. That is why it is taking very important and decisive action to rebuild every school in every community across Victoria. We want all children to get a good education no matter where they live, and the 2008–09 budget provides $592 million to build, replace and renovate 128 schools in communities across the state. There are also incentives for teachers to work in the schools where they are needed most and funding for maintenance programs in TAFEs to give young Victorians the best possible learning and training facilities.

In northern Victoria the highlights of the budget in education include $3.3 million for Wangaratta West Primary School, $2 million for Grahamvale Primary School, $4.1 million for Wodonga Primary School, $8 million for Wodonga South Primary School and $6.1 million for Chaffey College. We have also seen increased funding to the TAFE sector, with $16 million for the national logistics and driving centre near Wodonga.

The Brumby government has allocated funding in this budget for a new cancer action plan, which aims to increase cancer survival for Victorians by a further 10 per cent. The plan aims to save 2000 lives by 2015. These are lives that would otherwise have been lost. The plan will include investing in innovative preventive treatments and research to reduce major risk factors and avoidable cancer deaths. What we want to do is ensure that there is effective screening and early diagnosis. That is part of a $150 million plan by the government to step up efforts to tackle the causes of cancer, such as smoking. Also as part of that preventive approach to tackling illness we are looking at issues around obesity and running healthy eating choices programs in our schools, as well as the Go for Your Life programs, which encourage people to get up and keep moving and to exercise more.

The $1 billion tax cuts for business have really been welcomed. The government is taking action to drive jobs and investments in communities in rural and regional Victoria. Doing business in Victoria will now become even easier with $1.43 billion worth of tax cuts and business costs in the 2008–09 budget. These are the biggest tax and business cost cuts in a decade. They are cuts in stamp duty, cuts in land tax and further cuts in payroll tax, and this brings to over $5.5 billion the tax cuts of the Labor government, including the abolition of the eight state taxes and cuts to the WorkCover premiums.

The Brumby Labor government is also taking action to help young Victorian families get the best possible start

and own their own homes. As part of that initiative in this year's budget we have an additional $3000 regional first home bonus for newly constructed homes in regional Victoria. Combined with a first home buyer grant in regional Victoria this will mean that regional first home buyers will be eligible to receive up to $15 000 in assistance to buy a new home, making living in regional Victoria even more attractive. This grant will encourage new families to stay in or move into regional Victoria.

With regard to keeping families safe, the Brumby government has been taking action to make our communities safe places to live, work and raise a family. This year's budget sees increases in emergency services funding to deliver firefighting trucks and rescue and emergency response vehicles. There is also more funding to fight organised crime, with the prison population increasing due to the efforts of an extra 1400 police on the streets. The government is also funding a major new 350-bed prison unit in Ararat and an extra 92 beds across Beechworth and Dhurringile prisons. I note a $210 000 upgrade for the Heathcote police station is also in the budget.

The Brumby government is taking action on preventive health, and that includes dental health in northern Victoria, with the funding of 18 new dental chairs at Mildura and Wodonga; they will greatly benefit the people in the community who require dental care.

The Brumby government is again taking action to increase training opportunities in Northern Victoria Region. The budget funded $16 million for the National Logistics and Driver Skills Centre near Wodonga, and $350 000 for the new primary industry centre in the Goulburn Ovens Institute of TAFE.

I have just mentioned a few of the initiatives in this budget for rural and regional Victoria. There are many more that I could talk about: transport, farming and the money allocated in the budget for the farming initiative as some relief from the drought. This is a very good budget for regional and rural Victoria. It has certainly been welcomed in Northern Victoria Region. I have been pleased to go out and talk to people in my region about the projects the government is funding. The budget makes regional Victoria a great police to live, work and raise a family.

Mr LENDERS (Treasurer) — I rise to sum up the second-reading debate on the bill. It is interesting to note that it has been 51 days since the budget was delivered, on 6 May. I find myself in something of a strange position as the person who presented the budget in the Assembly and who now sums up the debate in the Council as the budget passes. I guess that is one of the vagaries of the Westminster system.

It is also interesting to note that this bill, which has only eight clauses and three schedules, has attracted more discussion and debate over more time than any other bill. I guess that shows how important the budget of the state is to most people in that a lot of the agenda of the state is set through where Parliament ultimately places the economic resources.

Because I outlined the main issues in the second-reading speech, I will not go through those again in summing up, but I want to make a couple of comments on where the debate has been. I thank the many members in both chambers for their discussion and contributions to the debate. Firstly, the general observation is that there has been quite a debate on debt: whether it is appropriate or not appropriate, and what the levels of debt are. I think that has been an inconclusive one, because on the one hand, some debate has been about saying, 'All debt must be bad'; but then on the other hand, there has been an extraordinary amount of debate among and contribution from members about all the capital works programs that are urgently required in electorates across the state.

I just draw to the attention of the house that this is one of those unresolved issues in the debate. I think you, Acting President, were looking at the debate analytically, and I understand how members wish to be parochial about the interests of their electorates; but for those who are analytical, the two just do not add up. You cannot have constant demands for more and more services and at the same time an abhorrence for any taxes, any debt or a range of these things. I think the debt is balanced. The ratings agencies have drawn their conclusions on it, and it is an investment in the future of this state.

A similar observation applies to the taxes and services debate: many members are saying taxes must be cut but that services must be increased. As you well know, Acting President, that simply does not work.

I will make a couple of other observations. A number of members in their contributions have in a sense compared Victoria to other sates on services that should be provided. Again it is a legitimate thing for a member to seek services in their electorate, so I am not critical of members, but I make the observation that Mr Drum was in the chamber today making comments about the funding of Catholic schools as an example, and other members have talked about the funding of government schools.

It is worth noting that when we compare states with states, we need to compare apples with apples, but a fundamental thing happens. Anyone who read the *Australian Financial Review* yesterday would have seen that with Rio Tinto having increased the price of ore by 85 per cent — and good on Rio Tinto for doing that, for raising the export potential! — the Western Australian government will reap $860 million in royalties over four years through something as simple as that.

Mr D. Davis interjected.

Mr LENDERS — I take up Mr Davis's interjection. That is correct: the Commonwealth Grants Commission will partially compensate Victoria for that, but the point I make is that when we are comparing states with states, we should make proper comparisons. The state of Queensland receives about $3.4 billion in royalties. The state of Victoria receives $43 million in royalties. When you adjust or compare the size of one state with the other, the royalties that Queensland receives are equivalent to the revenue in Victoria per capita that we receive from payroll tax or that we actually receive from stamp duty.

What I say to members who compare Victoria with other states — and Mr Drum talked about funding for Catholic schools compared to other states and the like — is, firstly, that we have one of the skinniest revenue bases of any state because we are not a resource state, and the Commonwealth Grants Commission still penalises Victoria.

During the life of this government, we have gone from receiving 82 cents in the dollar of our GST revenue to 93 cents of our GST revenue, so the grants commission is ever so slowly recognising the facts about royalties in other states and a range of other issues that a state like Victoria faces. I put that on the record as part of the debate, because that is something that particularly the opposition members have not addressed; and when they compare states with states, that is one of the issues we have.

The final point that I will make is for Mr Drum's benefit. As I said in this house on 12 June in the debate on the tax bill, he is totally wrong in the way he describes what the revenue sources of other states are and how the first home buyers schemes operate in other states. It is difficult matching apples with apples and pears with pears, but to assert that Victoria is the only state where first home buyers actually pay stamp duty is incorrect, because five other states have the same thing, and there are only six states.

There are issues about when the stamp duty starts, there are issues of means testing of stamp duties, and there are issues of differential rates. That is all part of a legitimate debate that can be held in any debate on a budget or taxes, but I make the point particularly clear: he is wrong, and I would urge Mr Drum to read *Hansard* of 12 June, when I outlined in more detail just where it goes.

Having said that, I have welcomed the debate on the budget. It is great to see over 51 days a discussion across two houses of Parliament and in the community about an important economic document for the state of Victoria, and I commend the appropriation bill to the house.

APPROPRIATION (2008/2009) BILL

Second reading

Motion agreed to.

Read second time.

Committed.

Committee

The DEPUTY PRESIDENT — Order! The committee has been asked to consider the Appropriation (2008/2009) Bill. I understand the matters we will be considering in the context of the debate will not involve amendments but rather will take the form of seeking responses from the Treasurer about the bill. In order to assist in the most efficient consideration of the Appropriation (2008/2009) Bill 2008 in a committee of the whole, it is my view that the committee should initially consider the adoption of clauses 1 to 8.

I will invite members to indicate if they have any contributions on those clauses as we proceed, and members may then raise specific issues of detail relating to specific departments in the order listed in the bill when considering schedule 1. Thereafter members may discuss issues relating to advances contained in schedules 2 and 3 of the bill — in other words, I think most of the matters of detail that members might be wishing to raise questions on are likely to pertain more to the schedules than the clauses of the bill. Can I get an indication from members whether there are any clauses that members wish to make any comment on?

Mr RICH-PHILLIPS (South Eastern Metropolitan) — Yes.

The DEPUTY PRESIDENT — Order! Can I have an indication of which clauses are involved?

Mr RICH-PHILLIPS — Clauses 3, 7 and 8.

The DEPUTY PRESIDENT — Order! And, I understand, clause 1. Are there any further clauses, Mr Thornley?

Mr THORNLEY (Southern Metropolitan) — Not further clauses, no.

Clause 1

Mr D. DAVIS (Southern Metropolitan) — Thank you, Deputy President, and, through you, to the Treasurer. The purposes clause of this Appropriation (2008/2009) Bill makes provision for the appropriation of certain sums out of the Consolidated Fund for the ordinary annual services of the government for the financial year 2008–09 — a simple, elegant purpose in its own way. Also in the second-reading speech the Treasurer talks about resilience in the face of risks and says:

> The result is a resilient economy, one with the right attributes for growth during difficult times.

But he acknowledges in that speech risks on the horizon — inflation and a volatile global outlook, and I will not list them. He, I am sure, knows the ones I am referring to. It is in that context that I want to start asking a question about the estimates in terms of, on the one hand, the budget appropriations, but an essence of that appropriation is the durability of the inflows on the other hand. I want to ask him in the first instance about some taxes and charges. On 1 July, just a few days hence, there is an indexation of all taxes and charges. Can he explain how that is brought to account in the system and the amount of additional revenue that will be collected through the indexation in this period beginning 1 July and going to 30 June?

Mr LENDERS (Treasurer) — In opening up and responding to David Davis, I will make a few observations. Firstly, we are dealing with an appropriation bill and his question was how this fits in, and presumably his link is if the revenue is not there, the appropriations will not be met. I understand that. But we are discussing an appropriation bill where the Parliament is being asked to appropriate moneys. There are a number of issues, and I can get the exact figure for him of what the indexation of taxes is. I think it is in the order of about $60 million. I can get an exact figure for him. I can be advised on that. It is obviously something that comes out of legislation passed by this Parliament, probably about four years ago, which actually indexes taxes and charges, and it is done on a figure based on the Treasurer determining essentially what the inflation rate is; that determination being done in accord with the budget papers and the revenue being raised. That is a fairly simple proposition.

Before I respond to other questions by David Davis, I indicate that I know budgets have been considered in committee in the Legislative Council before, which is Council's right to do. It is therefore in the hands of the Council what it does or does not do, but I make the observation that, firstly, it is an appropriation bill, fundamentally. That is the key thing — it is about where the appropriations are going — and it is relevant. Revenue issues are relevant, and I am sure we will have some discussion on those. The Public Accounts and Estimates Committee has gone through this budget. I stand to be corrected by members of the committee, but there has been in the order of probably 50 to 60 hours of consideration by that committee on behalf of the Parliament to answer some of these questions. Certainly I will answer questions as they are asked of me, but I make the observation that a lot of detail is provided in five lots of budget papers on this, so I will seek to assist or put policy direction around them, but I do not intend, without being pedantic or unhelpful, to use this committee stage to repeat detail that is available in budget papers and has been scrutinised for 51 days.

Mr D. DAVIS (Southern Metropolitan) — I thank the Treasurer for his response of around $60 million and I appreciate his offer to obtain that figure for me. I make the point that I could not glean that figure from those earlier discussions. It may have evaded me at some point, but I have been reasonably thorough in seeking precisely that figure. Equally, could he, in providing that figure, provide that same estimate into the forward estimates period?

Mr LENDERS (Treasurer) — I thank David Davis for his question. Again, as I said, the starting point that I will make on this is that if we are indexing fees and fines at an inflation rate which we are forecasting here in the budget papers at 3.25 per cent — and we have had discussion in this chamber on this issue previously as to reconciling fees and fines between budget paper 4 and budget paper 2, but there are figures in the budget papers each particular year showing how much fees and fines are — we will see fees and fines coming from traffic offences in the order of, I think, $400 million, and we will see an aggregation of fees and fines. So if my figure in relation to fees and fines this year of $60 million is correct — —

Mr D. Davis — Through indexation.

Mr LENDERS — Through indexation. If that is in that order, I would expect that if inflation continues to be that over the next few years we would have approximately that same figure indexed each year. That would be the approximation that we would have. Obviously it totally depends on what those fees and fines are and depends on the — —

Mr D. Davis — That is my point about resilience.

The DEPUTY PRESIDENT — Order! I advise Mr Davis that this is a committee of questions and responses; it is not a conversation. If he has follow-up questions or if he wants the minister to elaborate on the point, then he should ask a subsequent question. Mr Davis should not have a conversation across the chamber. It makes it difficult for Hansard and for the committee.

Mr LENDERS — Victorians are far more law abiding than I thought. I have been advised that the indexation factor is actually $24 million. In response to David Davis, that is the approximate figure. I go back to the earlier point that I made: without wishing to be unhelpful — and I am certainly not seeking to be that — some of these are clearly issues that are far more than just ones that arise out of taxation matters. This was one where we had quite a debate, and if I recall correctly the Chair was the lead speaker for the opposition — or certainly was with Mr Forwood when the last bill went through — and was grilling me at the time as representing the Treasurer on that particular state taxation legislation which brought in indexation. So in response to David Davis, we are expecting the economy to continue to grow, but to grow at a slower rate. The figures are there on page 23 of budget paper 2. We have talked about them before. We are expecting to see economic growth, real gross state product, growing at 3.25, 3, 3 and 3 over the forward years, so I would anticipate that, all else being equal, it would grow at approximately that amount over the same period of time.

Mr D. DAVIS (Southern Metropolitan) — I appreciate the minister's response. Just to clarify that, he first thought $60 million, but on greater detail being provided he now says $24 million. Is that fees and fines, or is that all charges that are indexed and in that loop that are automatically indexed on 1 July?

Mr LENDERS (Treasurer) — That is fees and fines.

Mr D. DAVIS (Southern Metropolitan) — Just to reiterate my earlier point, I would certainly appreciate the equivalent figures for the out years of the forward estimates period.

Mr LENDERS (Treasurer) — I do not have that figure at my fingertips at the moment. What I will say to David Davis is there is nothing particularly secret about that figure. I will find the figure for him in the budget papers and get back to him. What I say to him is that on these particular issues these charges are indexed for a reason, and the reason these were indexed was to avoid the situation where Parliament every four or five years, as used to be the case, would come back and say that if a fine of 5 penalty points was inappropriate — and we debated Mr Drum's private members bill yesterday — as there had been inflation for a number of years, an amendment would be introduced in Parliament to make that 6 penalty units or 7 penalty units. This was simply put in to assist with reducing an administrative burden to keep these things in line with inflation. There is nothing uncommon about this; most jurisdictions do it, and the commonwealth certainly does it. It is a way of keeping fees, fines and charges indexed to inflation so that the Parliament is not forever dealing with the issue that we know as inflation.

Mr PAKULA (Western Metropolitan) — While we remain on clause 1, I recall that in the budget speech the Treasurer made reference to a new target for budget surpluses. I suppose I have a multifaceted question. Could the Treasurer clarify for the house why the government has implemented a new target, what it is, how the budget surplus over the forward estimates period is expected to perform when compared to that target, and how that performance is expected to assist in the provision of infrastructure spending?

Mr LENDERS (Treasurer) — I would have the same opening response to Mr Pakula that I had to David Davis. I would certainly seek to answer things in a general sense of where they are rather than specifics. I have taken in the general concept that Mr Pakula has raised, which is: why has the government increased the surplus? The government previously had a target of having a surplus of $100 million each year, and has now sought to increase that to 1 per cent of budget revenue. Of course the appropriation bill deals with about $32 billion of $37 billion — the remainder coming from other sources than the appropriation bill — so we have increased the target from that $100 million to $370 million accordingly. In fact in the forward estimates period we are estimating it to be double that amount.

Our rationale is that if we are to have the stronger infrastructure spending that I think universally the debates in both chambers have called for, part of that

strategy is to have a budget surplus which comes to about 20 per cent of that infrastructure expenditure. Part of it is the depreciation and other allowances in departments, which come to about 40 per cent, and the other 40 per cent in the forward estimates period is borrowings to build on the infrastructure.

In response to Mr Pakula, the reason for the target is because it is necessary to increase the target. We have a greater need for infrastructure than we have ever had before. It is 51 days since the budget was presented, and in those 51 days all other states and territories and the commonwealth have presented their budgets. We now know that there is a theme across the country that shares our vision of the need for infrastructure. Every jurisdiction has acknowledged that there is a greater need for infrastructure expenditure. Again, in direct response to Mr Pakula, the policy settings are to give a greater capacity to spend that amount on infrastructure within prudent means so that we can build the levers to make Victoria a stronger economy and do it in a prudent manner.

The DEPUTY PRESIDENT — Order! I also thank the Treasurer for alerting the chamber to the fact that in any debate on clause 1 we really are talking about policy settings or the purpose of the bill, rather than specific detail. The Treasurer was quite correct in summing up his answer to that response.

Mr VINEY (Eastern Victoria) — I raise an issue which relates to government policy for the rebuilding or refurbishment of every school in Victoria. I seek the Treasurer's advice to the committee as to the stages of how that is to be achieved. In particular, in relation to this appropriation, how does it all — —

The DEPUTY PRESIDENT — Order! This is a precise example of a question that ought to be referred to the schedule when we deal with education.

Mr VINEY — I am more than happy to do that.

Mr RICH-PHILLIPS (South Eastern Metropolitan) — Going to the overall policy settings that the Treasurer spoke of earlier, the budget speech makes it clear that the budget is predicated on a growth rate of 3.75 per cent for Victoria. Given that the Treasurer in his summing up referred to a growth in the resource states and given that he would be aware that the commonwealth budget, which came out after this budget, is predicated on a growth rate of 3 per cent, I wonder if the Treasurer would like to comment on how robust Victoria's forecast of 3.75 per cent growth is, given that the commonwealth's overall growth rate is now forecast at 3 per cent. With respect to sensitivity analysis the — —

Mr Thornley — New South Wales is dragging it down.

Mr RICH-PHILLIPS — That was inane, Mr Thornley. With respect to the sensitivity analysis contained in budget paper 2, there is a sensitivity analysis for an increase in GSP (gross state product) above the estimate. Does the Treasurer have a parallel one for a reduction in GSP growth below the forecast?

The DEPUTY PRESIDENT — Order! I will accept that question and ask the Treasurer to respond to it in the context that it establishes the parameters overall on which the budget has been framed.

Mr LENDERS (Treasurer) — I thank Mr Rich-Phillips for his question. As I said before when I was talking about the policy settings, this budget was presented 51 days ago. It was done on the same day as those in the Australian Capital Territory and the Northern Territory and a week before the commonwealth budget, and since then we have seen the forecasts of all other jurisdictions.

Mr Rich-Phillips has asked about sensitivity analysis, and the answer is that we have put our sensitivity analysis in here, but in general terms it will be a mirror on items there. It is one of the more difficult areas for governments to predict, to be full and frank about. It is difficult to predict economic growth, particularly with the subprime decline in the United States of America. During my six and a half years as a minister I have travelled overseas twice, and I have not done so lightly. My trip this year in January was partly for investment for the state, but also partly to get a sense of the problem from people at the United States Federal Reserve, as well as from agencies in Japan and in China, including those in Shanghai and Beijing. I wanted to eyeball people face to face so I could get a sense of where the economy is travelling so we could make some predictions.

We forecast a growth rate of 3.25 per cent. Interestingly, a range of things were factored into that. We looked at the state of Victoria as a whole and at measures, including the Sensis business confidence figures, ANZ job ads, lending figures and a range of other things. These figures move around almost on a daily or weekly basis. We have seen consumer confidence and business confidence levels move around. All of these things were factored into our forecasts, including the consensus figures the forecasters were producing at the time when these

figures were struck in April, and this figure was on par with what we would have expected. We also had to look at where all the other jurisdictions were predicting their budgets to go. Mr Rich-Phillips is correct in saying that the commonwealth was predicting a lower figure — 3 per cent. We also looked at what the New South Wales Treasurer, Michael Costa, was predicting in his budget, which was several weeks ago. That was a figure with a 2 in it — from memory, I think a low 2 in front of it — and that is 35 per cent of the nation's economy.

I took all of these things into consideration. I have not seen any serious critique of the figure other than the one Mr Rich-Phillips has pointed out, which is: if the commonwealth said 3 per cent, why was Victoria not saying 3.25 per cent? Victoria has a stronger economy than the other jurisdictions and some of those measures, such as business confidence and consumer confidence, are much stronger in this state than in New South Wales and more broadly across the country. That was the rationale for the figure of 3.25 per cent. It comes from the economic and financial policy division of Treasury, which has been predicting this for many years. A lot of effort goes into getting the methodology right at the Department of Treasury and Finance. At each budget every year those people pride themselves professionally on it, and budgets are a series of estimates. We report five times as a year, as the *Australian Financial Review* said on that infamous date that upsets Mr Rich-Phillips — that is, 16 January. That newspaper reported that the Victorian government is too transparent because it reports so often. I think the figure is correct, and these figures obviously will be revised at the mid-year budget update in December, when we will have another formal look at these figures. If we look at where the economy is going, the premise of the budget speech is that the economy is growing but at a slower rate, and this reflects that.

Mr RICH-PHILLIPS (South Eastern Metropolitan) — Is the Treasurer aware of any work within Department of Treasury and Finance that suggests at this point in time, when the Parliament is passing this budget, that growth figure should be revised?

Mr LENDERS (Treasurer) — I have not formally asked the Department of Treasury and Finance for any update of this because the next formal update that I will seek from DTF is for the mid-year budget update in December, so it will start putting that work through.

If we look at the consensus that has gone through, some of these things, we are talking of 0.25 per cent margins. So is the figure 3.1251 or is it 3.1249? One of those depends on the forecast at 3.25 per cent and one at 3 per cent. Where it is in a band of those is not a particular issue on which I have formally sought advice from DTF, but what I can say to Mr Rich-Phillips is that this is a forecast. At the time it was done we think it was accurate. We will do an update in mid-December, in the mid-year budget update.

You would have to say, if we are looking at the various indicators, it will still stay in the band — is it 3.0 or 3.25? If you had to make a prediction now which one it will be, there is arguably more downside risk than upside risk, but this is me speculating, and I am not an economist. I think the figure was correct when we struck it, and we will revise it in December.

Mr VINEY (Eastern Victoria) — Some criticisms have been made of the government over recent times in relation to the size and growth of the total budget. I notice in this appropriation it is $31.258 billion. I am wondering if the Treasurer can advise the committee of the rationale, if you like, for that growth. How has that growth occurred over recent times, and what is the rationale of the government's perspective in that growth and how those funds might be applied?

Mr LENDERS (Treasurer) — In the macroeconomic sense, it is an interesting policy question Mr Viney asks: where should a state start on striking the budget? I know that Mr Koch and Mr Vogels have said previously in this house that this budget has doubled in size since the change of government. That is correct; it has doubled in size since the change of government. It begs the question: is that appropriate or not appropriate?

The economy has also roughly doubled. The budget is roughly the same percentage of the economy that it was back at that time. How do you measure a budget? They are both inherently correct. Budgets have doubled in size. The answer then is: on the other hand, if the other part of that question Mr Viney asks is, 'What should the size be?', if you want to stay the same size, you would cut your services in half. A starting point for a government is: what size should a budget be?

Clearly from a government perspective, it will pay some heed to what the size of a budget was in a previous year. You will pay some heed to that, because it is obviously a guidance. The Parliament has said, 'This is what we think is an appropriate amount'; therefore you assume it has hit a community barometer correctly.

Government then needs to start balancing things. For example, the revenue base is strong. In this budget the

revenue base was obviously stronger than had been anticipated and the government gave some tax relief as a consequence. Part of it was an appropriate return to community. What should be the size? It was overwhelmingly targeted to first home buyers, and targeted to manufacturing industries through payroll tax or land tax to deal with some of those things that had happened.

The starting parameter is that there are policy obligations that have to be met, and the government has election commitments. Mr Viney — in a question he agreed to hold off until the committee discusses one of the schedules on the advice of the Chair — was talking about schools. For example, there were election commitments from government to rebuild and modernise 500 schools during the life of this Parliament.

Clearly a parameter of budget will be: how do we do that? How do we phase that over the four years? If we have made a commitment, the opposition would very kindly and very helpfully, I am sure, hold us to account if we did not do that. One of the policy parameters is to carry out those budget commitments. Similarly, whether it be in the service delivery areas from what we call Labor's financial statements or the election commitments we costed at the last election — there are a range of parameters.

We need to have the requirements matching funding for the commonwealth in a range of areas. We need to match the infrastructure spend. All of these things come together where there is a policy mix. The previous year is the obvious starting point, because that was an appropriate mix and Parliament chose that to be the case 365 days ago. We move from there to emerging issues. We had droughts, floods, bushfires — we had all of it — plus we had the emerging skills issues, a whole range of issues that we had to deal with.

Being as succinct as I can be for Mr Viney, there were a range of macro and micro issues that all came together when we set the policy settings in place for this budget. That is where the appropriation bill has its origin.

Mr D. DAVIS (Southern Metropolitan) — My next question is also one that concerns the overall settings, looking at revenues coming in, in this case from water authorities. There are significant dividends from the water authorities. A long-term policy — and I understand it is not just your government — has accepted dividends from the water authorities.

The Victorian Competition and Efficiency Commission reported in its December 2007 waterways inquiry into the metropolitan retail water sector that since 2003–04 the dividend payout ratio — that is, the dividends paid as proportion of post-tax profits for all three city water retailers — has risen materially. The VCEC also stated that there has been a progressive increase in the gearing ratio across the retailers, and the interest rates cover has gone below the mid-point which apparently indicates that the retailers, City West Water and Yarra Valley Water, have some threshold of debt serviceability issues.

Given the reliance on those and the nature of water issues around the state with the drought and the infrastructure issues that a number of the water retailers face — and the Treasurer has referred to — I ask him about the durability of those estimates in terms of dividends coming in from the major water retailers.

The DEPUTY PRESIDENT — Order! As I call the Treasurer, can I indicate that I am still keen to maintain his answer in the parameters of setting the budget rather than the specifics necessarily, because I think there are some issues in regard to the bill and what the committee has a prerogative to actually investigate.

Mr LENDERS (Treasurer) — In response to David Davis's question on the macro-parameters we look at, this budget recognises the $600 million contribution from the state to the food bowl, for example, which is, from my recollection, if not the only one, certainly one of the few significant contributions to water infrastructure from the state probably in the last decade or two. I stand to be corrected on that but it is certainly not a usual thing. Normally these things actually come through borrowings from the water authorities themselves. On the macro-parameters, there is a difference from the previous policy settings in that there has been a significant injection of capital into water authorities, which is unusual in Victoria.

The other side, I guess, in macro terms to what David Davis says is: firstly, how reliable is the income or dividend stream from water authorities — no pun intended? Secondly, is that sustainable? In a macro sense the sustainability issues are essentially dealt with through a process that is not budget related; it is a process that the Minister for Water in the other house and I deal with totally separate from the appropriation bill, and obviously we would not be approving those borrowings if we did not think that was the case.

But in the macro of the budget, as David Davis says, there is either an increasing or less reliance — we are assuming less and less dividends from the water

authorities going forward, which is quite simple: there is less water and less sewage because there is a drought.

Mr THORNLEY (Southern Metropolitan) — I have a very broad-ranging question about the structure of the budget itself. There are a lot of things in this business that are inherited over a very long period of time, and I wonder whether some of them are as germane to our needs as they might have been when they were originally created. Two examples that spring to mind would be that revenues and expenditures tend to be kept very separate in the way a budget is outlined.

I have seen the same thing in other public authorities; I was on the council at a university and on boards at other places. I guess being from a more business-oriented environment, you tend to put those things together in business units because the revenues and expenditures of a lot of things are related to each other, and it is more helpful to understand how those things net and what the drivers are.

I guess the second thing is the periodicity, if you will. I know we have a total estimated investment structure that has a particular shape to it, but otherwise by and large we have this very annual kind of zero-sum-gain, one-size-fits-all periodicity to the way we think about the budget, and I am not sure that the real world out there always works in that type of cycle. I wonder whether the minister has thoughts about whether there are things that might be worth thinking about longer term about the way we structure the budget itself and the intellectual architecture of the way we do the thing.

Mr LENDERS (Treasurer) — I thank Mr Thornley for his comment on that particular area, and indeed I have a lot of thoughts on this. In fact, the finance minister has a process in place at the moment, where he is starting work on legislation to essentially rewrite the Financial Management Act to address some of those issues that Mr Thornley has raised.

I have four budget papers here in front of me, which I have brought into the chamber. I do not have the overview; I have budget papers 1, 2, 3 and 4 and the Appropriation (2008/2009) Bill. I know, as someone who has this year far more closely followed the budget than I had in the last eight and a half years — which I am sure would not surprise Mr Rich-Phillips — there are a lot of items in here that are probably duplicated.

If we look at budget papers 2 and 4 — some of them are there for different purposes; some of them are there for the Auditor-General's formal accounts. I know the Public Accounts and Estimates Committee has given a lot of advice to the government on this and we will respond to another report from the PAEC, as we do each year, on areas to enhance the budget process.

I would say to Mr Thornley that we seek, in I think clause 6 or 7 — I think clause 6 of the appropriation bill is what we call the accrual accounting clause — to try to make it a bit more relevant than what a budget would traditionally have been. But certainly there is ongoing scope and work to make this more transparent and remove duplication where duplication is not necessary. That is a work in progress, being led by the finance minister. I will certainly be working closely with him and the department to see if we can come up with a better outcome; then we will come to the Parliament with it and have a discussion.

Mr D. DAVIS (Southern Metropolitan) — As a follow-up to my earlier question to the Treasurer, and I thank him for his response, on the issues surrounding the reliability of dividends from water authorities and the sensitivity of that, it is my understanding that a number of water authorities may have written to the government as part of this process to indicate the difficulties they face in that regard. I wonder if the minister might indicate if that is the case, and which authorities have indicated they may have some difficulties with their contribution through dividend?

Mr LENDERS (Treasurer) — Deputy President, this is getting very specific. What I can say to David Davis — and I stand to be corrected on this — is that I think the only dividends we receive are actually from the four metropolitan water authorities. At the moment every water authority is dealing with the issue of capital infrastructure. The government has made some fairly clear policy announcements on water pricing and things to fund the $4.9 billion water plan which is out there.

So, in general terms if a water authority says it has an issue with, say, the authority's expenditure and if it wishes to borrow money for a capital works program, it goes through a process in the Department of Sustainability and Environment and the Department of Treasury and Finance where the two ministers need to sign off on that before we go any further.

What I can say is that we are relying less on dividends from water authorities than before, because their revenues are down in these difficult times. So it is a policy issue. We are factoring in less revenue from the water authorities, and that is reflected in the budget papers.

The DEPUTY PRESIDENT — Order! I will allow another question from Mr Davis, but I also take up the minister's comment. I think that that was a very specific

question and that there are other forums of the Parliament where that sort of question could be pursued. I am not sure, given that it was to do with revenue raising and specifically revenue raising, that it was necessarily pertinent to a clause 1 discussion on an appropriation bill, which is really more on the spending side. With that sort of caution, I call Mr Davis.

Mr D. DAVIS (Southern Metropolitan) — I accept your caution, Deputy President. It is with the sensitivity of those revenues and the consequent appropriation of those dividends that I am obviously concerned. I actually asked the minister whether there were any authorities that had formally indicated that there was a difficulty. If he wants to leave that, in general I am relaxed about it. But I wonder if he might indicate to the house whether there are authorities that have formally, as part of the process, indicated that difficulty?

The DEPUTY PRESIDENT — Order! I will allow the Treasurer to elect whether or not he answers the question. I am not entirely comfortable with it in the context of this committee stage. Does the Treasurer have a remark to make about that question?

Mr LENDERS (Treasurer) — No.

The DEPUTY PRESIDENT — Order! I invite Mr Davis to perhaps follow that up in another context or even in regard to taxation bills by a similar process.

Mr THORNLEY (Southern Metropolitan) — I also want to understand this. The changing nature of our relationship with the commonwealth, in particular, is leading to greater and greater proportions of our resources being determined at that level and within those processes, and increasingly as we move through the specific purpose payments into the national partnership payments and into a more performance-driven environment. Increasingly the numbers will be contingent on our performance, which I think will be a good thing.

I think that is the point behind the answer to Mr Rich-Phillips's question — that is, that some states perform well and some perform badly. It is not surprising that growth is around about the weighted average of the nation when you have got the largest component dragging everyone else down. I am wondering what approach we may be taking to an increasingly contingent nature to the inputs, and whether we will then want to look at a more contingent structure to the outputs, and how we think about that as that transition occurs?

Mr LENDERS (Treasurer) — I thank Mr Thornley for his question. It is a fairly profound question. In some ways in an appropriation bill it is almost a chicken-and-egg situation. If we go back to the basic principles, if our starting point is a surplus of 1 per cent, clearly a factor of that is what revenue is coming in from the commonwealth before we, in this discretionary sense, have effectively made it 2 per cent of the surplus-to-funds capital.

The starting point is that we need to factor in the revenue from the commonwealth. This has been a turbulent year, primarily because the largest specific purpose payment (SPP) — the health one, the Australian health care agreement — has been one that has been partially rolled over or partially renegotiated. The second largest one, the education one, will be coming up shortly in any case. All of that is on the table. Part of it was a hiatus because of the change of government, where some of the rolling-over went, and there are clearly different policy parameters from the new government that have been articulated, but the devil is always in the detail.

So we are certainly seeking SPPs that are more output focused, which aligns them more effectively with our own performance, which is output focused, and the national partnership payments will also have a different focus from SPPs; and they will have far more strings attached and be more specific.

We factor in the general revenue of this issue; we make some assumptions of them going forward. We are hopeful that in the out years there will be greater capacity because the commonwealth will acknowledge, much as it did with the old national competition payments some years ago, that if the state gets a reward for economic reform that gives the commonwealth more revenue, that will happen. So it is a space to watch. Hopefully by the time next year's appropriation bill is introduced, we will have more information on that, but that is probably the single most profound area that we are seeking to deal with. The SPPs are one-sixth of the budget, and they are core funding for health and education. If we can get those right and actually grow and get rewarded for the hard work Victoria has done, we will see profound results in the next budget.

Clause agreed to; clause 2 agreed to.

Clause 3

Mr RICH-PHILLIPS (South Eastern Metropolitan) — Clause 3 outlines the amount that is appropriated by this bill. Clause 3(2) notes that if there is an act or determination with respect to salaries or

related costs that leads to an increase above and beyond the amount appropriated by this bill then the Treasurer may issue that amount from the Consolidated Fund. My question to the Treasurer is: is he aware of any act or determination that would require him to exercise his power under this clause with respect to the 2008–09 budget?

Mr LENDERS (Treasurer) — There will clearly be a series of acts or determinations under this provision. This budget was framed and had literally gone to print when the teachers' EBA (enterprise bargaining agreement) heads of agreement was signed. Of course it was only ratified by the Australian Education Union last week, or quite recently. Similarly there are multiple enterprise agreements being negotiated across the board as we speak, as is always the case. Even when the major ones are settled or done there will always be a lot of minor ones in there, and this provision is specifically designed for that purpose. We are dealing here with budget estimates in budget papers 2, 3 and 4, which deal with some of these areas, and we are dealing with an appropriation which deals with actuals. Then those actuals change when the Industrial Relations Commission starts ratifying EBAs.

There will be a series of agreements; the teachers' is obviously a significant one that was not, in an appropriation sense, factored in because at that stage the actual figure was based on the old salary rates until the new agreement was made. There will be a number of them, and that is the most obvious one.

Mr RICH-PHILLIPS (South Eastern Metropolitan) — I thank the Treasurer for that response. With respect to the teachers' EBA, can the Treasurer indicate the amount that will be required under clause 3(2), in addition to the main appropriation?

Mr LENDERS (Treasurer) — I do not have that exact amount in front of me. There is nothing particularly secret about it; there was quite a media discussion about it on the day before the budget. We are trying to get an exact figure, and the Department of Education and Early Childhood Development will certainly have those figures in place shortly. As I said, I think it was last week that the EBA was ratified by Australian Education Union members. There will need to be a process where it is formally certified in the Industrial Relations Commission, and I would be surprised if that has happened yet. Once that is done, the Department of Education and Early Childhood Development will formally make an assessment, I would say, and the chief financial officer will at that stage start providing the information to the Department of Treasury and Finance.

Anything I say would be an approximation only. The exact figures will come out in the annual report of the Department of Education and Early Childhood Development. There will be further reporting of them in the mid-year budget update when there are actual figures around. There are estimates, if we are talking of a figure — a 4.7 per cent increase in the first year of pay for teachers, and then, I think, 1.7 per cent or whatever the figure was in the second, third and fourth years. That will come to a figure that reflects the total teacher wage force budget plus 4 per cent in the first year and plus 2 per cent in the second, third and fourth years.

Mr RICH-PHILLIPS (South Eastern Metropolitan) — I was hoping that the Treasurer might have an approximate dollar figure for that increase.

The DEPUTY PRESIDENT — Order! I would invite the Treasurer to answer, but my understanding of his answer is that at this stage he does not have that dollar figure available to himself or with the financial advice because at the moment it resides with the department.

Mr LENDERS (Treasurer) — The only additional information I would give to Mr Rich-Phillips if he wants to calculate it himself is to look at schedule 1, the output appropriation for the Department of Education and Early Childhood Development. That is probably about 85 per cent or 90 per cent wages, so if he adds 4 per cent to that he will get pretty close.

Mr RICH-PHILLIPS (South Eastern Metropolitan) — I thank the Treasurer for his help. Is the Treasurer aware of any other agreements that have been struck but not included within the base appropriation that would come into effect or be picked up by this escalation power that the Treasurer has — that is, not hypothetical; those that have been agreed but are not included in the base appropriation?

Mr LENDERS (Treasurer) — There will be others. Since 6 May — I could not tell Mr Rich-Phillips exactly where — there have certainly been some in the health sector, some of the smaller grants; there have been a number around. Yes, he is talking about the power of appropriation above and beyond the appropriation. The quantum of that he will certainly get next year in the appropriation bill, and he will certainly get it in the annual report of departments. There will have been a number of smaller ones, but the large EBAs, whether they be for teachers, public servants,

nurses or police, which are probably the four big ones, are the ones that we see given a lot of attention. But I can assure Mr Rich-Phillips that almost on a weekly basis Industrial Relations Victoria is working with government agencies on lots of others. There will be smaller ones, but none of the size of the teachers' agreement.

Mrs PEULICH (South Eastern Metropolitan) — I thank the Treasurer very much for the information provided to Mr Rich-Phillips. He may be able to provide some information in relation to my question, and that is whether provision is being made for the government to fund non-government school teacher salary increases.

Mr LENDERS (Treasurer) — Within the outputs of the Department of Education and Early Childhood Development there is a component which is support for non-government schools. It is an amount that is allocated to non-government schools. It is skewed heavily on an equity basis to the poorer schools; there is a whole formula around that. That agreement is, I think, signed between the minister and predominantly the Catholic Education Commission but also other bodies. That is, I think, a four-yearly agreement. It certainly did not come up during my eight months in the education portfolio but I think it comes up in the next year or so. Support for that is negotiated each year. This budget will reflect the government's obligations, and the normal indexation and the like will always be in budgets. The appropriation for the Department of Education and Early Childhood Development is what is expected for this current financial year.

I guess the policy question Mrs Peulich is asking is, 'Should there be more or not?'. In the end there will be a negotiated agreement, as there always has been. Non-government schools are overwhelmingly funded either by the commonwealth or by parents — that has been the tradition — and state schools have been predominantly funded by the state. That has effectively been the policy divide between jurisdictions. Whilst there is a small commonwealth amount for state schools and a small state amount for non-government schools, that is the general formula, that has been the general policy and whenever that agreement is renegotiated the Minister for Education will come to me.

Mr PAKULA (Western Metropolitan) — Carrying on from the questions asked by Mr Rich-Phillips and Mrs Peulich, I ask the Treasurer whether, to the best of his knowledge, there are likely to be any large public sector enterprise bargaining agreements which expire and have to be renegotiated during the coming financial year and for which any pay rise would be likely to be payable during the next financial year, which would therefore require him to make reference to subclause 2 of clause 3?

Mr LENDERS (Treasurer) — I always find it difficult to answer predictive questions from former union officials on how enterprise bargaining is likely to go, so I should probably defer to Mr Pakula to answer that one. Clearly, as a number of members have said — I think Mr Drum was last to say it — the Australian Education Union (AEU) teachers agreement took a lot longer than most people would have expected, so it is difficult to predict when an agreement will come up. However, there are clearly some large ones coming up.

The main public service agreement will probably come up towards the end of this financial year — that is my recollection — and there is certainly a doctors' enterprise bargaining agreement coming up in the near future. They are two large and significant agreements that I expect to come up during the financial year, and I have probably missed several others.

There is a government wages policy which we seek to negotiate. These negotiations are never easy, as anyone who, for their sins, was ever industrial relations minister — as I was in 2002 — certainly knows. Anybody who has ever had to negotiate any of these things knows they are not easy items. So I say to Mr Pakula that these two agreements and a number of smaller ones will probably come through this year. The policy challenge for government is to continue to negotiate a wages policy that is a good outcome for employees and for the state.

Mrs PEULICH (South Eastern Metropolitan) — Further to my earlier question — and I thank the minister very much for his answer — the minister said that allowances or increases in the line of indexation are likely to have been provided for, but my question actually asked whether further increases over and above normal indexation has been allowed for, or whether additional funding will be required over the course of the next year, given that the agreement will be renegotiated.

The DEPUTY PRESIDENT — Order! I will allow the question on this clause in the context of what the Treasurer has already said, but I think it is starting to move towards the schedules rather than the parameters of the clause itself. Up to this point the questions have related to the parameters of the Treasurer's power to make adjustments to the budget through the year in the event that there are award increases. Mrs Peulich's last question seeks something additional in terms of an increase in allocation, which is quite separate to that

issue. The minister has referred to that obliquely, so I will let him answer, but I ask that it be kept fairly tight.

Mr LENDERS (Treasurer) — Thank you, Chair. Your advice to Mrs Peulich is absolutely correct. This applies to government employees, whether it is an award determination or not, and non-government teachers are not government employees. In a policy sense it is an interesting discussion. In the budget debate a number of people raised the question of what the government is doing for the non-government school sector.

There is an enterprise agreement, and most non-government schools have their own enterprise agreements, which they negotiate from time to time. The Catholic Archdiocese of Melbourne — and I assume the Sale, Sandhurst and Ballarat dioceses are the same — and, traditionally, the Catholic Education Office simply apply the award that was agreed to by the government and the AEU, after a discussion with the VIEU (Victorian Independent Education Union).

If that is the case, that enterprise agreement is between two bodies that the government, in a sense, has nothing to do with — we are not the employer, we are not the employee. This clause does not apply to that, and the question regarding whether, in a policy sense, the government should be giving money in these areas would be more appropriately asked under schedule 1.

Clause agreed to; clauses 4 to 8 agreed to.

Schedule 1

Mr RICH-PHILLIPS (South Eastern Metropolitan) — I take the Treasurer to page 15 of the bill, which is the appropriation in respect of the Department of Treasury and Finance, item 4, which is 'Treasurer's advances'. Can the Treasurer tell the committee what criteria are applied to the expenditure of funds against Treasurer's advances — how applications for Treasurer's advances are assessed?

Mr LENDERS (Treasurer) — Mr Rich-Phillips asks a good question on how criteria are assessed. Criteria are assessed on a case-by-case basis. Some of the rules for Treasurer's advances, obviously, cover a range of areas. It may be that there is an item, the most obvious examples being the Gippsland floods, the Gippsland fires et cetera, that relates to a natural disaster, and this is a way of dealing with it. The Treasurer's advance applies on a case-by-case basis, when the government needs to put money aside, particularly for an area where commercial negotiations or negotiations with another government are going on, or where it is not in the state's interest to be telling the world specifics of an item so that you are suddenly negotiated down in that process. Some of those items would be dealt with by Treasurer's advance.

Some of those cases would be as simple as negotiations with the commonwealth, for example, that you could call commercial where we do not want to show our hand in the interests of the state until we actually know what the commonwealth is doing. The fundamental principle is that they are case-by-case decisions; they are items that do not logically fit under one of the other lines that come through in the various appropriations under schedule 1, so it gives the state a discretion. It is something that has always been there in Victoria, and presumably always will be for the reason that there is a logic to it.

Mr RICH-PHILLIPS (South Eastern Metropolitan) — With respect to the amount that is being appropriated for 2008–09 for Treasurer's advances, it increases from $434 million to $931 million. What is the basis for that doubling of the Treasurer's advance amount?

Mr LENDERS (Treasurer) — It is a good question, but I would also suggest to Mr Rich-Phillips that some of the people we are in commercial negotiations with may read *Hansard*. The commonwealth Treasury officers may read *Hansard*. The legitimate question Mr Rich-Phillips asks is, 'Where is the accountability of this?'. The accountability comes when we go to the next schedules where these things are reported. Once the event is over it is reported back to the Parliament in the next appropriation bill, obviously, but also in the annual financial report of the state of Victoria, so there is double reporting on what happens to the advances after the event.

I can start speculating on why amounts are smaller or larger. I guess I can do some of that for Mr Rich-Phillips, but as he knows, being on the Public Accounts and Estimates Committee, this figure goes up and down year by year, sometimes by dramatic amounts depending on what events have occurred. I would prefer not to start going through the individual items in the Treasurer's advance because they are fully reported to the Parliament in the annual financial report and in schedule 3 as part of that appropriation process.

Mr RICH-PHILLIPS (South Eastern Metropolitan) — I take the Treasurer's answer in good faith and will not pursue that particular line, but perhaps the Treasurer might like to clarify from that answer whether what he is saying is that, of the amount appropriated for Treasurer's advances, not all of it is there as a pool of funds for an emergency; some of it is

indeed set aside for specific projects where the government does not wish to disclose how much it is setting aside.

Mr LENDERS (Treasurer) — The tradition of a Treasurer's advance is for those emergencies and areas where for commercial-in-confidence, policy or other good reasons certain items are there, and they are reported far more clearly to the Parliament. In the case of emergencies, we cannot foresee them, and Mr Rich-Phillips is not suggesting we do, but in the case of the other items, once the event that triggers them going into the Treasurer's advance is addressed, quite clearly they are reported.

Mr RICH-PHILLIPS (South Eastern Metropolitan) — I have one further question for the Treasurer, and I am sure he would be disappointed if I did not ask it. It relates to a request from the Legislative Council for a Treasurer's advance for an amount of $380 000 for 2007–08 for funding for certain select and standing committees with which, I believe, the Treasurer is familiar. That request was rejected, according to advice to the Public Accounts and Estimates Committee, due to limited Treasurer's advance capacity for 2007–08.

Firstly, does that indicate that the amount appropriated for Treasurer's advances in the 2007–08 year has been fully expended, and in terms of the criteria by which Treasurer's advances are approved, why did the purchase of the painting *View of Geelong* warrant a Treasurer's advance of $733 000 but the funding of the Council's committees does not warrant a Treasurer's advance?

Mr LENDERS (Treasurer) — We could spend hours on this matter, and I wish I had the figures in front of me, but firstly, on the Treasurer's advance for this year, today is 26 June and if Mr Rich-Phillips wants to achieve his ambition to be finance minister for Victoria I am sure he will be well aware that the next few days are somewhat busy days in the Treasurer's and finance portfolios, so we will not have a final fix on that until probably 5.00 p.m. on Monday.

A lot of this is done by prioritising, and that is what it is about. There are many things involved. Using the specific Geelong example that Mr Rich-Phillips used, or using the parliamentary committees example, the Victorian Parliament allocation breaks down into, I think, four appropriation lines, and one is the Department of the Legislative Council which has $2 million unspent from previous years.

If a department comes forward and asks for money, one of the first things a prudent Treasurer will do is ask, 'Are there other ways of paying for it rather than taking it out of the Treasurer's advance?'. If a department has an accumulated surplus — and this happens in every department; it is not just the Legislative Council: any of the departments may come to the Treasurer for a Treasurer's advance — I will prudently as Treasurer ask the Department of Treasury and Finance, 'Are any other sources of funding available?'.

If a department has $2 million unspent from a previous year then the first port of call is for that to be used for one-offs on those occasions. By definition, select committees are one-offs. At that juncture the normal response would be, 'Is there another way of funding it?'. A prior year's surplus can be allocated by the Treasurer giving approval of a prior year's surplus. My response is that if there is an application for a prior year's surplus then I will certainly approve it.

There is a $2 million prior year's surplus in the Department of the Legislative Council. I think, and I stand to be corrected, that there is about $6 million or $8 million — certainly across the whole of the Parliament a figure getting close to $10 million. There is a lot in the joint house department, there is some in the Assembly and some in the parliamentary committees department. All of them have accumulated prior year surpluses. When a Treasurer's advance request comes in from a body that has surpluses from previous years, I think what the taxpayers would expect the Treasurer to do is say, 'Well, let's not start on something new that should be used for floods, fires, famine or something else, or capacity'.

Mr Rich-Phillips — The revenue is cash?

Mr LENDERS — No. Mr Rich-Phillips says the revenue is cash. There is a capacity to draw down, in the case of the Legislative Council, on $2 million of prior year's surpluses, and a request to the Treasurer to access that funding for a specific project will be approved; I have communicated this to the President. I do not have the details of the prior year's surpluses there, but in relation to the other example and any of these issues, that is the first test and then ultimately they are a Treasurer's call. The first thing though, that I will ask my department is: does the agency or department body seeking the money actually have the capacity to pay it themselves by reprioritisation?

The DEPUTY PRESIDENT — Order! For the sake of moving through this expeditiously I suggest that I call each of the budget areas, which I think would also be consistent with the ruling I made at the outset, and

might actually help members work through it fairly progressively. In the first instance I go to page 6. Are there any members who wish to make a contribution in regard to the Department of Education and Early Childhood Development appropriation?

Mrs PEULICH (South Eastern Metropolitan) — With a growing backlog of maintenance in terms of our schools, I ask the Treasurer why there is no increased provision for maintenance in the forward estimates?

Mr LENDERS (Treasurer) — Chair, I am not the Minister for Education, and of course all the outputs for education, all the performance measures are in budget paper 3, which Mrs Peulich can look through. What I as Treasurer have here in the appropriation bill is actually a request from the department for output funding to increase from $6.3 billion to $6.6 billion, so there is actually increased funding for the department.

That will include a departmental funding model, in which there is an indexation of all previous amounts within that department, and then above and beyond that there will be a number of new outputs that have actually been approved through the budget process and have been presented to the Parliament to be included in there.

Maintenance for schools is something that is dealt with on two levels. One level is that the school as part of its student resource package, the school budget, receives a portion for maintenance that is normally done by the school itself. In addition to that the eight regions of the education department have a further amount of funding, which is in the order of some millions of dollars — I do not have the figures at my fingertips — which they then use to supplement larger costs. If, for example, you have a school that is a two-storey building which suddenly has a funny roof and you have to get a crane in, obviously that is not something a normal school budget will deal with. Then periodically the department or the government will put more money back into the schools through the education department regions to deal with maintenance backlogs. Certainly we did that once during my eight months in the portfolio; that is a particular thing. So maintenance funding for schools through the student resource package, which is the largest single component of school maintenance, has been indexed this year, as it has in other years.

Mr VINEY (Eastern Victoria) — I thank the Treasurer for anticipating my earlier question on the size of the budget, but I was seeking some advice from him as to how this budget and this allocation in the schedule of the Department of Education and Early Childhood Development is going towards the government's quite laudable goal of refurbishment of all schools across the state — in particular I think it is 500 schools in this four-year period. Could he take the committee through some of the rationale as to how the allocations this year are going towards the achievement of that overall goal?

Mr LENDERS (Treasurer) — As I have informed the house before — and the committee, it being part of the house — the government certainly has made an election commitment to rebuild, renovate or modernise 500 schools during the term of this Parliament. Last year the number of those schools funded in the budget was in the order of 130 — —

Mr D. Davis — One hundred and thirty one.

Mr LENDERS — Thank you, Mr Davis. This year the number of schools is actually three fewer — 128 — if my memory serves me correctly; I could look through the budget papers to confirm that. In addition to the maintenance component of schools, the depreciation component which government can draw on which comes through the output line, we are also seeing an additional asset line of $227 million in this budget, which gets us to the global figure in the order of $592 million. That will then go towards those 128 schools — some of them being new, some of them being modernised — as part of the government's schedule to achieve the refurbishment of these 500 schools during the life of this Parliament.

So there is a plan; the education minister has articulated that quite clearly. This is the second year in which that plan has been operating. What we are seeing now, in these two budgets, is the vast bulk of the finances for this initiative being delivered, and this budget has a very strong skew towards the school regeneration projects — the very large projects have been pretty well dealt with in this budget.

The remaining two budgets, then, will contain funding for the rest of the government's particular commitments to individual schools according to its election commitments and also for a large number of other schools, whether that be for small rural schools or a whole range of other programs in schools. The minister will come up with proposals for the order in which those things will be done over the next two budgets. So what we are seeing here in this budget allocation is a record spend which will get us well on the way to achieving the modernisation of those 500 schools during the four-year period.

Ms LOVELL (Northern Victoria) — I refer the minister to the Bendigo education plan, a plan I know

he is well aware of from his time as education minister. He is also well aware that this government made a commitment at the last state election to spend at least $72 million on the four new schools that it will build to replace the five existing schools in Bendigo. Last year's budget allocated $20 million for that project.

In this year's budget, as part of the press release headed 'State budget delivers boost to regional and rural education' it was announced that $49.1 million will be used to continue or commence school regeneration programs in Colac and Bendigo. Since then the Minister for Regional and Rural Development, Jacinta Allan, has informed the Bendigo community that $41 million of that $49.1 million will go towards that plan, giving the plan a total of $61 million allocated to it at this stage, which leaves an $11 million hole in that budget.

Teachers in Bendigo have advised me that they have been led to believe that the remaining $11 million is in the forward estimates of this budget. Can the minister confirm whether that $11 million black hole is in this budget or when it will be filled?

Mr LENDERS (Treasurer) — I find it interesting that Ms Lovell is describing something as a black hole. In my response to Mr Viney's question I made it quite clear that the government is committed to either build, modernise or regenerate 500 schools over four years. We made a specific-figure budget promise, a $1.9 billion election commitment, which, if you take out the TAFE component, becomes $1.83 billion, or something of that order, of actual funding for schools. What we have committed to date is approximately $1.1 billion to $1.2 billion of that $1.8 billion over two budgets, which means there is still around $700 million left which the government has pledged that it will use. If we go through the forward estimates, there is unallocated capital in all the forward estimates years for the highest infrastructure spends this state has ever had.

Ms Lovell talks of a black hole. There is no black hole. What we have is simply a commitment to rebuild 500 schools. She has mentioned some schools in Bendigo, in her community and in her electorate, and she has mentioned the Minister for Regional and Rural Development in another place, Jacinta Allan, who is a passionate advocate for Bendigo, and what she has done in those areas. What we can see is that for two of the four budgets we have acquitted probably 80 or 90 per cent of the four-year commitment. There is no black hole. There is a commitment by this government to deliver all the schools it promised. If those Bendigo schools were among the listed schools in 2006, which from my memory of the portfolio they certainly are, then they will certainly be delivered during the four budgets of this government. And the fact that probably 80 to 90 per cent has been done in the first two budgets should give Ms Lovell comfort rather than any concern. We are actually delivering on our education commitment to rebuilding those schools in Bendigo.

Ms LOVELL (Northern Victoria) — I ask the Treasurer whether the $11 million is in this budget.

The DEPUTY PRESIDENT — Order! I think the Treasurer actually answered that question.

Mr D. DAVIS (Southern Metropolitan) — Just on the commitments on schools, the budget overview in the 2007–08 budget indicated 131 schools. In the interests of better understanding this allocation, I wonder if the Treasurer might provide a list of the ones that have been completed. I am referring to the ones that were originally put out. I think it is instructive to know exactly where the program is at the moment so as to gauge where it is going.

Mr LENDERS (Treasurer) — What we have here is an appropriation bill. We have a department under schedule 1, and we have what appropriation bills are. This is an approval for me to issue warrants for $6.654 billion regarding operating costs and for $2.27 billion regarding capital. That is what this is seeking approval for. What we have actually done in the budget papers is outline the number of schools, and the progress reporting on individual capital in schools is something that will come, on the very large projects through a budget information paper report in a few months time, and that will be reported in the annual report of the Department of Education and Early Childhood Development. I suggest to David Davis that he can actually go onto regional websites and look at the schools. I am not wishing to withhold information, but as part of an appropriation bill this is an appropriation for money to go forward. I can assure Mr Davis, without going into the specifics of schools, that schools are being built and being delivered. I can certainly tell him that in my eight months in the portfolio I have had trouble keeping up with the openings.

Mr D. Davis interjected.

Mr LENDERS — I suggest to Mr Davis that the first port of call is simply asking the department or going through the annual report. But what we are seeking here is to appropriate money to build schools and the completion of that process is one that is covered off in other areas of government. But I can assure him — and he can take my assurance — that schools

are being built across the state, and 500 will be done by November 2010.

Mrs PEULICH (South Eastern Metropolitan) — A few weeks ago I asked the Treasurer a question in this chamber about the federal Labor government's promise to provide every senior student in Victoria with a computer. At the time the Treasurer said he would work with the commonwealth to make sure these computers were rolled out in our schools in the best possible way. Since then of course we have also found out that some very well resourced government schools have been provided with significant numbers of computers, whilst small schools, such as Aurora, which specialises in the education of deaf and blind students, received only one extra computer. Was the Treasurer involved in the development of the guidelines to make sure these computers were being rolled out to schools in the best possible way, and can he confirm that the reason why there is only one computer for every two students is that that diminished amount of funding is being redirected to the installation and maintenance costs that the federal government had not accounted for?

Mr LENDERS (Treasurer) — They are levels of detail on the administration of the Department of Education and Early Childhood Development that I am certainly not privy too. What I would suggest is that the most expeditious way for Mrs Peulich to get an answer is to just put a question on notice to the Minister for Education through me, and we will seek to get an answer for her. I am not privy to that sort of detail. That is a level of detail, when we are talking of an appropriation bill of $32 billion, that I am just not on top of.

Mrs PEULICH (South Eastern Metropolitan) — I have one further question to ask, if I may. Presumably in his role of providing oversight over all of the departments, is the Treasurer confident or can he guarantee that the $60.5 million allocation for ultranet will indeed be met?

Mr LENDERS (Treasurer) — Ultranet obviously is a large IT component of the budget of the Department of Education and Early Childhood Development, and it is one that obviously will be phased in and set up over several years. That project is being managed by my colleague Bronwyn Pike, as the Minister for Education, who has responsibility for that. I have full confidence in Ms Pike and the Department of Education and Early Childhood Development to manage a project. IT projects are never simple and never easy. They will work through it with schools and providers; they will work through that and manage that project.

The DEPUTY PRESIDENT — Order! If there are no further questions on education, I propose we move to the Department of Human Services items on page 7. Are there any questions in respect of that section?

Mr D. DAVIS (Southern Metropolitan) — My question to the Treasurer relates to health and the Victorian public hospital capital spend over the next four years. Among that capital spend in different hospitals for the forward planning, how many additional multistay or overnight stay beds will be added to the current number of beds in the system?

Mr LENDERS (Treasurer) — The delineation between capital and output on health expenditure is a complicated area. If we are talking of capital in relation to a bed, in the scheme of things a bed is a very small part of it. Obviously the cost of a bed is the output cost of actually having the bed staffed and serviced and operated during its life. Again, perhaps I can suggest to Mr Davis the same course as I did to Mrs Peulich: that if he wants that level of detail perhaps he can put a question on notice to the Minister for Health, and we will obviously try to expedite an answer to that. But I cannot provide that level of detail on that now.

Mr D. Davis — Take it on notice.

Mr LENDERS — By taking it on notice, I am not being difficult. I am just suggesting that is the most expeditious way for that to happen. There is an accountability in this place on questions on notice. So I think that is an appropriate course.

The DEPUTY PRESIDENT — Order! If there are no further questions on that section, the committee will move onto the Department of Innovation, Industry and Regional Development items on page 8. Does anyone have a question on the Department of Innovation, Industry and Regional Development?

Mrs KRONBERG (Eastern Metropolitan) — I refer to the schedule 1 allocation for the Department of Innovation, Industry and Regional Development, particularly item 1, which relates to the provision of outputs for $1.43 billion. Within this allocation, how much is allocated to assist the government's response to reduce the energy-intensive element prevailing in the government's IT sector?

Mr LENDERS (Treasurer) — I would suggest to Mrs Kronberg the same thing: to put a question on notice to the Minister for Information and Communication Technology, presumably, or the Minister for Innovation — to the appropriate minister — to get an answer. This is an output for $1.4 billion that covers the entire gambit of regional

development. It covers skills and it covers industry facilitation and support. That is a specific item which I suggest the member put on notice for the minister.

Mr DALLA-RIVA (Eastern Metropolitan) — I refer the Treasurer to item 3. This is the first instance this item has appeared as we have gone through the different departmental items. It lists a figure of $27 million for 'payments made on behalf of the state'. There was no such entry in the previous year. Can the Treasurer explain what that allocation of $27 million is about?

Mr LENDERS (Treasurer) — I will seek advice on that, Chair, but I am pretty sure that is the regional gas connection. No, I have sought advice and I am told that is the first of the payments for the Melbourne Convention Centre that comes in, so it is a public-private partnership. It is the first of the stream of payments that will go forward. The accounting treatment of some of these again goes back to Mr Thornley's question early on, about where the accounting treatment is, but that is the accounting treatment of it, so that is the first of the payments for the Melbourne Convention Centre.

Mr DALLA-RIVA (Eastern Metropolitan) — In terms of it being a payment, I just need clarity on what the payment is for. The Treasurer says it is for the Melbourne Convention Centre. Is that payment to the property developers? Is it payment as part of the component for the PPP? How is it made up in terms of what it is used for?

Mr LENDERS (Treasurer) — I guess my response is that I would suggest Mr Dalla-Riva put a question on notice for the Minister for Major Projects. In a sense, like Mr Barber earlier today, he has lost an opportunity. He had the minister for 3 hours at the Public Accounts and Estimates Committee to go through that. This will be the first of a series of payments that are simply made out of the convention centre. Part of that is for the capital; part of that is for the 30 years or 25 years, whatever the contractual period is, for the maintenance component of that. This was the first of the payments for the convention centre. The specific details of it within that particular output — and this is my suggestion to him — I suggest he put on notice for the minister.

Mr DALLA-RIVA (Eastern Metropolitan) — I refer the Treasurer to the provision of outputs. Just for clarity, we know that the government has allocated up to $35 million for Toyota. Are any of those funds out of these forward estimates in respect of that payment or would it be a Treasurer's advance?

Mr LENDERS (Treasurer) — There are a couple of things about that. Firstly, Mr Dalla-Riva says he knows the government has made a $35 million payment towards Toyota.

Mr Dalla-Riva — I did not say that.

Mr LENDERS — We know that the commonwealth government has made a $35 million payment towards Toyota. The issue of investments facilitation and support are items that he should address to the Minister for Industry and Trade, which he periodically does in this place on that particular issue, but if he is talking about an appropriation that is actually seeking appropriation, clearly this budget is before the announcement that he particularly made, so there is clearly no effort to seek appropriation for Toyota in this budget.

Mr DALLA-RIVA (Eastern Metropolitan) — My final question relates to that. Given that we have heard from the minister about the fact that the industry portfolio is one about attracting investment, and we have heard the minister himself argue that a lot of that is about ensuring that there is some financial incentive, although he is not specific often as to what those financial incentives are, as the Treasurer, as part of that componentry of the $1.4 billion, does he have an allocation consideration in the forward estimates in terms of the money that he may use for investment attraction into Victoria and, if so, is it within this section of the budget papers?

Mr LENDERS (Treasurer) — What I will say to Mr Dalla-Riva — and I am not sure where he is heading with this — is an investment facilitation falls much into the same area that Mr Rich-Phillips raised before about the Treasurer's advance. There are areas of investment facilitation where government for obvious reasons goes through a process where these things are scrutinised by the Auditor-General and reported at various times and places when there are commercial discussions and a range of things going on.

For those reasons, clearly investment facilitation is something that comes through the Department of Innovation, Industry and Regional Development. Clearly investment facilitation depends on what form it comes in. If it comes through a Treasurer's advance, there is a whole range of areas, but the fundamental point I would make, Chair, in addition to my earlier comment is that Mr Dalla-Riva has the option as a member of this house to ask whatever question he wants, and I have the option to answer the questions, but what I would say to him is it is a lost opportunity.

As I said before, he has had 3 hours with the Minister for Industry and Trade at the Public Accounts and Estimates Committee inquiry into the estimates, and much as I said to Mr Barber earlier in the house today, it is up to him how he wishes to use the opportunity. I would say quite clearly he is asking questions here when he could have got an answer from the minister who is responsible for administering that act and every part of that act at the hearing.

I will take the question on notice. If he raises it as a question on notice, I will obviously put it forward to Minister Theophanous for response. We are in the same house. This is a general appropriation bill. They are details he could ask of the minister at any time.

Ms PULFORD (Western Victoria) — My question relates to item 4, payment to the Regional Infrastructure Development Fund. I was wondering if the minister could explain what mechanisms or systems are in place in the way in which funds are allocated through that fund in a manner that ensures an equitable distribution throughout regional Victoria?

Mr LENDERS (Treasurer) — I thank Ms Pulford for her question about the Regional Infrastructure Development Fund. This is a fund that is administered by my colleague — —

Mr Dalla-Riva interjected.

Mr LENDERS — I take up Mr Dalla-Riva's interjection. I have answered a lot of questions in this house and been as helpful as I can be with information at my fingertips. Where information is available through other sources, I will advise members of it.

Ms Pulford raises the issue of the Regional Infrastructure Development Fund, and that is a fund that I am more familiar with than some others because when I was finance minister I needed to countersign those issues with the minister responsible at the time for the Department of Innovation, Industry and Regional Development, so I am familiar with the fund and the history of it.

This fund is one where its processes are generally that it is through municipalities, but also through other people or organisations who seek small amounts of assistance to make a critical difference in a region who come forward to the government. So they should go to Regional Development Victoria or directly to the Department of Innovation, Industry and Regional Development with proposals and they will be assessed, and in the end, after going through a process, the minister will make a decision on where this funding can be put forward to facilitate investment in Victoria.

We have seen some extraordinary efforts of investment in Victoria in places where the extra $1 million or $2 million from government, or sometimes $400 000 or $500 000 for government, is enough to leverage a municipality or to put critical infrastructure in place that often then gets an investment and jobs into a regional community. People seeking it should simply approach the Department of Innovation, Industry and Regional Development or Regional Development Victoria direct and speak to people and see how they can do it.

Similarly I would say in response to Mr Dalla-Riva's interjection, if people wish to access investment support on the same basis, they should approach the department also. The department will deal with all comers who are seeking to make Victoria a better place to live, work, invest and raise a family.

The DEPUTY PRESIDENT — Order! Is there anything further on that schedule? If not, I propose to move to the Department of Justice schedule. Are there any questions regarding the Department of Justice schedule? If not, I intend to move to page 10, the Department of Planning and Community Development. Are there any queries on that?

Mr GUY (Northern Metropolitan) — I will save the house's time and be very quick. I wanted to ask a question in relation to the budget outlay for the new residential zones proposal implementation. I ask the Treasurer why an allocation has been made for a document that the minister says is not a fait accompli; it is in a 7 or 8 months consultation phase, and whether that is a normal occurrence — for the government to fund a document that is not even necessarily going to be implemented?

Mr LENDERS (Treasurer) — I would invite Mr Guy to put that on notice for the Minister for Planning. Presumably he is referring to funding somewhere in budget papers 2, 3 or 4 which refer to this document and funding for it. I do not recall seeing that particular line in budget papers 2, 3 or 4, but the work of the Department of Planning and Community Development is one that involves a lot of preparation of documents, a lot of planning. It is a planning department and it is a core part of that department to do so. If he has a particular line somewhere which is new in there, I would certainly refer that also to the Minister for Planning for his response to Mr Guy.

Mr GUY (Northern Metropolitan) — I wonder if the Treasurer would be able to inform us very quickly in relation to page 10 in schedule 1 where we have listed no. 3, payments made on behalf of the state, if he could inform us what those are?

Mr LENDERS (Treasurer) — Payments made on behalf of the state vary from department to department and accounting treatment to accounting treatment, so we have a figure here of $500 000 that is an increase on a previous year. I will see if I can find out. We have been advised, and I am delighted to advise Mr Guy, it is money for the Anzac Day Trust.

The DEPUTY PRESIDENT — Order! Anything further? Page 11, Department of Premier and Cabinet, are there any matters on that? Page 12, Department of Primary Industries, any matters?

Mr DALLA-RIVA (Eastern Metropolitan) — Again in item 3, there is $27.9 million but nothing in the forward estimates. I am just wondering what has fallen off or what has been satisfied in that process?

Mr LENDERS (Treasurer) — I am confident I have got it right this time that it is actually the last year of the network tariff rebate. That was phased out over a number of years and in its place there have been some solar panel rebates.

The DEPUTY PRESIDENT — Order! Are there any questions on Department of Sustainability and Environment, page 13? Are there any questions on page 14, Department of Transport?

Mr D. DAVIS (Southern Metropolitan) — My question here is relating to the Department of Transport output. I notice that the Auditor-General's report *Maintaining the State's Regional Arterial Road Network*, which was released this week, says at point 3.4.3 on page 24:

> VicRoads was unsuccessful in its bid for additional maintenance funding in 2008–09, but secured more resources to address a small number of urgent backlog items within the 2007–08 financial year.
>
> VicRoads made the case for an additional $25 million of maintenance funding in 2008–09 to start addressing the backlog of high priority works. This bid was successful.

I wonder if the minister might explain why that bid was unsuccessful. Given the Auditor-General's report and the matters of backlog he has drawn attention to, I wonder if the minister might explain why the government knocked back that bid for funding.

Mr LENDERS (Treasurer) — I am not going to commence discussing the deliberations of cabinet or cabinet committees. I give David Davis full marks for trying, and I also make the observation that hindsight on his part is a wonderful thing. The Auditor-General's report was received by the Parliament on Tuesday and the budget was presented to the Parliament 51 days ago, so that is a substantive issue here. What I will say to David Davis, though, is two things: if he looks at the outputs for the Department of Transport, what he will see is a substantial increase in both the capital and output funding for that department. It is a significant increase in capital. I do not think you see many times in the history of the state of Victoria that the capital for a department has gone from $650 million to $1.1 billion in a single budget. What David Davis sees is a massive extra increase in capital expenditure in transport, and the points he makes about the Auditor-General's report were addressed by me in this place and certainly far more eloquently and thoroughly by my colleague the Minister for Roads and Ports in the Legislative Assembly.

Mr D. DAVIS (Southern Metropolitan) — Just on the matter relating to page 14, Department of Transport, I want to talk to the Treasurer about the Transport Ticketing Authority. Given the ongoing delays with the new ticketing solution, the myki public transport ticketing smartcard, have there been any supplementary payments or additional appropriations made to the Transport Ticketing Authority since 1 January 2008?

Mr LENDERS (Treasurer) — The Department of Transport has a line item here, a large one in appropriation, and the Minister for Public Transport will be administering a portion of that for the Transport Ticketing Authority for its funding over a period of time. I do not have the exact figure in front of me here, and I suggest Mr Davis puts a question about that particular figure on notice for the Minister for Public Transport. The issue Mr Davis is talking about is one that the government is very focused on, and if he puts a question on notice today to the Minister for Public Transport, that is probably the best way to facilitate a detailed answer.

The DEPUTY PRESIDENT — Order! Is there anything further on the Department of Transport? If not, then we move to page 15, Department of Treasury and Finance. Anything further? We have already ranged across some of that with Mr Rich-Phillips.

Mr DALLA-RIVA (Eastern Metropolitan) — I know we have already covered item 4, but I would also like clarity on item 3. Can the Treasurer explain what the $1 billion of payments out of that department are for?

Mr LENDERS (Treasurer) — Primarily superannuation.

The DEPUTY PRESIDENT — Order! Anything further? If not, that concludes our walk through schedule 1.

Mr LENDERS (Treasurer) — In response to Mr Dalla-Riva before, I said that line item 3 on page 15, Department of Treasury and Finance, was predominantly superannuation. I was incorrect. First home buyers, not superannuation, are the largest single part of that payment.

Schedule agreed to.

Schedule 2

Mr D. DAVIS (Southern Metropolitan) — I draw attention to the Primary Industries section of schedule 2 on page 17; for line item 'National Heritage Trust' there is an allocation of $387 606. I wonder if the minister would explain what that payment is for.

Mr LENDERS (Treasurer) — I can certainly seek that for Mr Davis. Where we are now in schedule 2 is formally for the appropriation coming back to the Parliament to outline areas where moneys have been spent already — that is the Treasurer's advance. All of these areas will have been reported in the annual report for 2006–07; each of these will have been reported already so they are on the public record. Mr Davis or I could look through the annual financial report for that year; the details would all be reported there. This is a way that this is acquitted back to the appropriation, but the information has been out there on the public record since August last year.

Mrs COOTE (Southern Metropolitan) — I indicate to the Treasurer that I have six points that I would like to discuss about the St Kilda Triangle funding. Could the Treasurer please provide some details of the $1.414 million set aside for the St Kilda Triangle legal costs?

Mr LENDERS (Treasurer) — This must be a day for Southern Metropolitan Region. I will say to Mrs Coote what I said to David Davis: this figure simply reports what has already been reported in the annual financial report which I tabled in the Parliament in August last year. I could certainly take Mrs Coote through that annual report, through the $1.414 million for legal costs, but it will be reported in the annual report that that is what it was for.

Presumably the details of the legal costs will need to be taken on board by the Department of Sustainability and Environment, so presumably it will be for the Minister for Environment and Climate Change. It will be something that was reported in August last year. I could take the question on notice for my colleague Mr Jennings, to see what else he has to offer.

Mrs COOTE (Southern Metropolitan) — That answers the question I had, excepting to ask whether this is the only occasion on which the Treasurer has made funds available for an advance for a government department to take legal advice against a community organisation?

Mr LENDERS (Treasurer) — That question would be more appropriately asked of the relevant minister. I should not speculate, but we are talking of the 2006–07 financial year. I suspect they were not legal costs that involved a community group; I suspect they involved the developer. Probably Mrs Coote should put that on notice for my colleague the minister.

Ms LOVELL (Northern Victoria) — I refer the Treasurer to the line item for the Bendigo pipeline of $25 million. Can the Treasurer clarify whether that amount is for the first pipeline that went through to Bendigo or the second one that is going through at the moment?

Mr LENDERS (Treasurer) — I am not trying to be unhelpful here, but these were Treasurer's advances that were signed off in the 2006–07 financial year by my predecessor as Treasurer. I would imagine that some of these documents are quite historic and would have been reported in the annual financial report to the Parliament, and they are now being acquitted as part of the appropriation in this schedule.

Ms LOVELL (Northern Victoria) — Therefore it must have been for the first pipeline, which the Treasurer announced in the budget would be $30 million. I ask the Treasurer: what percentage of that project does that $25 million cover?

Mr LENDERS (Treasurer) — I suggest that Ms Lovell put that as a question on notice to the Minister for Water in the other place. The procurement of the water pipeline is a responsibility of that minister, and this is simply a reporting to the Parliament of a Treasurer's advance — specifically the second report that the Parliament has received of a Treasurer's advance made in the 2006–07 financial year towards that project. The annual report of the department, which is the annual financial report to the Parliament, will have more details in it, and I suggest to Ms Lovell that she could get that information from there.

Schedule agreed to.

Schedule 3

Mr DALLA-RIVA (Eastern Metropolitan) — I have a question about page 19 of the bill, and specifically about the Department of Innovation, Industry and Regional Development. On page 16 the figure is $16.6 million. Could the Treasurer clarify why it appears to have gone down? Could the Treasurer please give an explanation for the difference in those figures?

Mr LENDERS (Treasurer) — I stand by my substantive response to Mr Dalla-Riva earlier on. The schedules are essentially funds used by the department either under different sections of the appropriation bill in previous years in the Financial Management Act, some of them being a department's additions to outputs and some of them being Treasurer's advances. Two different sources of funding are being reported under separate schedules to the act, and both of them are for the 2006–07 financial year, but under the requirements of the Financial Management Act, they are reported in two separate parts of this appropriation.

Mr DALLA-RIVA (Eastern Metropolitan) — Some people might accuse me of being a smart artist occasionally, but page 20 of the bill refers to a painting *View of Geelong* by Eugène von Guérard at a cost of $733 000. I know that Mr Rich-Phillips raised this matter, but what is it? I am just curious.

The DEPUTY PRESIDENT — I was also curious how to spell one of the words that you mentioned.

Mr LENDERS (Treasurer) — Could I suggest that Hansard resort to Latin; that might be easier! What we are reporting here is an acquittal of Treasurer's advances made during the 2006–07 financial year. Obviously that was a Treasurer's advance in the arts portfolio for that period of time. It was very publicly communicated at the time, and there was a public debate about it, and it is now being formally acquitted by being put in schedule 3 of this appropriation bill.

Schedule agreed to.

The DEPUTY PRESIDENT — Order! That concludes the committee's consideration of the bill. I indicate that this is a unique situation. I think the Treasurer referred to the fact that he delivered the speech in the Assembly and closes it in the Council. He has been prepared to respond to quite a range of questions on the budget, and I thank him for his participation in that debate. It has been an interesting exercise on legislation which is a bit different.

Reported to house without amendment.

Report adopted.

Third reading

Mr LENDERS (Treasurer) — I move:

That the bill be now read a third time.

In doing so I thank the committee, the house and certainly the Department of Treasury and Finance and my office for great assistance over the last period in getting this budget ready. Can I say that at 5.45 p.m. it has been a long 51 days. I commend the bill to the house.

Motion agreed to.

Read third time.

BUDGET PAPERS 2008–09

The PRESIDENT — Order! The question is:

That the Council take note of the budget papers 2008–09.

Question agreed to.

BUSINESS OF THE HOUSE

Adjournment

Mr LENDERS (Treasurer) — I move:

That the Council, at its rising, adjourn until Tuesday, 29 July 2008.

Motion agreed to.

TOBACCO (CONTROL OF TOBACCO EFFECTS ON MINORS) BILL

Assembly's refusal

Returned from Assembly with message relating to refusal to entertain bill.

Ordered to be considered next day.

LOCAL GOVERNMENT AMENDMENT (ELECTIONS) BILL

Introduction and first reading

Received from Assembly.

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

Statement of compatibility

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

In accordance with section 28 of the Charter of Human Rights and Responsibilities, I make this statement of compatibility with respect to the Local Government Amendment (Elections) Bill 2008.

In my opinion, the Local Government Amendment (Elections) Bill 2008, as introduced to the Legislative Council, is compatible with the human rights protected by the charter. I base my opinion on the reasons outlined in this statement.

Overview of bill

The purpose of the Local Government Amendment (Elections) Bill 2008 ('the bill') is to amend the Local Government Act 1989 ('the LG act') and the City of Melbourne Act 2001 ('the Melbourne act') to improve a number of electoral processes for local government.

Specifically, the bill proposes to:

make changes to electoral dates and times for councils;

alter candidate nomination processes;

clarify enrolment requirements for corporations, ratepayers and absentee voters;

amend procedures for council countback process;

create offences for making false declarations; and

make other technical amendments to clarify or correct minor legislative anomalies.

Human rights issues

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

The bill engages three of the human rights provided for in the Charter of Human Rights and Responsibilities ('the charter').

Section 13: Privacy and reputation

Section 13 establishes a right for an individual not to have his or her privacy, family, home or correspondence unlawfully or arbitrarily interfered with and not to have his or her reputation unlawfully attacked.

The right to privacy concerns a person's 'private sphere', which should be free from government intervention or excessive unsolicited intervention by other individuals. An interference with privacy will not be unlawful provided it is permitted by law, is certain, and is appropriately circumscribed. An interference will not be arbitrary provided that the restrictions on privacy are reasonable in the particular circumstances and are in accordance with the provisions, aims and objectives of the charter.

In the bill, there are certain provisions which engage the right to privacy. However, in each instance, the interference with privacy is neither unlawful or arbitrary for the reasons set out below:

Clause 9 of the bill provides that under the LG act, the chief executive officer ('the CEO') of a council may request any person to provide information either orally or in writing, to determine the eligibility of the person to be enrolled in a council election.

The type of information that can be requested by the CEO is limited to information that can help determine whether a person is entitled to be enrolled on a voters' roll in accordance with the LG act. Further, the interference with privacy is lawful and not arbitrary, because the power to request information from a person is confined to information necessary to determine the eligibility of a person to be enrolled.

Clause 27 of the bill restates a requirement for a person wishing to nominate as a candidate, who is a ratepayer that has been omitted from the voters' roll, to submit together with their nomination form, a statutory declaration stating that they are entitled to be enrolled and including an additional requirement that it specify the grounds on which entitlement to be enrolled is claimed.

The information required in the statutory declaration is similar to the information that would be required if the person was applying for enrolment and is only required if the person has been omitted from the voters' roll in error. Entitlement to be on the voters' roll is a key eligibility requirement to be a candidate under the LG act. The interference with privacy is reasonable and circumscribed.

In addition, clause 11 and clause 43 of the bill provide that under the LG act and under the Melbourne act, persons entitled to be enrolled on the voters' roll for a council election by virtue of being enrolled on the state electoral roll, cannot lodge a request with the CEO that their address not be shown on the voters' roll. Persons enrolled on the state electoral roll can already apply to the Victorian electoral commissioner requesting that their personal details not be shown on the state electoral roll, and as such, there is no limitation of the privacy right.

Accordingly, the bill does not provide for the unlawful or arbitrary interference with privacy and therefore there is no limitation on the right to privacy. Therefore, this right is not discussed further in this statement.

Section 15: Freedom of expression

Clause 16 and clause 19 of the bill limit the right to freedom of expression and are discussed in part 2 of this statement.

Section 18: Taking part in public life

Section 18 establishes a right for an individual to participate in the conduct of public affairs, to vote and be elected at state and municipal elections, and to have access to the Victorian public service and public office, without discrimination.

The right to participate in public affairs is a broad concept, which embraces the exercise of governmental power by all arms of government at all levels. The right to vote must be established by law and is confined to 'eligible persons'. The right to be elected ensures that eligible voters have a free choice of candidates in an election, and as with the right to vote, the right to be elected is limited to 'eligible persons' as determined by legislation.

Numerous provisions of the bill engage but do not limit the right to take part in public life, for the reasons set out below:

In clause 5 and clause 6 of the bill, which relate to entitlements to enrol on the voters' roll for a council election, the reference to 'a ward' is substituted with reference to 'the municipal district'.

This is a technical amendment and clarifies that eligibility to vote in a council election in the case of ratepayers, is determined according to whether a person owns or occupies a rateable property within the whole municipal district, rather than a single ward of the council. It does not alter actual voting entitlements in any way.

Clause 5 also amends the process of preparing the voters rolls to specify that the CEO should not include on the list of property owners, any person who lives in the municipality, unless that person applies to be on the roll. This extends the existing limitation that applies if the person lives in the property they own.

The purpose of this amendment is to avoid duplicating people on the council voters roll, as residents who are on the state electoral roll are already automatically included on the council roll. The amendment relates to the roll preparation process and does not alter any person's right to apply for enrolment.

Clause 9 of the bill provides that on receiving an application from a person for enrolment on the voters' roll for the municipality, the CEO of the council may refuse to enrol the person.

The power to refuse to enrol a person can only be exercised by the CEO where he or she believes the person, based on the information submitted in their application, is not eligible under the LG act to be enrolled. The bill further provides that the CEO must advise the person of the reasons of the refusal and may allow the person the opportunity to provide further information in support of their enrolment application. In addition, under the Local Government (Electoral) Regulations 2005, a person who is not enrolled and who believes they are entitled to vote may apply to vote as an unenrolled voter.

Clause 13 of the bill provides that in the case of a by-election, a person does not have a right of entitlement to be enrolled on the voters' roll for a ward of the municipality, if the same person was enrolled for another ward at the time of the last general election.

This amendment simply ensures that persons are excluded from voting in respect of more than one ward within the municipality within a single term of office of the council. The bill does provide exemptions so that persons are entitled to be enrolled for a different ward if the person's primary place of residence has changed, or the person has ceased to have a right of entitlement to be enrolled in respect of the previous ward.

Clause 15 of the bill provides that in the case of a by-election to fill an extraordinary vacancy, if the minister considers the holding of the election within 100 days after the extraordinary vacancy, as required under the LG act, would be adversely affected by the Christmas and New Year holiday period, the minister may fix the date of the election to no later than 150 days after the extraordinary vacancy.

This enhances the right to vote as it ensures elections are not conducted at times when voters are likely to be absent and limited in their ability to cast a vote.

Clause 17 of the bill provides that voting at a general election or by-election must be conducted by the same means, whether attendance or postal voting, as the previous election was conducted, unless the council resolves to change the voting system at least eight months before a general election or within seven days of a vacancy for a by-election.

This does not limit the right to vote since voters will be informed about the system of voting through public notices and provided appropriate voting materials by the returning officer if the voting is to be by means of postal voting. Under the proposed amendment, the default system for any council election will be the system used at the previous general election, which is appropriate to minimise voter confusion.

Clause 27 of the bill restates a provision requiring a returning officer to reject as being void a nomination as a candidate for a council election from a person who is not enrolled or entitled to be enrolled on the voters' roll for the municipality.

There is no limitation on the right because the right to be elected only applies to 'eligible persons' which is limited to persons enrolled on the voters' roll who have a direct interest in the affairs and governance of the municipality.

Clause 16 of schedule 3 to the LG act, which sets out a mechanism to request a poll of voters by a council, is repealed under clause 31 of the bill.

This is a technical amendment and ensures consistency with other legislation. Provisions enabling voters to request a poll of voters in relation to specific matters under the LG act have been repealed under previous amending acts. The proposed amendments retain provisions required for the conduct of polls of voters at the request of the minister, under section 193(7) under the LG act or if required by a council under section 18 of the Liquor Control Reform Act 1998. This amendment, therefore, does not interfere with the ability to undertake a poll of voters and does not limit the right.

Clauses 3 and 39, and clause 23 of the bill limit the right to take part in public life and are discussed in part 2 of this statement.

2. Consideration of reasonable limitations — section 7(2)

Section 15: Freedom of expression

(a) the nature of the right being limited

The right to freedom of expression protects a person's right to hold an opinion without interference, and includes the freedom to seek, receive and impart information and ideas, whether orally, in writing, in print by way of art, or other medium. However the right is not absolute and may be subject to reasonable limitations necessary to respect the rights and reputations of other persons, or for the protection of national security, public order, public health or public morality.

(b) the importance of the purpose of the limitation

Clause 16: Compelling a person enrolled on the State electoral roll to exercise their right to vote at a council election ensures the person meets their civic obligation as a member of that municipality, providing for more democratic representation in local government.

Clause 19: Prohibiting the distribution of information that is likely to deceive a voter in relation to the casting of his or her vote improves the voting system in local government by ensuring candidates are elected fairly and honestly. It also prohibits action that may lead to another person's vote being invalidated because of misinformation.

(c) the nature and extent of the limitation

Clause 16 clarifies an existing requirement under the LG act that makes it compulsory for an enrolled person to vote if they live in the ward where the election is being held. The amendment specifies that compulsory voting only applies to people who are enrolled for that ward on the state electoral roll. The amendment therefore confines the extent of the limitation on the right.

Clause 19 prohibits a person, at any time, to or cause, permit or authorise someone to print, publish or distribute any matter or thing likely to mislead or deceive a voter in relation to the casting of their vote. It also prohibits the printing, publishing or distribution of an electoral advertisement, handbill, pamphlet or notice that contains a representation or purported representation of a ballot paper for use in that election likely to induce a voter to mark their vote otherwise than in accordance with the directions on the ballot paper.

(d) the relationship between the limitation and its purpose

There is a direct relationship between the limitation and the purpose of maintaining a fair and democratic voting system in local government.

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

There are no less restrictive means reasonably available to achieve the intended purposes.

(f) any other relevant factors

There are no other relevant factors to be considered.

Section 18: Taking part in public life

(a) the nature of the right being limited

The right to take part in public life protects the right to participate in public affairs, the right to vote in genuine, periodic and free elections and right to have access to the public service and office. However the right to take part in public life is not absolute and may be subject to reasonable limitations.

(b) the importance of the purpose of the limitation

Clause 3 and clause 39: Owners or occupiers of a rateable property in a municipality have specific interests in local issues, and as eligible voters, have a free choice of candidates who can represent those interests on council. The franchise for local government elections includes residents and ratepayers in each municipality on the basis that these people have a significant interest in the way that a council is governed. It is proposed to exclude from the franchise, people whose only interest is in relation to a single vehicle car park, a single boat mooring, or a single storage unit because the extent of their direct interests in council governance is substantially less than that of residents and owners or occupiers of more substantial properties and does not warrant the same voting rights.

Clause 23: The right to stand for council election ensures that eligible voters have a free choice of candidates in an election, and that candidates elected can in turn best represent local communities' interests. The proposal to prevent a person from nominating for a council if they have been removed from office at that council because of a specific failure on their part recognises that there are standards that are required of people who hold public office and that the community is entitled to be represented by people who will properly perform their duties as councillor.

(c) the nature and extent of the limitation

Clause 3 and clause 39 of the bill prevent a person from being enrolled on the voters' roll as a ratepayer for a council election, if their only entitlement is as an owner or occupier of a single vehicle car park, or a single boat mooring, or a single storage lockable unit with a floor area not exceeding 25 square metres. A person who owns or occupies such a property will continue to be entitled to be enrolled if they are also a resident of the municipality or if they own or occupy other rateable property in the municipality.

Clause 23 of the bill limits the right to nominate as a candidate for a council election for persons whose position on the council became vacant in the previous four years because they failed to take the oath of office, were absent from four consecutive ordinary meetings of the council without obtaining leave, or the minister has ordered that the person is incapable of remaining a councillor on the grounds that the councillor failed to attend or remain at a call of the council without a reasonable excuse. This limitation will apply to persons who cease to be councillors because of one of these grounds after the commencement of clause 23.

(d) the relationship between the limitation and its purpose

There is a direct relationship between the limitation and the purpose of ensuring that elected councillors properly

undertake the duties of office and act in a manner appropriate to a community leader.

There is a direct relationship between the limitation and the purpose of ensuring that voters have a substantive interest in the way a municipality is governed.

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

There are no less restrictive means reasonably available to achieve the intended purposes.

(f) any other relevant factors

There are no other relevant factors to be considered.

Conclusion

I consider that the bill is compatible with the Charter of Human Rights and Responsibilities because, although it does limit two human rights, the limitations are reasonable and proportionate. The limitations strike the correct balance by providing persons the right to take part in public life and serving the interests of the local council.

JUSTIN MADDEN, MLC
Minister for Planning

Second reading

Mr LENDERS (Treasurer) — I inform the house that there were two minor amendments to this bill in the Legislative Assembly. I move:

That, pursuant to standing order 14.07, the second reading speech be incorporated into *Hansard*.

Motion agreed to.

Mr LENDERS (Treasurer) — I move:

That the bill be now read a second time.

Incorporated speech as follows:

For the first time, in November 2008, elections will be held concurrently for all councillor positions in all Victorian councils.

In some ways these elections will comprise the biggest electoral event ever held in this state. They will involve elections for 79 councils where more than 2000 candidates are expected to contest 600 positions.

This bill will amend the Local Government Act 1989 and the City of Melbourne Act 2001. It includes a number of reforms to electoral processes for local government. Many of these changes will apply in the forthcoming elections. The bill also includes amendments to clarify or correct minor legislative anomalies.

The 'election period' for local government elections is proposed to be amended to specify that it commences on the last day of nominations.

This will mean that 'caretaker' provisions for councils will apply for a period of 32 days before the election day, rather than 57 days as is currently required. This will more closely resemble the caretaker period that applies during parliamentary elections.

Councils in caretaker mode may not enter into major contracts or entrepreneurial ventures or make decisions about the employment or remuneration of a permanent chief executive officer. Nor may they publish electoral matter unless it is only information about the election process.

The bill includes changes to electoral dates and times for councils:

The date for the close of nominations will be changed to 32 days before the election for all council elections, replacing the current arrangement where nominations close on different days for postal and attendance elections.

The time for the close of nomination will change from 4.00 pm to 12 noon, which will bring it into line with the practice in state elections.

The setting of dates for by-elections will be clarified in some circumstances where the act is currently unclear, such as when a by-election is required after a failed countback.

Provision will be made to allow a by-election date to be delayed by up to 50 days when necessary to ensure that election processes do not occur during the Christmas and summer holiday period.

The bill amends some candidate nomination processes, including a requirement that each candidate must sign their nomination declaration in the presence of the returning officer or provide an appropriate statutory declaration explaining why they cannot do so. This effectively requires candidates to nominate in person.

The purpose of this change to nominations is to ensure the legitimacy of each candidate's nomination. It will also enable returning officers to directly advise each candidate about what is required during the election.

A person whose position as councillor on a council becomes vacant as a result of a particular failure in office will not be eligible to nominate as a candidate for election to that council for a period of four years.

This will include anyone whose position on council becomes vacant after the commencement of this bill because they:

fail to take the oath of office,

are absent from four consecutive meetings of the council without leave,

fail to attend and remain at a call of the council without a reasonable excuse.

A number of minor amendments to voters' rolls are included in this bill, with the purpose of clarifying processes and addressing anomalies:

Councils will no longer be required to automatically enrol absentee owners who live within the municipality because, as residents, they should be already enrolled as state roll voters. The change will enhance the accuracy

of voters' rolls by reducing the potential for duplications.

People who are owners or occupiers of single vehicle car parks, single boat moorings or single storage units with floor areas of no more than 25 square metres will no longer be entitled to enrol to vote unless they have another entitlement as a resident or ratepayer.

A corporation that jointly owns a property with another corporation will be able to appoint an office-bearer to be its voting representative. The current provision is inconsistent in only allowing corporations that are sole owners or joint owners with persons to appoint a voter.

Statutory corporations will no longer be entitled to appoint an office-bearer to be on the voters roll. Office bearers in statutory corporations are accountable to another level of government and should not be voters in council elections.

Enrolments for corporations that own rateable property will be limited to a single term of the council, which will ensure consistency with other corporation enrolments and assist with the accuracy of the voters' rolls. Councils will be required to notify a corporation affected by this change before its previous appointment lapses.

When a vacancy occurs in a ward or district where the councillors were elected by proportional representation, it is filled by a countback process using the votes cast in the original election. The bill amends the procedures for a countback to ensure consistency between the processes for electronic and manual counts.

The bill will insert a new offence in the Local Government Act for people who make false declarations as candidates, scrutineers or voters. The act and the regulations require people to sign declarations in various instances to attest to the accuracy of the information they provide or to state that they meet certain criteria.

This bill continues the government's process of democratic reform for the local government sector. A number of the changes in this bill have been the subject of prior consultation with the sector.

I commend the bill to the house.

Debate adjourned for Mr HALL (Eastern Victoria) on motion of Ms **Lovell.**

Debate adjourned until Thursday, 3 July.

UNCLAIMED MONEY BILL

Introduction and first reading

Received from Assembly.

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

Statement of compatibility

For Mr LENDERS (Treasurer), Mr Jennings tabled following statement in accordance with Charter of Human Rights and Responsibilities Act:

In accordance with section 28 of the Charter of Human Rights and Responsibilities (the charter), I make this statement of compatibility with respect to the Unclaimed Money Bill 2008.

In my opinion, the Unclaimed Money Bill 2008, as introduced to the Legislative Council, is compatible with the human rights protected by the charter. I base my opinion on the reasons outlined in this statement.

Overview of bill

The purpose of the Unclaimed Money Bill 2008 is to safeguard unclaimed money and ensure that the rightful owners of unclaimed money can be identified and located. The bill rewrites the Unclaimed Moneys Act 1962 in modern drafting style using plain English.

The bill also makes a number of changes to the administration of unclaimed money designed to reduce regulatory burden on Victorian business, and secure a contemporary policy and legislative framework which best achieves the purposes of the bill. In particular the bill:

removes the requirement that business advertise unclaimed money in the *Gazette*;

reduces the time that business is required to hold unclaimed money to one year;

modernises compliance and enforcement powers in a manner which is consistent with best practice;

gives clear protection to information obtained in relation to the administration of unclaimed money and prescribes when this information may be disclosed; and

facilitates the transfer of the administration of unclaimed superannuation to the commonwealth.

Human rights issues

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

Right to privacy

The right to privacy is protected by section 13 of the charter. In accordance with this right a person must not have his or her privacy, family, home or correspondence unlawfully or arbitrarily interfered with.

An interference with privacy will be unlawful if it is not permitted by law, or it is not certain and appropriately circumscribed. An interference will be arbitrary if the restrictions on privacy are unreasonable in the circumstances and not in accordance with the provisions, aims, and objectives of the charter.

Clause 12 of the bill requires business to pay unclaimed money and lodge a return with the registrar, which includes information about unclaimed money held by the business.

Clause 14 requires a trustee to lodge a statement with the registrar which includes details of unclaimed trust property converted into money pursuant to the bill. Clauses 28 and 94 require the registrar to advertise or publish details of unclaimed money and unclaimed superannuation benefits respectively. All of these requirements raise the right to privacy.

These clauses do not, however, limit the right to privacy under the charter. The details of unclaimed money and unclaimed superannuation benefits provided and published are fundamental to the bill achieving its purpose of identifying and locating the rightful owners of those moneys, and the relevant requirements will be permitted by law. Furthermore, clauses 28 and 94 provide that only the minimum amount of information necessary to locate and identify the rightful owners of unclaimed money will be published. In these circumstances the provision of and publication of details about unclaimed money and unclaimed superannuation benefits is not arbitrary and is clearly lawful.

The bill also contains certain safeguards concerning the use of information obtained under or in relation to the administration of the bill. For example, clause 76 makes it an offence to disclose this information except in the limited circumstances prescribed by the bill.

To the extent that the confidential information is also personal information, the Information Privacy Act 2000 provides a further safeguard that will assist in ensuring that the right to privacy is not unlawfully or arbitrarily interfered with.

Part 6 division 1 of the bill also engages the right to privacy to the extent that it provides authorised officers with the power to conduct investigations, enter, search and inspect premises and apply for a search warrant. In particular:

Clause 69 provides that a person may be required, by written notice, to provide written information, produce a document, or attend before the registrar to answer questions.

Clause 70 provides that an authorised officer may enter, search and inspect a premises for the purposes of an authorised investigation.

Clause 71 provides that an authorised officer may apply for `a search warrant in relation to the premises where an authorised officer believes on reasonable grounds that there is, or may be within the next 72 hours, on the premises a thing relevant to the administration of the bill.

Notwithstanding that these clauses raise the right to privacy they do not limit that right because they are neither unlawful nor arbitrary.

The bill establishes a self-assessment regime for the collection and payment of unclaimed money to the registrar. Non-compliance with these obligations may result in a business or trust receiving a windfall from money to which it is not legally entitled. Therefore, it is reasonable that authorised officers have sufficient powers to enable effective monitoring, compliance and enforcement of the bill. In this context the powers serve a legitimate purpose and are not arbitrary. The powers are also consistent with the charter insofar as they help to protect the property rights of the lawful owners of unclaimed money.

The powers conferred under the bill will be permitted by law and subject to additional constraints. For example, the powers of investigation and entry, search and inspection can only be used for the purposes of an authorised investigation. An authorised investigation is confined by clause 68 to monitoring compliance, investigating suspected offences or other matters reasonably related to the administration of the bill. An authorised officer may enter premises for the purpose of an authorised investigation, but only with the consent of the occupier or on the authority of a warrant. A warrant must be issued by a magistrate, in accordance with rules relating to search warrants under the Magistrates' Court Act 1989. The exercise of a warrant is further circumscribed by clause 72 which provides that an announcement must be made before entry, and clause 73 which provides that a copy of the warrant must be given to the occupier. Any information obtained in the exercise of powers is also protected by clause 76, which makes unauthorised disclosure an offence. For these reasons the powers in clauses 69 to 71 are clearly lawful and not arbitrary.

The requirement under clause 70(4) that an authorised officer may not exercise the power to enter and inspect premises if that officer fails to produce, on request, his or her identity card is a further constraint on the power under the act. Under clause 10 this identity card must contain the officer's name, signature and photograph. This requirement may be said to engage an authorised officer's right to privacy. However, given the powers of an authorised officer, the requirement to carry and produce an identity card is reasonable and is not of itself an unlawful or arbitrary interference with the right to privacy.

Clause 77 of the bill specifies a number of circumstances in which information obtained under or in relation to the administration of the bill can be disclosed. In each instance the disclosure permitted may engage the right to privacy but does not limit that right because the disclosures are neither unlawful nor arbitrary. Each disclosure will be permitted by law and will be appropriately circumscribed. For example, clause 79 prohibits the disclosure of information provided by an authorised person unless disclosure is necessary to enforce a law or protect the public revenue and the registrar consents to the disclosure. A criminal sanction is imposed for unlawful disclosure. The reasons the permitted disclosures in clause 77 are not arbitrary are set out below.

Clauses 77(1)(b) to (d) permit disclosure in connection with the administration of the bill, a taxation law, the First Home Owner Grant Act 2000 and corresponding laws in other Australian jurisdictions. The registrar of unclaimed money is the Commissioner of State Revenue (the commissioner). In this context it is not arbitrary that information obtained under the bill may be disclosed when necessary to assist in the administration of other laws administered by the commissioner. Making this information available in respect of equivalent laws in other jurisdictions is consistent with the government's commitment to increased harmonisation and inter-jurisdictional cooperation.

Clause 77(1)(e) permits the disclosure of information obtained under the bill in accordance with an order made under the Family Law Rules 2004 of the commonwealth. This disclosure is not arbitrary because the registrar may be ordered by the Family Court to pay unclaimed money to a person other than the legal owner as part of a property settlement. This provision ensures that any information disclosed in compliance with a Family Court order is not disclosed unlawfully.

Clause 77(1)(g) specifies a number of 'authorised persons' to whom the registrar is permitted to disclose information obtained under or in relation to the administration of the bill. These include the Ombudsman, the Auditor-General and the privacy commissioner. In each instance the disclosure is not arbitrary because it recognises the registrar has an obligation to provide information to these bodies in accordance with their specific powers and functions. Clause 77(1)(g) also permits disclosure to a member of the Victoria Police, a member of the Australian Federal Police, the director of consumer affairs and the Victorian WorkCover Authority. These disclosures are not arbitrary because issues may be identified in the administration of the bill, which are outside the registrar's jurisdiction, but are in the public interest to be further investigated by the relevant regulator. For example, a visit to a business premises may reveal workplace safety or consumer protection issues. Similarly, information obtained by the registrar may be relevant to criminal investigations being conducted by the Victorian or Australian federal police. Importantly, disclosure in these circumstances may also help to protect and promote other rights protected by the charter.

Clause 92(2) provides that the application form for the payment of unclaimed superannuation benefits may include a request for a person to provide his or her tax file number (TFN). While this clause engages the right to privacy it does not limit that right. The requirement is not arbitrary because it reflects a requirement of commonwealth law and under clause 92(3), a person is not obliged to provide their tax file number and non-compliance does not prevent the person from being paid an unclaimed superannuation benefit. Finally, Clause 93(3) permits the registrar to give the commonwealth commissioner of taxation information contained in the unclaimed superannuation register. While this clause engages the right to privacy it does not limit that right because it is neither unlawful nor arbitrary. Clearly, the disclosure will be permitted by law. In addition, disclosure is not arbitrary because the commonwealth and states have historically shared administration of unclaimed superannuation.

Right to property

Section 20 of the charter provides that a person must not be deprived of his or her property other than in accordance with law.

Clause 69 of the bill engages this right because it permits the registrar to compel a person, by written notice, to produce a document. Similarly, the power of entry and inspection in clause 70 raises the right because a person may be required to produce a document for inspection, and an authorised officer may retain a document for inspection, to make a copy of it, or take extracts from it. Clause 71 is also relevant because, under the authority of a warrant, it permits an authorised officer to seize or secure against interference a thing named or described in the warrant and, if reasonably necessary, to break open any receptacle for those purposes.

Notwithstanding that the exercise of these powers may result in the deprivation of property they do not limit the right to property because in each instance the deprivation will not be unlawful or arbitrary. That is, each deprivation will be permitted by law and is appropriately circumscribed for the reasons set out above in relation to the right to privacy. The deprivation is not arbitrary because in a self-assessment regime it is essential to have sufficient powers to investigate and collect evidence to enable effective monitoring, compliance and enforcement. These powers also help to ensure that the registrar can adequately protect the property rights of the rightful owners of the unclaimed money.

Freedom of movement

In accordance with section 12 of the charter 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.

Clause 69 provides that the registrar may require a person to attend at a specified time or place to answer questions relevant to an investigation. To the extent to which this provision may require a person to move to, or from, a particular location it may represent a limit on that person's freedom of movement.

Freedom of expression

Section 15(2) of the charter gives a person 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 of Victoria, in a variety of forms. The right to freedom of expression encompasses a freedom not to be compelled to say certain things or provide certain information.

Clause 69 of the bill provides that the registrar may, by written notice, require a person to provide written information, attend before the registrar to answer questions, or to produce a document. Similarly, in the exercise of the registrar's powers of search, entry and inspection under clause 70(1) the registrar can require a person to produce a document, or answer questions relevant to an investigation.

To the extent these clauses compel a person to provide information or answer questions they may represent a limit on that person's freedom of expression.

Clauses 76, 79 and 80 of the bill may also engage the right to freedom of expression so far as they prohibit the disclosure of certain information by authorised persons, and the secondary disclosure of information which is obtained from authorised persons under the bill. 'Authorised persons' are defined in clause 3 of the bill to mean an authorised officer or any other person engaged in the administration of the bill.

Clause 76 prohibits the disclosure of information obtained under or in relation to the administration of the bill, except where expressly authorised. Clause 79 then prohibits a person who obtains information as a result of an authorised disclosure from disclosing that information to others. A further restriction on disclosure is provided by clause 80, which sets out that an authorised person is not required to disclose or produce certain information to a court except as provided by the bill.

In each instance, these clauses prevent a person from imparting information. Therefore, clauses 76, 79 and 80 limit the right to freedom of expression.

Clause 70(7) also engages the right to freedom of expression because it makes it an offence to use threatening language to an authorised officer carrying out an authorised investigation, or a person assisting an authorised officer. In creating this offence clause 70(7) restricts the things a person may say during the conduct of an investigation. Therefore, clause 70(7) is a limit on the freedom of expression.

Presumption of innocence

Section 25(1) of the charter provides that a person charged with a criminal offence has the right to be presumed innocent until proved guilty according to law.

The bill creates a number of offences, which include the defence of 'reasonable excuse'. In particular, clause 17 provides that a person must not fail, without reasonable excuse, to make entries on their unclaimed moneys register. Clause 18 provides that a person must not, without reasonable excuse, fail to pay an amount or lodge a return with the registrar. Clause 19 provides that a trustee must not, without reasonable excuse, fail to comply with the trustee's obligations in respect of unclaimed trust property. Clause 70(6) provides that it is an offence for a person to refuse or fail, without reasonable excuse, to comply with a requirement made by an authorised officer in the exercise of that officer's powers of search, entry and inspection. In each instance the offence attracts a monetary penalty.

These clauses require the person charged to point to evidence that he or she had a reasonable excuse for failing to comply with certain requirements under the bill. This may limit the right to be presumed innocent, because in the absence of any evidence of reasonable excuse, a conviction may ensue without the prosecution proving all the elements of the defence in the usual way. Accordingly, clauses 17, 18, 19 and 70(6), which include the defence of 'reasonable excuse', limit the right to be presumed innocent under section 25(1) of the charter.

Clause 26 may also engage the right to be presumed innocent under section 25(1) of the charter. Clause 26(1) provides that, if a body corporate contravenes a provision of the bill, a person who is concerned in, or who takes part in the management of the body corporate will be deemed to have contravened the same provision. However, clause 26(2) goes on to provide there is no deemed contravention if the person charged can produce evidence of certain matters. These matters include that the body corporate contravened the offence without the person's knowledge, the person was not in a position to influence the conduct of the body corporate in relation to the contravention, or that the person used all due diligence to prevent the contravention by the body corporate.

To the extent that clause 26(2) requires the person charged to adduce evidence of certain matters to avoid liability, it may limit the right to be presumed innocent under section 25(1) of the charter.

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 equal protection of the law without discrimination. Discrimination, in relation to a person, means discrimination within the meaning of the Equal Opportunity Act 1995 on the basis of an attribute set out in section 6 of the act.

Clause 87 of the bill provides that money paid into court which has not been claimed after a period of 15 years is required to be paid into the Consolidated Fund. However, where a person entitled to the money is under the age of 18, the 15-year period does not start running until that person has turned 18. Likewise, where a person entitled to money has a disability within the meaning of the Guardianship and Administration Act 1986, the 15-year period does not start running until such time as that person becomes a 'represented person' under that act.

To the extent that clause 87 provides more favourable treatment to persons under the age of 18, and certain persons with an impairment, it may limit the right of recognition and equality before the law.

2. Consideration of reasonable limitations — section 7(2)

Freedom of movement

The right to freedom of movement under section 12 of the charter may be limited by operation of clause 69 of the bill.

(a) What is the nature of the right being limited?

The right to move freely within Victoria encompasses a right not to be required to move to, or from, a particular location.

(b) What is the importance of the purpose of the limitation?

The bill establishes a self-assessment regime for the collection and payment of unclaimed money to the registrar. The limitation is important because it forms part of the suite of powers required for the registrar to effectively monitor, investigate and enforce compliance with the bill where cooperation with an investigation is not forthcoming.

(c) What is the nature and extent of the limitation?

A person may be required to attend before the registrar at a specific time or place to answer questions relevant to an investigation. The limitation only extends to that individual who is required to attend before the registrar at the specified time and date and the limitation only operates for the period of time a person is required to attend before the registrar or an authorised officer.

(d) What is the relationship between the limitation and the purpose?

Given the bill establishes a self-assessment regime it is essential that the bill has sufficient powers of investigation to ensure the registrar can identify and treat non-compliance. This provision recognises there may be circumstances where a person withholds or demonstrates reluctance to answer questions relevant to an investigation. In these circumstances it may be necessary to require that an individual attend before the registrar to answer questions. In this context, the limit is proportionate because it will apply only to an individual in the specific circumstances outlined above.

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

Ordinarily, a person will be asked to answer questions relevant to an investigation on a voluntary basis, or provide the relevant information in writing. However, attendance may be considered necessary where a person withholds or demonstrates reluctance to answer questions relevant to an investigation, and the relevant information cannot be obtained from other sources. In these circumstances there is no less restrictive means reasonably available to the registrar to obtain the

information necessary to monitor, investigate and enforce compliance with the bill.

(f) Conclusion

The limitation is reasonable and necessary to achieve the legitimate aim of establishing a compliance regime which operates effectively in a self-assessment environment. In doing so it is necessary to have some powers which can be used where cooperation with an investigation is not forthcoming. Ultimately, these powers will help to ensure that unclaimed money is protected for its rightful owners.

Freedom of expression

The right to freedom of expression under section 15 of the charter may be limited by the operation of clauses 69 and 70 of the bill.

(a) What is the nature of the right being limited?

The freedom of expression is a right of fundamental importance in our society and is an essential foundation of a democratic society. It encompasses the right not to be compelled to express information of all kinds, including in documents.

(b) What is the importance of the purpose of the limitation?

To the extent that clauses 69 and 70 compel a person to answer questions, provide information or produce documents, they may limit the right to freedom of expression. The purpose of this limitation is to ensure that the registrar can effectively monitor, investigate and enforce compliance with the bill where cooperation with an investigation is not forthcoming, the ultimate purpose of those powers being to ensure the registrar can safeguard and protect unclaimed money for its rightful owners.

(c) What is the nature and extent of the limitation?

Under clauses 69 and 70 a person may be compelled to answer questions, provide information or produce documents. However, the circumstances in which a person can be asked to do so are limited to during the exercise of the registrar's search, entry and inspection powers, or upon written notice from the registrar. In each instance the request can be made only in relation to matters relevant to an authorised investigation. In addition, these powers are generally reserved for circumstances where an individual has failed to cooperate with an investigation by withholding information or demonstrating a reluctance to answer questions. In addition, the use of information gathered under these clauses is further limited by clause 74, which provides that the information cannot be used against the person in any proceeding in respect of an offence against the bill. In this context the limitation is considered proportionate.

(d) What is the relationship between the limitation and the purpose?

The limitation is the registrar's ability to compel an individual to answer questions, produce documents or provide information. This is directly related to the purpose of that limitation, which is to ensure that the registrar can obtain the information, which is necessary to monitor, investigate and enforce compliance with the bill, and ultimately protect and safeguard unclaimed money.

(e) Are there any less restrictive means available to achieve its purpose?

No other means are considered reasonably available to achieve the purpose of the limitation imposed.

(f) Conclusion

The limitation is reasonable and necessary so that the registrar can gather the information necessary to effectively administer the bill where cooperation with an investigation is not otherwise forthcoming.

The right to freedom of expression under section 15(2) of the charter may be limited by clauses 76, 79 and 80 of the bill.

(a) What is the nature of the right being limited?

The freedom of expression is a right of fundamental importance in our society and is an essential foundation of a democratic society. It encompasses the right not to be compelled to impart information of all kinds, including in documents.

(b) What is the importance of the purpose of the limitation?

The purpose of the limitation is to ensure that an individual's right to privacy is protected by restricting the disclosure of information that has been obtained in relation to the administration of the bill. This limitation is important because the registrar has an overarching duty to maintain an individual's right to privacy.

(c) What is the nature and extent of the limitation?

Clauses 76, 79 and 80 of the bill limit the right to freedom of expression by restricting the disclosure of information obtained in relation to the administration of the bill, unless that disclosure is expressly permitted by the bill. The limitation only applies to authorised persons or the authorised recipients of information under the bill. The information to which the restriction relates is limited to information obtained under or in the administration of the bill, and does not apply to other information that an authorised person or authorised recipient may wish to impart. The bill also provides several significant exceptions to the general prohibition. For example, clause 77 prescribes a number of circumstances where disclosure is permitted, and clause 78 provides for certain disclosures which are of a general nature. Accordingly, the nature and extent of the limitation is confined.

(d) What is the relationship between the limitation and the purpose?

There is a direct relationship between the limitation and the purpose of ensuring the privacy of information obtained in relation to the administration of the bill is protected.

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

No other means are considered reasonably available to achieve the purpose of the limitation imposed.

(f) Conclusion

The limitation is reasonable and necessary to ensure personal information obtained in the administration of the bill is adequately protected. In this case it is necessary to balance the right of an authorised person or authorised recipient to freedom of expression with an individual's right to privacy.

The right to freedom of expression may also be limited by clause 70(7) of the bill.

(a) What is the nature of the right being limited?

The freedom of expression is a right of fundamental importance in our society and is an essential foundation of a democratic society. It encompasses the right to impart information and ideas of all kinds both orally and in writing.

(b) What is the importance of the purpose of the limitation?

The purpose of this limitation is to provide a penalty for the use of threatening language in the conduct of an authorised investigation under the bill. The importance of this limitation is to protect authorised officers from threatening behaviour in the conduct of an authorised investigation.

(c) What is the nature and extent of the limitation?

Clause 70(7) limits a person's freedom of expression by making it an offence to use threatening language. However, the limitation applies only during the conduct of an authorised investigation, and in relation to the use of threatening language to an authorised officer or an assistant. In addition, the limitation only applies in relation to language which is threatening, being language which amounts to a declaration of the intention to inflict harm, or that indicates that harm, danger or pain are imminent.

(d) What is the relationship between the purpose and the limitation?

The purpose of the limitation is to protect officers from the use of threatening language during an investigation. This purpose is directly related to the limitation on the freedom of expression which arises by making it an offence for a person to use threatening language to an authorised officer carrying out an authorised investigation, or an assistant.

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

No other means are considered reasonably available to achieve the purpose of the limitation imposed.

(f) Conclusion

The limitation is reasonable and justified to protect authorised officers from threatening language in the conduct of an authorised investigation under the bill.

Presumption of innocence

The right to be presumed innocent under section 25(1) of the charter may be limited by the operation of clauses 17, 18, 19 and 70(6) of the bill.

(a) What is the nature of the right being limited?

The right to be presumed innocent is a fundamental common-law principle that requires the prosecution to prove all elements of a criminal offence beyond reasonable doubt.

However, the courts have recognised that this right may be subject to limits particularly where, as here, defences have been enacted for the benefit of the defendant in respect of what would otherwise be an absolute liability offence.

(b) What is the importance of the purpose of the limitation?

The importance of the purpose of this limitation is to enable a person who has a 'reasonable excuse' to escape liability for what would otherwise be unlawful conduct. The limit recognises that individuals may make honest and reasonable mistakes, or fail to comply because of circumstances which are beyond their control. These are facts that are within the knowledge of the defendant and therefore it is reasonable that the defendant adduce or point to the evidence which puts these matters in issue.

(c) What is the nature and extent of the limitation?

The relevant clauses require the defendant to point to evidence that he or she had a reasonable excuse for failing to comply with particular provisions in the bill. This may limit the right to be presumed innocent if the effect of the defence is that, in the absence of any evidence of reasonable excuse, a person can be convicted without the prosecution proving all the elements of the offence in the usual way. The limitation will only apply where a defendant is charged with an offence under clauses 17, 18, 19 and 70(6). In addition, when evidence of reasonable excuse is adduced the prosecution will have the burden of disproving the matters raised beyond reasonable doubt. In this respect, the nature and extent of the limitation are confined.

(d) What is the relationship between the limitation and its purpose?

The purpose of the limitation is to enable a person to escape liability for an offence where that person has a reasonable excuse. The imposition of the evidential onus on the person charged is directly related to the purpose of that limitation.

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

Less restrictive means would not achieve the purpose of the limitation. The matters pertaining to reasonable

excuse are in the knowledge of the person charged and therefore it is reasonable that they point to evidence which puts this matter in issue. Removing the defence altogether would mean that the relevant clauses no longer imposed a limit on the right to be presumed innocent, but this would defeat the purpose of the limitation, because a person charged could not avoid liability even if they could point to a reasonable excuse for non-compliance. In the context of the bill, this would result in an unfair outcome for the defendant. To the extent the limitation requires the defendant to meet an evidential onus, rather than requiring that matter be proven on the balance of probabilities, the limitation already represents a less restrictive means of achieving the purpose.

(f) Other factors

The offences provided for in clauses 17, 18, 19 and 70(6) are regulatory and not of a serious criminal nature. Contravention of these offences attracts only a small fine.

(g) Conclusion

The limitation is necessary to provide a means for an individual to escape liability for an offence, where he or she can provide a reasonable excuse for non-compliance. Given that the circumstances giving rise to a reasonable excuse are known principally to the defendant, it is reasonable that they point to the evidence which puts these matters in issue.

The right to be presumed innocent under section 25(1) of the charter may also be limited by the operation of clause 26 of the bill.

(a) What is the nature of the right being limited?

The right to be presumed innocent is a fundamental common-law principle that requires the prosecution to prove all elements of a criminal offence beyond reasonable doubt.

However, the courts have recognised that this right may be subject to limits particularly where, as here, defences have been enacted for the benefit of the defendant in respect of what would otherwise be an absolute liability offence.

(b) What is the importance of the purpose of the limitation?

Under clause 26(1) if a body corporate contravenes a provision of the bill, a person who is concerned in, or takes part in, the management or control of the body corporate, is deemed to have contravened the same offence. This provision is necessary so that a person cannot avoid liability by hiding behind the corporate veil. In this context, the purpose of the limitation in clause 26(2) is to ensure that there is no deemed contravention if a person charged can produce evidence that they had no knowledge of the contravention, they were not in a position to influence the contravention, or they used all due diligence to prevent the contravention. The limitation is important, because it would be unreasonable to convict someone of an offence if there was evidence of any of the matters referred to above, and this evidence could not be disproved beyond reasonable doubt.

(c) What is the nature and extent of the limitation?

Clause 26(2) requires the person charged to give evidence of certain matters to avoid being convicted of an offence. This may limit the right to be presumed innocent if, in the absence of evidence of those matters, a person is convicted without the prosecution proving all the elements of the offence in the usual way. The limitation will only apply where a defendant is charged with an offence under clause 26 and only relates to matters which are principally in the knowledge of the person charged. If the person charged adduces evidence of one of the relevant matters, it will be up to the prosecution to prove those matters beyond reasonable doubt. Accordingly, the nature and extent of the limitation are confined.

(d) What is the relationship between the limitation and the purpose?

The purpose of the limitation is to enable a person to escape liability under clause 26(2) where it would be unreasonable for that person to be deemed to have committed an offence. It would be unreasonable to deem an offence where a person had no knowledge of the contravention, was not in a position to influence the contravention, or took all due diligence to prevent the contravention. These are all matters which are in the knowledge of the person charged. In this context, the limit, being the imposition of the evidential onus on the person charged, is directly related to the purpose of that limitation.

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

Less restrictive means would not achieve the purpose of the limitation. The matters which indicate a person should not be convicted are principally in the knowledge of the defendant. Therefore, it is reasonable that they adduce evidence which puts these matters in issue. Removing the defence altogether would mean that the relevant clause did not impose a limit on the right to be presumed innocent. However, removing the defence would defeat the purpose of the limitation since liability could not otherwise be avoided, resulting in an unjust outcome for the defendant. To the extent the limitation requires the defendant to meet an evidential onus, rather than requiring that matter be proven on the balance of probabilities, the limitation already represents a less restrictive means of achieving the purpose.

(f) Conclusion

The limitation is necessary to ensure a person is not deemed to have contravened a provision under clause 26 where the defendant can show evidence of one or more of the matters described in clause 26(2). Given that the circumstances giving rise to these matters are known principally to the person charged, it is reasonable that they point to the evidence which puts these matters in issue.

Recognition and equality before the law

The right to recognition and equality before the law under section 8 of the charter may be limited by the operation of clause 87 of the bill.

(a) What is the nature of the right being limited?

The right to recognition and equality before the law 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) What is the importance of the purpose of the limitation?

The purpose of the limitation is to ensure that the 15-year period after which moneys in court are required to be paid into the Consolidated Fund does not start running until the person entitled to that money is legally capable of claiming it. This limitation is important because it protects the rights of those who are more vulnerable due to their lack of independent legal standing because of age or impairment. It ensures money is retained in court for those persons until they have attained the legal capacity necessary to take action to recover it.

(c) What is the nature and extent of the limitation?

The nature of the limitation is the favourable treatment provided to those under 18 and to those with certain disabilities, because it provides them with extra time to recover unclaimed money from the court into which it was paid. The favourable treatment does not extend beyond those persons who are not otherwise legally capable of recovering money in court. In addition, even where the 15-year period has run against a person, clause 89 of the bill allows that person to recover that money out of the Consolidated Fund. Therefore, the primary benefit of the limitation is that those people to whom it applies can claim the moneys from the court rather than taking action to recover that money from the Consolidated Fund. The limitation does not in any way affect an individual's fundamental entitlement to the money. Accordingly, the nature and extent of the limitation is confined.

(d) What is the relationship between the limitation and its purpose?

There is a direct relationship between the more favourable treatment of persons under the age of 18 and persons with certain disabilities, and the purpose of protecting the rights of those who are more vulnerable because of age and impairment.

(e) Are any less restrictive means available to achieve the purpose?

No other means are considered reasonably available to achieve the purpose of the limitation imposed.

(f) Conclusion

The limit on the right to recognition and equality before the law is reasonable and justified because it protects the rights of persons under the age of 18 and persons with certain impairments by ensuring the 15-year period after which moneys in court are required to be paid into the Consolidated Fund does not start running until those individuals have the legal capacity to recover those funds.

Conclusion

I consider that the bill is compatible with the Charter of Human Rights and Responsibilities because, even though it does limit a human right, this limitation is reasonable.

JOHN LENDERS, MP
Treasurer

Second reading

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

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

That the bill be now read a second time

Incorporated speech as follows:

This bill rewrites the Unclaimed Moneys Act 1962 and seeks to ensure the effective and efficient administration of the unclaimed money regime. The rewrite in legislation has occurred following consultation with a selection of those businesses affected by the legislation and is in accordance with the government's dual commitments to modernising the Victorian statute book and reducing the regulatory burden on Victorian business.

The overall purpose of the bill remains to safeguard unclaimed money and ensure that the rightful owners of such money can be identified and located. The types of unclaimed money dealt with under the bill remain the same — money paid into court, general unclaimed money such as share dividends, salaries and wages, rent and bonds, debentures and interest and unpresented cheques and unclaimed superannuation benefits.

The administration of unclaimed money is an important public service designed entirely to benefit those who have somehow lost touch with money to which they are legally entitled. In the 2006–07 financial year the State Revenue Office collected over $25 million in general unclaimed money and, to date, has been able to return $15 million to the rightful owners.

The current act was introduced in 1962 and, while it has been amended over time, numerous opportunities for further modernisation and improvement have been identified. This bill makes a number of changes to the administration of unclaimed money. These changes are designed to reduce the regulatory burden for Victorian business and secure a contemporary policy and legislative framework which best achieves the purpose of the bill. The key changes include:

removing the requirement that business advertises unclaimed money in the *Government Gazette* and introducing a more effective advertising regime;

reducing the time that business must hold unclaimed money from two years to one year;

modernising the registrar's compliance and enforcement powers in a manner consistent with current best practice;

giving clear protection to information obtained in relation to the administration of unclaimed money and setting out the circumstances in which this information can be legally disclosed; and

facilitating the transfer of the administration of unclaimed superannuation to the commonwealth.

Removing the requirement that business advertises unclaimed money in the *Government Gazette* and introducing a more effective advertising regime

Under the 1962 act, a business is required to advertise details of unclaimed money in the *Government Gazette* annually. The bill transfers this requirement for advertising from Victorian businesses to the registrar of unclaimed money, a role currently undertaken by the commissioner of state revenue. In doing so, the regulatory burden for Victorian business will be reduced.

The bill requires the registrar to advertise, but provides more flexibility to use contemporary means of advertising, such as electronic publication on the SRO website and advertisements in major regional and metropolitan newspapers sooner in the unclaimed money process. Electronic advertising provides a much more modern, effective and efficient vehicle for owners to locate money, thereby fulfilling one of the predominant purposes of the act — to identify and locate rightful owners of unclaimed money.

Additionally, the bill enables the registrar to advertise earlier in the process (after one year instead of two) thereby increasing the potential for owners to be reunited with their money sooner.

A reduction in the time that business must hold unclaimed money

Under the 1962 act, a business is required to administer and retain unclaimed money for at least two years before that money can be paid to the registrar. The bill reduces this period to just over one year, thereby further reducing the regulatory burden on Victorian business.

Modernising the registrar's compliance and enforcement powers in a manner consistent with current best practice

The bill updates the powers of investigation by adopting powers typical of other acts which protect public money — for example the First Home Owner Grant Act 2000. These include the powers to require a person to give information and to attend to answer questions or produce documents, the power of entry and inspection and the power to apply for a search warrant.

Non-compliance with the requirements of the bill may result in a business receiving a windfall from money to which they are not legally entitled. Therefore, it is important that the registrar has effective means for monitoring compliance and investigating suspected offences. These powers have been designed with the public benefit purpose of the bill in mind, and are circumscribed to ensure an adequate balance between the interests of business and the registrar's obligation to protect unclaimed money on behalf of legal owners.

The enforcement provisions in the bill have also been modernised to ensure they provide an effective deterrent for non-compliance. The bill introduces administrative penalties for failure to comply, and new offences have been created for failing to keep records and providing false and misleading information. The new offences will help ensure that details of unclaimed moneys are accurate and verifiable, and are a necessary and integral part of a self-assessment regime.

To complement the introduction of administrative penalties, a business will now have the right to seek review in the Victorian Civil and Administrative Tribunal or the Supreme Court in relation to certain decisions made by the registrar about unclaimed money.

Giving clear protection to information obtained in relation to the administration of unclaimed money and setting out the circumstances in which this information can be legally disclosed

The privacy provisions in the bill will protect the confidentiality of all information obtained in the administration and execution of the bill, and will clearly prescribe when such information may be disclosed. Only the minimum information necessary to identify and locate the owners of unclaimed money will be published by the registrar. Provision will also be made for the sharing of information with other agencies where this is in the interest of the greater public benefit.

Facilitating the transfer of the administration of unclaimed money to the commonwealth

The bill makes changes to provisions dealing with unclaimed superannuation. These changes will give effect to an agreement between the Victorian and commonwealth governments for the transfer of administration of unclaimed superannuation to the commonwealth. This transfer will make it easier for individuals searching for lost superannuation by providing a single access point and a simpler national claims process. This approach will also avoid the duplication of administration costs inherent in the current system, which divides administration between the commonwealth and the states.

The Victorian government is committed to the effective administration of unclaimed money. This bill makes important changes which will enable the registrar to better safeguard such money and increase the prospect of rightful owners being reunited with their funds. The bill also represents an important step in reducing the regulatory burden on Victorian business which has long been associated with the administration of unclaimed money.

I commend the bill to the house.

Debate adjourned on motion of Mr RICH-PHILLIPS (South Eastern Metropolitan).

Debate adjourned until Thursday, 3 July.

CRIMES (CONTROLLED OPERATIONS) AMENDMENT BILL

Introduction and first reading

Received from Assembly.

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

Statement of compatibility

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

In accordance with section 28 of the Charter of Human Rights and Responsibilities, I make this statement of compatibility with respect to the Crimes (Controlled Operations) Amendment Bill 2008.

In my opinion, the Crimes (Controlled Operations) Amendment Bill 2008, as introduced to the Legislative Council, is compatible with the human rights protected by the charter. I base my opinion on the reasons outlined in this statement.

Overview of bill

The bill removes all references to the Australian Crime Commission (ACC) and the commonwealth Ombudsman from relevant definitions in section 3 of the Crimes (Controlled Operations) Act 2004 (the act).

The bill also makes consequential amendments to the act and to the Major Crime Legislation (Office of Police Integrity) Act 2004.

The underlying purpose of the bill is to remove a constitutional impediment to the act commencing operation.

The bill will enable, as an interim measure, the implementation of the controlled operations regime in Victoria, and will enable Victorian law enforcement agencies to conduct controlled operations under the regime contained in the act.

In due course, if and when the commonwealth Parliament amends its own controlled operations legislation, the Victorian government proposes to introduce complementary and constitutionally valid amendments enabling the ACC to avail itself of the Victorian controlled operations regime.

Human rights issues

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

The provisions of the bill do not affect any human rights protected by the charter.

Conclusion

I consider that the bill is compatible with the Charter of Human Rights and Responsibilities because it does not limit, restrict or interfere with any human rights protected by the charter.

JUSTIN MADDEN, MLC
Minister for Planning

Second reading

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

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

That the bill be now read a second time.

Incorporated speech as follows:

This bill will enable the Crimes (Controlled Operations) Act 2004 (the act) to be commenced in Victoria.

The act is one of four cross-border investigative powers acts enacted in Victoria in 2004, that were based on model laws developed as part of a national initiative to combat cross-border criminal activity.

This initiative recognised that, while organised criminal networks such as drug cartels are able to operate across the nation, police have often been hampered in investigating cross-border crime because the laws on police investigations vary across Australia.

The act delivered in part on Victoria's commitment to implement cross-border investigative laws at the leaders summit on terrorism and multijurisdictional crime in 2002. It was based on model laws developed by a joint working group of the Australasian Police Ministers Council (APMC) and Standing Committee of Attorneys-General (SCAG).

These model laws reflected the need for a nationally coordinated approach to law enforcement, and were designed to cover controlled operations, surveillance devices, assumed identities and witness identity protection, and to enable relevant authorities or warrants issued in one jurisdiction to be recognised as valid in participating jurisdictions.

A controlled operation is an investigative method where an operative (who can be a law enforcement officer or a civilian who is assisting a law enforcement agency) conceals his or her identity in order to associate with people suspected of being involved in organising or financing crimes.

As part of the investigation, it may be necessary to authorise the operative to commit an offence (such as to purchase drugs) in order to gather evidence or intelligence. Controlled operations can play a particularly important role in the investigation of organised crime such as drug trafficking, where it can be difficult to obtain evidence by other means.

The act, once it commences, will implement the model controlled operations laws in Victoria. It will apply the model provisions to regulate both cross-border investigations and investigations that occur wholly in Victoria. It will largely replace the existing patchwork of legislative provisions that govern controlled operations in this state with a more comprehensive, regulated scheme.

The Australian Crime Commission (ACC) was included under the definition of 'law enforcement agency' in the act, so that the ACC could avail itself of Victorian controlled operations powers when investigating any relevant state offences without a federal aspect. The act also establishes an inspection and reporting regime in relation to law enforcement agencies' use of controlled operations, including monitoring of the ACC's use of Victoria's regime by the commonwealth ombudsman.

After the model bill was enacted in Victoria, the commonwealth raised concerns about the constitutional validity of the states' monitoring and reporting arrangements in the model bill that had originally been agreed by the APMC and SCAG. These concerns arose from the High Court's decision in *R v. Hughes* (2000) 202 CLR 535 that provisions that seek to confer functions, duties or powers on a commonwealth body will be of no effect until the commonwealth consents to those provisions. Accordingly, in November 2006 the commonwealth introduced the Crimes Legislation Amendment (National Investigative Powers and Witness Protection) Bill 2006 (cth), which sought to address this issue by giving the commonwealth ombudsman oversight of the ACC's use of state and territory-controlled operations legislation.

In response, the Victorian government considered drafting legislation amending the act to accommodate the commonwealth's proposed monitoring and reporting regime. However, the commonwealth amendment bill lapsed with the calling of the federal election in late 2007.

As an interim measure, this bill removes all references in the act to the ACC and the commonwealth ombudsman. Once enacted, these amendments will enable the Victorian act to be proclaimed and commence operation in relation to Victorian law enforcement agencies in advance of the commonwealth passing its amending legislation.

There are two important potential uses of the controlled operations regime contained in the act: firstly, its potential use by Victorian law enforcement agencies for investigations including cross-border investigations; and secondly, its potential use by the ACC to investigate Victorian offences without a federal aspect across borders. The purpose of this bill is to disable the second potential use in order to enable the first to commence operation.

If and when the commonwealth enacts amendments to its controlled operations regime to address the constitutional issue I have outlined, the Victorian government intends to introduce complementary and constitutionally valid amendments to enable the ACC to use the Victorian controlled operations regime to investigate Victorian offences without a federal aspect. In other words, the government proposes to legislate to enable the second potential use of the principal act I have mentioned to be achieved in a constitutionally valid way, as soon as it is in a position to do so.

I commend the bill to the house.

Debate adjourned on motion of Mr RICH-PHILLIPS (South Eastern Metropolitan).

Debate adjourned until Thursday, 3 July.

MELBOURNE CRICKET GROUND AMENDMENT BILL

Introduction and first reading

Received from Assembly.

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

Statement of compatibility

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

In accordance with section 28 of the Charter of Human Rights and Responsibilities, I make this statement of compatibility with respect to the Melbourne Cricket Ground Amendment Bill 2008.

In my opinion, the Melbourne Cricket Ground Amendment Bill 2008, as introduced to the Legislative Council, is compatible with the human rights protected by the charter. I base my opinion on the reasons outlined in this statement.

Overview of the bill

The purpose of the bill is to amend the Melbourne Cricket Ground Act 1933 to facilitate the proposed widening of the southern concourse of the Melbourne Cricket Ground from gate 1 to light tower 4.

The purpose of widening the concourse is to improve pedestrian flows during peak crowd times and in the event of an emergency evacuation.

The outcome of the project will be to widen the concourse by up to 6 metres, extending over Brunton Avenue. This structure will be supported by existing columns and a small number of additional columns on the northern (MCG) side of Brunton Avenue and a new concrete wall erected on the southern side of Brunton Avenue.

The wall will be built on a narrow section of unpaved land between Brunton Avenue and the railway line that is an isolated part of Yarra Park ('the unpaved land'). As Brunton Avenue is still formally part of Yarra Park, the platform of the extended concourse over Brunton Avenue will be built in air space that is currently also part of Yarra Park.

The bill relates to a new Crown allotment 2065 on the plan numbered OP112691 which contains a stratum comprising a number of parcels that are required to accommodate all elements of the construction including wall, columns, platform and footings. The stratum is above ground, at site level and below the ground.

New subsections 11F(3) and 11F(4) revoke an order in council and Crown grant in relation to the stratum included in the Crown allotment.

The bill permanently reserves the stratum in the Crown allotment as part of the site for the Melbourne Cricket Ground under the Crown Land (Reserves) Act 1978 and deems the

relevant stratum to be part of the land reserved as the ground under the order in council dated 20 February 1934 and referred to in Crown grant volume 5925 folio 1184828 (new subsection 11F(5)).

To avoid doubt, new subsection 11F(6) of the bill removes any right of way in relation to any stratum in the Crown allotment that is, or is being used as, a road. There are, however, no known rights of way in relation to the stratum.

Human rights issues

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

The right under the Charter of Human Rights and Responsibilities Act 2006 upon which the bill would have an impact is identified as:

> Section 12: freedom of movement
>
> Every person lawfully in Victoria has the right to move freely within Victoria and to enter and leave it and has the freedom to choose where to live.

This right would be limited because the bill blocks access to the unpaved land, by making it part of the MCG reserve and subsequently the site for a wall, and removes any right of way in relation to any stratum in the Crown allotment that is, or is being used as, a road.

2. Consideration of reasonable limitations — section 7(2)

(a) The nature of the right being limited

The right to freedom of movement is an important right in international law. It includes freedom from physical barriers and procedural impediments. It can be engaged by proposals that involve changes in land use that limit the ability of individuals to move through, remain in, or enter or depart from areas of public space.

(b) The importance of the purpose of the limitation

The purpose of the limitation on freedom of movement is of critical importance to the efficient operation of the Melbourne Cricket Ground. It is necessary to facilitate the widening of the concourse to improve pedestrian flows during peak crowd times and in the event of an emergency evacuation.

(c) The nature and extent of the limitation

The nature of the limitation is to make the unpaved land part of the MCG reserve and subsequently the site for a wall, making it impassable to pedestrians. However, there will be no significant deprivation on freedom of movement because the unpaved land is currently rarely accessed by pedestrians as it is a very inconvenient and dangerous place to walk with poor amenity due to its location. Further, the removal of any right of way in relation to any stratum in the Crown allotment that may be a road is unlikely to limit freedom of movement as there are no known rights of way in relation to the stratum.

(d) The relationship between the limitation and its purpose

There is a rational and proportionate relationship between the limitation imposed by the bill and the purposes of the limitation. The limitation on freedom of movement is directed towards the important purpose of improving access, movement and safety on the MCG concourse, and the limits are reasonable. Unlike the unpaved land, the MCG concourse is frequently used by members of the public and it is here that the community requires improved access, movement and safety.

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

There are no practicable less restrictive means available that would achieve the purpose of the limitation on freedom of movement.

Conclusion

I consider that the Melbourne Cricket Ground Amendment Bill 2008 is compatible with the Charter of Human Rights and Responsibilities because it does limit, restrict or interfere with a human right, being the right to freedom of movement under section 12 of the charter, but the limitation is reasonable and proportionate. This is in view of the important objective of the legislation, which is to improve the convenience and safety of patrons on the MCG concourse.

JUSTIN MADDEN
Minister for Planning

Second reading

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

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

That the bill be now read a second time.

Incorporated speech as follows:

The MCG is an iconic sporting arena that is well renowned throughout the world. The stadium's close proximity to the CBD and the quality of its facilities add enormously to Melbourne's ability to host major events and accommodate the elite teams who utilise this world-class facility.

The MCG hosts two of Australia's most important annual sporting events — the AFL Grand Final and the Boxing Day test match. It has also hosted huge international events such as the 2006 Commonwealth Games and of course the 1956 Olympic Games.

The MCG is widely known as 'the people's ground'. Central to the MCG's reputation is its ability to provide a comfortable and safe environment for the public to attend events.

It has recently become apparent that the narrowness of some sections of the concourse on the southern side of the MCG is affecting the flow of patrons in and out of the ground. The area in question runs behind the Great Southern Stand from gate 1 to light tower 4.

The width of the concourse in this area is a particular problem when the ground is hosting events that attract large crowds. But it can also be an issue with smaller crowds if patrons arrive or depart from the ground at the same time. For example, for Friday night AFL matches when patrons are

attending after work, the concourse can become heavily congested even if the venue is only half full.

The proposal to expand the width of the concourse will also be of benefit should an emergency evacuation of the MCG be required. Of course we all hope that this never happens. However, it is prudent to plan for the possibility of incidents occurring similar to the scoreboard fire in 1999 which required a section of the ground to be evacuated.

As the manager of the MCG, the Melbourne Cricket Club (MCC) has developed a proposal to expand the width of the narrow sections of the southern concourse. The state government has agreed to provide the funds to enable this project to proceed expeditiously.

The proposed expansion will add up to 6 metres to the width of the concourse at its narrowest point. According to specialist consultants this will greatly assist the MCC to safely manage an emergency evacuation at the ground as well as significantly improve the flow of patrons around its exterior.

The MCC would like to start work immediately after the 2008 grand final to ensure completion of the extension in time for the Anzac Day AFL match in 2009.

In order to enable the widening of the concourse to occur, it is necessary to ensure that the additional concourse space and its footings are added to the area defined as the MCG under the relevant legislation.

The proposed amendment to the act will incorporate stratum title provisions over Brunton Avenue. The ongoing management arrangements for Brunton Avenue itself are not proposed to be altered.

It is not proposed to build in the rail reserve and therefore none of the rail reserve area is proposed for inclusion.

Similar amendments to those proposed in the bill have been made in the past, such as in 2004 when parts of the roof of the Great Southern Stand were required to be added to the area defined as the MCG.

It is also proposed to include the footings that will support the new concourse deck as part of the MCG. This is the most efficient way in which to facilitate commencement of work on the footings as well as to ensure that the footings can be properly managed and maintained by the MCC in the future.

These footings will be located in the narrow strip of land between Brunton Avenue and the fence on the railway land on the southern side of Brunton Avenue.

Because the area of the MCG is defined in legislation, an amendment is required to add these additional areas to it.

In summary, the bill amends the Melbourne Cricket Ground Act 1933 to:

> revoke the existing order in council and Crown grant in relation to the area required for the construction of the expanded concourse; and then
>
> permanently reserve the area required for the construction of the expanded concourse under the Crown Land (Reserves) Act 1978 as part of the Melbourne Cricket Ground.

In conclusion, this is a straightforward and sensible amendment to the Melbourne Cricket Ground Act 1933 aimed at facilitating improved patron comfort and safety at one of Melbourne's sporting icons.

I commend the bill to the house.

Debate adjourned on motion of Mr DALLA-RIVA (Eastern Metropolitan).

Debate adjourned until Thursday, 3 July.

COURTS LEGISLATION AMENDMENT (JURIES AND OTHER MATTERS) BILL

Introduction and first reading

Received from Assembly.

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

Statement of compatibility

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

In accordance with section 28 of the Charter of Human Rights and Responsibilities, I make this statement of compatibility with respect to the Courts Legislation Amendment (Juries and Other Matters) Bill 2008.

In my opinion, the Courts Legislation Amendment (Juries and Other Matters) Bill 2008, as introduced to the Legislative Council, is compatible with the human rights protected by the charter. I base my opinion on the reasons outlined in this statement.

Overview of bill

The bill contains amendments to the Constitution Act 1975, the Juries Act 2000 and the Magistrates' Court Act 1989.

The amendment to the Constitution Act 1975 will preserve the entitlement to a pension at age 60 and after 10 years service for County Court judges appointed to the Supreme Court after the commencement of section 18 of the Judicial Remuneration Tribunal Act 1995 but who before that commencement had service as a County Court judge.

The amendments to the Juries Act 2000 will place beyond doubt the power of the juries commissioner to exercise a power to excuse or not excuse a pool member from being part of a pool from which a panel would ultimately be chosen, to provide for the juries commissioner to be able to receive complaints from current or former jurors about jury irregularities, to prohibit panel member and juror investigations, and to repeal section 51 of the Juries Act 2000 and replace it with an amended section to enable the relevant minister to set the rates for payment of jury remuneration and allowances and vary such remuneration and allowances and notify such rates in the *Government Gazette*.

The amendment to the Magistrates' Court Act 1989 will provide that only persons prescribed by the rules of court can witness a statement to be tendered at committal proceedings.

Human rights issues

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

Section 11: freedom from forced work

Section 11 of the charter provides that a person must not be held in slavery or servitude and must not be made to perform forced or compulsory labour.

Clause 5 of the bill provides for remuneration and allowances for jury service. Section 11(2) of the charter is engaged. However, section 21(3)(c) provides that forced or compulsory labour does not include work or service that forms part of normal civil obligations. Jury service is part of normal civil obligations and therefore the right is not limited.

Section 12: freedom of movement

Section 12 of the charter provides that every person lawfully in Victoria has the right to move freely within Victoria and to enter and leave it and has the freedom to choose where they live.

The right is limited by clause 7 of the bill which inserts a new section 78A in the Juries Act 2000. Section 78A limits the right to the extent that it prohibits a person who is on a panel for a trial or a juror in a trial from 'viewing or inspecting a place or object that is relevant to the trial', which may restrict a person from travelling to particular locations.

However, the limit upon the right is clearly reasonable and justifiable in a free and democratic society for the purposes of s 7(2) of the charter having regard to the following factors:

(a) The nature of the right being limited

The right to move freely within Victoria encompasses a right not to be forced to move to, or from, a particular location and includes freedom from physical barriers and procedural impediments.

(b) The importance of the purpose of the limitation

The purpose of the limitation is to ensure the ability of parties to obtain a fair trial and the effective administration of the criminal justice system. The right of a person charged with a criminal offence or a party to a civil proceeding to have the charge or proceeding decided by a competent, independent and impartial court after a fair and public hearing is enshrined in section 24 of the charter and is a fundamental right in the legal system. The purpose of the limitation on the right to freedom of movement is therefore very important.

(c) The nature and extent of the limitation

The right is limited only to the extent that a person is prevented from travelling to locations to view a place or object which is relevant to the trial.

(d) The relationship between the limitation and its purpose

The limitation on the free movement of a person is directly and rationally connected to the purpose of ensuring the effective administration of the justice system and the right to a fair hearing.

(e) Less restrictive means reasonably available to achieve the purpose

There are no less restrictive means of achieving this purpose.

(f) Other relevant factors

Nil.

(g) Conclusion

The limits upon the right are reasonable and justifiable.

Section 13: privacy and reputation

Section 13 establishes a right for an individual not to have his or her privacy, family, home or correspondence unlawfully or arbitrarily interfered with and not to have his or her reputation unlawfully attacked.

Clause 6 of the bill inserts a new section 78(4A) into the Juries Act 2000 which provides that if a complaint about the deliberations of a jury or the disclosure of information about those deliberations is made to the Juries Commission during the course of a trial, the Juries Commission must refer the complaint to the trial judge. This may interfere with a person's information privacy where the complaint contains personal information, and also a person's communication privacy including privacy of mail.

The right to privacy concerns a person's 'private sphere', which should be free from government intervention or excessive unsolicited intervention by other individuals. An interference with privacy will not be unlawful provided it is permitted by law, is certain, and is appropriately circumscribed. An interference will not be arbitrary provided that the restrictions on privacy are reasonable in the particular circumstances and are in accordance with the provisions, aims and objectives of the charter. The purpose of the interference is to ensure a fair trial which is reasonable and consistent with the charter right to a fair hearing. The extent of the interference is circumscribed and clear. Accordingly, clause 6 does not provide for the unlawful or arbitrary interference with privacy and there is therefore no limitation on the right to privacy.

Section 15: freedom of expression

Section 15(2) 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 not to express.

Clause 7 of the bill engages the right in two ways:

> The new section 78A engages the right to the extent that it prohibits a person who is on a panel for a trial or a juror in a trial from making an inquiry for the purpose of obtaining information about a party to the trial. Making an inquiry includes 'consulting with another person', 'conducting research by any means', 'viewing or inspecting a place or object that is relevant to the trial', 'conducting an experiment' or 'requesting another person to make an inquiry'.
>
> The new section 78B engages the right to the extent that a person may be forced to express information to a judge

under examination. The right to freedom of expression includes the right not to express.

Section 15(3) of the charter provides that special duties and responsibilities attach to this right and it may therefore 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. Public order can be defined as the sum of rules that ensure the peaceful and effective functioning of society. Clause 7 interferes with freedom of expression with the aim of protecting a party's ability to obtain a fair trial and the effective administration of the justice system. These are key elements of public order. Clause 7 therefore constitutes lawful restrictions on the freedom of expression under section 15(3) of the charter.

Section 21: right to liberty and security of the person

Section 21 of the charter provides that every person has the right to liberty and security, that a person must not be subjected to arbitrary arrest or detention and that a person must not be deprived of his or her liberty except on grounds, and in accordance with procedures, established by law.

Clause 7 inserts a new section 78B into the Juries Act 2000 which engages the right to liberty because a person who is on a panel for a trial or a juror may be required to be physically present at the court or another location for a limited time for the purpose of giving evidence on examination, and to this extent constitutes a detention.

However, the detention cannot be regarded as arbitrary as it is for a reasonable purpose (to ensure that the court is able to examine a person in relation to a contravention of the new section 78A, in order to ensure a fair trial). The right is not limited as the deprivation of liberty will be on grounds and in accordance with procedures established by law.

Section 25(2)(k): right not to be compelled to testify against 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 himself or to confess guilt. At the time a person may be compelled to provide information under oath to a judge under examination, pursuant to the new section 78B, he/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.

Conclusion

I consider that the bill is compatible with the charter.

JUSTIN MADDEN, MLC
Minister for Planning

Second reading

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

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

That the bill be now read a second time.

Incorporated speech as follows:

The bill contains three distinct sets of amendments regarding the operation of the Victorian justice system. These amendments rectify an anomaly concerning the pension entitlements of some judicial officers, streamline the operation of the Victorian jury system and promote efficiency in ensuring rules of court are used effectively.

I will address each set of amendments in turn.

Constitution Act amendment

The first amendment rectifies an anomaly concerning the pension entitlements of former judges of the County Court of Victoria who have been subsequently appointed to the Supreme Court of Victoria.

In 1995, section 18 of the Judicial Remuneration Tribunal Act 1995 amended the County Court Act 1958 and the Constitution Act 1975, to raise the minimum age of entitlement to a pension to age 65 for subsequent appointees to the Supreme and County courts. Existing judges retained their entitlement to a pension at age 60, with 10 years or more of service.

In 2003, the Courts Legislation (Amendment) Act 2003 amended the Constitution Act 1975 to recognise the prior service of judges from courts other than Victorian courts.

The amendment in 2003 to the Constitution Act 1975 inadvertently disadvantaged judges appointed to the Supreme Court of Victoria from the County Court of Victoria by not recognising previously existing pension entitlements.

The amendment will give former County Court judges the same rights as have been given to judges from other jurisdictions.

Juries amendments

I turn now to the amendments in this bill which are designed to streamline and improve the efficiency of Victoria's jury system.

Jury service is the cornerstone of our legal system and these amendments are designed to ensure those who perform this important function have an enhanced and fulfilling experience as a juror.

Under the Justice Legislation (Further Amendment) Act 2006, the Juries Act 2000 was amended to allow the juries commissioner to inquire as to the availability of persons called to a jury pool to sit on lengthy trials. The juries commissioner relied on this section in preparing for an eight-week trial. The validity of the juries commissioner's action was challenged and ruled upon by Justice Coldrey, who recommended that the section be amended to place beyond doubt the power available to the juries commissioner.

The second amendment to the Juries Act 2000 will enable the juries commissioner to act as a point of contact for current or former jurors who have concerns about jury irregularities. If the juries commissioner is satisfied that a legitimate allegation exists, he or she will refer the matter to Victoria Police to be investigated.

In light of advances in technology, there are ever-increasing opportunities for jurors to undertake research relating to trial

participants and events. A number of appeals in New South Wales have emphasised the damage caused by undirected juror investigations, not only to the viability of public prosecutions, but also to the peace of mind of victims of crime. Such investigations can lead to jurors accessing potentially irrelevant and prejudicial material, which will affect the result of the trial. The bill prohibits jurors from undertaking investigations to ensure that a jury's decision is based solely on the evidence heard and seen in court.

Juror allowances recognise the contribution made by members of the public to Victoria's justice system. Historically, any adjustment to the rates of juror remuneration and allowances has required the preparation of a regulatory impact statement and regulations, both of which require significant financial and time resources. The amendment to section 51 of the Juries Act 2000 will provide the flexibility required to enable the responsible minister to pass on increases in allowances in a timely and cost-effective manner.

Magistrates' Court Act 1989

This amendment will ensure that the rules of court are used exclusively as the method for authorising persons to witness statements tendered at committal proceedings. Amending the rules of court is a much more efficient mechanism than ad hoc legislative amendments.

I commend the bill to the house.

Debate adjourned on motion of Mr RICH-PHILLIPS (South Eastern Metropolitan).

Debate adjourned until Thursday, 3 July.

PUBLIC HEALTH AND WELLBEING BILL

Introduction and first reading

Received from Assembly.

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

Statement of compatibility

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

In accordance with section 28 of the Charter of Human Rights and Responsibilities Act, I make this statement of compatibility with respect to the Public Health and Wellbeing Bill 2008.

In my opinion, the Public Health and Wellbeing Bill 2008, as introduced to the Legislative Council, is compatible with the human rights protected by the charter. I base my opinion on the reasons outlined in this statement.

Overview of bill

The purpose of the bill is to enact a new legislative scheme which promotes and protects public health and wellbeing in Victoria. It provides a modern and flexible legal framework that strengthens Victoria's ability to respond quickly and decisively to existing and emerging risks to public health, while at the same time safeguarding the rights of individuals who may be affected by measures taken to improve public health.

The right of everyone to enjoy the highest attainable standard of health is recognised by international human rights law, including article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). Article 12 requires parties to the ICESCR to take steps to achieve the full realisation of this right, including measures necessary for the prevention, treatment and control of epidemic diseases, the improvement of all aspects of environmental hygiene, and the healthy development of children. Health is a fundamental human right that is essential for the enjoyment of many of the individual rights protected by the charter, and in particular the right to life.

International human rights law recognises that a state may have to limit certain rights of individuals in order to address serious threats to the health of the population or individual members of the population. Such measures must be specifically aimed at preventing disease or injury and must not be arbitrary or unreasonable. In addition, the law must provide adequate safeguards and effective remedies against the illegal or abusive imposition or application of limitations on human rights. The bill clearly defines the circumstances in which coercive measures may be taken against individuals who, for a range of reasons, are unwilling to accept constraints voluntarily and who, by their actions, may pose a serious risk to public health. The bill also provides a range of mechanisms that enable decisions to be reviewed.

The bill is in 12 parts which are each directed at achieving discrete public health outcomes.

Part 1 sets out the purpose of the bill and defines key terms used in the bill. It does not engage any of the rights protected by the charter.

Part 2 sets out the objective of the bill and the principles that are intended to guide its administration. Clause 9 of the bill is particularly relevant to any assessment of the bill's compatibility with the charter because it specifically requires that decisions made and actions taken in the administration of the act should be proportionate to the public health risk sought to be prevented, minimised or controlled and should not be made or taken in an arbitrary manner.

Part 3 sets out the roles and functions of the Secretary of the Department of Human Services, the chief health officer (CHO) and municipal councils for the purposes of the act.

Part 4 makes provision for consultative councils.

Part 5 requires the Minister for Health to ensure a state public health and wellbeing plan is prepared, enables a public inquiry to be conducted with respect to serious public health matters; and makes provision for the collection and disclosure of information.

Part 6 confers specific responsibilities on councils in relation to investigating and remedying nuisances and the regulation of certain businesses that may pose a risk to public health.

Parts 3–6 engage but do not limit any of the rights protected by the charter.

Part 7 sets out the regulatory scheme that will apply to cooling towers and pest control and which will be administered by the Secretary of the Department of Human Services. Part 7 limits the right to equal protection of the law without discrimination but this limitation is reasonable in the circumstances.

Part 8 of the bill creates the legal framework for the management and control of infectious diseases and notifiable conditions. Part 8 limits a number of rights but in each case the limitation is reasonable and compatible with the charter.

Part 9 sets out the powers and responsibilities of authorised officers. This part engages but does not limit any of the rights protected by the charter.

Part 10 confers various powers that are needed to investigate, eliminate or reduce public health risks and the powers available if the minister declares a state of emergency arising out of any circumstances that are causing a serious risk to public health. Part 10 contains some limitations on rights protected by the charter, but these are reasonable in the circumstances.

Part 11 sets out various mechanisms that enable people to challenge various decisions made under the bill. Several of the clauses in part 11 that engage rights protected by the charter are identical to clauses in part 12 of the bill that will amend the Food Act 1984. The compatibility of these clauses is considered together.

Part 12 makes provision for various matters to enable the bill to be implemented smoothly.

Parts 11 and 12 engage but do not limit any of the rights protected by the charter.

Human rights issues

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

The bill engages a number of rights which are specifically protected and promoted by the charter. This statement provides an overview of the nature of each of the rights protected by the charter and the parts of the bill that engage each of these rights. The statement then discusses each part in turn. It examines the particular clauses which engage rights, and, to the extent that certain rights may be limited by the bill, whether such limitations are reasonable and can be demonstrably justified in a free and democratic society.

Section 8 — right to recognition and equality before the law

Section 8(2) of the charter establishes the right of every person to enjoy his or her human rights without discrimination. In this context, 'discrimination' refers to both direct and indirect discrimination within the meaning of the Equal Opportunity Act 1995 on the basis of an attribute set out in section 6 of that act. The attributes listed in section 6 of the Equal Opportunity Act include age, impairment and religious belief.

Section 8(3) of the charter recognises that every person is entitled to the equal protection of the law without discrimination. As a result, legislation should not have a discriminatory effect on people.

The rights protected by section 8 of the charter are engaged by some clauses in parts 7 and 8 of the bill.

Section 10(1)(c) — right not to be subjected to medical treatment without his or her full, free and informed consent

Section 10(1)(c) of the charter protects a person's right not to be subjected to medical treatment unless the person has given their full and free informed consent. In this context 'medical treatment' encompasses all forms of medical treatment and medical intervention, including compulsory counselling, examinations and testing.

In its general comment on article 12 of the ICESCR, the United Nations Economic and Social Council stated that the right to health embraces the right to control one's health and body, and includes the right to be free from non-consensual medical treatment. It also observed that article 12 of the ICESCR imposes an obligation on state parties to respect the right to health by refraining from applying coercive medical treatment.

The right not to be subjected to unwanted medical treatment is not, however, an absolute right in international human rights law. It is an accepted principle of international human rights law that it may be legitimate to require a person to undergo medical treatment in exceptional circumstances, including where it is necessary for the prevention and control of infectious diseases.

Clauses in part 8 of the bill engage this right.

Section 11 — freedom from forced work

Section 11(2) of the charter recognises that people must not be made to perform forced or compulsory labour. Section 11(3) of the charter clarifies that 'forced or compulsory labour' does not include work or service that forms part of normal civil obligations. The Human Rights Committee (HRC) has considered the meaning of 'normal civil obligations' in the context of article 8 of the International Covenant on Civil and Political Rights (ICCPR). The HRC has expressed the view that to qualify as a normal civil obligation, the labour in question must, at a minimum, not be an exceptional measure; must not possess a punitive purpose or effect; and must be provided for by law in order to serve a legitimate purpose under the covenant (see *Faure v. Australia*, communication no. 1036/2001, UN Doc, CCPRC, 85, D/1036/2001 (2005)).

The right to freedom from forced work is engaged by clauses in parts 9 and 10 of the bill.

Section 12 — freedom of movement

Section 12 of the charter protects various rights in relation to freedom of movement. These rights include the right to move freely within Victoria; the right to choose where to live in Victoria; and the right to be free to enter and leave Victoria.

The right to freedom of movement is not an absolute right at international law. Article 12 of the ICCPR (which provided the model for section 12 of the charter) expressly recognises that this right may be subject to restrictions that are necessary

to protect public order, public health or morals or the rights and freedoms of others.

The right to freedom of movement is engaged by various clauses in parts 8, 10 and 11 of the bill.

Several clauses in the bill permit individuals to be detained. While the detention of a person will limit his or her freedom of movement, lawful detention affects more specifically the right to liberty and security of persons (see general comment 27 by the HRC). As a result, where this statement considers the compatibility of clauses with section 21 of the charter, it does not separately consider whether such clauses are compatible with section 12.

Section 13 — privacy and reputation

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. The explanatory memorandum to the charter explained that 'the right to privacy is to be interpreted consistently with the existing information and health records framework to the extent that it protects against arbitrary interferences'. The right to privacy recognised by section 13 of the charter goes beyond the right to information privacy, and embraces a right to bodily privacy and territorial privacy. Provisions that enable people to be required to undergo a medical examination, test or treatment without consent will therefore engage section 13 of the charter as well as section 10(1)(c) of the charter.

The requirement that any interference with a person's privacy must not be 'unlawful' imports a requirement that the scope of any legislative provision that allows an interference with privacy must specify the precise circumstances in which an interference may be permitted. The requirement that an interference with privacy must not be arbitrary requires that any limitation on a person's privacy must be reasonable in the circumstances and should be in accordance with the provisions, aims and objectives of the charter.

Various clauses in parts 3 to 12 of the bill engage the rights protected by section 13 of the charter.

Section 14 — freedom of thought, conscience, religion and belief

The right to freedom of religion and belief (including the freedom to demonstrate one's religion or belief in worship, observance, either individually or as part of a community) is protected by section 14 of the charter.

The application of some clauses in parts 8 and 10 of the bill could temporarily limit an individual's freedom to demonstrate his or her religion in community with others.

Section 15 — freedom of expression

Section 15 of the charter recognises a qualified right to freedom of expression. It embraces an individual's right to express information and ideas, as well as the right of the community as a whole to receive all types of information and opinions.

Section 15(3) of the charter provides that the right may be subject to lawful restrictions reasonably necessary to respect the rights and reputation of other persons; or for the protection of national security, public health or public morality.

A number of clauses in parts 4–9 and 11 of the bill engage the right to freedom of expression.

Section 16 — peaceful assembly and freedom of association

Section 16(1) of the charter protects the right to peaceful assembly, which encompasses the rights of individuals and groups to meet in order to exchange ideas and information and express their views publicly. The recognition of this right in the charter may give rise to a positive obligation on public authorities to take reasonable and appropriate steps to ensure that the right can be exercised.

The right to freedom of assembly is not an absolute right at international law. Article 21 of the ICCPR (which provided the model for section 16(1) of the charter) is subject to a number of permissible limitations, including those which are necessary in a democratic society in the interests of public health.

Part 11 of the bill engages the right to freedom of assembly.

Section 17 — protection of families and children

Section 17(1) of the charter provides that families are entitled to be protected by society and the state. Decisions made under a number of clauses in parts 8 and 10 of the bill have the potential to engage the right to protection of families and children.

Section 19 — cultural rights

Section 19(1) of the charter protects the rights of people from a particular religious background to declare or practise their religion. The clauses in parts 8 and 10 of the bill that may engage the rights protected by section 14 of the charter may also engage cultural rights.

Section 20 — property rights

Section 20 of the charter recognises a person's right not to be deprived of his or her property other than in accordance with law. The requirement that a permissible deprivation can only be carried out 'in accordance with law' imports a requirement that the law not be arbitrary. A provision that confers a discretionary power to deprive a person of their property will be consistent with the charter if the limits of the power are defined and the criteria that govern the exercise of the discretion are specified.

Parts 9 and 11–12 of the bill contain provisions that engage property rights.

Section 21 — right to liberty and security of person

Section 21 of the charter establishes an individual's right to liberty and sets out certain minimum rights of individuals who are detained to minimise the risk of arbitrary or unlawful detention. More specifically, section 21 of the charter recognises the following rights:

the right not to be subjected to arbitrary arrest or detention;

the right not to be deprived of his or her liberty except on grounds, and in accordance with the procedures, established by law; and

the right to be informed at the time of arrest or detention of the reason for the arrest or detention and to be

promptly informed about any proceedings to be brought against him or her.

Several clauses in parts 8 and 10 of the bill engage the right to liberty.

Section 24 — fair hearing

Section 24(1) recognises an individual's right to a fair and public hearing. However, section 24(2) of the charter recognises that a court or tribunal may exclude members of media organisations or other persons or the general public from all or part of a hearing if permitted to do so by a law other than the charter.

Several clauses in parts 8 and 12 allow courts and tribunals to determine proceedings in private in specified circumstances.

Section 25 — rights in criminal proceedings

Section 25 of the charter protects a number of rights that apply to a person who has been charged with a criminal offence.

Section 25(1) protects the right of a person charged with a criminal offence to be presumed innocent until proved guilty according to law. It requires the prosecution to prove the guilt of an accused beyond reasonable doubt. Provisions that merely place an evidential burden on the defendant (that is, the burden of showing that there is sufficient evidence to raise an issue) with respect to any available exception or defence are consistent with section 25(1) of the charter because the prosecution still bears the legal burden of disproving that matter beyond reasonable doubt.

When assessing whether a clause which creates a summary offence is compatible with section 25(1) of the charter, it is necessary to consider whether section 130 of the Magistrates' Court Act 1989 will apply. Section 130 of the Magistrates' Court Act applies to summary offences that provide exceptions, exemptions, provisos, excuses or qualifications, and only requires the defendant to point to evidence that suggests a reasonable possibility of the existence of facts that, if they existed, would establish the exception, exemption, proviso, excuse or qualification. The burden remains on the prosecution to disprove those facts beyond reasonable doubt. As a result, if section 130 applies to a clause it will be consistent with section 25(1) of the charter. Clauses 61, 69, 176, 183, 188, 193 and 203 of the bill are consistent with section 130 of the Magistrates' Court Act and are therefore compatible with section 25 of the charter. The compatibility of these clauses with section 25(1) of the charter is therefore not discussed further in this statement.

Section 25(2)(k) of the charter recognises that a person charged with a criminal offence is entitled not to be compelled to testify against himself or herself or to confess guilt. The right against self-incrimination is an important aspect of the right to a fair trial. However, international case law suggests that obtaining evidence compulsorily from a person where the evidence has an existence independent of the will of the person does not limit this right (see the decision of the European Court of Human Rights in *Saunders v. United Kingdom*, 43/1994/490/572 at [69]). This right is engaged by clause 212 in part 11 of the bill.

ANALYSIS OF PARTS 3–12

Part 3 — administration

One of the key purposes of part 3 of the bill is to set out the statutory functions and powers of the Secretary of the Department of Human Services (the secretary).

Clause 17(2)(e) of the bill engages the right to privacy because it enables the secretary to establish and maintain a comprehensive information system with respect to the health status of persons and classes of persons in Victoria (including information about the extent and effects of disease, illness and disability); the determinants of individual health and public health and wellbeing; and the effectiveness of interventions to improve public health in Victoria. As the explanatory memorandum to the bill notes, this clause will continue a function already performed under section 9 of the Health Act 1958. Information collected by the secretary is used in the preparation of publications and reports such as the population health survey, epidemiological studies and infectious disease surveillance reports such as the *Surveillance of Notifiable Infectious Diseases in Victoria*. These reports and findings assist the secretary to adjust policy and resources as required. As the information is collected and used for legitimate purposes and the Information Privacy Act 2000 and the Health Records Act 2001 will govern how personal and health information is handled, the clause does not authorise an unlawful or arbitrary interference with a person's privacy. The clause is therefore consistent with section 13 of the charter.

Part 4 — consultative councils

The purpose of part 4 of the bill is to enable a consultative council to be established; to confer functions, powers and obligations on consultative councils that are created under this part; and to set out the functions, powers and obligations of the Consultative Council on Obstetric and Paediatric Mortality and Morbidity (CCOPMM).

There are three consultative councils in addition to CCOPMM that have been established under the Health Act:

Consultative Council on Anaesthetic Mortality and Morbidity;

Surgical Consultative Council; and

Quality Assurance Committee (QAC).

One of the most important functions performed by consultative councils is the review and analysis of cases of morbidity and mortality in the health system and the dissemination of the results of this research as widely as possible. The research conducted by consultative councils assists health service providers to make systemic changes to the treatment and care they provide.

Section 13 — privacy and reputation

Exchange of information

Clause 37 engages the right to privacy because it enables the chairperson of a consultative council to disclose information it has collected in the course of performing its functions to another consultative council. The council chairperson may only disclose information if he or she considers that the information is relevant to the functions of the other

consultative council. The purpose of allowing a consultative council to disclose information in these circumstances is to enhance the ability of consultative councils to perform their functions as efficiently as possible using the most reliable information available. As clause 37 would not authorise an unlawful or arbitrary interference with a person's privacy, the provision is consistent with section 13 of the charter.

Provision of information to prescribed consultative councils

Clauses 38–40 and 47 engage the right to privacy because they allow the chairperson of a prescribed consultative council to request or require a health service provider to provide information the chairperson believes is necessary to enable the council to perform its functions (clause 264 of the bill will insert a clause into the Health Act that is identical to clause 47). These clauses will enable or require health service providers to provide information about their patients regardless of whether the patient has consented to the disclosure of this information.

These clauses authorise the collection of information for a legitimate public health purpose — to enable prescribed consultative councils to perform their statutory functions. The clauses also adequately specify the circumstances in which information may be collected — that is, where the chairperson of the council considers it necessary to perform the council's functions. This establishes an effective precondition to the collection of information. Clauses 41 and 42 impose appropriate restrictions on the ability of consultative councils to disclose information collected under these provisions. For these reasons these provisions do not limit the right to privacy because they are neither unlawful nor arbitrary.

Requirement to provide birth reports

Clause 48 of the bill engages the right to privacy because it requires a report of every birth of a live or stillborn child to be submitted to CCOPMM in the form approved by CCOPMM within the prescribed period. The form will be designed to collect information on, and in relation to, the health of mothers and babies which will be stored in the Victorian perinatal data collection unit. The information collected includes identifying information.

This information has been collected by CCOPMM since 1982. The collection of this information enables CCOPMM to identify and monitor trends in respect of perinatal health (including congenital abnormalities) over time; provide information to the Secretary of the Department of Human Services on issues relating to the planning of neonatal care units; and undertake research on the causes of infant and maternal mortality and morbidity. CCOPMM's review and analysis of this information promotes both public health and the right to life. As the collection of this data is neither arbitrary nor unlawful, and given that clauses 41–43 constrain the circumstances in which identifying information may be disclosed, clause 48 is consistent with section 13 of the charter.

Restrictions on right to access information held about oneself

Clauses 42 and 43 engage the right to privacy because they provide that the Freedom of Information Act 1982 and part 5 and health privacy principle 6 of the Health Records Act do not apply to documents referred to in clause 42(4) and clause 43(1)–(2) respectively. More specifically, the clauses significantly restrict a person's right to request access to information held about them by an organisation and to seek that the information be corrected. The clauses do not, however, alter a person's right to obtain documents relating to their health care from the person or organisation who provided that care, unless those documents were created solely for the purpose of providing information to a consultative council.

The purpose of this limitation is to enable consultative councils to continue performing their important quality assurance functions, which in turn promote and protect public health. For example, the function of the Victorian Consultative Council on Anaesthetic Mortality and Morbidity (VCCAMM) is to identify avoidable causes of morbidity or mortality related to anaesthesia and to identify means to improve the safety and quality of anaesthesia practice. The ability of the VCCAMM to perform this task depends on the continued willingness of anaesthetists and other medical practitioners to provide relevant information. Given that information provided may be relevant to potential civil or criminal proceedings, it is unlikely that practitioners would continue to provide information to councils if that information could be readily disclosed. This would significantly impair the capacity of the councils to perform their functions. These clauses are therefore reasonable in the circumstances and do not permit unlawful or arbitrary interference with an individual's privacy.

Power to disclose information to specified persons and bodies if it is in the public interest to do so

A prescribed consultative council may disclose information to any of the persons or bodies specified in clause 41(1) of the bill if it considers it is in the 'public interest' to do so. Clause 265 of the bill will amend section 162FB of the Health Act by adding the secretary to the persons and bodies a consultative council may provide information. The disclosure of information would interfere with the privacy of any identifiable individual who is the subject of the information disclosed.

The use of the expression 'in the public interest' in this clause would enable a consultative council to disclose information in a range of circumstances. For example, a consultative council might determine that it is in the public interest to disclose information to the relevant professional registration board if information provided to it indicated that a registered health practitioner had engaged in professional misconduct within the meaning of the Health Professions Registration Act 2005. The *Report into the System for Dealing with Multiple Child Deaths* prepared in 2003 at the request of the then Premier, the Hon. Steve Bracks, MP, specifically recommended that CCOPMM members and staff should be able to provide information to the coroner and the Victorian Child Death Review Committee to assist their inquiries into child deaths and to notify the Child Protection Service if they form the reasonable belief a child is in need of protection. Permitting a prescribed consultative council to disclose information to the individuals and bodies specified by the clause is therefore reasonable in all the circumstances, and is not an arbitrary interference with a person's right to privacy. Moreover, even though the discretion conferred by this clause is cast in broad terms, the circumstances in which the discretion could be lawfully exercised are sufficiently clear from the context of the division and the bill as a whole to enable a person to regulate his or her conduct by it. For these reasons, clause 41 is consistent with section 13 of the charter.

Disclosure of information to facilitate medical research

The provision of information for research into the epidemiology of perinatal health including birth defects and disabilities is one of CCOPMM's functions (clause 46(1)(c)). Clause 233(h) enables regulations to be made with respect to the conditions under which access to information held by a consultative council for the purpose of medical research and studies is to be permitted. The effect of clause 42(7) of the bill is that personal information within the meaning of the Information Privacy Act 2000 (personal information) or health information within the meaning of the Health Records Act 2001 (health information) could only be disclosed to a person who is not referred to in clause 42(1) if this were permitted by regulations made under the bill. The disclosure of information about identified or identifiable individuals in order to facilitate medical research may be legitimate. If regulations are made under clause 233(h) it will be necessary at that time to consider whether the conditions under which access is given to the information adequately protect the privacy of the individuals to whom the information relates.

Section 15 — freedom of expression

Clause 42 of the bill engages the right to freedom of expression because it prohibits members and employees of prescribed councils from disclosing information about an identifiable person and restricts access to information under the Freedom of Information Act and part 5 and HPP 6 of the Health Records Act.

These restrictions on an individual's right to freedom of expression are necessary to create an environment that enables the reporting of adverse medical events without fear of repercussions or inappropriate exposure of individuals' confidential information. If health service providers are not candid when they provide information to consultative councils the ability of the councils to perform their statutory functions effectively would be severely compromised. These restrictions are therefore reasonably necessary for the protection of public health and are compatible with the charter because they fall within the scope of section 15(3) of the charter.

Part 5 — general powers

Part 5 of the bill will assist the government to fulfil its obligations to protect and promote the health of all Victorians and to cooperate with other jurisdictions in protecting public health from risks that may arise on a state, national and international scale.

Section 13 — privacy and reputation

Clause 52 engages the right to privacy because it imposes an obligation on the secretary to publish the report of a public inquiry. The report could only disclose 'personal information' or 'health information' if the disclosure would be consistent with the Information Privacy Act or the Health Records Act. Given that the clause must be exercised compatibly with both these acts, it does not unlawfully or arbitrarily interfere with a person's right to privacy.

Clause 55 authorises, but does not compel, a person to disclose information to those responsible for dealing with risks to public health. The chief health officer could request, for example, that he or she be provided with the names of persons who were present at a place, such as a medical clinic or a university lecture room, at the same time as a person who is later diagnosed as having a communicable disease. The chief health officer may wish to identify and contact those concerned to advise them to have a medical check in the interest of preventing further spread of the disease. This provision will allow people to disclose that information in response to the request. The provisions do not limit the right to privacy because such disclosures will be neither arbitrary nor unlawful. The clause establishes an appropriate balance between the privacy of the individual and the protection of public health by only authorising a person to disclose information if he or she reasonably believes that the disclosure is necessary for the administration of the act or regulations made under the act.

Clause 56 allows the secretary to disclose information to a range of government and international bodies where this is for the purpose of promoting or protecting public health and disclosure is in accordance with a formal agreement. For example, it will enable the secretary to disclose information to the commonwealth in accordance with a National Health Security Agreement made for one or more of the purposes specified in section 7 of the National Health Security Act 2007 (cth). This commonwealth legislation includes rigorous privacy protections for all information provided to it and provided by it to bodies such as the World Health Organisation. Such arrangements may include the sharing of information in relation to communicable diseases to enhance the ability within Australia to identify and respond quickly to public health events of national significance, and the sharing of information to protect against the international spread of disease.

Given the dual requirements that there be a formal agreement and that the purpose of the agreement must be to promote or protect public health, any potential interference with a person's privacy is neither arbitrary nor unlawful.

Clause 57 engages the right to privacy because it allows administrators to share information with each other in defined circumstances. Subclause (1) allows the secretary or the CHO to disclose information held by the secretary or the CHO to a council for the purposes of the bill if the secretary or CHO considers that the disclosure would assist the council to perform its duties or functions under the bill or any regulations made under it. Subclause (2) confers a similar power on councils to disclose information to the CHO and the secretary. These would not allow an individual's privacy to be arbitrarily interfered with because it limits the purposes for which information may be disclosed. These powers will allow councils and the secretary to share information to enable them to respond more effectively to complaints about nuisances, prescribed accommodation and prescribed businesses.

Subclause (3) enables the secretary or the CHO to disclose information they hold under or for the purposes of parts 6 and 7 of the bill or any regulations made under the bill for the purposes of those parts to a government department, statutory body or other person responsible for administering another act or regulations, if the secretary or the CHO consider that the disclosure would assist that person to perform their functions or exercise their powers under that act or the regulations made under that act. Subclause (4) confers a similar power on councils.

The discretion conferred by these subclauses is likely to be exercised in a range of circumstances. For example, the subclauses would allow:

information relating to the use of pesticides (including information about a person who holds a pest control licence under the bill) to be disclosed to the Department of Primary Industry (DPI) where this would assist DPI to administer the Agricultural and Veterinary Chemicals (Control of Use) Act 1992. The disclosure of this information would assist DPI to protect and promote public health as well as to protect the environment;

information regarding cooling tower systems to be disclosed to the Environment Protection Authority (EPA) for the purpose of enabling the EPA to take steps to ensure that cooling tower systems are connected to the sewer rather than the stormwater system. EPA performs this task to ensure the biocides in cooling tower system water are not released into the stormwater system;

the secretary to disclose information to the Department of Sustainability and Environment so that it can take steps to encourage people who manage cooling tower systems to take various measures that would conserve water; and

the secretary or a local council to disclose information about a nuisance to the EPA.

The secretary and councils will be required to comply with information privacy principle 1.3 when information is collected from individuals under or for the purposes of part 6 or 7 of the act. Individuals will therefore be aware of the kinds of organisations to whom DHS may disclose their personal information, and the circumstances in which this may happen. Clause 57 does not authorise unlawful or arbitrary interferences with a person's privacy and is therefore compatible with section 13 of the charter.

Section 15 — freedom of expression

Clause 51 provides that in the conduct of a public inquiry, certain provisions of the Evidence Act 1958 apply. The effect of this is that the convenor of that inquiry may compel a person to give evidence before the inquiry or to produce documents or materials the subject of the inquiry. Compelling a person to give evidence engages the right to freedom of expression. Clause 51 also engages the right to freedom of expression because it prohibits a person from giving information which he or she knows is false or misleading to the convenor.

The purpose of these restrictions on the right to freedom of expression is to ensure that the secretary can adequately investigate serious public health matters. It may be necessary to conduct an inquiry into a broad range of public health matters, such as the most effective way to respond to an emerging infectious disease or the contamination of a public water supply. The ability of the inquiry to achieve its objectives would be compromised however if it did not have the power to require people to give evidence and produce documents. A person required to give evidence to such an inquiry would retain their privilege against self-incrimination and would have the right to legal representation if they were affected by a public inquiry.

These lawful restrictions on the right to freedom of expression are reasonably necessary for the protection of public health and therefore come within the scope of section 15(3) of the charter.

Section 25 — rights in criminal proceedings

Clause 51 is compatible with the rights contained in section 25 of the charter. It does not abrogate the right to protection from self-incrimination. It also provides that a person whose interests are affected by a public inquiry is allowed legal representation, and that others may be represented.

Part 6 — regulatory provisions administered by councils

Part 6 of the bill sets out the regulatory provisions administered by local governments. These provisions give councils the ability to address specific matters within their municipality for the protection of public health.

Section 13 — Privacy and reputation

Clauses 58 and 61 engage the right to privacy because they impose limits on the way a person uses their home. They regulate the activities that a person may engage in on their land by making it an offence for a person to cause a nuisance or knowingly allow or suffer a nuisance to exist on, or emanate from, any land owned or occupied by that person. For example, it would be an offence to keep chickens in a way that attracts rats. The ordinary use of residential premises does not constitute a nuisance. In imposing these restrictions the provisions protect the right to privacy of other property owners by ensuring they are not subject to unreasonable interferences that are dangerous to health (such as discharges of poisonous gases) or offensive (such as odours that are so unpleasant people are unable to enjoy spending time in their gardens).

Clauses 60, 62, 65 and 66 engage the right to privacy because they require that councils must investigate any notice of a nuisance and give councils the power to enter unoccupied or occupied land in limited situations if a nuisance exists on the land.

The provisions do not limit the right to privacy because they are neither unlawful nor arbitrary. The scheme ensures that there is an appropriate balance between an individual's right to use and enjoy his or her property with the rights of others to have use and enjoyment of their property, including their homes, without undue interference. The restrictions are also 'lawful' in the sense that the bill adequately specifies the circumstances in which interferences with a person's right to privacy will be permissible and decisions about whether to interfere with that right will be made by councils and the Magistrates Court on a case-by-case basis.

Clauses 67, 69 and 71 engage the right to privacy because they require the proprietors of prescribed accommodation and certain businesses to apply to the relevant council for a registration to be issued, renewed or transferred using a form approved by the council. Where the proprietor is a natural person, he or she will be required to provide the council with personal information.

The requirement to provide this information engages but does not unlawfully or arbitrarily interfere with a person's right to privacy. The proprietors of prescribed accommodation and the businesses specified in clause 68 are required to register with the relevant council because these businesses have the potential to pose a risk to public health. The maintenance of a register of these businesses assists local councils to monitor that they are complying with their obligations under the bill and any regulations made under the bill. Clause 71 of the bill

limits the types of information that must be included in the application to that which is prescribed by regulations under the act and any information in respect of the prescribed accommodation or the premises required by the council. Councils are required to handle personal information in accordance with the Information Privacy Act. As a result, these clauses are compatible with section 13 of the charter.

Section 15 — freedom of expression

Clause 71 requires proprietors to provide certain information in order to be registered and therefore engages the right to freedom of expression. In this case, however, proprietors are required to provide the information for the purpose of protecting public health, and this falls within the exception contained in section 15(3) of the charter.

Part 7 — regulatory provisions administered by the secretary

Part 7 of the bill sets out the regulatory provisions administered by the secretary.

Section 8 — right to equal protection of the law without discrimination

Clause 101 engages the right to equal and effective protection against discrimination because it restricts a person's right to obtain a pest control licence on the basis of the person's age. More specifically, a person must be at least 16 years of age in order to be eligible for a pest control licence issued under clause 101(3) of the bill. The holder of a licence issued under clause 101(3) of the bill can only use the pesticides entered on his or her licence under the supervision of a person who holds a pest control licence issued under clause 101(2) of the bill (see clause 103(1)(d)). A person must be at least 18 years of age to be eligible for an unrestricted licence (see clause 101(2)).

Reasonableness of the limitation

Nature of the right

The nature of this right is considered above in the general overview of the nature of the rights engaged by the bill. There are many circumstances in our society where it is necessary to treat children differently from adults in order to provide them with the protection they need in accordance with section 17(2) of the charter.

The importance and purpose of the limitation

The pesticides that are used by pest control operators are dangerous to public health and the health of the operator if they are applied incorrectly or the operator fails to take adequate precautions. It is therefore important that licences are only given to individuals who have successfully completed appropriate training and are sufficiently mature to understand the risks that are associated with applying pesticides, and the importance of taking adequate precautions. Adolescents, as a class, have repeatedly been shown to be more likely to engage in risk-taking behaviour than adults and to be less concerned about the immediate or long-term consequences of risky behaviour. The purpose of the limitation is to prevent young people from undertaking this work until they have reached an age where they are likely to be sufficiently mature to perform the work safely. This purpose is consistent with section 17(2) of the charter.

The nature and extent of the limitation

As individuals are required by law to attend school until they are 16 years of age, the selection of this age as the minimum age requirement for obtaining a restricted pest control licence does not significantly limit a young person's ability to engage in paid work. As individuals are required to attend school until they are 16 years of age, it would be very unusual for a person who is under 16 years of age to be enrolled in a prescribed course of training or to be undertaking training in the prescribed units of competency. This minimum age requirement for a restricted pest control licence would therefore rarely result in a person who is less than 16 years of age being treated less favourably because of their age.

An individual who is at least 16 years of age may be given a restricted pest control licence provided the secretary is satisfied that the person is enrolled in a prescribed course of training or undertaking training in the prescribed units of competency. In practice, it is unlikely that individuals who are less than 18 years of age would be working as a pest control operator without supervision because they would be ineligible for a probationary drivers licence.

The relationship between the limitation and its purpose

While individuals mature at different rates, the age of 18 is frequently used as a minimum age requirement for positions that require a person to exercise sound judgement or to make decisions independently. It is therefore appropriate to select the age of 18 as the minimum age requirement for a licence that enables a person to lawfully engage in activities that may potentially pose a risk to public health as well as their own health.

It is appropriate to allow individuals to commence their training as a pest control operator at the age of 16 because this is the age that some people commence vocational training.

Any less restrictive means reasonably available to achieve the purpose that the limitation seeks to achieve

A less restrictive option would be to assess whether each applicant for a pest control licence between the ages of 16 and 18 is sufficiently mature to hold an unrestricted pest control licence. While this would have less impact on those adolescents who may be sufficiently mature to safely perform the tasks of a pest control operator, it would be administratively burdensome. It would also be difficult to develop or adapt a test that assessed the relevant components of a person's maturity. Given these difficulties, it is reasonable for the Parliament to use age as a proxy for maturity.

Other relevant factors

The national standard for licensing pest management technicians, which was developed by the National Environmental Health Forum in 1999, provided that an applicant for a licence must be at least 18 years of age (although individuals may begin training at an earlier age). However, it should be noted that the current Health Act does not provide that a person must be a particular age in order to be eligible for a licence.

Conclusion

This limitation on the right to equal protection of the law without discrimination is reasonable because it seeks to

protect children and does not unduly restrict the participation of children in the paid workforce.

Section 13 — privacy and reputation

Clause 81 allows a person in one of the specified classes to apply to the secretary for registration of a cooling tower system in the approved form. Clause 101 allows a person to apply to the secretary for the issue or renewal of a pest control licence in the approved form.

If the applicant in either of these cases is a natural person, he or she will be required to provide the secretary with limited personal information relevant to the application.

The requirement to provide this information engages but does not unlawfully or arbitrarily interfere with a person's right to privacy. The secretary is required to handle personal information in accordance with the Information Privacy Act and the information is being collected for a specific purpose.

Section 15 — freedom of expression

Clause 81 requires owners of cooling tower systems to provide information to the secretary in order for the system to be registered. Clauses 87 and 88 require the owner to notify the secretary of further information during the registration period. Clause 108 obliges a pest control operator to maintain records.

In these cases, although the clauses engage the right of freedom of expression, owners and operators are required to provide the information for the purpose of protecting public health, and this falls within the exception contained in section 15(3)(b) of the charter.

Part 8 — Management and control of infectious diseases, micro-organisms and medical conditions

Part 8 of the bill provides for the management and control of infectious diseases, micro-organisms and medical conditions. Each division regulates a discrete aspect. This part of the bill engages a number of human rights and for this purpose each division is discussed in turn.

Division 1 — principles applying to the management and control of infectious diseases

The objective of this division is to set out the principles that should be taken into account when interpreting and applying the provisions in part 8 of the bill insofar as they relate to infectious diseases. The division does not limit any of the rights specifically protected by the charter.

Division 2 — examination and testing orders and public health orders

In broad terms, the purpose of division 2 is to ensure that people who have an infectious disease, or who have been exposed to an infectious disease in circumstances where they are likely to contract the disease, take steps to reduce the risk of transmitting the disease to others. The division gives the CHO the power to make two different kinds of orders — examination and testing orders and public health orders.

Clause 113 enables the CHO to make an examination and testing order that requires a person to undergo one or more tests or examinations. The CHO may only make such an order with respect to a person if the CHO believes that specified criteria are satisfied, including that the person has an infectious disease or has been exposed to an infectious disease in circumstances where a person is likely to contract the disease; if infected with the disease the person constitutes a serious risk to public health; and the making of the order is necessary to ascertain whether the person has the infectious disease.

Clause 117 of the bill enables the CHO to make a public health order that requires a person comply with conditions that are designed to minimise the person's risk to public health. These conditions range from being required to participate in counselling to undergoing specified pharmacological treatment and submitting to detention.

Clause 112 of the bill specifically requires that where alternative measures are available which are equally effective in minimising the risk to public health, the measure which is the least restrictive of the rights of the person should be chosen.

The powers in this division have been conferred on the CHO because the CHO must be a registered medical practitioner (see clause 20). This ensures that decisions are only made by people who are skilled at assessing whether a particular person poses a serious risk to public health, and the measures that need to be taken to reduce that risk.

The division includes a number of mechanisms that will safeguard the rights of individuals who are subject to an examination and testing order or a public health order.

The following rights protected by the charter are engaged by this division:

the right of every person to enjoy his or her human rights without discrimination is engaged by the division generally;

the right not to be subjected to medical treatment without one's full, free and informed consent is engaged by clause 117;

the right to freedom of movement is engaged by clauses 113 and 117;

the right not to have one's privacy, family or home unlawfully or arbitrarily interfered with is engaged by clauses 113–115 and 117–119;

the protection of families and children is engaged by clauses 113 and 117; and

the right to liberty and security of person is engaged by clauses 113, 117 and 123 of the bill.

Section 8 — right of every person to enjoy his or her human rights without discrimination

The powers available in this division can only be exercised in relation to a person who has an infectious disease or has been exposed to an infectious disease in circumstances where a person is reasonably likely to contract that disease. The availability of these powers therefore directly discriminates against people who have, or have been exposed to, an infectious disease on the basis of impairment or personal association with a person who has an impairment.

Reasonableness of the limitation

Nature of the right

The nature of this right is considered above.

Importance of the purpose of the limitation

Taking measures to minimise the spread of infectious diseases that pose a serious risk to public health is one of the government's most important responsibilities in relation to public health.

Nature and extent of the limitation

The way in which the clauses in this division could affect a person who has or may have an infectious disease is outlined above. However, discrimination against a person on the basis that they have an infectious disease is lawful under both the Equal Opportunity Act (see section 80) and the Disability Discrimination Act 1992 (cth) (see section 38).

It is also important to note that the equivalent powers conferred by the current Health Act have only been exercised in relation to people who have refused to voluntarily take steps in order to minimise the risk of transmitting an infectious disease to others. In practice, the overwhelming majority of people who have or may have an infectious disease are anxious to take steps to minimise the risk they pose to others. As a result, most people who have or may have an infectious disease that may pose a serious risk to public health will not be subject to the exercise of the powers conferred by this division.

The relationship between the limitation and its purpose

The ability to require people who have or may have an infectious disease to take measures that would reduce their risk to public health is directly and rationally connected to the purpose of protecting the community from individuals who may pose a serious risk to public health.

Any less restrictive means reasonably available to achieve the purpose that the limitation seeks to achieve

There is no less restrictive alternative available that would achieve the purpose the limitation seeks to achieve.

Conclusion

The limitations on the rights protected by section 10(2) of the charter are reasonably and demonstrably justified in a free and democratic society.

Section 10(c) — right not to be subjected to medical treatment without his or her full, free and informed consent

Clauses 113 and 116 limit a person's right not to be subjected to medical treatment without his or her full, free and informed consent because they enable the chief health officer (CHO) to make an order that requires a person to undergo an examination and/or test, and make it an offence to fail to comply with such an order.

Clauses 117 and 120 also limit this right because they enable the CHO to require a person to:

> undergo an assessment by a specified psychiatrist or specified neurologist;
>
> receive specified prophylaxis, including a specified vaccination, within a specified period; and
>
> undergo specified pharmacological treatment for the infectious disease.

Reasonableness of the limitation

Nature of the right

The nature of this right is considered above in the context of the overview of the rights engaged by the bill.

Importance and purpose of the limitation

The purpose of requiring a person to undergo a test or examination is to ascertain whether a person has an infectious disease that may constitute a serious risk to public health. Ascertaining whether a person is infected with a particular infectious disease will assist the CHO to make an informed decision about whether a public health order should be made with respect to the person.

The purpose of requiring a person to undergo an assessment by a psychiatrist or neurologist is to ascertain whether a person is suffering co-morbidities that affect the person's ability or willingness to take steps to reduce the risk their infectious disease poses to others. Access to this information will enable the CHO to make an informed decision about the most appropriate way to control the risk that person poses to others.

The purpose of requiring a person to undergo specified pharmacological treatment or receive specified prophylaxis for the infectious disease is to reduce the risk that the person would otherwise pose to public health. It is anticipated that the power to require a person to undergo pharmacological treatment will be predominantly exercised to require people with tuberculosis (TB) to take antituberculosis medication. Individuals with TB who do not adhere to prescribed treatment pose a particularly serious risk to public health, because they are more likely to develop multiple drug resistant TB (MDR-TB) or extensively drug-resistant TB (XDR-TB).

Nature and extent of the limitation

The circumstances in which the CHO can make an examination and testing order or a public health order are clearly specified in the bill. Moreover, when making either order, the CHO will be required to have regard to the principles set out in clauses 111 and 112 as well as part 2 of the bill.

A person who fails to comply with an examination and testing order will be guilty of an offence against the bill and may be fined up to 60 penalty units. Such a person could also be detained for 72 hours at a specified place for the purpose of undergoing the specified examination or test. However, the person could not be physically forced to undergo a test or examination. Similarly, while a person who fails to comply with a public health order will be guilty of an offence and may be fined up to 120 penalty units, that person could not be physically forced to undergo an assessment, or receive prophylaxis or pharmacological treatment.

The relationship between the limitation and its purpose

There is a direct and rational relationship between these limitations on the right not to be subjected to medical treatment without one's full, free and informed consent and the purposes these limitations seek to achieve.

Any less restrictive means reasonably available to achieve the purpose that the limitation seeks to achieve

The Health Act does not enable a person to be required to accept pharmacological treatment for the purpose of reducing the person's risk to public health. The current scheme is therefore less restrictive of a person's right not to be subjected to medical treatment without one's full, free and informed consent. The disadvantage of not having the power to compel a person to receive medical treatment is that in some circumstances it may be necessary to indefinitely detain a person who could be completely cured of the infectious disease.

Other relevant factors

A number of other jurisdictions in Australia authorise a person to be required to accept treatment for an infectious disease (see section 23 of the Public Health Act 1991 (NSW); section 130 of the Public Health Act 2005 (Qld) and section 42 of the Public Health Act 1997 (Tas)).

Conclusion

These clauses limit a person's right not to be subject to medical treatment without his or her full, free and informed consent. Nevertheless, these limitations are reasonable and demonstrably justified in a free and democratic society because of the importance of protecting the community from the spread of infectious diseases; a person cannot be physically forced to receive medical treatment (broadly defined); and the maximum penalty that may be imposed on a person who fails to comply with an examination and testing order or a public health order is a fine rather than a term of imprisonment.

Section 12 — freedom of movement

The making of a public health order may also limit the right to freedom of movement because an individual subject to a public health order may be required to refrain from visiting a specified place or a specified class of place or reside at a specified place of residence at all times or during specified times.

Reasonableness of the limitation

Nature of the right

The nature of this right is considered above in the general overview of the rights engaged by the bill.

Importance and purpose of the limitation

The purpose of limiting the freedom of movement of a person subject to a public health order is to contain the spread of an infectious disease in the community.

Nature and extent of the limitation

While a public health order could potentially significantly restrict a person's freedom of movement, the bill provides that the least restrictive measure that would be effective in minimising the risk to public health should be preferred. A public health order should therefore only limit a person's freedom of movement to the degree necessary to protect public health.

The relationship between the limitation and its purpose

There is a direct and rational relationship between the limitation and the purpose it seeks to achieve.

Any less restrictive means reasonably available to achieve the purpose that the limitation seeks to achieve

As the CHO may only require a person to submit to restrictions on his or her freedom of movement if less restrictive options would not be as effective in minimising the risk that the person poses to public health, there is no less restrictive means reasonably available to achieve the purpose that the limitation seeks to achieve.

Any other relevant factor

The right of a person subject to a public health order to seek review of that order at any time by the CHO or VCAT will assist to safeguard the rights of a person whose freedom of movement is restricted by a public health order.

Conclusion

While clause 117 limits a person's right to freedom of movement, this is reasonable and demonstrably justified in a democratic society because of the importance of containing the spread of infectious diseases and the fact that the bill does not authorise a person's freedom of movement to be restricted if there are less restrictive ways of minimising the person's risk to public health.

Section 13 — privacy and reputation

Clause 117(5) of the bill engages section 13 of the charter because it enables the CHO to require a person who is subject to a public health order to take a range of measures that would interfere with a person's privacy or home. In particular, the CHO may:

> require such a person to inform the CHO or the CHO's nominee if the person changes his or her name or address;
>
> reside at a specified place of residence at all times or during specified times;
>
> require a person to accept supervision from a person nominated by the CHO. This may include receiving visits from that person at home and providing that person with information relating to any action, occurrence or plan that is relevant to the health risk that the person poses.

Second, registered medical practitioners are required to provide information to the CHO in some limited circumstances regardless of whether their patient consents to the disclosure of this information. Clause 115 requires a registered medical practitioner to provide the results of an examination or test conducted by him or her in accordance with an examination and testing order as soon as reasonably practicable. Clause 119 requires a registered medical practitioner to provide information on request to the CHO for

the purposes of deciding whether to make, revoke, vary or extend a public health order. This lawful interference with a person's privacy is reasonable in all the circumstances because it will assist the CHO to make informed decisions.

Clauses 113 and 117 of the bill engage the right not to have one's family unlawfully or arbitrarily interfered with under section 13 of the charter because they enable a person to be detained. However, the circumstances in which a person may be detained are clearly defined and therefore a lawful interference with this right. Moreover, these limitations are reasonable in all the circumstances for the same reasons (which are outlined below) that limitations on the rights protected by section 17 of the charter are demonstrably justified in a free and democratic society.

The power to require a person to undergo a medical examination, test, assessment etc. in clauses 113 and 117 of the bill would interfere with a person's bodily integrity and therefore engage the right to privacy. However, as this interference is authorised by law and is reasonable for the same reasons that the limitation on the right protected by section 10(1)(c) of the charter is reasonable, these powers are considered to be consistent with the rights protected by section 13 of the charter.

Section 15 — freedom of expression

Clause 115 of the bill engages the right to freedom of expression because it requires a registered medical practitioner who conducts an examination or test pursuant to an examination and testing order to provide the results to the CHO and the person subject to the order. The CHO requires this information to assess whether the person poses a risk to public health. This lawful restriction of a medical practitioner's right to freedom of expression is therefore reasonably necessary for the protection of public health. The clause does not limit the rights protected by section 15 of the charter.

Clause 119 of the bill also engages the right to freedom of expression because it requires a registered medical practitioner to provide information requested by the CHO. This information will be used by the CHO for the purpose of deciding whether to make, revoke, vary or extend a public health order. As this information is reasonably necessary for the protection of public health, this clause is also consistent with the rights protected by section 15 of the charter.

Sections 14 and 19 — freedom of thought, conscience, religion and belief and cultural rights

The making of a public health order could restrict an individual's ability to worship in community with others, or to participate in cultural practices and thereby limit the rights protected by sections 14(2) of the charter and 19 of the charter. However, these limitations are reasonable and demonstrably justified in a free and democratic society for the same reasons that the limitation of the right to freedom of movement under a public health order is demonstrably justified.

Section 17 — protection of families

The detention of a person under an examination and testing order or a public health order may interfere with family relationships, particularly if the person is subject to isolation and detention under a public health order for a significant period. Clauses 113 and 117 therefore limit the rights protected by section 17 of the charter.

Reasonableness of the limitation

Nature of the right

The nature of this right is considered above.

The importance of the purpose of the limitation

The purpose of detaining a person or detaining a person in isolation is to protect others from the risk that person poses to public health and thereby contain the spread of infectious diseases in Victoria. The detention of a family member protects others, including other members of the family, from the infectious disease.

The nature and extent of the limitation

A person may not be detained for more than 72 hours under an examination and testing order at the place he or she is to be medically examined or tested. Under clause 114(5) of the bill, the CHO could only detain a person under a further examination and testing order if the CHO believed that since the earlier examination and testing order ceased to have effect, there had been a change in the person's health which presented a new serious risk to public health.

A person could be detained under a public health order for a maximum period of six months, although this period could be repeatedly extended.

Clause 125 of the bill, which requires the CHO to facilitate any reasonable request for communication made by a person subject to detention under an examination and testing order or a public health order, will assist a person detained under this division to maintain his or her relationships with family members during the period he or she is detained.

Relationship between the limitation and its purpose

There is a direct and rational connection between the limitation and its purpose.

Is there a less restrictive means reasonably available to achieve the purpose that the limitation seeks to achieve?

There is no less restrictive means reasonably available to achieve the purpose that the limitation seeks to achieve.

Conclusion

The limitations on the rights protected by section 17 of the charter are reasonably necessary and demonstrably justified because of the importance of containing the spread of infectious diseases and the fact that the bill requires the CHO to facilitate any reasonable request for communication made by a person detained under this division.

Section 21 — right to liberty and security of person

Clauses 113, 117 and 123 of the bill engage the rights protected by section 21 of the charter because they specify the circumstances in which a person may be detained or arrested.

Clause 113 enables the CHO to detain a person who fails to undergo a required examination or test. The maximum period a person could be detained at the place he or she is to be tested is 72 hours. Clause 117 of the bill enables a person to

be detained under a public health order for a maximum period of six months, although this period could be repeatedly extended.

Clause 123 of the bill sets out how an examination and testing order or a public health order may be enforced. The clause permits police officers to use reasonable force to detain the person subject to an examination and testing order or a public health order and take the person to the place where he or she is required to be under the order. Under clause 123 an authorised officer can apply to the Magistrates Court for a warrant to arrest a person subject to an examination and testing order or a public health order if the authorised officer considers it necessary to enforce the order. A warrant may be issued subject to conditions imposed by the magistrate.

These clauses are consistent with the rights protected by section 21(3) of the charter because they specifically define the circumstances and the procedures by which a person may be arrested or detained.

Clause 113(2) provides that an examination and testing order must be in writing and specify: the purpose of the order; the infectious disease the CHO believes the person has or has been exposed to; and explain why the CHO believes that the person is infected with the infectious disease or has been exposed to the infectious disease in circumstances where a person is likely to contract the infectious disease. Clause 117(3) of the bill is cast in similar terms. Moreover, clause 123 provides that a person who is arrested or detained under clause 123 must be informed why they have been detained or arrested. These clauses are therefore consistent with the rights protected by section 21(4) of the charter.

The bill includes a number of procedural safeguards that will assist in protecting individuals from their continued detention becoming arbitrary. Clauses 114(4) and 118(3) of the bill require the CHO to revoke an examination and testing order and a public health order if the CHO ceases to believe that all of the preconditions for the making of the order apply.

In addition, for people who are detained under a public health order, clause 121 enables a person subject to the order to apply to the CHO for the order to be reviewed at any time it is in force. Clause 122 enables a person subject to a public health order to apply to the Victorian Civil and Administrative Tribunal for a review of the order at any time the order is in force. It is also worth noting that section 148 of the Victorian Civil and Administrative Tribunal Act 1998 enables a party to any proceeding to appeal, on a question of law, from an order of VCAT in the proceeding to the Supreme Court.

The division is consistent with the rights protected by section 21(7) of the charter because it does not limit the Supreme Court's jurisdiction to review the lawfulness of a person's detention under order 57 of the Supreme Court (General Civil Procedure) Rules 2005.

Clauses 113, 117 and 123 are therefore compatible with the right to liberty and security under section 21 of the charter.

Division 3 — notifiable conditions and micro-organisms

The purpose of division 3 of part 8 is to establish a scheme that requires medical practitioners and people in charge of pathology services to provide information to the secretary about notifiable conditions. The collection of this information will enable the department to continue performing a number of important functions that promote and protect public health, including understanding the prevalence of notifiable diseases within Victoria; identifying and addressing outbreaks of notifiable diseases; and ensuring that people who contract certain infectious diseases are provided with information on ways they can manage their disease and minimise the likelihood of transmitting the disease to others.

Section 13 — privacy and reputation

Clauses 127 and 128 engage the right to privacy because they require registered medical practitioners and people in charge of pathology services to notify the secretary of the 'notification details' in accordance with the regulations or, where applicable, the order in council. The notification details will include 'health information' within the meaning of the Health Records Act.

While these clauses interfere with a person's right to privacy, they do so in a manner that is neither unlawful nor arbitrary. This is because the clauses specify the circumstances in which registered medical practitioners and people in charge of laboratories will have to disclose identifying information about their patients to the secretary. It is also because the department needs this information to perform the functions referred to above, which are directly relevant to promoting and protecting public health in Victoria. As the collection of this information is reasonable in all the circumstances, these clauses do not permit arbitrary interferences with a person's right to privacy.

Section 15 — freedom of expression

Clauses 127, 128 and 130 engage the right to freedom of expression because they impose obligations on registered medical practitioners, people in charge of pathology services, and the proprietors of food premises or food-vending machines to notify the secretary of certain information in the circumstances specified by these clauses.

For the reasons discussed above, these minor restrictions on the right to freedom of expression are reasonably necessary for the protection of public health, and therefore fall within the scope of section 15(3) of the charter. As a result, these clauses are consistent with the rights protected by section 15 of the charter.

Division 4 — HIV and other prescribed diseases

This division has two key purposes — to ensure that people who are tested for HIV or a prescribed disease receive pre and post-test counselling, and to enable courts and tribunals to take measures to protect people from the economic and social consequences of the disclosure during court or tribunal proceedings of any matter relating to HIV or any other prescribed disease.

Section 15 — freedom of expression

Clause 131 engages the right to freedom of expression because it compels expression by imposing an obligation on registered medical practitioners not to carry out a test or authorise the carrying out of a test for HIV or a prescribed disease unless the registered medical practitioner is satisfied that prescribed information has been given to a person. It is anticipated that regulations will be made that require that people who are to be tested are provided with information about the medical and social consequences of being tested.

Clause 132 of the bill also engages the right to freedom of expression because it imposes an obligation on registered medical practitioners or persons of a prescribed class to ensure a person has been given prescribed information before telling that person the results of their test. It is anticipated that the regulations will be made that require the person to be given information about the medical and social consequences of being infected with HIV or a disease prescribed for the purposes of this division, and steps that the patient can take to minimise the risk of transmitting the disease to others.

These clauses are minor restrictions of the right to freedom of expression. They are also reasonably necessary for the protection of public health and are therefore consistent with the rights protected by section 15 of the charter.

Section 24 — fair hearing

Clause 133 of the bill engages the right to a public hearing and the right to public pronouncement of judgements and decisions because it enables a court or tribunal to order that:

> the whole or any part of the proceedings be heard in closed session;
>
> only specified persons be present during the whole or part of the proceedings; or
>
> the publication of a report of the whole or any part of the proceedings, or of any information derived from the proceedings, is prohibited.

A court or tribunal may make such an order if evidence is proposed to be given of any matter relating to HIV or any other prescribed disease and the court or tribunal considers that, because of the social or economic consequences to a person if the information is disclosed, an order should be made.

To the extent that clause 133 limits the right to a public hearing and to the public pronouncement of all courts and tribunals, the limitations fall within the scope of the exceptions to these rights set out in section 24(2) and (3) of the charter. Clause 133 is therefore consistent with section 24 of the charter.

Division 5 — orders for tests

The purpose of this division is to promote the occupational health and safety of certain 'caregivers' (such as medical practitioners and nurses) and 'custodians' (such as police officers) who are exposed to blood or other body fluids during the course of their work and may therefore have contracted a specified infectious disease. In this context, 'specified infectious disease' means HIV, any form of hepatitis which may be transmitted by blood or body fluids, and any infectious disease that has been prescribed to be a specified infectious disease (see clause 3).

While the risk of acquiring HIV or hepatitis following occupational exposure to contaminated blood is low, such an incident may cause significant distress to the relevant person and his or her family. Knowing whether the person who was the source of the exposure (the source) has a specified infectious disease can minimise the anxiety of the exposed person as well as inform decisions about the person's medical treatment (see post-exposure prophylaxis to prevent HIV infection joint WHO/ILO guidelines on post-exposure prophylaxis to prevent HIV infection, World Health Organisation, 2007). For these reasons, the source of an occupational exposure is routinely asked to provide their informed consent to be tested for HIV and various types of hepatitis. Consent to be tested is usually provided in these circumstances.

The purpose of this division is to provide a framework for obtaining information about whether the source has a specified infectious disease in those rare circumstances where that person is unable or refuses to consent to be tested for a specified infectious disease.

Section 10 — right not to be subjected to medical treatment without consent

Clauses 134 and 137 limit the right protected by section 10(1)(c) of the charter because they enable the CHO and a senior medical officer (SMO) to require a person to be tested for a particular infectious disease without that person's consent.

Clauses 135 and 137 also limit the right protected by section 10(1)(c) of the charter because they enable the CHO or an SMO respectively to authorise the testing of a sample from a person that has been taken for any purpose without that person's consent.

Reasonableness of the limitation

Nature of the right

The nature of this right is considered above in the general overview of the nature of the rights protected by the charter.

Importance of the purpose of the limitation

Knowledge of whether the source is infected with a specified infectious disease is valuable for three reasons. First, it helps the exposed person and their medical practitioner to accurately assess the risk of the exposed person contracting a specified infectious disease. If the test results show that the source is not infected with a specified infectious disease this will significantly alleviate the exposed person's anxiety.

Second, knowledge of the source's HIV status will help the exposed person to make an informed decision about whether he or she should commence or continue taking post-exposure prophylaxis to minimise the risk of contracting HIV (HIV-PEP). A study conducted by the US Centres for Disease Control (CDC) found that the administration of zidovudine to health care workers occupationally exposed to HIV was associated with an 80 per cent reduction in the risk for occupationally acquired HIV infection (see HIV post-exposure prophylaxis guidance from the UK Chief Medical Officers Expert Advisory Group on AIDS, Department of Health, 2004 at 5). Unfortunately, HIV-PEP causes a number of unpleasant side-effects and must usually be taken for 28 days. If the source of the exposure is not infected, it would usually be unnecessary for the exposed person to continue the course of HIV-PEP.

Third, if the source is infected with HIV, information about the virus present in the person (such as information about antiretroviral drug resistance) will be relevant to the decision of which HIV-PEP drugs are most likely to prevent the exposed person from contracting HIV.

Nature and extent of the limitation

Clause 134 enables the CHO to make an order that requires a person to be tested for a particular disease and to provide a sample of blood or urine for that purpose. This power may only be exercised if the making of the order is necessary in the interest of rapid diagnosis and clinical management and, where appropriate, treatment for any of those involved in the incident. If a magistrate is satisfied that the circumstances are exceptional, a magistrate may make an order that authorises a member of the police force to use reasonable force to enforce the order.

Clause 137 enables an SMO to make a similar order with respect to an incident relating to the health service where the SMO works. However, an order made under clause 137 of the bill cannot be enforced by a member of the police force.

The powers conferred on the CHO and SMOs to test a sample of a person that has been taken for another purpose is less of a restriction on the rights protected by section 10(1)(c) of the charter but are nevertheless inconsistent with the right not to be subjected to medical treatment without having provided one's full, free and informed consent.

Relationship between the limitation and its purpose

There is a direct and rational relationship between the limitations and their purpose.

Any less restrictive means reasonably available to achieve the purpose that the limitation seeks to achieve

A less restrictive means available to achieve the purpose of the limitation in clause 134 would be to make it an offence for a person to fail to comply with an order made under the clause, but not enable the order to be enforced by use of reasonable force. However, this measure is considered inadequate because there may occasionally be people who refuse to comply with the order.

There are no less restrictive means reasonably available to achieve the purpose of the limitations in clauses 134 and 137 of the bill.

Other relevant factors

People who are the source of an occupational exposure are usually willing to consent to being tested for HIV and other blood-borne diseases. As a result, it is anticipated that this power will be rarely exercised.

Conclusion

The limitations of this right are considered reasonable in all the circumstances because of the importance of promoting and protecting the occupational health and safety of those who are at increased risk of contracting a specified infectious disease during the course of their work.

Section 13 — privacy and reputation

In broad terms, clauses 134–137 interfere with a person's right to information privacy because they enable information about the health status of the source to be collected, used and disclosed without that person's consent. Clause 134 also interferes with a person's bodily privacy because it enables the chief health officer to make an order that requires a person to submit to a blood or urine test and permits a magistrate to authorise a member of the police force to use reasonable force to enable a registered medical practitioner to take a sample.

Clauses 135 and 137 of the bill engage the right to privacy because they enable the CHO or an SMO to make an order that authorises the testing of a sample provided by a person for any purpose for a specified infectious disease without the person's consent. These powers are only available if the CHO could have made an order with respect to the same person under clause 134 of the bill and obviate the need for the person to provide a further sample.

Clause 136 engages the right to privacy because it enables the CHO to examine any relevant health information held by the Department of Human Services that relates to the person as well as require a health service provider to give the CHO any relevant health information held by the health service provider relating to that person. The clause creates a means by which the CHO may be able to obtain information about the source that is less intrusive than requiring the person to provide a sample. The clause includes several safeguards that are designed to reduce the risk of this information being used for unrelated secondary purposes. First, the CHO may only use relevant health information obtained under subclause (1) for the purposes of this division. Second, subclause (3) limits the circumstances in which information collected under subclause (1) may be disclosed. Importantly, information collected under subclause (1) is not admissible in any action or proceedings before a court, tribunal, board, agency or other person.

Clause 140 of the bill minimises the extent of these interferences with a person's right to privacy in two ways. First, the clause prohibits any of the persons to whom the disease could have been transmitted and who have received notice of the test results from disclosing, communicating or recording anything in those results that would identify that other person. The penalty for this offence is 60 penalty units. Second, the clause prohibits the CHO or a senior medical officer including information that would identify the person tested when informing a relevant person of the results of a test performed under this division.

While these clauses interfere with a person's right to information privacy, they would not authorise an interference that is unlawful or arbitrary. This is because any interference would be reasonable in the particular circumstances and the clauses adequately specify the circumstances in which these interferences may occur.

Clause 134 also engages a person's right to bodily privacy because it enables a magistrate to authorise a member of the police force to use reasonable force to enforce the order made by the chief health officer. Clause 134 provides that a magistrate may only make an order that authorises the use of force if the magistrate is satisfied by evidence that the circumstances are so exceptional that the making of the order is justified. The clause is consistent with section 13 of the charter because the use of force is authorised by law and is reasonable in the circumstances for the same reasons that the limitation on a person's right not to be subjected to medical treatment without one's consent is a reasonable limitation of that right.

Section 15 — freedom of expression

Clause 136(1)(b) of the bill engages the right to freedom of expression because it enables the CHO to require a health

service provider to give the CHO any relevant health information held by the service provider with respect to a person in the circumstances specified by the bill. The CHO may only exercise this power if the CHO believes that the circumstances exist for the making of an order under clause 134 of the bill. The purpose of requiring a health service provider to disclose this information to the CHO is to ensure that people are not unnecessarily required to undergo tests pursuant to orders made under clause 134 of the bill.

Clause 139 of the bill also engages the right to freedom of expression because it requires a pathologist or registered medical practitioner who conducts a test under an order or authorisation to give the results to either the CHO or SMO. The clause also requires the CHO or SMO to give notice of the results to the person tested and the 'appropriate person'. These requirements are necessary in order to achieve the objectives of the division.

As these restrictions are reasonably necessary for the protection of public health, clauses 137 and 139 are consistent with the rights protected by section 15 of the charter.

Clause 140(1) restricts the right to freedom of expression because it prohibits a person who receives a notice of the results of the test on another person from disclosing anything in those results that would identify that other person. Clause 140(2) also restricts the right to freedom of expression because it imposes an obligation on the CHO and an SMO not to include information that would identify the person tested when advising a person of the test results for the source. These restrictions on the right to freedom of expression are reasonably necessary to protect the privacy of the source, and therefore come within the exception to the right to freedom of expression contained in section 15(3)(b) of the charter. The clause is therefore consistent with the rights protected by section 15 of the charter.

Section 21 — right to liberty and security of person

Clause 134 engages section 21 of the charter because it enables a magistrate to authorise a member of the police force to take the person named in the order to a specified place. A magistrate may also authorise a member of the police force to use reasonable force to restrain that person so as to enable a registered medical practitioner to take a sample if the person fails to cooperatively submit to the test.

The clause specifically defines the circumstances in which an order may be made and provides that an order does not have effect until it is served on the person who is subject to it. The clause does not limit the Supreme Court's jurisdiction under order 57 of the Supreme Court (General Civil Procedure) Rules 2005. The clause is therefore consistent with the rights protected by section 21 of the charter.

Division 7 — immunisation

The purpose of this division is to require parents of children who attend primary schools to give an immunisation status certificate (ISC) in respect of each vaccine-preventable disease to the person in charge of the relevant primary school. Clause 238(1)(z) of the bill will enable the Governor in Council to make regulations that prevent a child who has not been vaccinated against a particular vaccine-preventable disease from attending school during an outbreak of that infectious disease.

Section 13 — privacy and reputation

Clause 145 engages the right to privacy because it requires the parents of a primary school child to give an ISC in respect of each vaccine-preventable disease to the person in charge of the primary school their child attends. The information may be used by the person in charge of a primary school when making decisions about whether a child should be temporarily excluded from school during the outbreak of an infectious disease in order to minimise the risk of the child becoming infected. This lawful interference with a child's privacy is necessary to protect children who have not been immunised against vaccine-preventable diseases, and is therefore consistent with section 13 of the charter.

Section 15 — freedom of expression

Clause 145 restricts a parent's right to freedom of expression because it requires parents to provide information about their child's immunisation status to their child's school. For the reasons outlined above, this limitation is reasonably necessary for the protection of public health and therefore falls within the scope of section 15(3) of the charter.

Division 8 — blood and tissue donations

This division extends a scheme of statutory defences to actions brought on or on behalf of a person who claims to have been infected with HIV, hepatitis C or a prescribed disease because he or she was given blood, blood products or tissue donated by another person. The purpose of the division is to help maintain the viability of the Australian Red Cross Society and to encourage those who regularly donate or are considering donating blood in good faith to continue doing so.

Section 13 — privacy and reputation

The division engages an individual's right to privacy because the society or a health society must ensure that potential donors complete a statement in the approved form in order to have the benefit of a statutory defence against legal action (see clauses 151 and 152 and schedule 1 to the bill). The approved form will ask potential donors to answer various questions directed at assessing the risk of the person's blood being contaminated with an infectious disease.

The statement is the first step in a two-step screening process of blood donors (the second step is the testing of a sample of the donor's blood). It is not sufficient to rely on testing alone because:

> infection with some contaminants involves a window period. In the window period, the virus may be present in the blood, but not detectable by available tests;
>
> of the possibility of new variants of known viruses developing which may not currently be detectable;
>
> of the possibility of human error in carrying out the tests which cannot be entirely eliminated; and
>
> tests are not always 100 per cent effective, especially when first developed in response to an emerging disease (see *Review of the Human Tissue Act 1983 Report — Blood Donation and the Supply of Blood and Blood Products*, April 2002, NSW Health at 30).

Requiring people who wish to donate blood or tissue to provide the information that is needed to assess the risk of

their blood or tissue being contaminated is reasonable in all the circumstances and therefore does not arbitrarily interfere with a person's right to privacy. Moreover, the approved form will specify the information that is to be collected about potential donors, and therefore provides a lawful basis for the handling of this information about the donor. The clauses in this division are therefore considered to be consistent with section 13 of the charter.

Section 15 — freedom of expression

Clause 155 of the bill engages the right to freedom of expression because it prohibits relevant persons from making a statement that is false in a material particular.

The purpose of this restriction on a person's freedom of expression is to minimise the risk of a person contracting an infectious disease as a result of receiving contaminated blood, blood products or tissue. This lawful restriction on a person's right to freedom of expression is therefore reasonably necessary for the protection of public health and falls within the scope of section 15(3) of the charter.

Division 9 — autopsies

The purpose of this division is to enable the CHO to order an autopsy to be performed for the purpose of ascertaining whether there is a serious risk to public health.

Sections 8, 14 and 19 — equality before the law, freedom of religion and belief and cultural rights

The conduct of an autopsy may interfere with a person's right to exercise his or her religious beliefs (see the Human Rights and Equal Opportunity Commission's report entitled *Article 18 — Freedom of Religion and Belief*, 1998 at pp 45–46). Clause 156 could therefore be considered to limit the rights protected by sections 8, 14 and 19 of the charter. The clause may also discriminate against a person on the basis of religious belief, one of the attributes in respect of which discrimination is unlawful under section 6 of the Equal Opportunity Act and therefore limits the right protected by section 8 of the charter.

Reasonableness of the limitation

Nature of the right

The nature of these rights is discussed above in the context of the general overview of the rights protected by the charter.

Importance and purpose of the limitation

It may very occasionally be necessary to conduct an autopsy on a body for the purpose of verifying whether the person's death was caused by an infectious disease that may pose a serious risk to public health. This information would assist the CHO to decide whether it is necessary to take other measures to minimise or prevent the spread of an infectious disease. It may also be necessary to require an autopsy to be conducted on the body of a person who is suspected to have died from an emerging infectious disease to enable medical practitioners to learn more about the nature of the disease.

The nature and extent of the limitation

The conduct of an autopsy may cause significant distress to the family members of the deceased person because it is contrary to their religious beliefs. However, the bill only permits an autopsy to be conducted in very limited circumstances which are specified by the bill.

The relationship between the limitation and its purpose

There is a direct and rational connection between the need for an autopsy in certain cases and the purpose of minimising or preventing the spread of an infectious disease. If the deceased's family strongly objects to the conduct of an autopsy on the body the senior next of kin may apply for an order from the Supreme Court that the autopsy not be performed in the circumstances. In the context of autopsies performed under the Coroners Act 1985, the Supreme Court has attached considerable weight to the religious and cultural beliefs of the deceased person's family (see *Green v. Johnstone* [1995] 2 VR 176 at 179).

Any less restrictive means reasonably available to achieve the purpose that the limitation seeks to achieve

There is no less restrictive means available to achieve the purpose the limitation seeks to achieve because in some circumstances the conduct of an autopsy will be the only way to ascertain whether the person died from a particular infectious disease that may pose a serious risk to public health.

Conclusion

Given that the bill would only enable the CHO to require an autopsy to be conducted in very limited circumstances, and that the deceased's senior next of kin may challenge the CHO's decision to require an autopsy to be conducted, the manner in which clause 156 limits the rights protected by sections 8, 14 and 19 of the charter can be demonstrably justified in a free and democratic society.

Division 10 — brothels and escort agencies

The purpose of division 10 is to require brothels and escort agencies to take a range of measures designed to minimise the risk to sex workers and their clients of contracting infectious diseases.

Section 15 — freedom of expression

Clause 162 engages the right to freedom of expression because it requires brothel proprietors to provide medically accurate information about the transmission of sexually transmitted infections in a range of languages to clients and sex workers. Where a sex worker has difficulty in communicating in English, the clause requires proprietors of brothels and escort agencies to provide information in a language with which the sex worker is familiar.

Clause 159 also engages the right to freedom of expression because it prohibits proprietors from expressly or impliedly discouraging the use of condoms in the brothel or in any encounter arranged through the escort agency. The purpose of this clause is to minimise the spread of sexually transmitted diseases in the community.

The bill makes it an offence for an escort agency proprietor or a brothel proprietor not to comply with these obligations. The maximum penalty that may be imposed for one of these offences is a modest fine ranging between 10 and 60 penalty units.

As each of the minor restrictions on the right to freedom of expression referred to above is designed to contain the spread of sexually transmitted diseases in the community, they are considered to be reasonably necessary for the protection of public health within the meaning of section 15(3) of the charter. As a result, each of these clauses is consistent with section 15 of the charter.

Part 9 — authorised officers

Part 9 sets out the powers and obligations of authorised officers with respect to investigating and managing risks to public health, as well as monitoring compliance with the bill and regulations made under it.

Section 11 — freedom from forced work

Consideration was given to whether clause 176 engages the right to freedom from forced work because it enables authorised officers to require a person to operate equipment to access information from that equipment. Requiring a person to operate equipment would form part of that person's normal civil obligations and would not be considered to amount to 'forced or compulsory labour'. The clause therefore does not engage section 11 of the charter.

Section 13 — privacy and reputation

Clauses 166–170 and 175–176 engage the rights protected by section 13(a) of the charter.

Obligation to provide information

Clause 166 engages the right to privacy because it requires authorised officers to produce their identity cards for inspection when exercising their statutory powers. The card will display the name, photograph and signature of the authorised officer (see clauses 29–30). This requirement does not arbitrarily interfere with the privacy of authorised officers because the requirement is designed to ensure authorised officers are accountable for the way they exercise their powers and functions, and is therefore reasonable in the circumstances.

Clause 167 engages the right to privacy because it enables an authorised officer to request a person to provide information (including information about an identifiable person) that the authorised officer believes is necessary to investigate, manage or control a risk to public health. The clause requires authorised officers to inform the person at the time of making the request that he or she may refuse to provide the information requested.

Entry of premises

Clauses 168–170 engage the right not to have one's privacy or home unlawfully or arbitrarily interfered with because they permit authorised officers to enter premises, including residential premises, in specified circumstances.

Clause 168 permits an authorised officer to enter residential premises with the consent of the occupier for the purpose of investigating whether there is a risk to public health or to manage or control a risk to public health.

Clause 169 allows authorised officers to enter premises without the occupier's consent in three circumstances. First, an authorised officer can enter any premises that he or she believes is being used for one of the purposes specified by the clause (such as the provision of prescribed accommodation) provided that it is a reasonable hour during the daytime or the premises is open to the public. Second, an authorised officer may enter premises at any time if it is necessary to investigate, eliminate or reduce an immediate risk to public health. Third, an authorised officer may enter any premises at any time if a warrant has been issued. Clause 170 specifies the circumstances in which a warrant could be issued.

Division 3 of part 9 requires authorised officers to comply with various procedures (such as announcing who they are) when entering premises that are designed to ameliorate the intrusiveness of these powers. Where an authorised officer enters a residential premises without a warrant, the authorised officer must comply with clause 187 of the bill.

Clause 175 sets out the powers authorised officers may exercise where they have entered premises under the powers conferred by the bill. They include the power to inspect, examine, seize, photograph or do any other thing that is reasonably necessary for the purpose of exercising a function or power under the act or the regulations. An authorised officer who enters any premises under clause 169 can also direct a person at the premises to do certain things, including answering questions or producing documents (clause 176). As these powers might be exercised with respect to residential premises they engage section 13 of the charter.

Clause 185 provides an important safeguard against the misuse of the powers conferred upon authorised officers because it allows anyone to complain about the exercise of these powers to the secretary (if the authorised officer was appointed by the secretary) or the relevant council (if the authorised officer was appointed by the council). The secretary or the council is required to investigate any such complaint, and to provide a written report to the complainant on the results of the investigation.

Clauses 166–170 and 175–176 enable authorised officers to investigate risks to public health, take measures to alleviate those risks and monitor whether businesses conducted at certain premises are being conducted in accordance with requirements imposed by the bill and the regulations made under it. The conferral of these powers on authorised officers is reasonable in the circumstances and does not arbitrarily interfere with an individual's rights protected by section 13(1) of the charter. Moreover, the clauses adequately specify the circumstances in which interferences with these rights may be permissible. The above clauses are therefore consistent with section 13 of the charter.

Section 15 — freedom of expression

Clause 176 engages the right to freedom of expression because it enables authorised officers who have entered premises for the purpose of monitoring compliance with the bill or investigating a possible contravention of the bill to require a person to answer questions and to produce documents located at the premises that are in the person's possession or control. Before directing a person to produce such a document or to answer questions, an authorised officer must warn the person that failure to comply with the direction without reasonable excuse is an offence, and inform the person that he or she may refuse to answer any question if answering would tend to incriminate him or her. The maximum penalty that may be imposed on an individual who fails to comply with the direction is 60 penalty units.

Clause 184 could also be considered to engage the right to freedom of expression because it prohibits a person who is not an authorised officer from holding himself or herself out to be an authorised officer. The maximum penalty that may be imposed for this offence is 60 penalty units.

It is reasonably necessary for the protection of public health that authorised officers have the power to require people at regulated premises to assist them when they are monitoring compliance with the bill or possible contraventions of the bill. It is also reasonably necessary for the protection of public health that people who are not authorised officers are deterred from misrepresenting their status. As these restrictions on the right to freedom of expression come within the scope of section 15(3) of the charter, these clauses are consistent with the rights protected by section 15(1) of the charter.

Section 20 — property rights

The charter provides that a person must not be deprived of his or her property other than in accordance with law. Clauses 175, 178, 179, 181 and 182 variously authorise the seizure, forfeiture and disposal of things in circumstances where owners cannot be found, where there is a risk to public health or the things are required as evidence or to prevent the commission of an offence. Deprivation of property in these circumstances would be in accordance with a lawful exercise of statutory power and for a specified purpose and is compatible with section 20 of the charter.

Part 10 — protection and enforcement provisions

The purpose of division 1 is to enable the chief health officer with the assistance of authorised officers to swiftly and effectively respond to a wide range of risks to public health. Division 2 enables improvement and prohibition notices to be issued and thereby provides a means of remedying risks to public health. Division 3 creates a legal framework that will enable Victoria to rapidly and effectively respond to a public health emergency such as an influenza pandemic.

Section 13 — privacy and reputation

Clause 188 engages the right to privacy because it enables the CHO to require a person to provide information which the CHO believes is necessary to investigate whether there is a risk to public health or to manage or control a risk to public health. The clause safeguards the rights of an individual by requiring the CHO to warn the person that a refusal or failure to comply with the direction without reasonable excuse is an offence and advise the person that they can refuse to provide the information if it would tend to incriminate him or her.

Clause 190 engages the right not to have one's privacy or home unlawfully or arbitrarily interfered with because it enables an authorised officer, in very limited circumstances specified by the bill, to require a person to:

provide their name and address;

provide information needed to investigate, eliminate or reduce the risk to public health; and

enter and inspect any premises (including parts of residential premises) without a warrant if the authorised officer reasonably believes there may be an immediate risk to public health and that entry is necessary to enable the authorised officer to investigate, eliminate or reduce the risk.

These clauses do not allow a person's privacy to be unlawfully interfered with because they specify the circumstances in which the powers may be exercised. Moreover, to the extent that these clauses permit an interference with a person's rights under section 13 of the charter, the interference is reasonable in the circumstances because they enable the CHO and authorised officers to investigate risks to public health. These clauses are therefore compatible with section 13 of the charter.

Section 12 — freedom of movement

Clause 190(1)(b) engages the right to freedom of movement because it enables an authorised officer to direct a person or group of persons not to enter or to leave any particular premises.

Clause 200(1) of the bill also engages the right to freedom of movement because it enables an authorised officer, in narrowly defined circumstances, to restrict the movement of any person or group of persons within the emergency area and to prevent any person or group of persons from entering the emergency area.

Reasonableness of the limitation

Nature of the right being limited

The nature of this right is considered in the overview of the rights protected by the charter that are engaged by the bill.

Importance of the purpose of the limitation

It may be necessary to exercise the power conferred by clause 190(1)(b) of the bill in two circumstances. First, it may be necessary for an authorised officer to direct people not to enter particular premises to prevent them from hindering efforts to eliminate or reduce the risk the premises poses to public health. Second, it may be necessary to exercise the power to restrict people's exposure to a substance that may pose a risk to public health.

The purpose of the limitation in clause 200 is to control the movement of persons during a state of emergency which may help to contain the emergency. It may be necessary to exercise this power, for example, if there were an outbreak in a geographically confined area of a highly infectious disease that caused unusually severe illness in order to slow the spread of that disease.

Nature and extent of the limitation

The making of a direction under clause 190(1)(b) is likely to only temporarily interfere with a person's freedom of movement. Clause 190(5) provides that a person may be directed to remain at a particular premises for a period no longer than 4 hours. Such a direction may be extended as many times as is reasonably necessary for the purposes of investigating, eliminating or reducing the risk to public health, but not so as to exceed a continuous period of 12 hours (see clause 190(6)). The maximum penalty that could be imposed on a natural person who failed to comply with a direction given under clause 190(1)(b) is 120 penalty units (see clause 193).

Clause 200 of the bill limits the right more significantly because it permits a person's or group of person's freedom of movement to be constrained for a maximum period of six months. The maximum penalty that could be imposed on a

person who failed to comply with a direction given under clause 200 of the bill is 120 penalty units (see clause 203).

Relationship between the limitation and its purpose

There is a direct and rational relationship between the limitation and the purpose it seeks to achieve.

Any less restrictive means reasonably available to achieve the purpose that the limitation seeks to achieve

There may not be a less restrictive means reasonably available in a particular circumstance to achieve the purpose the limitation seeks to achieve.

Conclusion

The limitations contained in clauses 190 and 200 of the bill are compatible with the charter even though they limit the right to freedom of movement because the limitations are reasonable and proportionate in the circumstances.

Sections 14 and 19 — freedom of thought, conscience, religion and belief and cultural rights

The exercise of the emergency powers conferred by clause 200 of the bill could restrict an individual's ability to worship in community with others, and thereby limit the rights protected by sections 14(2) and 19 of the charter. However, these limitations are reasonable and demonstrably justified in a free and democratic society for the same reasons that the limitation of the right to freedom of movement during a state of emergency is demonstrably justified.

Section 15 — freedom of expression

Clause 188 of the bill engages the right to freedom of expression because it requires a person to provide information that the chief health officer believes is necessary to investigate whether there is a risk to public health. Clause 190 also engages the right to freedom of expression because it permits authorised officers exercising public health risk powers to require people to provide information.

These lawful restrictions on the right to freedom of expression are reasonably necessary for the protection of public health, and therefore come within the scope of section 15(3) of the charter.

Section 16 — freedom of assembly and freedom of association

Clause 200(1) limits the right to freedom of assembly because a person or group of people could be prevented from entering or leaving an emergency area as well as moving within the emergency area. These restrictions on the right to freedom of assembly are demonstrably justified in a free and democratic society for the same reasons that these limitations on the right to freedom of movement are demonstrably justified.

Section 20 — property rights

Clause 190 engages the right to property because authorised officers are permitted to close premises for the period of time reasonably necessary to investigate, eliminate or reduce the risk to public health. The clause also permits authorised officers to require the destruction or disposal of things if this is necessary to eliminate or reduce the risk to public health.

Clause 190 specifies the circumstances in which interferences with a person's property will be permissible. The provision is not arbitrary because the power may only be exercised by authorised officers acting in circumstances where the chief health officer believes that is necessary to investigate, eliminate or reduce a risk to public health. Deprivation of property in these circumstances would be in accordance with a lawful exercise of statutory power and is compatible with section 20 of the charter.

Section 21 — right to liberty and security of person

Clause 190 engages the right to liberty because it enables a person to be directed to remain at particular premises for up to 4 hours (although this direction could be repeatedly extended for up to 12 hours if this were reasonably necessary for the purpose of investigating, eliminating or reducing the risk to public health). Clause 200 also engages the right to liberty because it allows a person or group of persons to be detained in the emergency area for a period no longer than is reasonably necessary to eliminate or reduce a serious risk to public health. Both clauses are consistent with the rights protected by section 21(3) of the charter because they specifically define the circumstances in which a person may be detained.

Clause 200 minimises the risk of a person's detention becoming arbitrary by requiring an authorised officer to review whether the continued detention of the person is necessary to eliminate or reduce a serious risk to public health at least once every 24 hours. An authorised officer who decides to detain a person or continue that person's detention must notify the CHO of that fact. The notification must include the name of the person detained and briefly explain why the person has, or continues to be, subject to detention. The CHO must then inform the Minister for Health of any notice he or she has received.

Neither clause limits the Supreme Court's jurisdiction to review the lawfulness of a person's detention under order 57 of the Supreme Court (General Civil Procedure) Rules 2005.

Both clauses require a person who is detained to be informed of the reason for their detention (see clauses 190(2) and (3) and 200(3)) unless it is not practicable to do so in the particular circumstances. These clauses are therefore consistent with section 21(4) of the charter.

Section 25 — rights in criminal proceedings

Clause 197(7) engages the right to be presumed innocent until proved guilty according to law. This offence arises after proceedings in the Magistrates Court in relation to improvement or prohibition notices to address a nuisance, where there has been a failure to comply or where the nuisance is likely to recur. If the Magistrates Court has made an order, clause 197(7) makes it an offence for a person to fail to comply with the order unless in seeking to comply with the order they have exercised due diligence. This places a legal burden on the defendant with respect to the exception to the offence.

Reasonableness of the limitation

Nature of the right

The nature of this right is discussed above in the general overview of the nature of the rights engaged by the bill.

Importance of the purpose of the limitation

The purpose of the limitation is to protect public health by providing a mechanism for ensuring compliance with an order made by the Magistrates Court. The offence only arises where less coercive measures have failed to achieve the desired outcome of abating a nuisance.

Nature and extent of the limitation

As knowledge of the measures the defendant has taken to comply with the order will be peculiarly within the defendant's knowledge, it would be relatively easy for the defendant to prove, on the balance of probabilities, that he or she has exercised due diligence in seeking to comply with the order. It should also be noted that the clause places the legal burden with respect to the elements of the offence on the prosecution, and that the maximum penalty for this offence is a fine rather than a term of imprisonment.

Relationship between the limitation and its purpose

The imposition of a legal burden with respect to the defence of exercising due diligence in seeking to comply with the order is intended to secure compliance with the order made by the Magistrates Court. There is a direct relationship between the limitation and its purpose.

Any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve

It is necessary to structure the offence in this way because evidence of the steps the defendant has taken to comply with the order will be in the possession of the defendant rather than the prosecution (see *R v. Wholesale Travel Group* [1991] 3 SCR 154). There is therefore no less restrictive means reasonably available of achieving the purpose the limitation seeks to achieve.

Conclusion

The limitation is compatible with the charter because, even though it limits the right to the presumption of innocence, the limitation is reasonable and proportionate.

Part 11 — general provisions

Part 11 of the bill deals with a range of matters that affect how the bill is to be interpreted and implemented. It includes several mechanisms that will assist to safeguard the rights of individuals who are affected by the exercise of certain powers conferred by the bill.

Section 13 — privacy and reputation

Clause 229 engages the right not to have one's privacy or home unlawfully or arbitrarily interfered with because it permits specified people to enter onto any land, including residential premises, to take actions necessary to ensure compliance with a direction, requirement, or notice. This interference with a person's rights protected by section 13 of the charter is reasonable because the power is only available in circumstances where less intrusive interventions have not resulted in the person complying with the direction, requirement or notice. It should also be noted that the general restriction on entry to residential premises set out in clause 187 applies to the exercise of these powers. The circumstances in which the powers may be exercised are defined in detail by the clause. For these reasons clause 229 of the bill does not authorise unlawful or arbitrary interferences with a person's right to privacy or home, and is therefore consistent with section 13 of the charter.

Section 15 — freedom of expression

Clauses 210 and 261 (which will insert a provision in the Food Act that is almost identical to clause 210) engages the right to freedom of expression by prohibiting a person from:

> giving false or misleading information to the secretary, a council, the chief health officer or an authorised officer;
>
> making a false or misleading entry in a document required to be kept; or
>
> under the act or regulations.

For example, a person must not intentionally or negligently produce a document under the bill that is false or misleading in a material particular, without indicating the respect in which it is false or misleading and if practicable providing the correct information.

Clauses 211 and 261 (which will insert a provision in the Food Act that is identical to clause 211) provide that a person must not, without lawful authority, destroy or damage any record required to be kept in accordance with the bill or regulations made under the bill.

The purpose of these clauses is to maximise the effectiveness of the regulatory regime provided by the bill and thereby contribute to the protection of public health. The clauses lawfully restrict the right to freedom of expression to a degree reasonably necessary to protect public health, and are therefore consistent with section 15 of the charter.

Section 20 — property rights

Clauses 228 and 229 could be considered to engage the right not to be deprived of property other than in accordance with law. The clauses enable action to be taken to ensure compliance with a direction, requirement or notice issued in relation to a public health risk power (clause 190) or emergency power (clause 200), and for reasonable costs incurred to be recovered. For example, this might include entry onto land to decontaminate an area and recovering the expenses, such as removing lead-contaminated soil that is posing a risk to public health.

The clauses enable risks to public health (to which the relevant direction, requirement or notice related) to be remedied, following failure of a person to do so. The clauses specify the circumstances in which non-compliance with directions, requirements or notices may be addressed. The clauses confine cost recovery to 'reasonable costs' as defined. The debt remains a charge on the relevant land until recovered through a court of competent jurisdiction.

It is noted that the directions or requirements to which the clauses apply are made under part 10, following an authorisation of the chief health officer. Such an authorisation can only be made where the chief health officer believes that the authorisation was necessary to address a public health risk (see clauses 189 and 199). If a direction or requirement made in relation to a state of emergency (either under an emergency power or public health risk power) was authorised on insufficient grounds, a person who suffers loss may seek compensation (clause 204).

As the engagement with property rights is neither unlawful nor arbitrary, the clauses do not limit section 20 of the charter.

Section 24 — fair hearing

Division 1 of part 10 promotes the right to fair hearing in relation to the creation of specified review and appeal rights arising under part 6, part 7 and part 10 of the bill.

Section 25 — rights in criminal proceedings

Clauses 210 and 261 engage the right to be presumed innocent until proved guilty according to law because they place a legal burden on the accused with respect to the only available defence. The clauses, which are cast in identical terms, prohibit a person from giving information, making a statement, or producing a document that is false or misleading in a material particular. It is a defence for the accused to prove that at the time the offence was committed he or she believed on reasonable grounds that the information was either true or not misleading.

Reasonableness of the limitation

Nature of the right

The nature of this right is discussed above in the general overview of the nature of the rights engaged by the bill.

Importance of the purpose of the limitation

The purpose of the limitation is to protect public health by deterring people who might otherwise be tempted to provide false or misleading information, statements or documents under either the bill or regulations made under it or the Food Act. The provision of false or misleading information to the CHO or an authorised officer could make it more difficult for the CHO and authorised officers to promptly determine the cause of risks to public health and delay the taking of steps that would eliminate or ameliorate the risk to public health.

Nature and extent of the limitation

The onus only applies where the accused seeks to rely upon the defence — it does not apply to any of the elements of the offence. Further, the onus relates to matters that are peculiarly within the knowledge of the accused.

Relationship between the limitation and its purpose

There is a direct relationship between the limitation and its purpose.

Any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve

It is necessary to structure the offence in this way because knowledge of the circumstances that led to the accused believing on reasonable grounds that the false information was true or that the misleading information was not misleading are matters that are solely within the knowledge of the accused. Merely placing an evidential burden on the accused with respect to the defence would not adequately address this problem because the prosecution would still have to disprove the matter beyond reasonable doubt.

Conclusion

The limitation is compatible with the charter because, even though it limits the right to the presumption of innocence, the limitation is reasonable and proportionate in the particular circumstances.

Section 25 — rights in criminal proceedings — right not to be compelled to confess guilt

Clause 212 provides for a qualified privilege against self-incrimination. The privilege against self-incrimination is relevant to the right in section 25(1)(k) which protects a person from being compelled to testify against himself or herself, or to confess guilt, in criminal proceedings. However, the qualification of the privilege in the bill only applies to requirements made under the act or the regulations to produce a document, or a requirement of a person to give their name or address (which is similar to the Occupational Health and Safety Act 2004). Under international law, obtaining evidence compulsorily from a person where the evidence has an existence independent of the will of the person (such as documents) would not limit the right in section 25(1)(k).

It is noted that the bill requires the chief health officer or authorised officer, when exercising a relevant power (to require documents, information or a person's name or address), to inform the person of the privilege against self-incrimination (see clauses 176 and 188).

Part 12 — miscellaneous

Part 12 of the bill sets out savings and transitional provisions and provides for amendments (including consequential amendments) to other acts.

Section 13 — privacy and reputation

Clause 247 amends section 49B of the Births, Deaths and Marriages Registration Act 1996 by requiring the registrar of births, deaths and marriages (the registrar) to supply CCOPMM with any medical certificate in the registrar's possession relating to a maternal death; and any information that appears on the certificate of death that is requested by CCOPMM which it needs to perform its functions.

Clause 250 substitutes a new section 22A of the Coroners Act 1985. The current section 22A of the Coroners Act enables, but does not require, the coroner to notify CCOPMM of the death of a child. New section 22A will require the coroner to notify CCOPMM of the particular of the death of a child. It gives effect to recommendation 29 of the Victorian Parliament Law Reform Committee's final report on the Coroners Act. New section 22A will also require the coroner to provide CCOPMM with the particulars of any maternal death reported to the coroner.

While the charter only protects the rights of people while they are alive, the certificates referred to above may contain identifying information about family members of the deceased. Requiring the registrar and the coroner to provide certificates or information that appears on certificates to CCOPMM therefore engages section 13 of the charter.

These new notification requirements are necessary to enable CCOPMM to perform its function of conducting study, research and analysis into the incidence and causes in Victoria of maternal deaths, stillbirths and the deaths of children (clause 46(1)(a)). Both part 4 of the bill and part IXB of the Health Act prohibit the disclosure of confidential information except in defined circumstances. These clauses only permit information to be collected for legitimate purposes, and are therefore not arbitrary for the purposes of section 13 of the

charter. Moreover, the clauses adequately specify the circumstances in which information about identified people is collected, and consequently do not permit unlawful interferences with the right to privacy. As a result, these clauses do not limit section 13 of the charter.

Section 20 — property rights

Clause 261 inserts a new provision (section 59C) into the Food Act relating to compliance with directions and cost recovery. Like clauses 228 and 229 of the bill, the purpose of the clause is to create a mechanism that allows actions to be taken to comply with a direction or order and to recover costs of doing so. Unlike clause 230, new section 59C will apply to any direction made under the Food Act. However, this is appropriate given that a narrower range of directions may be given under the Food Act than under the bill.

Clause 261 adequately defines the circumstances in which this power may be exercised. It is therefore consistent with section 20 of the charter.

Section 24 — fair hearing

Clause 267 of the bill amends schedule 1 to the Victorian Civil and Administrative Tribunal Act by inserting a new part 16B to apply to reviews relating to public health orders under division 2 of part 8 of the bill. The new part 16B engages the right to a fair hearing in that:

> the publishing or broadcasting of reports of proceedings that identifies, or could reasonably lead to the identification of, parties is prohibited unless the tribunal considers it is in the public interest to order otherwise; and
>
> a person subject to a public health order may have restricted access to relevant evidence, submissions or documents if the tribunal is of the opinion that it is necessary to do so to prevent serious harm to the health or wellbeing of that person or any other person.

As the prohibition on publishing or broadcasting is authorised by law, it does not limit any rights protected by section 24 of the charter. It is noted that the tribunal may order that the prohibition on publishing or broadcasting a report does not apply if it considers that it would be in the public interest to make such an order, and the clause is similar to other provisions in schedule 1 to the Victorian Civil and Administrative Tribunal Act (see part 9 (Guardianship and Administration Act 1986), part 12 (Instruments Act 1958) and part 14 (Medical Treatment Act 1988)).

The potential restriction on access to information by the person subject to a public health order is limited to circumstances to protect a vulnerable person's health or wellbeing from serious harm. The right of the person's representative to access information is not limited. The restriction does not, therefore, limit the person's right to a fair hearing.

Conclusion

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

GAVIN JENNINGS, MLC
Minister for Environment and Climate Change and Minister for Innovation

Second reading

Ordered that second-reading speech, except for statement under section 85(5) of the Constitution Act, be incorporated on motion of Mr JENNINGS (Minister for Environment and Climate Change).

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

That the bill be now read a second time.

The introduction of this bill is part of the Victorian government's commitment to promoting and protecting the health and wellbeing of all Victorians. By repealing the Health Act 1958 and introducing this new bill, we are updating and modernising Victoria's public health framework.

Progress in health is most often measured in terms of access to hospital and medical services. These are important signposts for government and contribute enormously to public confidence about how their health system is travelling.

But there is another dimension to the operation of Victoria's health system which relates to the ways in which the health of the population as a whole is protected and nurtured — the investments which governments make in what is broadly called 'public health' through the systematic protection of communities from infectious disease and other mass hazards to health, through the regulation of water and food supplies, through the promotion of safe and healthy behaviours and environments and through preparations made to enable health services to respond effectively to disasters and other mass casualty events.

The Brumby government is strongly focused on prevention.

The 2008 statement of government intentions noted that the government has invested heavily in Victoria's health system and pursued the case for comprehensive national health reform around three key areas:

> shifting the focus to prevention;
>
> placing people and their needs at the centre of the health care system; and
>
> restoring effective funding of the public hospital system.

The new Public Health and Wellbeing Bill is a key initiative in the government's overall strategy of promoting prevention wherever possible.

It is designed to provide a modern legislative population health framework that is focused on prevention and is sufficiently flexible to enable swift and effective responses to emerging new threats to public health, as well as well-known risks to public health.

The bill recognises that the state has a significant role to play in protecting 'public health and wellbeing', which is defined to include the absence of disease, illness, disability or premature death, and the collective state of public health and

wellbeing. The bill signifies that the state has a role to play in reducing health inequalities, as well as aiming to improve health status overall. This throws out a major challenge to government. Research indicates that people's health outcomes are highly influenced by the whole environment that they experience, as well as by genetic factors and their general capacity for resilience. People suffering from social disadvantage generally have poorer health outcomes than the rest of the community.

We as a government have an important role in addressing these important areas of social policy. But we also need the tools to demonstrate the need for action to tackle these social conditions that directly influence health outcomes. The bill provides the government with key tools to enable data collection, to support evidence-based policy and effective agenda setting.

Public health delivery impacts directly on public confidence in the health system when the risks of failure are palpable — for example, when there is an outbreak of legionnaire's disease or when water supplies are contaminated by E. coli, or when the response to disasters is slow or ill planned.

The bill provides for responses to risks to health and enables the Department of Human Services to investigate and manage these risks, through a graduated scheme that enables a proportionate response to matters ranging from small incidents to emergencies, such as an influenza pandemic. The emergency powers in the bill will complement Victoria's detailed emergency planning system.

In 2007 a review process was commissioned to provide critical commentary of the responses by the Department of Human Services to people living with HIV who place others at risk, in the context of past failings in these processes. These reviews and the report of an international expert provided a body of work that gives overall support for the current approach undertaken by the Department of Human Services in the management of people living with HIV who put others at risk, namely a public health approach. These reviews have been taken into account in drafting this legislation.

Unlike these immediate risks and their control, the performance of public health programs in reducing the 'slow burning' risks which undermine the community's health in the longer term — the risky behaviours such as smoking, the diseases preventable by immunisation in childhood, or detectable at early stages by good screening services — contribute less to immediate public confidence in the system but have far-reaching consequences for life expectancy, the burden of disease and the sustainability of the health system itself.

At the same time, public health must be involved in working beyond even the 'slow burning' risks. The determinants of health precede risk, and risk may in fact be an outcome of failure in the areas where the determinants are at work — education, employment and healthy workplaces, good housing and livable communities, good social networks and social inclusion.

The bill contains a number of specific new initiatives which will enable a strategic and planned strategy to tackle these broader public health problems in a proactive way and reduce health inequalities:

it requires preparation of a state public health and wellbeing plan every four years, with the first plan to be produced by 1 September 2011 at the latest. This initiative is part of the Brumby government's wider commitment to accountability and public engagement — other examples include the recent statement of government intentions;

it enables the secretary to conduct a public inquiry in respect of any serious public heath matter. The minister may also direct the secretary to conduct such an inquiry; and

it enables the minister to direct that a health impact assessment be carried out of the public health and wellbeing impact of a matter specified in the direction.

Improving the health of Victorians is also an important part of national economic reform. Victoria launched the *Third Wave of National Reform*, which sets out the path to securing Australian prosperity for future generations. The *Third Wave* notes that 'the most effective way to boost productivity and participation is to develop our human capital'. Improving health is identified as a key component to building a healthy, skilled and motivated society, and a high-income economy that is among the world's best.

The bill deals with a broad range of matters and has been developed following thorough consultation. In 2004, the government released a discussion paper regarding the review of the Health Act and in 2005 it released a draft policy paper.

The government greatly appreciates the submissions that it received in relation to both of these papers from a wide variety of sources, including local government, professional associations, academics, peak health bodies, health workers, industry representatives and members of the public.

I turn now to the parts of the bill.

Parts 1 and 2

Part 1 of the bill contains the purpose of the bill, the definitions and the commencement provisions. The stated purpose of the bill is to enact a new legislative scheme which promotes and protects public health and wellbeing in Victoria.

The commencement provision allows the bill to be implemented over a period of time, with the possibility of some sections being proclaimed before the default commencement date of 1 January 2010. The default commencement date will allow adequate time for the remaking of eight existing sets of regulations and provides for the development of new regulations, should these be required. Allowance must also be made for the development of protocols and guidelines with agencies involved in enforcement of the new legislation, including Victoria Police and municipal councils.

Part 2 of the bill contains the objectives and principles of the bill. For the first time in Victorian health legislation we are enshrining in the objectives the state's role in protecting public health and wellbeing. These principles provide an important guide to the officers who exercise a broad range of powers under the bill. The principles support informed and transparent decision making that involves a proportionate response to risks to public health. The principles also note the importance of collaboration and prevention. The

precautionary principle is included and provides that if a public health risk poses a serious threat, lack of full scientific certainty should not be used as a reason for postponing measures to prevent or control the public health risk.

Part 3

Part 3 sets out the functions of the secretary, the chief health officer and local councils in administering the act. The chief health officer is being recognised for the first time as a statutory position that exercises a range of powers, particularly with regard to the control of infectious diseases. The chief health officer is also required to develop and implement strategies to promote and protect public health and wellbeing.

Part 3 outlines the public health functions of municipal councils. These will not change the major role of local councils in enforcing public heath standards within their community.

The bill clarifies that councils have the role of coordinating and providing immunisation services to children living and being educated in their municipal districts. I applaud the outstanding efforts of councils throughout Victoria in performing this statutory duty to protect residents from vaccine-preventable diseases. Victoria's state government is a strong supporter of councils' immunisation work.

As a result of the hard work of Victorian councils and general practitioners, by the final quarter of 2006 Victoria achieved greater than 90 per cent coverage for full vaccination in children aged one, two and six. This is the first time a state or territory in Australia has achieved this level of coverage.

Part 3 provides that councils must prepare public health and wellbeing plans. These provisions are similar to those in the Health Act, but have been revised to allow public health planning to be better integrated into other council planning.

Part 4

Part 4 provides for consultative councils, which promote public health and improvements in clinical practice by inquiring into specific areas of medical specialisation with a view to monitoring services and improving prevailing systems and standards. One such council is the Consultative Council on Obstetric and Paediatric Mortality and Morbidity, the functions of which are set out in part 4. These functions remain as they are in the Health Act, having been reviewed and updated in 2004.

Part 4 includes tight confidentiality provisions, which enable the consultative councils to gather all relevant information and make well-informed recommendations on improved practice.

Part 5

Part 5 provides for a state public health and wellbeing plan, which will establish the framework for promotion and protection of public health in Victoria. The state public health and wellbeing plan will be a public document that establishes Victoria's objectives and policy priorities over a four-year period to meet the public health and wellbeing needs of the people of the state of Victoria. The state plan will complement public health and wellbeing planning, which is undertaken by all municipal councils and will specify the collaborative measures to be taken by the state in achieving these objectives and priorities.

Part 5 also provides for the conduct of public inquiries to investigate any serious public health matter. These provisions are similar to those in other jurisdictions with modern public health legislation.

The health impact assessment provision will enable the minister to be informed of the impact that a specified matter may have on public health and wellbeing.

Part 6

Part 6 sets out provisions relating to nuisances. Municipal councils must investigate and address nuisances within their municipal districts.

The part also continues the requirement for hairdressers, beauty parlours and tattooists, businesses that perform skin penetrations and prescribed accommodation to be registered with their local council. Businesses conducting colonic irrigation will also now be required to register.

The government recognises the infection control risks that may be posed by such businesses and requires registration as a means of enabling those risks to be managed.

It is not the intention of the bill to establish a regulatory framework governing these businesses that relates to matters other than public health. This is a continuation of the current regulatory requirements in the Heath Act and regulations.

Part 7

Part 7 provides for the registration of cooling tower systems and the development and auditing of risk management plans. These legislative provisions were originally introduced into the Building Act in 2001 and have lead to a significant decrease of Legionella in cooling tower systems in Victoria. Given the public health focus of these provisions, it is more appropriate for the provisions to be in this bill.

Part 7 also regulates the use of pesticides in specified areas, where the pesticide use is not for the purposes of horticulture or agriculture, and specifies the licensing requirements for pest controllers. These provisions are complemented by the regulation of pesticides under the Agricultural and Veterinary Chemicals (Control of Use) Act 1992.

Part 8

Part 8 relates to the management and control of infectious diseases and micro-organisms.

A critical aspect of appropriate public health interventions is a good disease surveillance system. The part provides for notifications of certain infectious diseases and micro-organisms by doctors and pathology services. It also allows for the prompt addition by the Governor in Council of an infectious disease to the list of notifiable diseases, to allow for a rapid response to any new threat to public health.

The principles under which this part is to be administered are set out in the bill. This is important as this part provides powers that may interfere with an individual's behaviour and movements. The bill states that in those circumstances the measure that is the least restrictive of the rights of the person should be chosen.

Clause 113 of the bill empowers the chief health officer to make orders requiring a person to be examined or tested by a registered medical practitioner for an infectious disease. The chief health officer may make such an order if there is reason to believe that a person may have an infectious disease and may pose a risk to public health and the chief health officer is unable to assess the level of that risk posed by that person's infectious status due to a lack of information. An examination and testing order is designed to make that information available.

The purpose of public health testing and examination orders made under clause 113 is to confirm the infectious status of a person who may have an infectious disease so that the behaviour and conduct of that person with the potential to pose a risk to others can be managed, either cooperatively or if necessary with further orders. The threshold for the making of the order is that there is reason to believe the person has an infectious disease in circumstances where the disease will pose a serious risk to public health.

In this, these orders can be distinguished from the compulsory testing orders that may be made by the chief health officer under clause 134 of the bill, which will be discussed later.

In addition to examination and testing orders, the bill empowers the chief health officer to make public health orders in relation to a person who has an infectious disease and who needs to take particular action to prevent posing a serious risk to public health. It should be noted that the vast majority of persons who are diagnosed with an infectious disease behave appropriately to avoid posing a risk to others. There are a small minority who, for a number of reasons, may not be capable of taking that action, and a smaller number who may not be willing to do so.

The chief health officer is empowered to make a range of orders to deal with the various circumstances of these persons. These provisions have been revised as a result of a number of recent reviews of the administration of public health order powers both nationally and in Victoria. The bill contains a right of internal review and a right of appeal to the Victorian Civil and Administrative Tribunal against a public health order as a result of the recommendations of those reviews. The maximum period of a public health order is six months, although there is provision to extend an order. The bill provides that it must be varied or revoked if the circumstances that justified it being made should change.

The person subject to the order may apply at any time to the chief health officer for a review of the order and the chief health officer must within seven days of receiving such an application revoke, vary or confirm the order.

The person subject to the order may also at any time apply to the Victorian Civil and Administrative Tribunal for a review of the order.

Although it remains an offence not to comply with an order, the offence of knowingly or recklessly infecting another person with an infectious disease previously found in section 120 of the Health Act has not been included in the bill. Since that offence was enacted in 1988, there has been no successful prosecution of the offence. The offence of 'knowingly' infecting another, apart from being very difficult to prove, has been superseded by the inclusion in section 19A of the Crimes Act of an offence to intentionally infect another person with HIV. The Crimes Act also contains a hierarchy of offences that can be used to prosecute conduct that recklessly puts others at risk of their life or of serious harm, and this includes the reckless transmission of an infectious disease.

Other factors are that the Crimes Act makes provision for charges of 'attempting' to commit the offence, and that a criminal penalty is more appropriate than the existing civil penalty. The prosecution of these offences under the criminal law, rather than health legislation, is also in keeping with the recommendations of the reviews of the administration of public health orders mentioned earlier. It is appropriate that conduct by a person with an infectious disease that amounts to criminal behaviour be referred to the police and be dealt with by the criminal justice system.

Part 8 re-enacts provisions for the making of compulsory testing orders when an incident involving a caregiver (such as a doctor or nurse) or custodian (such as a police officer) could have resulted in a person involved in the incident contracting a blood-borne infectious disease, such as HIV or hepatitis C. The most common example of such an incident is a needle-stick injury involving a health worker at a hospital. After such an incident, it is necessary for both people involved to be tested so the risk of infection having been transmitted can be established.

Most people involved in these incidents consent to being tested and no orders are necessary. The bill continues the current system by which in those cases where it does prove necessary a senior medical officer at a health service can order a test to be conducted on a person involved.

These provisions were amended as recently as 2005, remain substantially the same, and are working well. However, the definition of 'caregiver or custodian' has been expanded and made more explicit in the bill. It includes a wider range of health workers, and any police officer while acting in the course of their duties as a police officer.

There is now explicit provision made in the bill for the chief health officer to obtain existing health information about a person involved in one of these incidents, either from departmental records or from records held by a health service, and to disclose that information to the person who may be at risk. This will eliminate the necessity for testing of a person previously diagnosed as having one of these infectious diseases.

In cases where no health records are available, the chief health officer may make an order for testing.

Compulsory testing orders are not intended to control the conduct of persons who have an infectious disease. Rather they are aimed at obtaining information in order to give a person who may have been exposed to infection a better understanding of their risk of contracting the disease, and what may be required for clinical management or treatment of the risk.

Compulsory testing orders are subject to a much lower threshold and are only made if there is a possibility that if a person had an infectious disease, then that disease may have been transmitted to a caregiver or custodian, depending on the nature of the incident. These orders are primarily made in the interests of the caregiver and custodian and not the person being tested, who may not in fact have any disease or who may have a disease but not pose any risk to the public at large. These compulsory testing orders are of more restricted scope

than other examination and testing orders. They are serving a narrower purpose in recognition of the risks that those such as health professionals and police officers may be exposed to when performing their everyday work.

The vast majority of incidents involving caregivers and custodians do not result in the transmission of a blood-borne virus, and preventive therapy can be taken to further reduce the risks of acquisition of hepatitis B and HIV. For example, the risk of transmission from needle-stick injury to a caregiver or custodian from someone who is hepatitis B positive and infectious is estimated to be around 33 per cent, for a hepatitis C-positive person the risk is around 3 per cent and from an HIV-positive person the risk is around 0.3 per cent. Caregivers and custodians should be routinely protected against hepatitis B as a vaccine is available and, if they are not, a course of vaccination can be commenced after the injury. With hepatitis C there is presently no vaccine or post-exposure prophylaxis available, and with HIV the risk assessment will take into account the risk of transmission according to the nature of the injury. A post-exposure prophylaxis is available for HIV and would be used if the risk was considered high.

If the chief health officer is satisfied that it is necessary and orders a person to undergo a blood test and that person refuses to comply with the order, there is provision in the bill for the chief health officer to make application to the Magistrates Court to allow Victoria Police to use reasonable force to enforce the order. This may involve using reasonable force both to take a person to a place to be tested, and to undergo the test.

What can be considered reasonable will depend on the circumstances of each case. The use of unreasonable force would expose those using it to civil liability. It is envisaged that force will be used very rarely, and its use would be appropriate and only to the extent necessary in those rare cases.

In order to increase the transparency of the chief health officer's decisions relating to both compulsory testing orders and public health orders, de-identified information regarding these orders must be included in the Department of Human Services annual report.

Part 8 also provides for immunisation status certificates, which must be provided by a parent to their child's primary school. These certificates are a means of encouraging parents to know whether their child is fully immunised. A certificate recording whether or not a child is immunised assists the school in responding to outbreaks of vaccine-preventable diseases. This provision is not intended to prevent parents from objecting to their children being immunised.

The part re-enacts the provisions regarding blood and tissue donations. These provisions provide a statutory defence for blood donors against claims that a recipient has contracted an infectious disease from a donation, if specified facts and matters can be proven.

The part also makes provision for autopsies to be conducted where the coroner does not have jurisdiction and the chief health officer believes that an infectious disease caused or contributed to the person's death.

The part also regulates brothels and escort agencies in order to reduce the likelihood of the transmission of sexually transmissible infections. These provisions will not affect the regulation of brothels and escort agencies that currently occurs under the Prostitution Control Act, but will enhance safe sex practice.

Part 9

Part 9 provides for powers to be exercised by authorised officers. The powers of entry to be exercised are consistent with current government policy, but make allowance for response to risks to public health, as well as the investigation of offences.

For the purposes of investigating risks to public health, authorised officers may enter public places and any other premises, including residential premises, with the consent of the occupier.

For the purposes of monitoring compliance with the act and regulations, or to investigate a possible contravention of the act or regulations, authorised officers can enter any regulated premises at any reasonable hour during the daytime, or when the premises is open to the public. The categories of regulated premises are specified in the bill. If a business premises is part of a residential address, the officers may only enter that part of the premises that is registered for the business.

Entry to any premises, including residential premises, is with consent or with a warrant.

However, in relation to any contravention of the act or regulations, an authorised officer may, without a warrant, enter any premises at any time if they believe on reasonable grounds that there may be an immediate risk to public health that must be dealt with.

The rules regarding announcement of entry, identification cards, and the powers of search and seizure under warrant reflect current government policy and are consistent with like provisions in recent statutes dealing with such matters.

Part 10

Part 10 provides for powers for the chief health officer to respond to risks to public health. These are the powers used to deal with the investigation and management of the most common risks to public health, such as outbreaks of salmonella and gastroenteritis. However, they have been made flexible enough to deal with other less common risks as they arise.

Part 10 also provides for the declaration of a public health emergency by the Minister for Health. An emergency will only be declared after consultation with the relevant authorities under the Emergency Management Act. Should that consultation determine that action is more appropriately taken under the Emergency Management Act, the minister would not declare an emergency under these provisions.

Whilst it is hoped that such an emergency will not often arise, it is essential that Victoria has the appropriate planning and legal framework to address these risks.

The powers would allow the chief health officer to order persons or groups of persons to remain at a place, or not to enter particular areas. An order to detain people will be subject to a requirement that it be reviewed every 24 hours. Decisions to detain people for more that 24 hours will be supervised by the chief health officer, and reportable to the

minister. The vast majority of people are cooperative with authorities in such circumstances, through both self-interest and civil duty. Those who are not could be made subject to more specific public health orders if necessary to protect public health.

The bill provides mechanisms for the chief health officer to obtain the assistance of council officers and the police in the course of an emergency. It is envisaged that council officers will be authorised to perform specified roles, and that the police would carry out normal policing duties, in accordance with agreed protocols.

Part 11

Part 11 has general regulation-making provisions, general powers of authorised officers, provisions regarding review and appeals and matters regarding offences and legal proceedings. The part also enables the secretary or a municipal council to issue an improvement or prohibition notice in relation to a contravention or likely contravention of the act.

Part 12

Part 12 contains saving and transitional provisions and amendments to other acts, including the repeal of the Health Act 1958.

Section 85 of the Constitution Act

Mr JENNINGS — I make the following statement under section 85(5) of the Constitution Act 1975 of the reasons why it is the intention of clause 240 of the bill to alter or vary section 85 of the Constitution Act 1975.

Clause 240 states that it is the intention of this section to alter or vary section 85 of the Constitution Act 1975 to the extent necessary to prevent the bringing before the Supreme Court of an action of a kind referred to in sections 124 and 142.

The actions referred to in sections 124 and 142 are actions against a registered medical practitioner.

Section 124 provides that no action will lie against a registered medical practitioner who in good faith and with reasonable care conducts a test, examination and assessment, or provides counselling, pharmacological treatment or prophylaxis, in relation to an examination and testing order or a public health order made under division 2 of part 8 of the act. Division 2 deals with the management and control of infectious diseases, and empowers the chief health officer to order a person to undergo any of a range of measures to reduce the risk they may pose to public health. Often these measures, such as an examination or counselling about the nature of the disease, will be undertaken by a registered medical practitioner.

Similarly, section 142 provides that no action lies against a registered medical practitioner who in good faith and with reasonable care takes a blood or urine sample, conducts a test or provides test results or counselling in relation to a test on a person who has been involved in an incident with a caregiver or custodian. In relation to these incidents, the chief health officer may order that a test be conducted on a person who has refused to be tested, and a registered medical practitioner will be asked to perform the test and provide results.

The aim of sections 124 and 142 is to protect registered medical practitioners who implement measures ordered by the chief health officer as part of the response to a threat to the health and wellbeing of the community. It is appropriate that registered medical practitioners be protected from legal liability for their actions in these circumstances. If registered medical practitioners were not provided with this protection, the regulatory framework for the protection of the public from infectious disease would not be effective.

Incorporated speech continues:

I commend the bill to the house.

Debate adjourned on motion of Mr D. DAVIS (Southern Metropolitan).

Debate adjourned until Thursday, 3 July.

ADJOURNMENT

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

That the house do now adjourn.

Calder Highway: Taradale signage

Ms LOVELL (Northern Victoria) — My adjournment issue is for the attention of the Minister for Roads and Ports in the other place. It concerns directional signage for services in Taradale, a town that has been bypassed by the latest section of the Calder Highway duplication works. The action that I seek is for the minister to upgrade signage to Taradale to include services available in that town.

The latest section of the Calder Highway duplication between Kyneton and Bendigo has recently been opened. This is a project that has been completed ahead of time, because the previous federal government, led by John Howard, had the vision to inject massive funding into the improvement of Victoria's road network. The new section, which opened in April, bypasses the towns of Malmsbury and Taradale, and signage on this new section directs passing motorists to

accommodation and refreshment opportunities at Malmsbury, including the town's famous bakery, but there is no signage directing motorists to service opportunities in Taradale because of VicRoads strict signage criteria. Under VicRoads criteria motorists are directed to only within 5 kilometres of the freeway, and unfortunately Taradale falls just outside the 5-kilometre limit.

Taradale offers motorists the opportunity to refuel, a service that is not available in nearby Malmsbury. In fact Taradale has not one but two service stations, but no signage to direct motorists from the freeway to the stations. Taradale service station operators have expressed their disappointment, but the situation has now reached a crisis point. One operator has reported that takings have dropped to around $40 a day and that on one occasion they took zero takings for that day. Operators are concerned that if signage is not provided they may be forced to close within a month. So I call on the minister to upgrade signage to Taradale to include services available in that town.

Water: Smart Water Fund

Ms BROAD (Northern Victoria) — I wish to raise a matter for the attention of the Minister for Water in the other place, Tim Holding. The action I seek is for him to assist rural communities to innovate and develop new ways to recycle and conserve water. Yesterday the Minister for Water announced a new round of grants of up to $500 000 for innovative water-saving projects to help reduce demand on our drinking water supplies. Up to $5 million is available for businesses, sports clubs, research centres and other organisations throughout Melbourne and regional Victoria as part of the Smart Water Fund. Two streams of funding are now available: $3 million for community groups and businesses with innovative water projects throughout Melbourne and regional centres, and $2 million for research and development into the key challenges facing the water industry.

The Smart Water Fund provides seed funding for water conservation, water recycling, research and development projects and biosolids management projects. Over $25 million in seed funding has already helped more than 150 projects in water conservation, recycling, research and development and biosolids management projects. Past recipients, I am pleased to say, include Murray Goulburn Cooperative and Bendigo Health.

Finding new and innovative ways to conserve and recycle water is essential to securing Victoria's water future, and for this reason the action I seek is for the water minister to assist rural communities to innovate and develop new ways to recycle and conserve water.

Rail: Pakenham pedestrian crossing

Mr O'DONOHUE (Eastern Victoria) — I raise a matter this evening for the attention of the Minister for Public Transport in the other place. It concerns the lack of a railway crossing on the western side of McGregor Road, where the Pakenham railway line intersects with McGregor Road, Pakenham.

For the minister's information, McGregor Road is one of the main ways to access the Pakenham bypass from the township and surrounds of Pakenham, and the opening of that bypass has significantly increased traffic flow down McGregor Road. The south side of the railway line, in and around McGregor Road, has seen significant residential development and growth in recent years, and the combination of increased traffic flow along McGregor Road and increased population growth in and around that road has seen increased pedestrian traffic, particularly around the four schools to the north of the railway line near McGregor Road. These schools are St Patrick's Primary School, the Pakenham Consolidated Primary School, Beaconhills College and Pakenham Secondary College.

The lack of a pedestrian crossing across the railway line on the western side of McGregor Road means that students and other pedestrians who need to cross that road must use the crossing on the eastern side. Given the traffic volumes and the lack of a pedestrian crossing over the railway line, this is a dangerous endeavour. I have had representations from a number of constituents who are concerned on behalf of their children or themselves about the need to cross McGregor Road to access the railway crossing on the eastern side. Many people are choosing to cross on the western side without a safe crossing over the railway line, and this is dangerous as well.

The action I seek from the minister is to construct a crossing over the railway line on the western side of McGregor Road as a matter of urgency. I raised this matter with the minister about a month ago in correspondence, and I failed to receive a response. I seek the minister's action as a priority, particularly in view of the coming school holiday period. It is time for action, and I ask her to take that action as soon as possible.

Kangaroos: harvesting

Mr P. DAVIS (Eastern Victoria) — My adjournment matter tonight is for the Minister for

Agriculture in the other place. It relates to the fact that Victoria remains the only mainland state to impose a ban on the processing of kangaroo meat. I have noted recent signs that the government may be preparing to change its position. The minister indicated in discussions with the Kangaroo Industries Association of Australia that the government was prepared to look at the feasibility of processing kangaroo meat. Previous attempts to open the matter for discussion were met with the blunt response, 'No, it is not government policy'. This is a heartening sign which, I remind the house, is in line with the Liberal Party policy position issued for the 2006 election. The evidence strongly supports such a move.

The kangaroo industry in Australia has developed significantly over the past 30 years. It generates more than $200 million a year and employs more than 4000 people in rural communities. The industry's critics raise the spectre of a threat to kangaroo species and the issue of cruelty. The first point is countered by a paper prepared by the Kangaroo Industries Association in 2002 which put kangaroo numbers at 58.6 million, more than twice the number of cattle and about two-thirds of the current Australian sheep population. The average harvest of kangaroos is a bit over 2 million a year, hardly enough to pose a threat to their continuing existence. In fact, harvesting is part of a management strategy to ensure that numbers do not rise to an unsustainable level. It also ensures a balance on grazing pressure between the wild kangaroos and animals such as sheep and cattle that are raised domestically.

Kangaroo harvesting is conducted under state management plans that require the approval of the federal department, Environment Australia. Licensed harvesters have to be trained and have to adhere to the national code of practice for the humane shooting of kangaroos, a stringent safeguard against cruel practices. They must tag all harvested kangaroos, and processors are required to file monthly reports on the numbers of tags, where they are used, and details about the animals they are attached to. As the industry association paper points out, intensive use and scientific effort have answered the questions of potential impact and enabled the industry to defend itself based on demonstrated science.

In effect, harvesting for meat processing makes practical and environmental sense. It has the potential to be an industry of considerable value to country Victoria, and the market has demonstrated a demand. At present Victorians can eat kangaroo meat, but it cannot be processed here. My request to the minister is that he follow through on his discussions with the association by correcting the anomaly — that is, enable the establishment of the kangaroo harvesting and processing industry.

Tourism: Western suburbs

Mr FINN (Western Metropolitan) — I wish to raise a matter for the attention of the Minister for Tourism and Major Events in the other place. It follows a visit to the Western Metropolitan Region by the deputy opposition leader and shadow tourism minister in the other place, Louise Asher, last week when she and I met with representatives of Western Melbourne Tourism and later that day with Mr Glenn Goodfellow from the Wyndham Tourism Association.

As I have mentioned in this house before, the west of Melbourne has much to offer in terms of tourism, and I commend the municipalities of Wyndham, Hobsons Bay, Brimbank, Maribyrnong, Moonee Valley and Melton for pooling their resources in a bid to highlight what the west has to offer.

Scienceworks at Newport is a long-time favourite, and Williamstown offers not just the most magnificent views of Melbourne by day or night but it also has one of the most impressive restaurant districts in Australia. The minister should try it.

The Werribee Open Range Zoo is a must-see attraction and I must say I feel quite sorry for those who have not taken the opportunity to experience its wonders. As I have mentioned before, the meerkats are my favourites, but the hippos are growing on me! The tortoises are not bad either. Next door to the zoo is Werribee Park Mansion, which this past January celebrated its 130th birthday, and just up the road is the Werribee Park Golf Club, offering a challenge to even seasoned golfers, with a magnificently picturesque backdrop of the Werribee River and sandstone cliffs.

Mr Jennings — I just want to go!

Mr FINN — The minister should go. Whilst in the general vicinity, a trip to the Victoria State Rose Garden is mandatory for garden enthusiasts, and those partial to a spot of shopping are doing themselves a grave disservice if they have not visited the home of Dame Edna Everage, Puckle Street in Moonee Ponds. A visit to the Point Cook homestead and the nearby RAAF Museum, a stroll along the banks of the Maribyrnong River and much more ensure visitors to the west will not leave disappointed.

As I mentioned a little earlier, there continues to be a conscious effort to tell the rest of Melbourne and Victoria that Melbourne's west has much to offer either

the day tourist or those who wish to stay a little longer, but as we know this sort of promotion costs money, and this is where the Minister for Tourism and Major Events in the other place comes in. A plan is currently being produced which will oversee a campaign to give a huge boost to tourism in Melbourne's west. My understanding is that it will also tackle some of the false perceptions those on the other side of town may have of the western suburbs and what we have to offer. I ask the minister to view this plan favourably and provide sufficient financial support to allow tourism in the west of Melbourne to bloom.

Bayside and Kingston: synthetic playing services

Mrs COOTE (Southern Metropolitan) — My adjournment matter tonight is for the Minister for Sport, Recreation and Youth Affairs in the other place. It is in regard to the provision of funding to the cities of Bayside and Kingston for feasibility studies to be conducted into the use of alternative playing surfaces on sports grounds.

It was interesting to see that in the excitement of the by-election on the weekend in Kororoit the then acting Premier, Mr Hulls, announced on 17 June that the government would give $300 000 to Kororoit for a new weather-resistant sports field. This is very unfair to those of us who live in the south-east and it is important that the cities of Bayside and Kingston are given the same type of opportunity as those in the west. The feasibility studies are required to determine what type of all-weather field would be appropriate throughout the cities of Bayside and Kingston given the fact that these councils are under such pressure due to the drought. There is not sufficient water to maintain their sports fields.

It is encouraging to see that there has been a 40 to 50 per cent increase across the board in membership of the Bayside soccer club from 2004 to 2007. However, it is disturbing that not only has this increase come to a halt but memberships have declined by over 400 this year because of the drought. We know that sports facilities are a crucial part of the community, yet this government is not doing what needs to be done to ensure their survival — and the survival of soccer in particular, which is our growth sport — for the good of residents. The City of Bayside and its adjoining City of Kingston are keen to do something that will work for both those communities, which I think is a terrific initiative and something that should be encouraged at all costs. I praise the Kingston and Bayside communities and councils and urge the government to act as a matter of urgency to ensure that the sports fields and clubs in those cities are not lost forever.

The action I am seeking is for the Minister for Sport, Recreation and Youth Affairs as a matter of urgency to allocate additional funding to the cities of Kingston and Bayside so that feasibility studies can be undertaken into the use of alternative surfaces for sports grounds.

Ringwood: transit city

Mr ATKINSON (Eastern Metropolitan) — I have a matter that is perhaps in the first instance for the Minister for Planning, but it crosses over a number of portfolios. It is about the Ringwood transit city project, which is in the city of Maroondah. It is quite an important project for the eastern suburbs. Ringwood is increasingly one of the gateway areas of the eastern suburbs, and it has been recognised by the government as a very significant activity centre. Under the stewardship of the Maroondah City Council the Ringwood area has been able to attract considerable significant investment. In particular it has secured investment from QIC towards an expansion of the shopping centre facilities in Ringwood, and also the addition of hotel facilities, residential units and other commercial space.

There have also been moves by prominent car dealerships, including Patterson Cheney Honda, and the Barro concrete group, which has a significant landholding, to make major investment decisions based on two premises: firstly, that the EastLink project will provide access to this location and be a significant factor in the ongoing investment potential of and community involvement in the Ringwood area; and secondly, the government's commitment to the transit station and to public transport facilities within the area. Their hopes were dashed — and the Maroondah City Council and the broader community were very concerned — by the state budget, which provided effectively no funding towards that transit city project. It was surprising, given that they have been given considerable encouragement by the government and, more importantly, given the opening of the EastLink project this weekend. As I indicated in my early budget speech, one would presume that the government would have wanted bus public transport to integrate with the rail line at Ringwood, and therefore that this project would have enjoyed some priority. That was not the case in this current budget.

QIC needs to make a number of decisions by September with regard to its investment in Ringwood. I would hate to see its investment lost, downgraded or slowed simply because this government had not

provided the right signals to that developer and that community. I therefore ask the minister for a timetable for the government's meeting its commitment on the Ringwood transit city project and an assurance that funds will be provided in next year's budget.

Schools: Catholic sector

Mrs KRONBERG (Eastern Metropolitan) — My adjournment matter is directed to the Minister for Education in the other place. One of my constituents recently wrote to me asking why students in Victorian Catholic schools have been relegated to second-class citizens. The Catholic sector plays a significant role in the delivery of quality education for families in this state. In Victoria the sector educates over 186 000 students, or more than one in five of its students. Unfortunately for far too long state government funding for Catholic schools has continued to languish at the bottom of the table when compared with all other states. Victorian Catholic schools receive $578 less per child each year than Catholic schools in New South Wales, or a staggering $104 million less each year.

This government is aware of the disparity that is manifest by the fact that Catholic schools receive only 16 per cent of Australian government school recurrent costs (AGSRC) from the Victorian government. The government is also aware that the Catholic sector has for some time asked the government to contribute 25 per cent of the AGSRC. In order that all state recurrent and targeted grants maintain their actual value, I ask that the minister undertake a review of this iniquitous funding situation with a view to committing to the full indexation of recurrent and targeted grants, as we all realise that inadequate indexation means that the real value of state grants to this sector continues to diminish.

The DEPUTY PRESIDENT — Order! I was to call Mr Vogels on the adjournment debate, but he has indicated to me that his matter is the same as the one just raised by Mrs Kronberg. As it is the same matter he will not be proceeding with it, but perhaps the minister should be aware that there are other members who are also interested in the matter raised by Mrs Kronberg.

Responses

Mr JENNINGS (Minister for Environment and Climate Change) — I have a number of written responses to adjournment debate matters raised by members earlier. They are: one from Mr O'Donohue on 7 May 2008; two from Philip Davis, one on 27 May 2008 and one on 28 May 2008; and one from Ms Lovell on 28 May 2008.

In the interests of diplomacy and the desire to get out of here as quickly as possible, I shall refer to the relevant ministers all the matters raised this evening, including Ms Lovell's one for the Minister for Roads and Ports in the other place dealing with upgrade of signage on a road at Taradale; Candy Broad's matter for the attention of the Minister for Water in the other place seeking his support for rural communities in relation to the Smart Water Fund grants program; Mr O'Donohue's matter for the Minister for Public Transport in the other place asking her to construct a railway crossing on the western side of McGregor Road, Pakenham; Philip Davis's matter for the attention of the Minister for Agriculture in the other place seeking his support to encourage the development of the kangaroo meat industry in Victoria; and Mr Finn's perfectly penned submission in relation to the virtues of the western suburbs, and calling on the Minister for Tourism and Major Events in the other place to join him in his flourish around those municipalities.

Andrea Coote raised a matter for the Minister for Sport, Recreation and Youth Affairs in the other place seeking his support to provide for the ongoing viability of sports grounds in Bayside and Kingston.

Mr Atkinson raised a matter for the Minister for Planning asking him to give undertakings and commitments about the timetable for government support for the Ringwood transit activity centre. Jan Kronberg voiced, and Mr Vogels apparently joined her in solidarity, a claim for financial support for Catholic schools funding. Perhaps he was in the confessional at the time.

The DEPUTY PRESIDENT — Order! The house now stands adjourned.

House adjourned 6.35 p.m. until Tuesday, 29 July.