PARLIAMENT OF VICTORIA

PARLIAMENTARY DEBATES (HANSARD)

LEGISLATIVE ASSEMBLY

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 Assembly committees

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

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

Joint committees

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Heads of parliamentary departments

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

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

Parliamentary Services — Secretary: Dr S. O'Kane

MEMBERS OF THE LEGISLATIVE ASSEMBLY

FIFTY-SIXTH PARLIAMENT — FIRST SESSION

Speaker: The Hon. JENNY LINDELL

Deputy Speaker: Ms A. P. BARKER

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

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The Hon. J. M. BRUMBY (from 30 July 2007)
The Hon. S. P. BRACKS (to 30 July 2007)

Deputy Leader of the Parliamentary Labor Party and Deputy Premier:
The Hon. R. J. HULLS (from 30 July 2007)
The Hon. J. W. THWAITES (to 30 July 2007)

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

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

Leader of The Nationals:
Mr P. J. RYAN

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

Member	District	Party	Member	District	Party
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Campbell, Ms Christine Mary	Pascoe Vale	ALP	Neville, Ms Lisa Mary	Bellarine	ALP
Carli, Mr Carlo Domenico	Brunswick	ALP	Noonan, Wade Mathew [5]	Williamstown	ALP
Clark, Mr Robert William	Box Hill	LP	Northe, Mr Russell John	Morwell	Nats
Crisp, Mr Peter Laurence	Mildura	Nats	O'Brien, Mr Michael Anthony	Malvern	LP
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Duncan, Ms Joanne Therese	Macedon	ALP	Powell, Mrs Elizabeth Jeanette	Shepparton	Nats
Eren, Mr John Hamdi	Lara	ALP	Richardson, Ms Fiona Catherine Alison	Northcote	ALP
Foley, Martin Peter [2]	Albert Park	ALP	Robinson, Mr Anthony Gerard	Mitcham	ALP
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Graley, Ms Judith Ann	Narre Warren South	ALP	Scott, Mr Robin David	Preston	ALP
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Haermeyer, Mr André [3]	Kororoit	ALP	Shardey, Mrs Helen Jean	Caulfield	LP
Hardman, Mr Benedict Paul	Seymour	ALP	Smith, Mr Kenneth Maurice	Bass	LP
Harkness, Dr Alistair Ross	Frankston	ALP	Smith, Mr Ryan	Warrandyte	LP
Helper, Mr Jochen	Ripon	ALP	Stensholt, Mr Robert Einar	Burwood	ALP
Herbert, Mr Steven Ralph	Eltham	ALP	Sykes, Dr William Everett	Benalla	Nats
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Howard, Mr Geoffrey Kemp	Ballarat East	ALP	Thwaites, Mr Johnstone William [6]	Albert Park	ALP
Hudson, Mr Robert John	Bentleigh	ALP	Tilley, Mr William John	Benambra	LP
Hulls, Mr Rob Justin	Niddrie	ALP	Trezise, Mr Ian Douglas	Geelong	ALP
Ingram, Mr Craig	Gippsland East	Ind	Victoria, Mrs Heidi	Bayswater	LP
Jasper, Mr Kenneth Stephen	Murray Valley	Nats	Wakeling, Mr Nicholas	Ferntree Gully	LP
Kairouz, Ms Marlene [4]	Kororoit	ALP	Walsh, Mr Peter Lindsay	Swan Hill	Nats
Kosky, Ms Lynne Janice	Altona	ALP	Weller, Mr Paul	Rodney	Nats
Kotsiras, Mr Nicholas	Bulleen	LP	Wells, Mr Kimberley Arthur	Scoresby	LP
Langdon, Mr Craig Anthony Cuffe	Ivanhoe	ALP	Wooldridge, Ms Mary Louise Newling	Doncaster	LP
Languiller, Mr Telmo Ramon	Derrimut	ALP	Wynne, Mr Richard William	Richmond	ALP
Lim, Mr Muy Hong	Clayton	ALP			

[1] Resigned 6 August 2007
[2] Elected 15 September 2007
[4] Elected 28 June 2008
[5] Elected 15 September 2007

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THURSDAY, 26 JUNE 2008

CONTENTS

Thursday, 26 June 2008

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

BUSINESS OF THE HOUSE

Notices of motion: removal

The SPEAKER — Order! I advise the house that under standing order 144 notices of motion 58, 59 and 177 to 185 will be removed from the notice paper on the next sitting day. A member who requires the notice standing in his or her name to be continued must advise the Clerk in writing before 2.00 p.m. today.

PETITION

Following petition presented to house:

Bass electorate: health services

To the Legislative Assembly of Victoria:

With the withdrawal of local doctors to operate the accident and emergency service for the Bass Coast, the demise of the Warley Hospital on Phillip Island, the rapid increase in growth and ageing population, the increasing tourist population and the proposed desalination project has put and will increase further pressure on the local hospital and ancillary services of this community to provide specialist services within this community instead of travelling to Melbourne or Traralgon. This has also put extreme pressure on the Rural Ambulance Service to cover the lack of hospital services in this area.

We, the undersigned concerned citizens of Victoria, ask the Victorian Parliament and the Minister for Health to support our petition for funding the upgrade of the health services in the Bass Coast region.

By Mr K. SMITH (Bass) (59 signatures)

Tabled.

PLANNING: MINISTERIAL INTERVENTION

Statement 2007–08

Mr BATCHELOR (Minister for Community Development), by leave, presented statement on ministerial intervention in planning matters, May 2007 to April 2008.

Tabled.

ENVIRONMENT AND NATURAL RESOURCES COMMITTEE

Impact of public land management practices on bushfires in Victoria

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

Tabled.

Ordered that report and appendices be printed.

ELECTORAL MATTERS COMMITTEE

Conduct of 2006 Victorian state election

Mr O'BRIEN (Malvern) presented report, together with appendices and transcripts of evidence.

Tabled.

Ordered that report and appendices be printed.

DOCUMENTS

Tabled by Clerk:

Members of Parliament (Register of Interests) Act 1978 — Summary of Variations Notified between 9 October 2007 and 25 June 2008 — Ordered to be printed

Multicultural Victoria Act 2004 — Victorian Government Achievements in Multicultural Affairs Report 2006–07

Police Integrity, Office of — Report on investigation into Operation Clarendon — Ordered to be printed

Special Investigations Monitor, Office of — Report under s 62 of the *Major Crime (Investigative Powers) Act 2004*

Subordinate Legislation Act 1994 — Minister's exception certificate in relation to Statutory Rule 65.

TOBACCO (CONTROL OF TOBACCO EFFECTS ON MINORS) BILL

Introduction

Received from Council.

The SPEAKER — Order! I have received the following message from the Legislative Council:

The Legislative Council transmit to the Legislative Assembly a bill for an act to amend the Tobacco Act 1987 to further control the effects of tobacco products on minors by making it an offence to smoke in motor vehicles in the presence of

minors and for minors to possess tobacco products and for other purposes with which they request the agreement of the Legislative Assembly.

Before the house proceeds, I advise the house that following examination I am of the opinion that the bill is a direct infringement of the privileges of this house in that it seeks to force an appropriation from the Consolidated Fund, a matter that under the Constitution Act 1975 must originate in the Assembly.

Mr BATCHELOR (Minister for Community Development) — I move:

That the message be taken into consideration immediately.

In doing so, Speaker, I point out that this is an unusual event. You have set out the constitutional nature of it, and I think it is appropriate that the Assembly understand and reassert its constitutional obligations. I think that is best done by taking this matter into consideration now.

Mr RYAN (Leader of The Nationals) — I rise to speak against the motion that has been moved by the Leader of the House. I move:

That the word 'immediately' be omitted with the view of inserting in its place the words 'on the next day of sitting'.

I do this in circumstances where there are significant implications in the message which has come from the Council which are very pertinent to the way that the legislative process unfolds here in this Parliament. There are implications here which go well beyond this particular piece of legislation in its own right.

The background of this is that the bill in question was introduced into the Legislative Council in December 2007 and ultimately, after being debated in the Council, was passed yesterday. Section 62 of the Constitution Act contains certain provisions regarding issues to do with appropriation. In essence those provisions, as I understand it — I do not have my copy of the Constitution Act with me; I left it by the bed at home! — generally recite that where an appropriation is to be made — —

Mr Nardella — It's in front of you. There it is!

Mr RYAN — You don't need it if you know it off by heart, member for Melton.

Mr Nardella — You're a gun lawyer!

Mr RYAN — I'm not the one reaching for the piece of legislation. The Constitution Act provides in essence that if legislation requires money to be appropriated from the Consolidated Fund, such legislation has to come from the Legislative Assembly. The concern that has arisen here is that this bill includes some new offences under the legislation which has been debated and has passed. They are infringement offences under the Infringements Act 2006. Payments of penalties for infringements can in turn be refunded under section 18 of the Infringements Act.

The difficulty that arises is that a refund can be characterised constitutionally as being an appropriation under the terms of the Constitution Act. Conceptually speaking, we could have the silly situation where the penalty infringement notice (PIN) is imposed under the provisions of this bill when it has been passed, the money is paid in accordance with that infringement notice and — for whatever potential reason, and there are many — the infringement notice is subsequently cancelled and the money reimbursed to the person who received the infringement notice. In practical terms, someone who breached this legislation could be fined $54 under a PIN and pay that fine. The money would go into the Consolidated Fund as the legislation requires. It may subsequently transpire that for whatever reason that PIN is cancelled and the person receives the $54 back, paid out of the Consolidated Fund. The argument runs that that constitutes an appropriation and that therefore the legislation must come through the Assembly as opposed to coming through the Council.

This opens up a whole panoply of areas which will need to be the subject of proper debate. There needs to be a very careful consideration of the constitutional provisions which found the way in which this argument is put. We need to have careful regard to the way that various sections of the various acts involved here are not only to be read on their face but to be interpreted. It is a matter of some complexity, and it is an issue which is deserving of fulsome consideration by the Parliament. We should not be doing this on the run. The issues that are now the subject of these considerations have been raised only earlier this morning, so that those of us who are now having to talk through this are doing it on the basis of an issue that has only now been raised by the clerks. It went through the Legislative Council without a problem from that perspective. The problem now turns out to have more complexity about it than the clerks of the Parliament or the Parliament itself anticipated, since it was not raised in that Council debate. We should deal with it properly.

Mr CAMERON (Minister for Police and Emergency Services) — I rise to speak in support of the motion of the Leader of the House that this matter be dealt with immediately. The proposition has been put forward by the Leader of The Nationals that this matter

needs to be fully considered, but the fact of the matter is that this matter is extremely clear. What we have is a piece of legislation that has originated in the upper house.

Mr K. Smith interjected.

Mr CAMERON — As the honourable member for Bass says, The Nationals have stuffed up. That is the view of the honourable member for Bass, and certainly we do not object to that view; we agree with him. If we look at section 62(1) of the Constitution Act, we see that it is extremely clear:

> A Bill for appropriating any part of the Consolidated Fund or for imposing any duty, rate, tax, rent, return or impost must originate in the Assembly.

This particular bill which has come to us from the upper house alters the Tobacco Act, and section 40 of the Tobacco Act provides that:

> … penalties under this Act —

that is, the Tobacco Act —

> form part of and must be paid into the Consolidated Fund.

The bill from the upper house which purports to amend the Tobacco Act sets out new penalties. Therefore section 40 of the Tobacco Act, whereby any of those penalties must be paid into the Consolidated Fund, comes into play.

Section 18 of the Infringements Act sets out that a penalty notice — that is, a fine — can be withdrawn. Section 18(3) sets out that:

> … an infringement notice may be withdrawn even if the infringement penalty and prescribed costs … have been paid.

But to make it extremely clear, section 18(5)(a) sets out that:

> if the penalty and costs (if any) have been paid into the Consolidated Fund, the Consolidated Fund is, to the necessary extent, appropriated accordingly …

The words are very clear. This is a bill which is offensive to the privileges of this house, but it is more offensive to section 62 of the constitution, and it is appropriate that a bill that is so offensive should be dispatched immediately.

Mr McINTOSH (Kew) — I rise to support the amendment moved by the Leader of The Nationals to the motion of the Leader of the House, which is essentially just about buying some time to consider this important constitutional issue. What we are not doing is debating the merits of your ruling, Speaker. What we are doing is seeking to buy some time for this house to consider the significant constitutional implications of that ruling.

Of course this matter only arose as a result of the amendment to the Tobacco Act proceeding through the upper house. As far as I am aware, no constitutional issue arose during the course of debate; the debate was properly levelled at the merits of the particular bill. Irrespective of the merits of the bill that was passed by the upper house, this matter is more about the constitutional implications — not only for this bill but perhaps for the whole of the constitutional makeup of the state. I would have thought that the appropriate course of action was not to debate the merits of this bill, but to debate the merits of the constitutional aspect of it and, most importantly, to give all members ample time to consider the important constitutional implications which flow from this discussion today.

Today the Speaker made a ruling; all that is happening now is that the Leader of The Nationals, who I support, is asking to buy some time so that the appropriate course of action can be considered.

This morning the matter was drawn to my attention for the first time. I thank the clerks for the detailed briefing I received on the matter. As a former barrister who practised over a number of years, my first reaction was to think about how to get some time to consider this matter wisely and in a cold hard light over a number of days, and to perhaps receive proper advice on the matter. At the end of the day, this matter is constitutional.

If the ruling stands, it will have implications for other matters — not just the ones that we are discussing today but also other matters that will arise on other occasions. When the members on the other side of the house are in opposition, which will occur after 2010, they too will be faced with this particular predicament. Future parliaments will be faced with this predicament, because it will be a ruling that will stand and bind the house. Of course the house is at liberty to change that at any time, but the law of precedent dictates that we are taking a significant step. That step is not in relation to the individual bill to amendment the Tobacco Act; we are considering a precedent that could be set in relation to the constitutional matrix of the state.

The appropriate course of action, the decent and democratic thing to do would be to buy some time. That time does not necessarily have to mean two years. The next sitting week is in a month, and that may be the appropriate time to consider the constitutional impact of this bill. Whether the bill gets debated or not is a

different issue. The most important thing is that we consider it wisely and over some time, with proper advice as to the constitutional matrix of this state and this particular bill. The ruling that is made today will become a precedent and it will apply to both sides of politics and to future parliaments. It is a major and significant step to take if we just bat ahead on the basis of the ruling the Speaker has just made.

I understand that parliamentary counsel has considered this matter and provided advice to the Speaker and to the clerks. I have been apprised of that advice. My immediate reaction is that the decent and democratic thing to do for future parliaments is to consider wisely any step that we take to amend the constitution. I would have thought that all members of the house would be keen to ensure that we get this constitutional matrix right.

On previous occasions we have passed amendments, amendments which were not necessarily supported by all sides, but the government has sought to amend our constitution so that special consideration is now required for certain parts of our constitution to be changed only by way of referendum. That is another indication of the government being prepared to say that such matters have to be considered wisely and taking into account advice from the people of Victoria. But this motion will be rammed through without proper consideration. I think that is appalling and undemocratic.

Mr LUPTON (Prahran) — I rise to support the motion put forward by the Leader of the House. The constitutional position is quite clear. I will take up the last point that was made by the member for Kew. He said that we need to delay and be concerned about making amendments to the constitution, but we are doing exactly the opposite. We are upholding the constitution, and the constitutional position is quite clear. This matter should be dealt with forthwith for a number of reasons, which I will detail.

During the life of the current Parliament we have seen in this chamber on a number of occasions now that opposition members appear to give higher authority and precedence to the privileges and assertions of the Legislative Council than they do to those of the Legislative Assembly and the constitution of this state. I would have thought that upholding the important historical privileges of this chamber would be a paramount consideration for any member elected to this house. It is quite clear, based on the advice obtained from the learned Clerk and from parliamentary counsel in relation to the way in which this sort of legislation operates — and the Speaker has made a ruling on it — that the way this bill originated in the Legislative Council was a breach of the constitution and it would be improper for this house to proceed with it.

It is important that all members of this chamber understand the importance of the privileges of this house and the important historical process whereby all legislation that in any way proposes to draw from the Consolidated Fund, from what is often referred to as consolidated revenue, originate in the Legislative Assembly. It is not only a provision that is found in our Constitution Act but is a very important historical constitutional privilege that operates in Westminster-style parliaments — namely, that all legislation which seeks, among other things, to draw on consolidated revenue should originate in the lower house.

The current Treasurer of Victoria, John Lenders, is a member of the Legislative Council, but all members will remember that when he delivered his budget this year, it was introduced in the Legislative Assembly and the Treasurer came into this chamber by leave to deliver the budget speech. That is an illustration for the purposes of the current circumstances of the requirement that all bills that have an effect on consolidated revenue need to originate in this chamber — an historical constitutional provision that is replicated in the Constitution Act in Victoria.

The motion moved today by the Leader of the House does nothing more than assert the historical privileges and primacy of this house in initiating legislation that has any call on the Consolidated Fund and uphold the constitution of Victoria in a way that is extremely important to the constitutional fabric of this state and this Parliament. The way in which the Legislative Council has gone about this process, inadvertently or otherwise, would nonetheless have the effect of usurping the constitution if the bill proceeded. That is an improper thing for any house of Parliament to countenance. The legal and constitutional situation is quite clear. There is no need for the type of delay that has been suggested by the Leader of The Nationals and the member for Kew. The constitutional situation in relation to this matter is clear. Given all of those circumstances, the motion that has been moved by the Leader of the House is entirely fitting, proper and appropriate. Members of this house should look to the privileges of this house and make sure that the constitution of this state is upheld.

Mr CLARK (Box Hill) — Speaker, your ruling and the motion moved by the Leader of the House raise profound issues: they raise issues as to the interpretation of the constitution, they raise issues on

the consequences of your interpretation if it is to prevail, and they raise issues that go to the entire constitutional history of the Westminster system. They deserve to be dealt with carefully by this house upon advice and further research and not by way of a debate that has been brought on with just a short period of notice.

I turn first to the issues of interpretation. Section 62 of the Constitution Act provides:

> A bill for appropriating any part of the Consolidated Fund or imposing any duty, rate, tax, rent, return or impost must originate in the Assembly …

The question is: is the bill in issue, the Tobacco (Control of Tobacco Effects on Minors) Bill, a bill for appropriating any part of the Consolidated Fund? The argument that is put to this house is that it does so because it imposes a penalty that can be refunded, but the refund is imposed by the bill which pays funds from the Consolidated Fund. The argument is that there is an appropriation because another act says that in certain circumstances there can be a refund out of the Consolidated Fund.

In the plain and ordinary meaning of the words, with all respect to your ruling, Speaker, and to those who have advised you, it is absolutely absurd to say that a bill that imposes a penalty which generates revenue going into the Consolidated Fund is a bill for appropriating part of the Consolidated Fund, and to reach that conclusion is something that needs very careful consideration by this house.

That brings me to the consequences of this legislation, because what has not been pointed out in debate so far is that the interpretation being made of this bill applies not only to the issue of whether bills may originate in the Assembly; it applies also to the question of whether a bill requires a message from the Governor, because if you look at section 63 of the Constitution Act, the wording is very similar indeed. We are not debating just the rights and privileges of the Assembly; we are debating the rights of the Parliament against the executive, because if the ruling being proposed today stands, it will dramatically curtail the ability of either house of Parliament to generate a non-government bill — that is, a private members bill.

The consequence, on my reading, will be that a private members bill introduced into the other place that provides for a penalty, certainly one that links back to the Infringements Act, would require a message from the Governor, and that is a restriction by the executive on the Parliament as a democratic institution that goes all the way back to the Civil War in England in the 17th century, the Glorious Revolution and the principles about the control of the Parliament over appropriation by the executive. As honourable members may or may not know, the purpose of introducing the requirement for a message was to prevent the Parliament by its own motion squandering the public revenues — that was the objective of it. It was not to make the Parliament subordinate to the executive, because a civil war had been fought, there had been the Glorious Revolution, there had been the bill of rights to assert the control of Parliament not only over taxation but over appropriation. The ruling that has been made here today and the arguments being advanced by those on the other side of the house want to entirely overturn all those principles which people have fought so long to establish under the Westminster system of democracy.

It also has the absurd consequence that, if you apply this interpretation only to legislation that has a penalty related to the Infringements Act, this bill could be reintroduced with a penalty not relating to the Infringements Act, and none of this would apply. How absurd would that be, that some act that was brought in in 2006, with no reference to its constitutional implications, could be used to strike down the right of ordinary members of Parliament to introduce a private members bill into this place? It is absolutely absurd, and we need to take time to carefully consider what we are doing, before we do something that we very much regret.

House divided on omission (members in favour vote no):

Ayes, 41

Allan, Ms	Lobato, Ms
Andrews, Mr	Lupton, Mr
Barker, Ms	Maddigan, Mrs
Batchelor, Mr	Marshall, Ms
Beattie, Ms	Morand, Ms
Brooks, Mr	Munt, Ms
Cameron, Mr	Nardella, Mr
Carli, Mr	Neville, Ms
Crutchfield, Mr	Noonan, Mr
D'Ambrosio, Ms	Pallas, Mr
Donnellan, Mr	Pandazopoulos, Mr
Duncan, Ms	Perera, Mr
Eren, Mr	Pike, Ms
Foley, Mr	Richardson, Ms
Green, Ms	Robinson, Mr
Harkness, Dr	Scott, Mr
Howard, Mr	Stensholt, Mr
Hudson, Mr	Thomson, Ms
Hulls, Mr	Trezise, Mr
Langdon, Mr	Wynne, Mr
Languiller, Mr	

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

Amendment defeated.

Motion agreed to.

Order of the day read for consideration of message.

Mr BATCHELOR (Minister for Community Development) — I move:

> That the bill be returned to the Legislative Council with a message advising that the Legislative Assembly refuses to entertain the bill as it seeks to force an appropriation from the Consolidated Fund, which is unlawful, being the exclusive power of the Legislative Assembly as set out in the Constitution Act 1975.

I have great pleasure in moving this motion today. It is a pleasure to send a message to the upper house. The reason for the government doing this is that it wishes to be seen to be actively supporting the Victorian constitution. We value and believe in the Victorian constitution and the traditions that underpin it. As the member for Box Hill so quaintly pointed out, these traditions go back to a period of civil war in the United Kingdom and the resolution of that and the settling of powers between the two houses of the British Parliament. They set the traditions which have been written into law in the Victorian constitution. It is our duty as members of Parliament to prosecute actions and conduct in this chamber and in our daily lives that support the constitution. It is the government's view that not only should we debate this issue and resolve it now, as we have voted to do, but that the government should support a proposition that it supports the constitution, and the only way we can do that is by passing the motion I have moved.

The legal arguments why the government believes that were eloquently and adequately set out by the Minister for Police and Emergency Services in the preceding procedural debate. It is not my intention to join the previous debate of lawyers at 30 paces. It was a procedural debate that drew them all out of the woodwork, and I am afraid that I cannot compete in that illustrious company. We had lawyers coming at us from all places. It was an ugly sight, and I do not want to be seen to be part of that sort of gaggle. However, the Minister for Police and Emergency Services very eloquently set out the government's reasons for supporting the view that was put forward by you, Speaker.

Opposition members argued that they want more time, that they need more time to consider the ruling and the impact it would have on the private members bill, as flawed as it is, and its future implications. Nothing in the preceding resolution or this motion prevents opposition members from doing that. If opposition members believe this is worthy of further consideration, they are obligated to do that themselves, and they have an infinite amount of time in which to do that. This motion does not seek to constrain, limit or deny opposition members the opportunity to go away and further consider this — it can do that. But, Speaker, we are presented with a considered ruling from you following advice from the clerks and parliamentary counsel where the proper consideration of this from a constitutional and legal point of view has already been undertaken.

It is wrong to suggest or say that no consideration has been given to the implications by the government; in fact quite the contrary is the case. As you know, Speaker, the advice given by the clerks in the Legislative Assembly and by parliamentary counsel is to the effect that an issue had been triggered — we will come to why that has occurred — by this bill being introduced and passed through the upper house which you felt you were obligated to bring to the attention of the house straightaway. You were correct. Having had the information and advice drawn to your attention, Speaker, you have brought it to the attention of the house. The government believes the right thing to do is to consider it now and acknowledge the correctness of the precedents that absolutely underpin your ruling today. I reiterate that none of that prevents the opposition from going away and taking additional advice, and giving further consideration to this issue, if it desires to do so. It is clear. It is a black-and-white situation that is provided for in the constitution, and we are duty bound as the government of the day and supporter of the constitution to implement it.

Underpinning all of this is the relationship between and the roles of the two houses, particularly now that we have an upper house that is now elected under a system of proportional representation, which allows greater equality and provides an opportunity for more parties to

gain representation. The very core of the Westminster system is the tradition that the government is formed in and appropriations come from the lower house. Even then the appropriation initiatives in the lower house are required to be preceded by a message from the Governor. When we undertake our actions in this house we are cognisant of the fact that we need a message from the Governor when dealing with matters that intrude upon the Consolidated Fund. In recognition of this fundamental, longstanding and sensible principle we have increasingly initiated bills in the lower house and not in the upper house. Some members in the upper house are confused. Because of the changes we introduced in that chamber, some upper house members are seeking to initiate bills in their blind pursuit of political objectives, but they have forgotten about the constitutional and legal requirements — the legal requirements on them and the legal requirements on us.

We believe that is important. Implicit in the message we are sending to the upper house is a statement that this house and this government acknowledge and accept the framework the constitution provides. We accept and acknowledge that appropriation bills and amendments to those bills must be initiated in the Legislative Assembly and that any appropriation must be preceded by a message from the Governor. We are not seeking to change that longstanding tradition. I suspect the opposition is also not seeking to change that tradition. If opposition members are honest, when they come back from their consideration of the issue they will acknowledge that this is an important principle that applies to government. We are happy to accept that in government, just as we were happy to accept it when we were in opposition. We are not seeking to make any radical or revolutionary change or to reprosecute the English Civil War that is so important to the member for Box Hill. In this argument we are the conservatives, because we want to see what currently exists as the law to continue.

The other point that has been made is that we are rushing in to set a precedent. Nothing could be further from the truth. We are not seeking to set a precedent; we are seeking to uphold the constitution. The other side and the other house are attempting to create the precedent. They are seeking to create the precedent where they are seeking to — —

Honourable members interjecting.

Mr BATCHELOR — There is an interjection from the member for Lowan who says that it is the clerks in the other place.

The SPEAKER — Order! I advise the member for Lowan that interjections are disorderly. The minister should refrain from commenting on interjections.

Mr BATCHELOR — I will refrain from commenting on that interjection by the member for Lowan. As I say, we are not seeking to set or create a precedent. We are seeking to uphold the constitution. The question may well be asked: how or why has this occurred? And for all those who seek to do political analysis there may be some who agree with the member for Lowan. There may be others who would put a different interpretation on it. I suppose the analytical spectrum of those people who can attribute explanations as to why we are in this position ranges from those who are conspiratorial and would see that this is a ruse to set out to undermine the constitution all the way through to those who just think that the perpetrator of this bill is a bit of a silly duffer, that he did not get it right and that he just made a mistake. There may even be some interpretation in the middle, such as that suggested by the member for Lowan; or it could be a combination of all of these. I do not know, Speaker, but it does not really matter why it has occurred. It has occurred and we are taking the correct, appropriate and legal response to correct the position. I am in solid support of this motion because it upholds the constitution and it is the right thing to do.

Mr RYAN (Leader of The Nationals) — I am pleased in a sense that the Leader of the House has seen fit to refer to the politics of this legislation, which is the subject of consideration here today, as well as the treatment of the issue which has now arisen as a result of the advice that we have all received from the clerks earlier this morning. I am pleased he has raised it because it brings into this debate an issue that necessarily might not have intruded into it. Since it is here, we need to talk about it.

The politics of this are this government has resisted mightily the notion of amendments to tobacco legislation which would assist the health of Victorians — young Victorians in particular. We have put questions in question time to this government over the past months — I have asked them myself — as to whether it would support different forms of legislative initiatives which would see, for example, a prohibition upon people smoking in vehicles in the presence of people under 18 years of age. Consistently the government has resisted that. It has dodged the question and refused to answer it, or otherwise has not been prepared to deal with it. Now, at a time when The Nationals through the coalition arrangements, have been able to introduce this legislation into the upper house, and at a time when the government has resisted

it mightily — the government voted against this legislation in the upper house — the government is using this opportunistic event which has been presented to it by the clerks, and due respect to them. They have given the advice, as they do, in their completely independent manner, which has been accepted by the Speaker.

The government is trying to seize upon this event, which has been gifted to it, to preclude the proper consideration of what is a very important issue, not only in the context of this legislation but also of much more far-reaching consequences. I think that is an appalling thing to do. It is lamentable that the government should seize upon the political position to achieve a situation which serves its own miserable ends in what is a debate which is absolutely crucial to the future of all Victorians.

Moving to the next point about the way in which this issue has found itself before the house today for the purposes of this particular debate, it is a bit precious for the government to be putting the situation that The Nationals — and particularly Mr Drum in the other place — have had the folly of failing to pick up a point which is now the subject of the debate here this morning. It is a bit precious when you think that the whole debate went through the Legislative Council. No member of the Labor Party picked it up; no member of the Greens picked it up; the member representing the Democratic Labor Party did not pick it up; certainly neither The Nationals nor the Liberal Party picked it up; and the clerks in the upper house did not pick it up. It was not until about 8 o'clock this morning that the first advice was given, to this side of the house at least, that there was a problem. Let us put all that in a proper context. An issue has arisen as a result of the advice which has been advanced by the clerks in this house, which — —

An honourable member interjected.

Mr RYAN — We will come to that point in a minute too. That advice has come to the house here this morning in circumstances where this whole issue has been able to go through the upper house in the course of the significant debate in that place and yet no-one said a word about it. No-one said boo about it.

Mr Batchelor interjected.

Mr RYAN — The minister now interjects to say in essence that the issue has only arisen today because it has come across to this house for the consideration of this house. That is just a stupid argument to make. The fact of the matter is that if this issue had been seen by those in the other place to be in the nature of that which has been brought to the attention of the house by the clerks of the Assembly, of course it would have been raised in the other place, and of course it would have been very relevant to do it. It is absolute nonsense to say otherwise.

Let us move to the next point. We have an issue here which is pertinent to the way in which the constitution functions in the state of Victoria. This is not a trivial matter. This has implications that go beyond the particular bill in the context of which the issue has been raised. It therefore requires that we be able to look at it on a proper basis and get proper advice about it. The Leader of the House has made reference to the lawyers who are tearing out of the woodwork to make commentary about this, and I see the Minister for Police and Emergency Services warming up in the traces over there. We will get more of that too.

That is a good thing, because of all the places where we should be able to have a fulsome debate about the issues that are pertinent to the future of Victorians, and very particularly where they concern constitutional interpretation, where should it otherwise be than on the floor of this chamber? But we should also bear in mind that the interpretation of this will no doubt have implications for other legislation that comes before the Parliament over the years.

It is not as clear as it is being put by those who are running the argument, and I say that again with the greatest respect to the clerks. I refer to the words in section 62 of the Constitution Act, which I now have in front of me, which talk in subsection (1) about being a bill:

> … for appropriating any part of the Consolidated Fund …

In interpreting those words you have to take into account the actual provisions of the bill which is being sought to be transmitted to the Assembly. If the interpretation that is reflected in the message is to be given effect, then an extraordinary sequence of events would have to occur to trigger it. You would need a situation where someone would have to be served with an infringement notice under the provisions of the bill. That person would then have to pay the amount of money which is reflected in that infringement notice. Then by some sequence of events that infringement notice would have to be withdrawn. I might say that the provisions of the Infringements Act are such that if a notice is withdrawn then the penalty must be refunded, so I concede that that is spoken for. It does not matter whether it is physically paid out or not; the provisions

of section 18 (5) talk about the fact that it must be refunded.

It is quite an extraordinary sequence of events when you come to consider the practicalities of how that might apply. It is upon this basis that the interpretation which has been put before the Parliament is founded. There are other elements that need to be the subject of consideration. Section 40 of the Tobacco Act is also not absolutely cut and dried in relation to the interpretation before us. There are two subsections in section 40. Subsection (1) states:

> Except as provided in subsection (2) penalties under this Act form part of and must be paid into the Consolidated Fund.

On the other hand subsection (2) talks about penalties that might be imposed through a council, and various other provisions are set out. Such fines are paid into the municipal fund of the council, and that is an issue which needs to be the subject of consideration in the course of this broader debate.

The critical point is, when you have such a significant issue as this why would you insist upon it being dealt with here today? There is no reason at all why this important debate should not be delayed and dealt with on another day when there is ample opportunity for all parties involved to be able to give due consideration to it.

Taking the point that the Leader of the House has made, the critical feature in this is that we get it right. The critical feature in this is that we do justice to what this place is here for, and that is to ensure that the legislation that goes through the chambers of this Parliament goes through on a basis which is not 'offensive' — the term used by government members — to our Constitution Act and which does not in some way inadvertently contravene all those sorts of aspects that underpin the constitutionality of the legislation which passes through here.

All of that lends itself as a matter of general principle to these things being given proper consideration. You should not do it on the run. Any of us here can get up and argue this case through sheer politics. The Leader of the House has done it today; I have done it too in what I am saying. I am simply putting the case that when you have an issue of constitutional interpretation, such as we have before us, it is not in the interests of this Parliament — leaving aside the politics and the parties — that we should be doing it on the run. I ask again, and surely it cannot have escaped the notice of those involved in this, how the whole debate could have unfolded in the upper house, how the debate could have occurred with all the parties there having had an opportunity to contribute to it and yet this critical point never be picked up.

I stand corrected in relation to one element of my contribution. It has been pointed out to me that there was no actual division in the upper house on this bill, suffice to say the Labor Party spoke against the legislation in the upper house debate. I just want to be clear about that point.

The critical point stands that if w e are going to have debates which are pertinent to the interpretation of the constitution of the state of Victoria, we should do it on the basis of due consideration of all concerned. We should not be doing this on the run. More particularly I would say on behalf of those of us on this side of the house that such arguments are secondary in a debate on a piece of legislation which we have always regarded as being important to the future of all Victorians, and young Victorians in particular. But the primary feature does not change.

The clerks in this Assembly, as they are bound to, have brought this matter to the attention of the Speaker, and a determination has been made on it. The issue ought be able to be argued in a manner which does justice to what is the fundamental responsibility of those of us who are elected to represent Victorians in this place. We should ensure, therefore, that we have the opportunity for detailed, reasoned consideration of what we have before us as opposed to some sort of blasé approach which might be adopted by the government of the day — of whatever persuasion — on the basis of the political expediency which happens to then prevail.

Mr CAMERON (Minister for Police and Emergency Services) — I rise to support the motion of the Leader of the House, and I do that taking into account what the Leader of The Nationals has said, which is that this critical point was not picked up in the upper house. When he says 'critical' what he means is 'fatal'. This fatal point was not picked up in the upper house. We have before us a bill which is unlawful, and for us to deal with it would not only be totally redundant and a waste of time, but quite frankly it would offend the privileges and the dignity of the lower houses of the Westminster system. Much has been said about this, and let us get this right — —

Mr Clark interjected.

Mr CAMERON — I am sure the member for Box Hill will cheer it on, but there is a clear delineation in the Westminster system between Crown and Parliament, and there is a clear delineation between lower and upper houses.

Mr Baillieu — On a point of order, Speaker, it would be appropriate if Hansard recorded how much laughter is coming out of the minister as he says what he says.

The SPEAKER — Order! There is no point of order.

Mr CAMERON — What a sad set! There is a clear delineation, and the member for Box Hill has talked about the delineation between Crown and Parliament. Certainly those who were there on 30 January 1649 when Charles I had his head lopped off probably got the impression that Parliament had won, but of course that was not the case; after the restitution the Stuarts got back into their old ways. We had the Glorious Revolution and William and Mary of Orange. Then we had the Bill of Rights, which was to assert the privileges of Parliament, and ultimately in the years after that the privileges of Parliament included the fact that funds, somehow taxed or somehow imposed upon the consolidated revenue, had to be dealt with in the lower house. That is the delineation in the Westminster world between lower and upper houses.

While that is the delineation, and while it is the practice, of course, at Westminster and in the Westminster world, for us that becomes irrelevant, because what we are dealing with is a written constitution. We can argue all we like about the unwritten English constitution, and there is no doubt that that is our constitution, but section 62 shows that when there is anything that imposes upon the Consolidated Fund it must originate in the Assembly.

What we have here is a bill which seeks to impose on the Consolidated Fund. I have already set out the reason that is the case. Section 18(5) of the Infringements Act makes it clear that a refund of a penalty is an imposition upon the Consolidated Fund. This is a simple matter. It would be ridiculous for this house to deal with the bill, especially given that even if the bill were passed by this Parliament, it would be struck down in the courts as not having a solid constitutional foundation. For that reason the motion of the Leader of the House should be supported immediately, and The Nationals should go away, do their homework and do things properly.

Mr McINTOSH (Kew) — It is regrettable that government members have not picked up on the significant constitutional point that is being made in this debate, as is evident from their assertion that somehow the government is relying on the precedent set by the Glorious Revolution and the Bill of Rights and the Parliament's ability to assert its control over money used by the executive. That is what we have here today. At the time of the Glorious Revolution of 1688 parties were virtually unknown in the Parliament, and it took around another 150 years for formal party structures and mechanisms to manifest themselves even in the English Parliament, let alone in this Parliament. The relevant provision in the Bill of Rights, which was passed in 1689, was to do with that Parliament's ability to assert its right over the way the Crown spent money, not about individual parties in a parliament. Here we have a different constitutional situation, because parties, which are quite often very keen to get their own way, run the executive these days. The Labor Party now controls the executive; it is the government. We thus have the government asserting a provision of the Bill of Rights of 1689 on the basis that the government represents the Parliament; but the government does not represent the Parliament, the Parliament is independent. Labor members may have a party and may be in government, but their government is asserting that a parliament has the right to oppress a parliamentary minority, and that is a most reprehensible thing. To make that assertion on the basis of that premise is appalling in the extreme.

Let us get back to the most important thing here. What is really interesting about this bill is that it was passed by the upper house. Yes, government members sought to amend it, but they did not vote against it in the upper house. I would have thought an important bill that deals with smoking and its impact upon children would be of interest to everybody in this chamber. I am standing here piously — I admit I am a smoker — but I am interested, as are other members of this place, in dealing with the impact of smoking on children. All members of the upper house supported this legislation; there was no opposition to this bill. Most importantly, all members of the upper house demonstrated their interest and commitment to those things that should be bipartisan. The road toll, issues to do with smoking, public health and all such things should be matters of profound interest to us, and we have had the upper house demonstrating that interest. Yet somehow the government is now asserting a constitutional right to block this very important bill dealing with a public health issue — the impact of smoking on children. This measure was supported unanimously in the other house, and I would have thought it would have been unanimously supported down here.

What is worse, the government is preventing debate on this bill and its passing not along party lines but on the basis of a constitutional provision that originated 300 years ago to prevent abuses by the government — that is, at that time by the Crown. You have the government party here using that provision to quash the intention of the vast majority of members of this

Parliament, as represented by the positions of the upper house, the coalition and the Independent member of this chamber on this bill and this motion.

However, what is most important is that to rely on the constitutional practice we are debating today will set a terrible precedent for the future. This precedent will also affect the past. By virtue of such a precedent being made some very bright young lawyer will go through all of the existing principal or amending acts of the Victorian Parliament that originated in the upper house, whenever they were passed, and if any of those have ever had any impact on an appropriation or have amounted to an appropriation, hypothetically or actually — because we are talking about a hypothetical appropriation — it will be able to be struck down on the basis of this precedent. Rather than dealing with the meritorious public health issues that apparently the majority of members of the Parliament in the upper house, the coalition and the Independent want to see passed through this Parliament, the government is asserting a hypothetical technical application of the law that will have implications not only for this bill and bills in the future but for acts that have already been passed.

Do not say it will not happen! Twenty years ago, during the time of the Cain and Kirner governments, a very good friend of mine at the bar took a technical point about the proclamation of a particular act. An individual had been dealt with on a traffic offence by a court that was not a proclaimed traffic court. What that meant was that every single prosecution that had gone through that court at any time was set aside, and the government had to refund the money, because it was not a proclaimed traffic court. Yes, that was a legal and very technical interpretation, but it was upheld by the court, so make no mistake about it.

We cannot debate or pass into law this matter of high principle and public health concerning the impact of smoking on children, notwithstanding that it has the support of the vast majority of members of Parliament, because the government has made a technical interpretation of a provision of the constitution that was never really about the executive asserting its right over the Parliament itself. It was never about that, and this assertion by this government means it will not only be setting a precedent for the future but — this is what I am really scared about — also creating the capacity for the setting aside of many existing acts, something that could happen whether a Liberal-Nationals government, a Labor government or indeed an Independent government were in power.

We run the risk that in the future we will rue what we do today in relation to this matter, based simply on sheer politics because the government has the numbers, as we could easily be setting a terrible precedent. I ask the house to reconsider its position and to debate this as a public health issue and not a constitutional issue. It is a significant matter about the impact of smoking on children, and that is the issue we should be debating, not this technical constitutional interpretation.

Mr INGRAM (Gippsland East) — The future government after Saturday will have 20 Independents in here! It is interesting that some members seem to be trying to rewrite the rules of the constitution. I think we had better make it very clear what we are actually debating here. I have been a member of this place for a number of years, and I have had a number of proposed amendments to legislation struck out.

Mr Batchelor interjected.

Mr INGRAM — I am actually supporting the motion of the Leader of the House. Through the years I have proposed a number of amendments that have been struck out for the same reason that we are debating this matter here today. Basically amendments that require appropriation from the Consolidated Fund cannot be moved by non-government members, and legislation that requires a message of appropriation has to come from this chamber and go to the other place. When legislation comes before the Parliament it is assessed by the clerks, and if a bill requires appropriation, they send a message to the Governor. Messages recommending appropriation come from the Governor on a regular basis.

The upper house has passed this bill, and good on it for doing so. We are not debating the merits of this legislation; that is not what this debate is about at all. This debate is about the actual procedures, and it is important that we get those right. Sometimes they seem a bit rusty and a bit clunky and they do not quite look like they are a good part of democracy, but they are in place for a reason.

I agree with other members who have said that this is a fairly technical issue concerning this bill that has come from the upper house. In my view, from just looking at it, it would be reasonably simple to return the bill to the other place, have the section that offends the Constitution Act amended, and then bring it back and debate it. That is a fairly simple process that we could follow.

I have not heard too many people in this place speaking against the concept of the bill that we are debating here. The principle that bills requiring appropriation emanate from this house is important. What we are talking about

relates to the infringement notices section of this bill and the fact that any payment to be made out of the Consolidated Fund may trigger the requirement for appropriation. I do not think anyone is necessarily arguing that that is not the case. If a payment is made under that section of the bill, then that requires appropriation. On the information I have, that could be amended fairly simply. I would like to thank the clerks for providing advice on how this has come about.

I think it is important that members of this place do not get locked into the politics of this issue and that we make sure we do not set a precedent that could actually cause governments a problem in the future, whether that be a Liberal-Nationals coalition government, a Labor Party government or an Independent government. Whatever the government is, I do not think we — —

Ms Asher interjected.

Mr INGRAM — It was not raised by me; it was raised by the member for Kew. It is important that we defend the constitutional powers of this Parliament. This is no reflection on all those members in the other place who debated this legislation or on parliamentary counsel. Our clerks have a greater responsibility to ensure that the legislation we debate meets the constitutional requirements of this chamber and the requirements of the constitution more generally.

With those words, I support the motion. I believe it is important that we send the message back to the other place and take the politics out of this. Let the other house have the debate again, let it amend the legislation and then let it come back and let us pass the law. We should do everything we can to improve the health of our young people in this state, and this bill is primarily about protecting young children in cars from being exposed to passive smoking. Let us send this back to the other place for debate, let it be amended, let us bring it back, and let us do it properly.

Mr CLARK (Box Hill) — I want to add just a few words to what I said in the debate on the question of timing and also to add to the very cogent arguments that were put by the Leader of The Nationals and the member for Kew. The question that we are debating in fact relates to two issues, as I said briefly in my earlier remarks. It relates to the question of section 62 of the Constitution Act and the requirement that a bill for appropriating any part of the Consolidated Fund must originate in the Assembly, but it also relates equally to the provisions in section 63 of the Constitution Act, which require that any appropriation from the Consolidated Fund must be done consequent upon a message from the Governor, which effectively means with the support of the government.

This second aspect raises just as many concerns as, if not more than, the first aspect, because if the bill currently referred to us by the other place is held to infringe section 62 of the Constitution Act, then that bill and many other bills and possibly many acts that have already been passed by this house infringe section 63 of the Constitution Act. If the views being argued by the government today prevail, then it would seem that it would no longer be possible, for example, for a member in this house to move an amendment to a bill that increased a penalty in that bill, certainly if it was a penalty that was applied under the Infringements Act. Also, as I said earlier, it would not be permissible for any private members bill, or indeed any government bill, to originate in the Legislative Council if that bill contained a provision for a penalty under the Infringements Act. Those are very serious consequences indeed both for the liberty and freedom of the Parliament and the democratic system and for the good functioning of government.

We had the Minister for Police and Emergency Services inviting the house to ignore history, to ignore all the objectives, reasons and constitutional debates that gave rise to the provisions that we have in our constitution, and to just look at the black-letter law. He said, 'We have a written constitution. Forget the history; look at what is there in writing'. There are two responses that can be made to that argument.

Firstly, if you look at what is in the Constitution Act, you see that it refers explicitly to a bill for appropriating any part of the Consolidated Fund. You would have to say on the plain meaning of the words that a bill that imposes a penalty and which puts money into the Consolidated Fund is not a bill for appropriating any part of the Consolidated Fund simply because there is a possibility that down the track under another act of Parliament some of the money that goes into the fund may later go out of the fund again by way of a refund. The onus is clearly on those advocating for this very strained interpretation of section 62 of the Constitution Act to demonstrate that there is a reason to go against the plain meaning of the words.

Secondly in response to the Minister for Police and Emergency Services, I expect that he would know, having a legal background, that there is a principle of interpretation of legislation that one seeks to interpret it in accordance with its purposes. This brings us back to the debate about constitutional history. The forerunner of section 62 of our Constitution Act was the assertion that in the United Kingdom primary responsibility for

money matters lay with the people's house, the House of Commons, rather than with the House of Lords. The corresponding provision about messages in section 63 of the Constitution Act simply ensures a degree of fiscal discipline and gives the government of the day some ability to control the budget by avoiding the Parliament of its own motion through non-government bills appropriating vast swathes of the Consolidated Fund.

That may be said to be reflective of the residual powers of the Crown over fiscal matters — in other words, the Crown had control subject to the consent and approval of the Parliament. But it is drawing an exceptionally long bow to say that knocks out any bill in this house that brings money into the Consolidated Fund simply because there may be a refund made out of the Consolidated Fund under some other piece of legislation in the future.

If we look at the consequences of the interpretation which is being argued for today, we find that they are potentially quite significant. It depends in part on whether what is being asserted relates only to penalties that are imposed under the Infringements Act or whether it applies to penalties generally. If you take the more narrow possibility, it would seem to imply that every piece of legislation passed by this house since the Infringements Act 2006 came into operation that contains a penalty under that act requires a message from the Governor. I do not know if the Speaker or the clerks know whether such a message has been generated in the past with respect to all of those bills. If it has not, then arguably those bills which were passed by this Parliament without such a message are constitutionally invalid.

There may have been some very wise heads in some obscure and detached parts of the administration of the Parliament or the government who realised this issue when the Infringements Act was passed and took steps to avoid it ever creating a problem. I would like to know that fact; I would like to know what the consequences may be of the ruling being advocated today in terms of striking out legislation which has been passed since the Infringements Act was enacted and which contained penalties under that act.

The broader interpretation of the ruling which is being urged on us today is that it applies to any piece of legislation containing a penalty. Arguably, that may follow from the logic of the argument if there is some capacity, by any other means, for a refund of such a penalty to be made from the Consolidated Fund. There may be that possibility, because if people have had a fine imposed on them and they have subsequently proved or demonstrated that the fine was not validly imposed — for example, by a court action striking out the original fine — then there would be an entitlement to a refund. Does that mean that every piece of legislation ever passed by this house that contains any financial penalty payable to the Consolidated Fund needed to have been done by means of a Governor's message? If so, has such a message been generated for every such bill, because if not, there may be a large number of pieces of legislation on our statute books that are invalid.

I will move beyond these legal issues. The legal interpretation is supported by our asking ourselves, 'What exactly would the public think about the sort of case that is being urged on us by the government today?'. I think the public would have two reactions.

Firstly, I am confident that they would regard the interpretation that the government is advocating as nonsense, which is to say that simply because there can be a refund of a fine provided for in a bill, that bill is designed to appropriate money from the Consolidated Fund.

Secondly, they would say, 'What on earth is the government doing in trying to stop the enactment of a piece of legislation that is designed to provide better protection for minors from the consequences of passive smoking?'. The public would point to the huge swathe of evidence about the dangers of passive smoking. They would applaud the measures which have been taken on a bipartisan basis over many years to reduce those consequences. They would applaud the objectives of the bill that was passed by the other place to try to bring about further improvements. They would say to all of us, 'For heaven's sake, let us get on with dealing with the merits of the issue and get on with dealing with the protection of children'.

This is an issue of such importance that the house could spend a large part of the day debating it and dealing with it because of its implications. But of course there are many other pieces of legislation on this very crammed business program which still need to be dealt with. This debate may be limited from the point of view of non-government parties, but that should not underestimate the grave importance we attach to the issue which is before us at the moment.

Mr LUPTON (Prahran) — I rise today to support the motion moved by the Leader of the House. I want to firstly address some of the contributions made by the member for Kew earlier in this debate. I want to particularly make it clear to the house that the issue raised by the member for Kew, which was also raised

in the last minute or so by the member for Box Hill in his contribution, that what we should be dealing with here is the merits of tobacco and smoking, is a complete furphy. We are dealing with a constitutional principle; that is what this debate is about. This year the government has made it clear on a number of occasions that we are developing a comprehensive tobacco control strategy which will be released in the near future. That comprehensive tobacco control strategy will be put before this house and will deal with the types of matters this legislation seeks to deal with. Whether it deals with all or some of those matters, that strategy will deal with a number of matters that otherwise would have been dealt with by this legislation.

Let us make this clear: today we are dealing with the constitutional principle of whether or not a bill that was passed by the Legislative Council is in constitutional form. Advice from the Clerk and parliamentary counsel has made it clear to us that the bill passed by the Legislative Council is unconstitutional in its form. It would be completely improper for this house to debate, deal with and potentially pass a piece of legislation which on any view of it, based on advice to this house from the clerks and parliamentary counsel, is in a non-constitutional form. It would be a completely improper thing for us to do, and this government will not countenance that. We want to make that very clear right from the outset.

The constitutional position is quite clear. Section 62 of the constitution sets out clearly that bills for appropriating any part of the Consolidated Fund must initiate in the Assembly. That is a clear and well-understood constitutional principle. Under the Tobacco Act that is currently in force, any penalties incurred under that act are paid into the Consolidated Fund. Under section 18(3) of the Infringements Act, any infringement may be withdrawn even after the penalty has been paid and the refund of a penalty is drawn from the Consolidated Fund. The linkages are quite clear. There is a direct linkage between the Constitution Act, the Tobacco Act and the Infringements Act. For the opposition to suggest that this is some kind of novel concept is really quite remarkable.

In his contribution to the debate, the member for Box Hill, while suggesting that all of this in one sense was novel, took us back some 350 years to the English Civil War, and he referred on a number of occasions to the constitutional provisions that have evolved since that time. I am not sure whether the member for Box Hill would have regarded himself as a Cavalier or a Roundhead back in those days, but perhaps he would have, as they tend to do on the other side of the house these days, sat on the fence and stood for nothing in that cause as well. Nonetheless the important principles that have evolved over those 350 years have set out the situation that the lower house, the people's house, the house where government is formed, is the house where bills that impact on the Consolidated Fund must initiate.

That principle was long fought for. It was fought for over many centuries, right back in the days when the role of the Speaker was a far more dangerous one than it is today, back in the days in Britain when such great speakers as Speaker Lenthall had to stand up for the privileges of the House of Commons. In those days the role of Speaker was a very dangerous one to have. It can be dangerous still today, but hopefully not in the same way it was then. The constitutional foundation established by that history and the evolution in the way Westminster-style parliaments operate is clear to us, and the obfuscation that the Leader of The Nationals has attempted in his contribution should be seen for what it is.

The Legislative Council did not raise this point. That is very interesting. We have seen over the course of constitutional history that upper houses of one sort or another often try to do things that may or may not be constitutionally valid. Whether they recognised it, whether they were conscious of it at the time, whether it was a deliberate strategy or whether it was simply something that was done through inadvertence is not the point. Whether the Legislative Council recognised this issue or not is completely and utterly beside the point. The issue has been recognised, and having been recognised it is fatal to this legislation. Whether other people pick it up or not is completely and utterly beside the point. It has been picked up, and as far as the constitutional provisions are concerned, it is a fatal point.

There is a certain amount of disingenuous behaviour on the other side of this house in this debate, which should not surprise anyone. What is suggested by the Leader of The Nationals is that if we delay this debate then we will be able to consider it in a more detailed fashion. I could not imagine in a month of Sundays that the opposition or The Nationals or anyone on the other side would come back in a few weeks time and say, 'We have thought about it and you are absolutely right'. This is complete nonsense; it is another furphy coming from the opposition. The constitutional position has been made quite clear, but those opposite simply do not like it; and they do not like it because it involves a political matter that puts them in a difficult position.

What we have found over the course of years in this Parliament is that the position of the Clerk is an independent position and rightly so. The position of parliamentary counsel is also regarded appropriately as one of providing bipartisan or non-partisan advice as the case may be. What we have heard from the opposition in this debate today calls into question all of those proper and appropriate attitudes and precedents. The advice that has been tendered by the Clerk and parliamentary counsel and accepted by you, Speaker, and this side of the house says that the constitutional provisions in relation to this bill mean that this house should not deal with it, but all that is being cast into doubt by the opposition in what I believe is an inappropriate and improper way.

This debate today is about an important constitutional principle, but it is also important to understand that it is the government, this side of the house, that is upholding the constitution. We are making sure that the well-understood constitutional provisions prevailing in this Parliament and in this state under the Constitution Act are upheld, that this house of Parliament makes sure that it is the master of its own destiny by upholding the constitution as it is written and well understood and as it should continue to apply. It is absolutely fundamental to the constitutional processes of this state that any bill that seeks to draw on the Consolidated Fund initiates in the Legislative Assembly. Any member of this chamber who gets up and asserts that that is not a proper constitutional provision is wrong.

I have frankly not heard any member of the opposition, in opposing this motion, get up and say that. What they have attempted to do is obfuscate. They have attempted to suggest that there are other reasons for their opposing this motion, but as far as the government is concerned, the primary consideration in this constitutional debate is upholding the constitution of this state, of making sure that we uphold the privileges of this house and we uphold the constitution. For that reason I support the motion that has been moved by the Leader of the House, and I commend it to the house.

House divided on motion:

Ayes, 44

Allan, Ms	Languiller, Mr
Andrews, Mr	Lobato, Ms
Barker, Ms	Lupton, Mr
Batchelor, Mr	Maddigan, Mrs
Beattie, Ms	Marshall, Ms
Brooks, Mr	Merlino, Mr
Cameron, Mr	Morand, Ms
Carli, Mr	Munt, Ms
Crutchfield, Mr	Nardella, Mr
D'Ambrosio, Ms	Neville, Ms
Donnellan, Mr	Noonan, Mr
Duncan, Ms	Pallas, Mr
Eren, Mr	Pandazopoulos, Mr
Foley, Mr	Perera, Mr
Green, Ms	Pike, Ms
Harkness, Dr	Richardson, Ms
Holding, Mr	Robinson, Mr
Howard, Mr	Scott, Mr
Hudson, Mr	Stensholt, Mr
Hulls, Mr	Thomson, Ms
Ingram, Mr	Trezise, Mr
Langdon, Mr	Wynne, Mr

Noes, 32

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

Motion agreed to.

LAW REFORM COMMITTEE and FAMILY AND COMMUNITY DEVELOPMENT COMMITTEE

Reporting dates

Mr BATCHELOR (Minister for Community Development) — By leave, I move:

(1) The resolution of the house of 1 March 2007 providing that the Law Reform Committee be required to present its report on the inquiry into alternative dispute resolution to the Parliament no later than 30 June 2008 be amended so far as to require the report to be presented to the Parliament no later than 31 March 2009; and

(2) The resolution of the house of 27 February 2008 providing that the Family and Community Development Committee be required to present its report on the inquiry into the involvement of small and medium size businesses in corporate social responsibility to the Parliament no later than 1 June 2008 be amended so far as to require the report to be presented to the Parliament no later than 31 July 2008.

Motion agreed to.

BUSINESS OF THE HOUSE

Adjournment

Mr BATCHELOR (Minister for Community Development) — I move:

> That the house, at its rising, adjourn until Tuesday, 29 July 2008.

Motion agreed to.

MEMBERS STATEMENTS

Joy Benbow

Dr NAPTHINE (South-West Coast) — After more than 25 years of outstanding service to the community of south-western Victoria in her role as an electorate officer, Joy Benbow will retire tomorrow. Joy worked for the late Don McKellar, the Honourable Digby Crozier and me. Joy cared passionately about our local community and used her position to fight for better services for our region and to provide real help to the thousands of local constituents who sought advice and assistance.

I thank Joy Benbow for her service to our south-west community and to me as the local member, and I wish her and her husband, Colin, a long and happy retirement.

Victoria patient transport assistance scheme: payments

Dr NAPTHINE — Joy fought hard for a fair go for country people, and I am pleased to use the remainder of my time to pursue one of her pet issues, which is the urgent need for the government to increase payments under VPTAS (Victorian patient transport assistance scheme). This scheme helps rural people meet the extra costs involved in seeing medical specialists in Melbourne and regional centres, but currently VPTAS only pays 17 cents per kilometre and $35 for overnight accommodation.

With today's record petrol prices and the high cost of a hotel room in Melbourne, these payments are totally inadequate. I defy the Minister for Health to find even a broom cupboard you could stay in for $35 a night in Melbourne. When the government increases all its fees, fines and charges on 1 July, I urge it to also increase payments under VPTAS so that they better reflect the real cost for rural people.

CREATE Wyndham

Mr PALLAS (Minister for Roads and Ports) — I wish to speak to the house about an innovative and community-focused organisation in my electorate, CREATE Wyndham. Last week I had the great pleasure of opening its new offices. CREATE provides accredited training and support for disengaged young people and people with a disability in the Wyndham and north-western regions. The Wyndham community has seen CREATE, which opened its doors seven years ago, expand considerably, particularly over the last year, to encompass over 120 participants and on average receive three referrals a day.

The programs that CREATE provides ensure an individualised learning environment for all participants. They focus on gaining further education, training and employment pathways. It is a centre that ensures participants have every opportunity to fulfil their potential in an alternative setting to traditional education services. It provides participants with the opportunity to take part in programs such as WorkAssist, futures for young adults, driver education, accredited training, the accommodation project, independent living skills and student support.

There is also a youth worker involved in the program, who helps young people address issues related to mental health, family relationships, drug and alcohol problems, involvement with the criminal justice system, and accommodation. These programs focus on individual needs, community participation and increasing people's access to further education and employment to help them achieve their goals in life.

Congratulations to CREATE Wyndham on winning the 2008 Wyndham business award for a medium-sized business in the service industry. I would also like to thank the manager, Veronica Treloar, and her fellow staff for all their hard work and support for the local participants of Wyndham.

Life Education Victoria: mobile service

Mrs POWELL (Shepparton) — I received a letter from John Dickinson, secretary of the Rotary Club of Tatura, expressing its concern regarding funding of the Life Education Victoria mobile van and the way lack of funding is inhibiting its ability to do its work properly. The Tatura Rotary Club supports the Life Education van and states that it is an excellent way of bringing the value of proper diet, the dangers of alcohol and drug abuse and other valuable information to the young people in its area. At present the staff of the van spends far too much time trying to raise funds to keep the

project working. Staff members are concerned that increased costs are consuming more of the funds that are raised.

The Tatura Rotary Club has asked me to assist in getting the government to pay the wages of the personnel who work in the van and to contribute more funding to the running of the program. I join the Tatura Rotary Club in supporting the Life Education vans and the work they do in schools. With more children becoming obese because of bad food choices or lack of exercise and children suffering anorexia or bulimia, it is important that education about good food choices and positive body image is provided in schools. Members of the Life Education staff are well trained to provide information on the risks of drug and alcohol abuse and the long-term effects on their health. The van travels long distances to many schools in country Victoria. It provides great benefit, but it needs more funding because of the increases in petrol prices and the increased demand for its services. The government says it wants to tackle binge drinking and drug abuse in young people, and that it wants to address obesity. This is its opportunity to fund a program that supports those aims.

Kate Fenton

Mr ROBINSON (Minister for Gaming) — I commend the example set by a Forest Hill resident, Kate Fenton. The Deakin University publication *d*, volume 1 of 2008, states at page d5:

> After retiring from a career in credit management almost two decades ago, 84-year-old Ms Fenton has completed her Victorian certificate of education (VCE), graduated in the top 10 per cent of her arts degree, been inducted into the Deakin Golden Key International Honour Society and taken on a new career in education. And with her sights now on a master of arts, she's still not ready to put her feet up.

What makes Kate Fenton's life story fascinating is that she did not take up any of these educational opportunities until she retired early in the 1990s. As she says, her life changed completely after she finished work and felt that she needed to seek more fulfilment through study.

If those achievements are not extraordinary enough, Kate's contributions as a volunteer tutor at Parkmore and then Burwood Heights primary schools certainly are. As she says:

> I still work four hours a week at Burwood Heights and the children certainly help keep me young …

What makes her contribution to our local community more extraordinary is that she does all of this while battling very considerable health problems, which include double bypass heart surgery and an ongoing battle with leukaemia. Despite these problems she remains positive. Kate Fenton is an inspiration to us all.

Ferntree Gully electorate: child disability services

Mr WAKELING (Ferntree Gully) — Many residents in my electorate who have children with additional needs have expressed their frustration about the lack of adequate education services in our community. For many parents, their expectations were dashed when the mooted relocation of the Heatherwood facility from Donvale to Ferntree Gully did not eventuate. Consequently, last year I made representations to the Minister for Education to take action on this important issue for concerned residents in my electorate.

Recently the education department received a briefing paper on the needs of children with disabilities in its eastern metropolitan region. The paper recommended an increase in the provision of services for children with autism spectrum disorder without delay, the extension of services for children with mild intellectual disabilities through the establishment of new facilities in either the Knox or Maroondah areas, and that the transportation of students to Heatherwood be split from the transportation of students to the Vermont South Special School. These needs are important, and I call upon the government to act.

Ferntree Gully electorate: general practitioners

Mr WAKELING — Many residents in my electorate are also concerned at the recently announced reduction of bulk-billing GP facilities in Ferntree Gully. It is imperative that the Brumby and Rudd governments take action on this important issue to ensure that my community has access to readily available bulk-billing services. I call on these governments to investigate the need for Ferntree Gully to be possibly declared a district of workforce shortage to assist in the future provision of GPs to people in the Ferntree Gully electorate.

Country Fire Authority: Ocean Grove brigade

Ms NEVILLE (Minister for Community Services) — On Sunday last it was a great pleasure to officially open the new Country Fire Authority (CFA) station at Ocean Grove, and join ex-captain and life member Stan Smith to unveil the plaque. I also had the pleasure of handing over the keys for a new $275 000 fire tanker to Captain Bob Smith. The new

$2.5 million station will meet the needs of our increasing population well into the future. The new tanker, which is equipped with important safety features, will assist the brigade's capacity to respond effectively.

The Ocean Grove CFA has 67 volunteer members and attends more than 150 incidents each year. I was very pleased to have the opportunity to publicly acknowledge its commitment and courage in fighting fires and assisting in accident and emergency situations. It is highly valued and relied on by the community. My congratulations and best wishes go to Paul Stacchino, general manager of the Barwon area CFA, to Captain Bob Smith and particularly the volunteers, their families and friends who support them.

Surfside Primary School: environment award

Ms NEVILLE — On another matter, I am delighted to take this opportunity to congratulate Surfside Primary School in Ocean Grove on winning the school category for 2008 in the City of Greater Geelong's world environment day awards. The primary school has a proud record of involvement in a range of environmental projects, including the revegetation of the school grounds and the local dunes, the installation of large-scale rainwater tanks and the establishment of a Stephanie Alexander kitchen garden. As the member for Bellarine I have had the pleasure of being involved intensively with the school and I offer my warmest congratulations and best wishes to the students, families and staff on winning the award and providing a wonderful role model for the whole community.

Planning: Mornington height limits

Mr MORRIS (Mornington) — The matter I raise this morning is the ongoing battle between this government and the people of Mornington for the future of their town. Amendment C95 is the council's attempt at keeping the disaster that is Melbourne 2030 off the peninsula. A panel appointed by the minister has now reported back to the council on the proposed controls which have the overwhelming support of the community. In three of the four areas limits are 11 metres and three storeys and in the remaining area four storeys and 14 metres. The heights were arrived at after exhaustive consultation with all players and were backed by several petitions to this Parliament.

The panel has recommended some minor height reductions in a limited area, but in most areas heights would be increased by a full storey to four and five storeys. No strategic justification nor evidence of demand is given. While the panel recognises that Mornington's coastal location and character distinguishes it from other activity centres, the panel sees no point in protecting it. I commend the council for the role it has played in this process, and I urge councillors to have the courage to stand up to the panel and adopt the amendment without variation.

Police: Mornington station

Mr MORRIS — On another matter, Mornington police were driven from their station recently when a blocked sewerage pipe flooded the ground floor. A mobile command centre was quickly established in temporary accommodation outside the station and normal service promptly resumed. The temporary conditions will remain for the next couple of weeks. I extend my congratulations to Neil Aubert and the police team at Mornington for their terrific response to this very unfortunate event.

Buses: Ballarat

Mr HOWARD (Ballarat East) — I was pleased last week when the Minister for Public Transport came to Ballarat to advise of a substantial increase in the bus services available to Ballarat residents. This announcement forms part of a very significant investment by the Brumby government in bus service improvements right across Victoria. Residents across my electorate, from Malmsbury and Kyneton right through to Ballan and Ballarat, are already appreciating the fantastic upgrade to our rail services provided through the regional fast rail upgrade. This has been followed by new and improved bus services for Hepburn Springs, Daylesford, Mount Edgerton and Gordon, and Creswick, which link into the rail services.

This latest announcement sees Ballarat Transit services increase by 23 per cent. This includes 73 extra Sunday services and new routes. We now have 14 services running via the Ballarat railway station to improve ongoing train and coach connections. These new bus services commenced this Monday, and they are backed up by investment in infrastructure, with 60 bus stops having already been upgraded for disabled and elderly passengers. To encourage residents to use this service if they have not done so previously, free travel is being provided on all bus routes for the first four Tuesdays. That is a great opportunity for people to experience these services.

Dimboola-Rainbow and Warracknabeal-Rainbow roads: upgrade

Mr DELAHUNTY (Lowan) — Victoria is bigger than Melbourne, and I call on the government to

address two issues that are concerning the people of the Lowan electorate. Firstly, now that the government has effectively closed the Yaapeet–Dimboola rail line, I call on it to use its special purpose payments to work with the Hindmarsh Shire Council and upgrade the roads from Yaapeet to Dimboola and Warracknabeal. As stated in the *Wimmera Mail-Times* of yesterday:

> The decision means farmers at Rainbow, Jeparit and Yaapeet must carry their grain to GrainCorp's Warracknabeal grain centre —

or the AWB facility at Dimboola. The article goes on to say:

> … the companies stopped using the Yaapeet line because of the condition of the track.

The council has said upgrades are needed to the Dimboola-Rainbow and Warracknabeal-Rainbow roads.

Wimmera–Mallee pipeline: connections

Mr DELAHUNTY — The second issue I wish to raise is in relation to farmers south of Horsham. I call on the Minister for Water to direct GWMWater to comply with a local agreement and consult with every individual land-holder south of Horsham before making a decision on rating and on connection to the Wimmera–Mallee pipeline. This issue was highlighted in the *Wimmera Mail-Times* of yesterday under the heading 'Farm water anger'. Because the channels could not supply water to a group of farmers south of Horsham — there are about 30 of them — they were not rated and many of them want to stay that way. They also do not want to be connected to the Wimmera–Mallee pipeline. I think GWMWater must comply with the agreement it had with local land-holders to consult individually with each and every one of them before it makes its final decisions on rating and whether to connect them to the Wimmera–Mallee pipeline.

Patricia Feilman

Mr BROOKS (Bundoora) — I wish to speak of the sad passing of Patricia Feilman on 28 May. Ms Feilman was probably best known in her role as chief executive of the Ian Potter Foundation, one of our largest philanthropic organisations. In the 36 years she was active with the Ian Potter Foundation, Ms Feilman was a driving force behind the foundation's charitable pursuits in areas such as the arts, community wellbeing, the environment, education, health and medical research. She strove to ensure that charitable funds were used in the most effective and strategic way possible.

A qualified accountant, Ms Feilman is also credited with establishing through the Ian Potter Foundation a farm revegetation program which was a precursor to the successful Landcare scheme. She also established the Australian Landscape Trust, was a trustee of Trust for Nature, and was chair of the Little Desert Flora and Fauna Foundation. Ms Feilman served for five years on the Australian National Commission for UNESCO, and for five years as the chair of the Victorian State Film Centre. An avid gardener and operator of nursery businesses in Heidelberg and Mitcham, she also served on the Nurserymen's Association of Victoria and chaired the Garden State Committee of Victoria. She chaired the Zoological Parks and Gardens Board for 9 of her 15 years on that board, during which time the Melbourne Butterfly House at Melbourne zoo was commissioned.

What is clear from Ms Feilman's proud record of service is that she had a genuine concern for charitable causes, the arts and the environment. Her record of achievement and community betterment stands as an example to future generations.

Alcohol: binge drinking

Mr O'BRIEN (Malvern) — I rise to oppose the creeping nannyism of Labor governments, the most recent example being the Rudd Government's attempt to label many ordinary Australians as binge drinkers. To suggest, as Labor does, that consuming four mid-strength beers or their equivalent constitutes binge drinking flies in the face of the common sense and experience of Australian adults. Should every husband and wife who share a bottle of wine over the course of an evening be demonised as irresponsible bingers? Of course not, yet that is the response of 'Supernanny', otherwise known as the federal Minister for Health and Ageing, and her cohort of thin-lipped killjoys and out-of-touch bureaucrats.

The irony of ironies is that Ms Roxon used to be an organiser for the National Union of Workers, formerly known as the Federated Storemen and Packers Union. Can you imagine Nicola trotting down to the pub near the local woolshed or tannery at Friday knock-off and shrieking at her members, 'Put down that VB! You've had three already!'? Of course it would not have happened, because she would not have dared to lecture the people who paid her union salary. But give Ms Roxon a ministerial suite and a big white car and she believes that she has the right to lecture the Australian electorate — the taxpayers who pay her salary. If Labor wants to get serious about binge drinking, and it should, let it start enforcing existing responsible service of alcohol laws and let it put more

police on the streets in licensed areas and let it counsel a Prime Minister who has self-induced alcoholic blackouts at New York strip clubs! But please spare us the finger wagging from Nanny Nicola!

Geelong: manufacturing investment

Mr EREN (Lara) — Being a proud former manufacturing worker, I am proud of the Brumby Labor government's efforts in backing manufacturing in Geelong, and indeed Victoria. Unlike the previous Liberal government, we have taken action by way of initiatives which are helping to ensure that local manufacturing companies in Geelong continue to drive Victoria's economic growth and long-term prosperity. We have been working hard to grow Geelong's industrial base and have facilitated nearly $2 billion of new investment in the Barwon south-west region since 1999. Recent company expansions include Rip Curl, Satyam, Air Radiators, Modern Olives, SalesForce, Cotton On, Qantas and Huyck Australia, to name a few, and we are now working with a variety of other companies to facilitate new projects and jobs.

These efforts are being boosted by the $24 million investment and innovation fund for Geelong, which has delivered $3.4 million worth of grants in round 1, resulting in 193 new jobs and $29 million of new investment. We have also funded a study by the Geelong Manufacturing Council to identify collaborative opportunities for Geelong manufacturers, particularly in research and development, export and cost reduction. We are supporting a range of other initiatives that will create the right conditions for further local growth, including the $380 million Geelong ring-road, the relocation of the Transport Accident Commission, the new medical school, and the $13 million expansion of the Geelong Technology Precinct.

While the strong Australian dollar and increased global competition — —

The ACTING SPEAKER (Mrs Fyffe) — Order! The member's time has expired.

Tourism: Tallangatta

Mr TILLEY (Benambra) — In the mid-1950s the township of Tallangatta was moved 7 kilometres westward as part of the expansion of the Lake Hume storage dam. When the site of 'New Tallangatta' was being justified to locals, it was claimed that the waters of the Hume Reservoir would provide a great tourist attraction. The water levels since the relocation have not been an attraction, especially since the completion of Dartmouth Dam in 1979. A feasibility study has been conducted into the Narrows weir project. Community survival, profitability and progression would be assured with expanded investment attraction, development of tourism and recreation pursuits for the region, enhanced ability to attract residential development and increased rate revenue for Towong shire. Tallangatta's tourism activity has become significantly disadvantaged by the unstable and increasingly unreliable water levels.

Tallangatta is an approximately 30-minute drive from Wodonga and is one of the most scenic areas in north-eastern Victoria, with an abundance of sub-alpine undulating terrain surrounding the township. The provision of a permanent water level adjacent to the town can be achieved by the construction of a rock cascade-type wall approximately 14 metres in height across a section of Lake Hume known as The Narrows on the Mitta Mitta River arm downstream from Tallangatta. Tallangatta could, with permanent high water levels, compare to Yarrawonga as a tourist destination. With agriculture in the area being decimated by drought and farmers being literally dogged out of their fields, this would be a most welcome boost for the region.

St Joseph's Home for the Aged, Northcote

Ms RICHARDSON (Northcote) — Last week I was privileged to visit St Joseph's Home for the Aged, a nursing home and hostel in Northcote run by the Little Sisters of the Poor. Led by Mother Cecilia, 19 sisters, along with 85 staff, care for 71 elderly people. The standard of care is exceptional, the atmosphere is friendly and homely and the sisters and staff are not only dedicated but inspiring.

The order was founded in France in 1839 and ever since its members have cared for the elderly. The sisters raise over 60 per cent of their operating costs through charitable donations. As part of their mission they welcome the elderly poor of all races and religions and respond to their needs. Each sister takes a vow of hospitality which includes respect for the uniqueness of each resident, fostering a home away from home, providing meaningful activities, encouraging pastoral care and accompanying the dying. For the sisters this is a lifetime commitment.

The original chapel and house from the 1880s have been preserved, along with the original furnishings. The chapel, like the sisters, is one of the treasures of Northcote. The dedicated and humble work of people like the Little Sisters of the Poor is an inspiration to us

all as they quietly dedicate their lives to the welfare of others.

Tony Matisi

Ms RICHARDSON — On 11 June Tony Matisi, who is notable for becoming Victoria's first Italian-born mayor in 1969, passed away. Tony came to Australia from the Eolian Islands in 1938 and was interned as an enemy alien during World War II. In 1962 Tony was elected a councillor to the former Northcote City Council. He served the community on council until 1985 and was mayor on three occasions. Tony Matisi is emblematic of the significant contribution that migrants have made to Australia and to Northcote in particular. He will be sorely missed.

Baxter-Tooradin–Fultons–Hawkins roads, Baxter: roundabout

Mr BURGESS (Hastings) — I wish to bring to the attention of the house a matter that underlines the incompetence of the Brumby government. The matter is the promised construction of a roundabout at an intersection in Baxter. The Baxter Tavern intersection is the combination of one of the state's most notorious intersections and one of the state's worst level crossings. Coming out of what can only be described as a confusing mess of an intersection, motorists find themselves on top of a level crossing with no boom gates to stop them.

A roundabout at the intersection was promised just a few days before the last state election and again in last year's state budget but to date nothing has been done. I have written to the Minister for Roads and Ports several times asking for urgent action and some indication of what is holding this critical construction up. I was advised that work on the roundabout cannot commence until VicTrack completes the boom barrier installation. I was shocked to discover that neither department seems to be aware of what stage the other project is at and that no time frame for the start of the roundabout or work on the boom gates is available from either.

On the same day that the government announced with much fanfare that it was finally going to heed the community's long campaign for action on the Baxter Tavern intersection, private enterprise announced that along with a new Safeway, there would be a new roundabout and car park built just 50 metres away on the opposite side of the level crossing. The private enterprise roundabout was planned, constructed and has been operating for the best part of a year now. The minister must realise that the work does not stop once the photos are taken and the press release is read. He must do what he is actually paid to do and ensure his department is getting the work done that this community so desperately needs.

Lions House Foundation

Mr LANGDON (Ivanhoe) — Today I pay tribute to the Lions House Foundation for its ongoing support of the families of patients of the Austin and Mercy hospitals. The foundation has two interim houses which it rents and manages for the benefit of families with loved ones in the care of the Austin or Mercy hospitals. The foundation, of which I am a member, is also supported by a number of organisations and individuals.

I pay tribute to Mrs Eunice Craythorn and the ladies of the Country Women's Association of Heidelberg for providing welcome packs, which are placed in every room for new tenants. I pay tribute to Val Warwick of Reservoir Lions Club for knitting little bonnets, jackets and booties for the babies who are born prematurely and are in the care of the Mercy Hospital intensive care unit. I pay tribute to them for the ongoing support they provide to the foundation and to many Lions clubs but in particular to Noble Park-Keysborough, Whittlesea and Inverloch and surrounding district Lions clubs. I also pay tribute to the old district 201 V4 club for all its support in the year and to the district governor, Margaret Sheriff. I pay tribute to all those organisations and individuals.

The Lions House Foundation was established to set up a permanent house, but at the moment it is renting two properties. The interim houses are being well managed and are providing a lot of caring support for families who have loved ones in the Austin or Mercy hospitals. I commend not only the Lions House Foundation but also all the people who support it.

Students: regional and rural Victoria

Dr SYKES (Benalla) — I wish to condemn the city-centric Brumby government for its failure to provide country students with equitable education opportunities. I have previously spoken about the gross underfunding of students attending Catholic schools. In summary, students attending Catholic schools in Victoria have 16 per cent of their costs met by government grants compared with the national average of 25 per cent. Catholic schools educate over 20 per cent of Victorian students and are greatly valued, particularly in country communities, for their contribution to our children's education. Country young people have much lower year 12 completion rates and a much lower uptake of tertiary education than their city

counterparts. The Leader of The Nationals in the upper house, Peter Hall, has initiated a parliamentary inquiry into this issue. It is already clear that a key issue is the much higher cost of tertiary education for country students, who often have to leave home to attend tertiary education campuses.

It beggars belief that the Brumby government can be contemplating introducing higher education contribution scheme (HECS) style fees for students attending TAFE colleges. The Brumby government's failure to support country young people extends to its apprenticeship support schemes applying only to businesses with three or more apprentices. This discriminates against the many small businesses in country Victoria and discourages them from providing young country Victorians with apprenticeship opportunities. I call on the Brumby government to live up to its claim that education is its no. 1 priority and ensure that country Victorian young people have the same education opportunities as their Melbourne counterparts.

Edrington History Research Group

Ms LOBATO (Gembrook) — I would like to inform the house about a wonderful local history group, the Edrington History Research Group, which is based at Edrington Park retirement village in Berwick. During the mobile office I recently conducted at the village I had the opportunity to meet the history group's members Bob Flavell, Loris Flavell and Jan Gray. They were able to provide me with some of the fascinating facts about the site on which the retirement village now stands.

The site was first owned under freehold title by Captain Robert Gardiner in the 1850s, who named the site Melville Park after one of his sons. It was later sold to James Gibb, who as well as being a shire president on six occasions was also elected as a member of the Victorian Parliament as the representative of Mornington in the Legislative Assembly. He was later the member for the federal electorate of Flinders. Pastoralist Samuel MacKay was the next owner of the property, and he engaged architect Rodney Alsop in the early 1900s to design the mansion which still stands on the site today.

Andrew Chirnside, whose father and uncle had developed the Werribee Park mansion, purchased the property in 1912 and renamed it Edrington. When Mr Chirnside died the property passed into the hands of his nephew and niece, Rupert Ryan and Maie Casey. Rupert was elected to the House of Representatives as the member for Flinders and retained that position until his sudden death at the property in 1952. Maie Casey married Richard Gardiner Casey, who entered federal Parliament as the member for Corio in 1931 and who, after a period of overseas postings, became the member for Latrobe.

Celebrating Our Cultural and Religious Diversity postcard campaign

Mr KOTSIRAS (Bulleen) — Recently I launched the Celebrating Our Cultural and Religious Diversity postcard campaign in my electorate. Because racism and intolerance is learned behaviour, schools and parents often play a vital role in promoting mutual understanding among young people of all races and religions. This postcard campaign is designed to encourage young Victorians to express their views on what it means to them to be an Australian and to live in Australia.

Australia is one of the most religiously, culturally and linguistically diverse nations in the world. It is a mosaic of different customs, languages and religions. Most Australians agree that our cultural and religious diversity is one of our greatest strengths and that we must learn to use our differences as a uniting force and our similarities as a bridge to assist us to live peacefully with our neighbours. Our challenge is to celebrate both our differences and our similarities, and this celebration must commence with our children, who are our future. Similar postcard campaigns in the past have engaged students in discussion about the values of cultural and religious diversity in Australian society with much success.

The Celebrating our Cultural and Religious Diversity campaign is an example of the type of project that can be initiated for the benefit of Victoria. This campaign goes a long way towards promoting pride and understanding in our culturally diverse society. It is important that our young Victorians continue to have respect for others and that we pay tribute to the contribution of all people for the richness they add to our social, economic and cultural life.

This initiative is a result of there being no leadership shown by this Premier and this government in celebrating our cultural diversity and combating racism in our schools.

Tony Matisi

Mr CARLI (Brunswick) — Like the member for Northcote, I want to acknowledge the contribution of Labor stalwart Tony Matisi to both the Labor Party and the Italian community. Tony was born in 1914 in the

Eolian Islands in Sicily and came to Australia in 1938 where he joined his brother Frank, who ran a fruit shop on High Street like many people from the Eolian Islands.

Tony came to Australia at a very difficult time. He was interned for a period during the Second World War like thousands of Italians who were seen as aliens. It was a very bleak period for Australia. His nephew Bob described that period in the following way:

> We were not allowed to have a radio and had to inform the police if we left Northcote.

It was a very difficult time for the Italian community, but Tony got through it. Another great difficulty he faced was that he was not able to bring his fiancée to Australia until 1949, so they were apart for 11 years. When they got back he ran a shop in Northcote, joined the Labor Party, became a councillor in 1962, served for 23 years on council and was elected mayor three times in Northcote. He provided a great contribution to and did a lot for the Italian community, particularly building support for the Labor Party amongst Italian immigrants of that period, which has contributed to the Labor Party being a very strong force within the Italian community. Tony was knighted by the Italian government.

Fees, fines and charges: indexation

Mr WELLS (Scoresby) — This statement condemns the Brumby government for its lack of transparency in regard to its indexation of fees, fines and charges regulation policy. For the Brumby government to be fully transparent it needs to publish a full set of figures in its budget papers.

The ACTING SPEAKER (Mrs Fyffe) — Order! The time for members statements has expired.

BUSINESS OF THE HOUSE

Program

Mr INGRAM (Gippsland East) — I desire to move, by leave:

> That the government business program as established for this sitting week under standing order 94 be amended to remove the Local Government Amendment (Elections) Bill 2008 from the specified items to be guillotined at 4 o'clock this afternoon.

Leave refused.

LOCAL GOVERNMENT AMENDMENT (ELECTIONS) BILL

Second reading

Debate resumed from 12 June; motion of Mr WYNNE (Minister for Local Government).

Government amendments circulated by Mr WYNNE (Minister for Local Government) pursuant to standing orders.

Debate adjourned on motion of Mrs POWELL (Shepparton).

Mr Ingram — Acting Speaker, I wish to move an amendment that the debate be adjourned until next week.

The ACTING SPEAKER (Mrs Fyffe) — Order! The time has not been set.

Mr WYNNE (Minister for Local Government) — I move:

> That the debate be adjourned until later this day.

Mr INGRAM (Gippsland East) — I wish to move as an amendment that the debate be adjourned for one week.

The ACTING SPEAKER (Mrs Fyffe) — Order! I am advised that the amendment proposed by the member for Gippsland East cannot be accepted because the time he proposes is beyond the time for the passage of the bill under the government business program.

Motion agreed to and debate adjourned until later this day.

UNCLAIMED MONEY BILL

Second reading

Debate resumed from 29 May; motion of Mr HOLDING (Minister for Finance, WorkCover and the Transport Accident Commission).

Mr WELLS (Scoresby) — I rise to join the debate on the Unclaimed Money Bill 2008. The aim of this bill is to ensure better administration of unclaimed money. It is also an attempt to reduce the burden of red tape. The Labor Party is an expert at promising less red tape but delivering more red tape. The usual spin from the government in the second-reading speech points to the fact that in 2006–07 it has collected over $25 million in general unclaimed money of which $15 million has

been returned. That does sound impressive. However, what it does not mention is that the State Revenue Office is holding $131 million together with a further $20 million in unclaimed superannuation. That is a total of $151 million of unclaimed money that is earning interest at an institution such as the Victorian Funds Management Corporation or a similar financial institution.

This bill is a rewrite of the Unclaimed Moneys Act 1962. There are a number of points that I would like to cover. Firstly, the main provisions of the bill include the removal from businesses of the responsibility to advertise details of unclaimed money in the *Government Gazette*. The responsibility is given to the registrar to advertise details of unclaimed money by contemporary means such as electronic publications on websites.

Secondly, the bill reduces the time that businesses or trustees must hold unclaimed money from two years to one year. Thirdly, it introduces investigation powers by adopting powers typical of those in other acts which protect public money. New investigatory powers are handed to the registrar, such as the power of entry and inspection and the power to apply for a search warrant. Fourthly, the bill introduces administrative penalties for businesses for non-compliance and for providing false and misleading information. Such penalties include imposing a liability on a business where a default occurs in paying interest on an amount payable under the bill which remains unpaid. Fifthly, the bill introduces the right for businesses to seek a review in the Victorian Civil and Administrative Tribunal or the Supreme Court if they object to a decision made by the registrar about unclaimed money. Sixthly, the bill introduces privacy provisions to protect the confidentiality of private information. Only the minimum information necessary to identify and locate the owners of unclaimed money will be released.

What is unclaimed money? Clause 3 provides that:

> unclaimed money means —
>
> (a) principal, interest, dividends, bonuses, profits, salaries, wages and any other sums of money that are legally payable to the owner and that have remained unpaid for not less than 12 months after that money become payable, or
>
> (b) money that has been converted from unclaimed trust property within the meaning of section 14 by a trustee after the expiration of the required period under Division 2 of Part 3 —
>
> other than any amount the value of which is less than $20 or the prescribed amount (whichever is higher).

Any business that deals with dividends or payments of money, which money is not claimed, has to hold a register. That business register is defined on page 12 under ‘Business and Trustees’. Division 1 is headed ‘Obligations of business in respect of unclaimed money’. Clause 11 reads:

> Business to keep business register
>
> (1) A business that holds unclaimed money within the meaning of paragraph (a) of the definition of unclaimed money in section 3(1) must —
>
> (a) establish a business register of unclaimed money, in the prescribed form at, or readily accessible from, its principal office or place of business in Victoria; and
>
> (b) by 31 March each year, enter in the business register the prescribed details in relation to unclaimed money held as at 1 March in that year.

Clause 12 is headed ‘Payment of unclaimed money to Registrar and lodgement of return’ and states:

> (1) On or before 31 May each year (or the later date approved in writing by the Registrar in any particular case), a business that held unclaimed money on 1 March of that year must —
>
> (a) pay to the Registrar an amount equal to all amounts of unclaimed money held on that 1 March less any amounts that have been paid to the owner and any amounts deducted under subsection (3) or section 11(3); and
>
> (b) lodge a return with the Registrar in the form and manner determined by the Registrar.

With those very few comments, the opposition does not oppose the bill, and we wish it a speedy passage.

Ms RICHARDSON (Northcote) — I am very pleased to rise to speak in support of the Unclaimed Money Bill 2008. The purpose of the bill is to provide a better mechanism for people to reclaim money that is rightfully theirs. The improvements to the management of unclaimed money also have direct benefits for businesses as they reduce the regulatory burden previously placed upon them. It is, of course, all part of Labor’s ongoing commitment to cut the red tape for businesses in our state.

The bill rewrites the Unclaimed Moneys Act 1962. Under that act businesses were required to advertise details of unclaimed money in the Victorian *Government Gazette*. In other words, the regulatory burden was on businesses. Under the new regime the registrar of unclaimed money will be required to advertise the details of unclaimed money. The registrar will be able to take full advantage of the internet and, in

recognition of the need to provide information to all Victorians, whether or not they have access to the internet, a toll-free number will also be provided. The public will also benefit, because previously the cost to a business of the advertising was recouped from the amount of unclaimed money, thereby reducing its final amount. By any measure the internet and a toll-free phone number is a much more efficient and effective means of locating owners of unclaimed money than the Victorian *Government Gazette*.

The bill also enables the registrar to advertise the details of unclaimed money after one year, which is a reduction from the current two years, thereby increasing the chance of finding the rightful owner. In the last financial year out of a total pool of more than $25 million over $15 million of unclaimed money was returned to its rightful owners. No doubt these measures will increase the amounts reclaimed by the public. The types of unclaimed money dealt with by this bill include share dividends, salaries, wages, rent, bonds, debentures, interest, unpresented cheques and unclaimed superannuation benefits. The bill does not cover unclaimed moneys from refunds, dividends and prizes from Tattersall's and Tabcorp. These unclaimed amounts are dealt with under the Gambling Regulation Act and administered by the Victorian commissioner for gambling regulation.

In respect of superannuation, the bill enables the transfer of the administration of unclaimed superannuation to the commonwealth. This will reduce administrative costs and provide one simple access point for those seeking their lost superannuation. We have all seen the advertisements about the need to find our super when it is lost, and we know of super that has gone missing from employees.

Another important component of the bill deals with the enforcement powers available to the registrar to protect the rightful owners of unclaimed money. This includes a power to make and withdraw an assessment or reassessment in respect of a business or trustee. Interest can be charged where there is a default resulting in money remaining payable to the registrar after it becomes due. Penalties are also payable on top of interest where a default occurs. The bill also sets out the obligations placed on the registrar including the various advertising requirements.

In summing up, this bill increases the chances of finding the rightful owners of unclaimed money, it provides a more efficient and effective means for businesses to operate and it reduces the regulatory burden that was previously placed on businesses. Therefore, in the brief time I have left, I commend the bill to the house and wish it a speedy passage.

Mr CRISP (Mildura) — I rise to speak on the Unclaimed Money Bill 2008. The Nationals in coalition are not opposing the bill. The bill rewrites the Unclaimed Moneys Act 1962, and its general purpose is to update the language of the legislation and bring advertising methods up to date with technology. It also makes changes to the administration of unclaimed superannuation.

The member for Scoresby has given a very detailed run-through of the major provisions of the bill, so I will not go into them. In quite simple terms, the bill rewrites the act with a view to updating the compliance and enforcement powers, gives protection to information obtained in relation to the administration of unclaimed money, prescribes when this information may be disclosed and facilitates the transfer of the administration of unclaimed superannuation to the commonwealth.

In terms of advertising, and this is something that has a country perspective, the means of advertising has been extended to include electronic methods and also posting on the State Revenue Office website. That is a welcome move into the times. The bill also removes the requirement for businesses to advertise unclaimed money in the *Government Gazette*, and I think that makes sense in this age.

However, there are of a couple of issues that arise from this bill for country people. The term 'publicly available' is one that I would like to talk about. Currently, it means that the registrar must make information in unclaimed money registers available in both metropolitan and regional areas. Some people in rural areas may not have access to the internet to conduct an unclaimed money search, and therefore clause 28(3) permits the registrar to make information publicly available in other forms. For example, the equivalent information may be available by telephoning a toll-free number.

There are a number of issues relating to unclaimed money that concern elderly people and their grasp of technology. The availability of that technology in country areas is a concern, so I urge that in the implementation of this bill we maintain the use of print media, which is still a major form of information for elderly people and those who are not quite in the technological age in country areas. We looked to this bill to also lower the regulatory burden. The purpose of the bill is to make the administration of unclaimed money simpler. It shortens the time for which money

must be held, which aims to reduce the workload of business. However, I contest whether it actually reduces the cost or workload of business. Initial restructuring may be costly, people will need to be educated in new processes, so whether or not this bill lives up to its promise remains to be seen in practice.

I turn to the amounts involved. The State Revenue Office will get a one-off cash injection of the order of $10 million based on the 2006–07 year. It has accumulated a considerable amount of money over time, which is earning interest. I note that if people claim money there is room for them to get their interest back. However, there are many country projects that would very much benefit from that $10 million by way of either a loan or a budget offset. It could go a long way — and $151 million would also go a long way to fixing a lot of things in this state in the current environment.

With those comments, I advise that The Nationals are not opposing this legislation, but I urge the government to get the communication on this bill right and to note the changes that will impact on business and country people as far as their ability to access their unclaimed money goes.

Ms DUNCAN (Macedon) — I am pleased to rise in support of the Unclaimed Money Bill 2008. As has been said, the primary purpose and scope of this bill remain the same as for the original 1962 act, and the types of unclaimed moneys dealt with also remain the same. They include general unclaimed money such as share dividends, salaries and wages, rent and bonds, debentures and interest, unpresented cheques, money paid into court and unclaimed superannuation benefits, which I suspect make up a large portion of the unclaimed money. The primary purposes of this bill are to safeguard people's money, enable them to access it more quickly and, most importantly, enable them to locate it more easily. Currently this sort of information is published in the *Government Gazette*, and I would suggest that most people have never read a *Victorian Government Gazette*; it is not the most riveting read.

Mr Nardella — I do; I read it all the time. I read nothing else.

Ms DUNCAN — It is certainly never going to be on the bestseller lists, and most people probably do not even know it exists. This bill makes it a requirement that these unclaimed moneys be published in a searchable form on the internet. It puts that positive obligation on the registrar to make publicly available information about the unclaimed money register for the purposes of identifying and locating the owners of those moneys. As I said, the bill specifically requires that these details be available on the internet in a searchable form which is updated regularly.

We just heard from the member for Mildura. It is not only older people or people living in isolated areas but also many other people who do not regularly use the internet, and the bill also allows the registrar to make information available in other forms that may be considered appropriate. These will include the existing unclaimed money telephone service and newspaper advertisements to make people aware of these changes. The bill will also mean that instead of this information becoming available within two years, that will now occur within a 12-month period. That will make it quicker and easier for people to find any unclaimed money, and I commend the bill to the house.

Mr SCOTT (Preston) — It gives me great pleasure to speak in favour of the Unclaimed Money Bill 2008. This is a sensible bill which provides further protection for consumers. The protection of consumers and their money has been a great priority of this government, which I am proud to be a member of. I fully support those activities. As has just been stated by the member for Macedon, the types of unclaimed money the bill deals with is unchanged. It is money paid to courts and general unclaimed money such as shares, dividends, salaries, wages, rents and bonds, debentures, interest, unpresented cheques and unclaimed superannuation benefits.

The key changes in the bill include the requirement that businesses advertise unclaimed money in the *Government Gazette* and the introduction of a more effective advertising regime. As has previously been touched on, that regime will include a searchable internet site where people can search for unclaimed money. I think that is a sensible modernisation. I should not respond to interjections, Acting Speaker, but I could not but note the interjection of the member for Melton, who said he regularly read the *Government Gazette.*

Mr Nardella — And nothing else.

Mr SCOTT — I suggest that life is more exciting than that — and I know he reads other material. There are other, more entertaining sources of reading than the *Government Gazette,* and I hope that he can perhaps avail himself of his local public library. Since time is short, I will keep my contribution to that and commend the bill to the house.

Debate adjourned on motion of Mr KOTSIRAS (Bulleen).

Debate adjourned until later this day.

LOCAL GOVERNMENT AMENDMENT (ELECTIONS) BILL

Second reading

Debate resumed from earlier this day; motion of Mr WYNNE (Minister for Local Government).

Mrs POWELL (Shepparton) — I am pleased to speak on the Local Government Amendment (Elections) Bill 2008 as the shadow Minister for Local Government, and I am pleased to see that the Minister for Local Government is in the chamber to listen to the debate on local government. While the opposition is not opposing this bill, we do have some serious concerns about parts of the legislation. However, we understand that many of the provisions need to be in place before the next council elections in November this year, and we want to make sure that those provisions are in place.

As I said, we do have some concerns. One of those issues is about people's voting rights. It is interesting that we have now received proposed government amendments to the bill to amend the voting rights in respect of single lockable storage units, and I will talk about that later. That again shows that as anomalies come forward, we need to address those anomalies. We have asked for a complete review of the City of Melbourne, but that was not forthcoming, and I will talk about that later.

The purpose of the bill is to amend the Local Government Act 1989 and the City of Melbourne Act 2001 to facilitate the holding of local government elections. This bill is to come into operation on 15 August 2008 to enable the changes to be implemented for the next election, and, as I said, the next election will be on 29 November this year. It is going to be an interesting year because all 79 councils are simultaneously going to election this year, which has not happened for a number of years. There have been staggered elections held for a number of years.

As I said, the government has brought this bill in to try to fix up a number of anomalies that have been found, and these anomalies have been identified by people who have written to the minister and to the government, and they have also been identified in the press. Over the last few months there have been quite a large number of articles in the press identifying areas — anomalies, if you like — where people are entitled to vote because of their ownership of small parcels of land. One of those areas is car spaces, where owners and renters of single car spaces — we are talking about car spaces of about 16 square metres — are eligible to vote. The anomaly was that such a car space could attract up to four votes; two owners and two occupiers or two renters could be entitled to have a vote for that single car space. The other issue is that of single boat moorings. With Docklands now in the city of Melbourne, people have become more aware of that issue because now we have single boat moorings, and the owners of those are entitled to a vote.

The government has responded by introducing an amendment to the City of Melbourne Act to change the definition of rateable property to exclude a property that is solely used for the purpose of parking a single vehicle or mooring a single vessel. This, in effect, is taking away all voting rights from those people who are the owners of those properties. It is disenfranchising those ratepayers, and I wonder if the government has looked at whether the person who is paying the rates is entitled to have a vote. I know that the issue about where you draw the line with strata titles and people's entitlement to vote is a very vexed issue, but obviously there is a philosophy — a philosophy with some support — that if you pay rates, you should get a vote.

The Minister for Local Government has said that single car parks and boat moorings may not have enough of a connection to the city and that this is why this amendment has been brought in, but I have to say that many of my colleagues who will probably speak on this bill have a strong view on people's right to a vote, and many have a belief that some of those smaller areas do not deserve a vote, so there is a divergence of opinions. I know that my colleagues will eloquently express their feelings about the rights of people to vote. I am not sure whether the minister considered asking the valuer-general to look at and form a view on those voter entitlements to see whether he had some answers about where we should draw the line in allowing voting entitlements and what size the eligible rateable properties should be, whether they be commercial, residential or vacant land or whatever their use may be.

Unfortunately removing voters rights is a vexed issue. People feel very strongly about it. The proposed government amendments to the bill came into the house this morning, although I received a copy yesterday. They will exclude single lockable storage units not exceeding 25 square metres. That is a small area — it is about 5 metres by 5 metres — and the issue again is with strata titles. I know the amendments came about because of some media coverage on a nine-storey building full of boxes and paperwork in Little Collins Street which is the registered address of more than 200 voters. Again, it is a very vexed issue whether all of those people are entitled to a vote.

Under these proposed government amendments their rights will be taken away and they will not be allowed to vote. That begs the question of what happens with issues like helipads and telecommunication towers, particularly since some of the telecommunication towers are owned by overseas companies, which are currently entitled to a vote. We need to have a look at whether we allow overseas businesses to have a vote in the Melbourne City Council elections and whether we disallow some other people who live around the city of Melbourne and whose main claim to fame is a car park space or a boat mooring. That needs to be seriously looked at, because we do not want to have more votes in the Melbourne City Council elections coming from outside the city of Melbourne, particularly from overseas developers.

Other issues include substations and billboard spaces. If the owners or renters of billboard spaces pay rates or have a lease, are they entitled to vote? Some of those areas with billboard spaces that promote advertisements are quite large. Another issue is that of the newspaper kiosks and fruit kiosks that are appearing in Melbourne. There are quite a number of anomalies that are going to have to be looked at, and I believe we will be coming back here again and again to make amendments as more anomalies come forward. This is not just about the City of Melbourne; this is about all of Victoria. All Victorian councils are going to be dealing with this issue.

The Scrutiny of Acts and Regulations Committee (SARC) looked at this bill and obviously scrutinised it fairly strongly. I will read from one of the recommendations it made, which states:

> The committee draws attention to the provisions in the bill concerning entitlement to vote and disqualification from seeking public office.
>
> The relevant provisions are —
>
> > Clause 3 — excludes statutory corporations from the franchise in council elections.
> >
> > Clause 23 — proposes to exclude certain persons from nominating as a candidate at a council election if they have been removed from office at that council because of a specific failure on their part.
> >
> > Clause 39 — excludes from the franchise persons whose only property interest within a municipality is a single car park or a single boat mooring.
>
> The committee notes that electoral laws may prescribe matters concerning franchise limitations and qualification and disqualification to hold or nominate for public office.

This next point is the important part of the comments:

> The question whether these laws prescribe reasonable and non-discriminatory franchise and eligibility limitations is for the Parliament as a whole to consider and determine.

That is an important point. We really have not had the discussion about where we think voter entitlements should be, and the SARC review has made that a very important issue. We need to take that into account and make sure that when we as a Parliament take voters' entitlements away, we look at whether that is a reasonable responsibility for us to have, because not only are we removing their right to vote, we are removing their right to become a councillor. All of those issues will be coming before us over the next few months.

Obviously this is a large bill, and I had a number of consultations about it. I contacted all 79 Victorian councils, the peak local government bodies — the Municipal Association of Victoria and the Victorian Local Governance Association — and CORBA, which is the Coalition of Residents and Business Associations in Melbourne. Not only did I receive a letter from that association, I met with representatives of the CORBA group, who raised a number of issues with me about the need for a review of the City of Melbourne and also some issues surrounding voter entitlements and council elections. I also received a response from Mr Jack Davis, the president of Ratepayers Victoria.

Mr Wynne interjected.

Mrs POWELL — The Minister for Local Government has made a comment because the CORBA representatives also met with the minister. I know that he understood their issues, because I believe they put their views forthrightly to the minister.

Mr Wynne — Without doubt!

Mrs POWELL — The minister says, 'Without doubt'. The minister asked who it was who came to see me, and that was Kevin Chamberlain, Dr Jackie Watts and Bill Cook. They met with me and David Morris, who is the shadow parliamentary secretary for local government. I also had a very good briefing from the minister's department, and I put on record my thanks to Jim Gifford, John Watson and Peter Keogh for their cooperation and their assistance not only at the briefing but when I asked questions after the briefing, because obviously there were quite a number of questions. I thank them and the minister for that opportunity.

The response I got from the councils was that they were happy enough with the bill. It was identified in the

Better Local Governance discussion paper last year, so a number of those issues are now coming forward, and they have been promoted by that process. I understand that code of conduct legislation will be coming in shortly, which was also identified in that discussion paper.

I am pleased to say that although councils were more than happy with that legislation, there were some concerns about the requirement to attend in person when nominating candidates during an election. A couple of councils said to me that they had some concerns about a person having to nominate in person and sign a form. They were concerned because people may live a long way away and may not be able to attend in person. Again, I think the requirement to attend in person is a good idea; it stops dummy candidates and it provides an opportunity for a person to know and understand elections. I think that part of the bill is good.

There were many personal issues that people raised with me. Jennifer Jacomb responded to the issue. Jennifer wrote to the government and comprehensively reviewed section 55A of the Local Government Act. I received a comprehensive document detailing Jennifer Jacomb's concerns about that act. Jennifer was concerned that the false declarations provisions do not go far enough. Jennifer believes that the penalty is at the discretion of the returning officer and provided a number of examples where that could be an issue. Jennifer believes strongly that if there is a breach, the returning officer must determine the penalty and that that should not be a matter of discretion.

I also received a letter from four City of Melbourne councillors. They have written to the Minister for Local Government seeking a review and raising some concerns about electoral matters concerning the City of Melbourne. They put forward a motion in the council on 24 June, which I understand was lost. But I understand that another motion put forward to ensure an electoral review was passed and supported by everybody including the Lord Mayor, John So. On page 4 of today's the *Age* an article entitled 'City council: So backs voting review' says:

> Melbourne Lord mayor John So has joined the call for a full review of the city council's controversial voting structure.
>
> State Parliament is due to debate today changes to the City of Melbourne Act, which would strip voting entitlements from car parks, boat moorings and possibly investors in storage space. Local government minister Richard Wynne says he will not order a broader review.

Cr So was among councillors who this week urged a comprehensive review of the electoral system. We need to reiterate the need for an electoral representation review for the City of Melbourne. There has been no review since 2001. Every other council in Victoria has had an electoral review every second election. Every other council has consulted with its community. I know the Victorian Electoral Commission determines whether the number of councillors is the right number and whether the ward structure is the right structure to take the council forward. Unfortunately the City of Melbourne has been denied that democratic right, because in the City of Melbourne Act there is a section excluding that council from conducting a review. I think that provision removes democratic rights from residents and ratepayers. They do not have any input into how the council is structured.

At the moment there are nine councillors who represent an unsubdivided municipality, but 9000 extra people have come into the municipality with the inclusion of Docklands and part of Kensington. I think that means the city of Melbourne has changed. It now has 9000 extra voters but there are still only nine councillors. A review would discover whether there is a need to increase the number of councillors and whether it is still appropriate that there be an unsubdivided municipality or there need to be wards. The community, the citizens and ratepayers of the city of Melbourne should be able to determine that. If the city of Melbourne were the same as every other council and came forward to be reviewed every second election, it would be due for a review right now, before the elections. It was last reviewed in 2001, and it is ready for a review before the upcoming election, which is what the opposition has been calling for.

The opposition feels so strongly about this issue that it moved a motion on the issue in the upper house, which was passed with the support of the Greens and the Democratic Labor Party. We were pleased about that. The motion was put forward by Mr Hall, a member for Eastern Victoria Region in the other place, on behalf of the opposition. Mr Hall made a wonderful contribution. He eloquently put the opposition's case on the need for a review. The motion was not only about the need for a review. The opposition also asked the government to consider the number of councillors; an electoral structure that provides fair and equitable representation for people who are entitled to vote at the general election of the council; whether the municipal district should be divided into wards, and if so, what should be the boundaries for those wards; whether the system of voting should be by postal ballot or attendance voting, with an appropriate provision for absentee ballots; and whether a candidate for Lord Mayor or Deputy Lord Mayor should also be eligible, in the event that they are not successful, to be elected as a councillor.

The last issue is important, because there are many people who have to make a decision to nominate for either Lord Mayor or Deputy Lord Mayor on one ticket or as a councillor on another ticket. There may be some candidates who are good but may miss out because they do not become the Lord Mayor or Deputy Lord Mayor. We may lose those candidates because of the way the system is set up. I am not sure if the system is working well or whether it serves the interests of the city of Melbourne, but the opposition is saying that the issue should be looked at to see if it is right. The mayor is popularly elected. That is unique to the city of Melbourne. We need to have a look at that issue and make sure that it suits the people of the city of Melbourne.

The opposition has also asked the government to look at the operation of section 9 of the City of Melbourne Act. That section is about controversial voting entitlements. We also asked the government to look at the operation of section 17 of the act, which is about the Senate-style ballot paper. That matter was put on the notice paper on 27 May, was debated on 11 June and was passed with the support of the Greens and the Democratic Labor Party. I listened to the upper house debate. The two speakers from the government side were not opposed to a review; the only opposition they had to it was that there was not enough time to have a review before the election. I beg to differ, because I know that the minister has been aware of this issue for some time. The City of Melbourne has been raising this issue for a quite a long time. It has been seeking support from the minister for a review of the matter.

The minister has said that we will not go ahead with that, but I urge him to change his mind and make a decision that the Melbourne City Council will have an electoral review to allow the people, the community of the city of Melbourne, to have a say in how they want to be represented and to make sure that they are fairly and reasonably represented. This is particularly important now with the new inclusions of population, but more importantly to make sure that the structure of the Melbourne City Council, which administers a great city, is one that takes the city forward into the future and meets the needs not just of the people who live there but also the people of the state of Victoria and, just as importantly, people who come from around the state and around the world to visit this wonderful city.

There are some other provisions of the bill that I would like to touch on. The caretaker period has been reduced from 57 days to 32 days. The Victorian Local Governance Association has said that that is in response to a call from it, so it supports that reduction. That is a good inclusion because, as a former councillor, I have observed that when councils go into that caretaker period they are unable to make any major decisions and it delays development. It is a good inclusion, and it brings it in line with the state government where I think that period is 33 days. It is important that councils are able to make decisions in the best interests of their communities and that developments are not delayed or put on hold for too long, so that is an inclusion that we support.

One of the other provisions says that all nominations are to close by 12 noon, 32 days before an election day. Currently nominations close at 4 o'clock. This is in line with the state election policy, and I understand that the Victorian Electoral Commission requested this change, which is to allow it to check the nomination details — —

Mr Wynne interjected.

Mrs POWELL — It will give them time, as the minister says, to conduct the draw for the ballot paper, so it is a sensible inclusion in this bill. The minister may also set a by-election date 150 days after a vacancy. At the moment it is 100 days, but if necessary the minister may set that date 150 days after the vacancy, and that is to avoid the Christmas and New Year holiday period. That is a good point. It is important that people who go away for Christmas and holidays have an opportunity to be able to put in their nominations.

One of the issues that has caused some concern amongst the opposition is that a councillor being dismissed from council for specific failure of duty may not nominate for the council for four years. That is a new provision. Clause 23 outlines the failures which may lead to a councillor being dismissed, and those are: the failure to take the oath of office within three months of being declared elected; absence from four consecutive ordinary council meetings — and I raise the minister's attention to what I think is a spelling mistake on page 6 of the explanatory memorandum which says 'meeting' instead of 'meetings' — without obtaining leave; or if they were dismissed by an order of the minister because they failed to attend and remain at a call of the council without reasonable excuse.

There was some concern about people being able to appeal dismissals on those grounds, particularly if the minister decided that the person could not remain a councillor because they did not attend a call of the council or did not come in within the 30 minutes provided for. The procedure is that the chief executive officer writes to the minister and says that the councillor has not attended. The minister seeks a 'please explain' from the councillor to say why that councillor was not able to be there and then makes a

determination about whether that councillor should be dismissed. We are concerned that if that person felt they had a genuine reason, they should be able to appeal. Apparently they can go to the Supreme Court and the dismissal can be overturned by a judge, and the minister has to take notice of that.

Clause 19 amends section 55A of the act to remove the limitation to the election period of provisions that prohibit misleading or deceptive electoral matter; these will now apply at all times. That is a good inclusion because the power to stop people from misleading the community should not just be confined to during the election period if people are deceiving the voters at any stage during that time and making statements that are not true and are found to be not true. This is a positive clause. It now means that that will apply at all times.

There will be a new offence for candidates, scrutineers and voters who make false declarations, and the penalty will be $2000. We wonder, though, why that did not include campaign workers, because sometimes they wear a T-shirt or a badge that says they are a member of the Greens or 'This is how you vote Green', or it might say, 'We have been endorsed by the ALP', when in fact they have not been. If the candidates and the scrutineers have to make a declaration, then we believe that campaign workers also should make sure that what they are saying is exactly right, and they should be penalised if they are wearing misleading T-shirts or badges or putting out information that is misleading or incorrect.

We have seen misleading information in a number of campaigns. I was in Gippsland just a few weeks ago and a notice came into the letterboxes from a non-Nationals person — I believe it was endorsed by someone from the Labor Party — but the logo was exactly the same as that of The Nationals. It was misleading and deceptive because it looked as though it came from The Nationals, but it did not.

Dr Sykes — Very naughty.

Mrs POWELL — As the member for Benalla said, that was very naughty, and also very misleading. The government needs to have a look at those situations where any sort of information going to voters which may make them change their voting pattern could be considered misleading.

One of the other issues that this bill provides for is that a candidate must sign their nomination declaration in the presence of the returning officer or provide a statutory declaration explaining why they cannot. As I said earlier, we do not have a problem with that, but I understand there needs to be an appointment made with the returning officer to go in and sign. The concern is that if the returning officer, for whatever reason, has to leave and was unavailable — —

Mr Wynne — The deputy has the authority.

Mrs POWELL — The minister is now saying that the deputy has the authority. That is not in the bill — —

Mr Wynne — It is in a subsequent clause.

Mrs POWELL — If it is in a subsequent clause, that needs to be spelt out, because obviously the returning officer will not be there all the time and you cannot say to a candidate who has made an appointment and come along that the person is not there.

Mr Delahunty interjected.

Mrs POWELL — As the member for Lowan says, particularly if people come from big electorates in the country — the member for Lowan has a very large electorate. The minister has said that the deputy — —

Mr Wynne — There is a provision, but we will talk about it.

Mrs POWELL — There is a provision? We would like to have it put on record that there is a provision or there is going to be a provision, because that is something that I did not pick up in the bill.

The requirement that the nomination declaration has to be signed by the candidate in front of the returning officer will hopefully stop dummy candidates nominating at the last minute. We have even heard of instances where nomination forms have been put forward when the person does not even know they have been nominated. We need to make sure that those sorts of practices are not carried on. There have probably been a number of instances across councils where somebody has waited until the last minute and not really given due consideration to nominating. We need quality candidates who have given every thought to becoming a councillor to put their names forward. We hope this provision will stop dummy candidates and people putting in false, incorrect or mischievous candidate nomination forms.

As I said, the opposition will not oppose the bill, but we have some concerns about parts of it. Mainly they are about removing voters rights arbitrarily without giving a lot of thought to anomalies — for example, a car park might attract up to four votes, and that is an anomaly. Most people would say that is something that should

not happen. But there is a philosophy that if you are paying taxation, then you need representation — there is a very strong view out there that that is the case. I know some people may have a different view, but we need to review that and make sure that all views have been put forward. As the SARC review said, that should be a decision made by the Parliament. I hope we can come back and have another discussion on that to make sure that the concerns of people who have very strong views on people's rights to vote are looked at, not just with this bill but with any bills or amendments as we go forward in the future.

As I said, a number of anomalies are being discussed, and not just in the media. People know, particularly when properties are being rated, that anomalies will be found across councils in country and urban Victoria, whether in relation to bathing boxes — which have not been identified and I know they are not an issue dealt with here because most of them are on Crown land — or other issues.

Every resident and ratepayer in every Victorian municipality has had an opportunity to have input into their council's structure, and I believe the minister should consider an electoral review for the City of Melbourne. Most people, not just the opposition, are saying that now. Lord Mayor John So and all the councillors of Melbourne City Council are requesting a review to look at all the issues we have identified; not just the voting entitlements but whether there are enough councillors and whether the ward structure is now appropriate, since a lot of other areas have been brought into the electorate. Again, I say that the opposition does not oppose this legislation.

Ms D'AMBROSIO (Mill Park) — I am very pleased to rise to speak in support of the Local Government Amendment (Elections) Bill. Before going to the detail of the bill before us I wish to address a couple of the issues raised by the previous speaker that certainly need clarification and to demonstrate that there is really no basis for concern on the part of the previous speaker or her coalition partners. The member for Shepparton indicated that there is great concern about the lack of a full review of election processes for the city of Melbourne in particular. Let me be very clear that the request by the City of Melbourne for a broad electoral review was very specific in seeking the minister's support for that request once the City of Melbourne has adopted its Future Melbourne plan, which we understand is not to be concluded until towards the end of this year. The context of that request obviously makes a broad review between now and the next council elections impossible.

The government has made it very clear and the minister has indicated that at the conclusion of all 79 council elections, which will be held in November this year, we will certainly be looking via the Electoral Matters Committee of the Parliament at electoral conduct. There is a very clear commitment on the part of government to look at consequences arising from the alignment of all municipal elections and electoral processes once the elections have been conducted in November. There is certainly no legitimate cause for concern on the part of the previous speaker.

The member for Shepparton also raised an issue concerning the possibility of penalties applying for certain offences for apparent misleading conduct by campaign workers. The bill provides for a penalty offence specifically in a case where a person has knowingly made a false written declaration. That is not about campaign workers simply wearing badges indicating some party affiliation where there may not be any. It is essentially about written declarations required of candidates and scrutineers in very limited and narrow circumstances. If we do away with the myth, we can see that the two concerns that have been raised have no basis at all.

The bill arises from extensive community and stakeholder consultation undertaken by the government under the fine stewardship of the Minister for Local Government. The bill makes a series of amendments which will both clarify and rectify existing legislative inconsistencies and also provide for greater efficiencies and fairness in the conduct of council elections. Not as significantly, some of these amendments will better reflect the standards of election procedures which exist for state elections. This bill is due to come into effect on 15 August, which provides ample opportunity for it to take full effect and for all electoral preparations to be made for the coming round of council elections in November.

The bill excludes statutory corporations from being entitled to a vote in a municipal election, including in the city of Melbourne. There seems to be no objection to that, and it is sound policy to not allow statutory corporations that are accountable to state and federal governments to take part in municipal elections. The bill reduces the caretaker period of election processes from 57 to 32 days. Many councils and peak bodies have requested this. It will reduce the length of down time, as I would put it, in the functioning of the normal business of councils. Many councils are multimillion dollar organisations, and this is a more efficient way for them to conduct their business, while allowing ample opportunity for proper electoral processes to take effect through the shorter caretaker period.

The bill and the house amendment alter the definition of rateable property so that a person who owns or occupies only a single-vehicle car park or a single-boat mooring or a storage unit of floor area not exceeding 25 square metres is excluded from entitlement to appear on the roll or to vote. This amendment does not disturb such a person's entitlement to vote by virtue of meeting other prerequisites that might apply to them, such as being an owner of another rateable property or a resident of that municipality, as they would appear on the state electoral roll. I can understand that there are some concerns on the other side of the house about people being somehow disenfranchised, but let us be very clear that people who are residing in a municipality and are on the municipal roll will certainly remain on the municipal roll and be entitled to vote. There is absolutely no doubt whatsoever about that.

I congratulate the Minister for Local Government, who is at the table, on moving very expeditiously to introduce amendments in respect of single-storey units. The matter has been brought to his attention only in very recent days. There is a recent trend towards subdividing properties down to very small sizes, which can potentially skew the voters roll and also the election results as a consequence. We need to be mindful of the fact that there are some 30 000 car parking spaces in the city, all with the potential to be strata titled. With that trend toward strata title continuing, it could result in a skewed voters roll and therefore skewed election outcomes in the city of Melbourne. There are some 7500 to 7700 single car parking spaces in the city of Melbourne. They are individually valued and therefore the owners are entitled to vote as the owners of a rateable property. That is very important.

On the issue of storage units, there are 559 store lots at one particular address at 601 Little Collins Street. Of the owners of those, 218 who have no other entitlement to the vote in the municipal elections have become new voters. Whilst it may be an issue of concern for those opposite, we need to consider this in proportion to what it may mean for residents of a municipality who are on the state roll so far as their eligibility to remain on the voters roll is concerned.

This bill also clarifies the enrolment processes so that there is a consistency between corporations and persons. The act would then require a chief executive officer (CEO) of a council to enrol a person who had given a notice of application unless the CEO believed there was no entitlement for such enrolment. The CEO must give written advice of reasons for the refusal, and this will help to ensure that the voters roll is as correct as it can possibly be.

There is also an amendment to both the Local Government Act and the City of Melbourne Act to remove the overlap between the council and the Victorian Electoral Commission election processes. That means that where a person is on the state roll and wishes to become a silent voter in a municipal election they can do that only through application to the Victorian Electoral Commission. A silent voter on the state roll automatically is a silent voter in a municipal election for which they are entitled to be enrolled.

In the short time I have left to speak on the bill I refer to a further amendment to prevent a voter from changing enrolment to a new ward in order to vote in a by-election without legitimate reason. A legitimate reason is classified as, for example, a changed primary place of residence. This is to avoid the possibility of someone deliberately seeking to change their address simply to obtain a vote in a by-election and not for any other legitimate reason The bill will synchronise the closing of nominations for attendance voting and postal voting to 32 days before the election day.

Further, the method of voting, whether it be by post or by attendance, will become a default to the system applied in the previous election of that municipality unless a council chooses to change the default setting, if you like, at least eight months before the municipal election. This is to allow for greater planning opportunity and certainty at a much earlier point. I congratulate the minister on a really terrific bill. The minister has certainly brought local government processes and elections to a very synchronised point.

Mr MORRIS (Mornington) — I am pleased to have the opportunity to participate in this debate. This morning I was beginning to think the bill may not actually be debated before the guillotine today. The bill before us makes a number of changes to the Local Government Act, particularly in reference to the elections that are due towards the end of this year. It will be a significant day for local government because it will be the first time in the history of local government that every councillor seat in the state will be filled on the one day. It will be a considerable undertaking, and it is very important to get the basics and the legislation right. In large part that is what this bill is about. As the member for Shepparton has indicated, the opposition in coalition will not be opposing the bill. While there are some concerns, it is certainly more important to get many of these necessary changes made and in place in time for the election.

The main changes included are a reduction of the caretaker period from 57 days to 32 days, bringing the nominations largely into line so that they close 32 days

before the election day at 12.00 noon. That is a step forward. Although it probably will not stop the last-minute rush which has always been a feature of council elections, at least it will happen earlier in the day. The minister will also have the ability to set by-election dates 150 days after a vacancy, if necessary, to avoid public holidays and so forth. I certainly welcome that. Last year the Mornington Peninsula shire sadly lost Cr Ian Johnson, which necessitated the calling of a by-election that had to be held right on Christmas. While everyone — the council, the community and the Victorian Electoral Commission — performed very well and got it done, it really did not allow a proper opportunity for community consideration. That is a good change.

Other changes include the requirement to nominate in person or provide a statutory declaration; the disqualification for failure of a specific duty for four years, which is essentially the balance of the term plus the next term; the expiration of the enrolments of corporate representatives; the single space or mooring and now including the storage unit provisions, which are perhaps slightly more controversial; the revised countback processes; and the new offence for candidates, scrutineers and voters who make false declarations. In relation to the last change, whilst I welcome the extension of the operation of that section and I think it is a step forward, I note that, as the member for Shepparton said, it applies now for 52 weeks a year, which means it is clearly very different to the similar provisions that operate under the Electoral Act. Perhaps when we have got through this election process, if there is to be a review of the operation it might be worth looking at that to see whether we want to go one way or the other with both laws.

The nature of the changes is that they are considerable in detail. There are 36 changes to the Local Government Act and 10 changes to the City of Melbourne Act, and obviously if there was any devil in the legislation it would be in the detail. I thank the Minister for Local Government and the department for the opportunity to work through that detail; it was certainly welcome. If I have any disappointment in the way the process has been handled, it is the limited parliamentary time we have this week to deal with it. I recognise the difficulty in getting this bill through in time for the elections, but I think it is disappointing that we do not have the opportunity to canvass the issues more. The government refused again this morning to consider removing this item from the government business program and therefore avoiding the guillotine. If there is any concern, it is really about what is not in the bill. Some of the franchise changes have been well reported. Most of them are probably of not much interest to the wider public, but they are certainly very important to the way local democracy operates. Any of these sorts of changes demand close scrutiny from the Parliament — the bill is getting some scrutiny from the Parliament — but certainly close scrutiny from local government as well.

I know the changes generally have the support of councils and officers. Some minor concerns have been expressed. Several councils have expressed to me their criticism of the changes to the nomination process. I must say they are not criticisms that I personally share. They have been centred around the difficulty of attendance, the difficulty of potential candidates getting away from work and all that sort of thing.

It is important that we get the process right from the start. Turning up to nominate in person is desirable, and you have the statutory declaration option if you cannot physically do it. If a candidate is not able to spare the time to formally nominate because of time pressures and job pressures, they are probably not going to be able to do justice to the campaign, which is their problem, and should they be successful they are probably not going to be able to do justice to the office of councillor. While I appreciate the concerns expressed, I do not share them.

SARC (Scrutiny of Acts and Regulations Committee) considered the bill and came back to the Parliament and suggested we should consider a couple of clauses including clause 3(5), which is the single car and vessel and now storage unit provision, and clause 23, which is the disqualification provision. I will come back to clause 3(5) but clause 23, which inserts new subsections (2A) and (2B) into section 70 of the principal act, essentially relates to the failure to take the oath of office, absence from four ordinary meetings without leave being obtained, and persons in respect of whom the minister has made an order under section 85(6) of the principal act. Section 85(6) is the ‘call of the council’ provision. From memory I think the minister must be satisfied that a reasonable excuse has not been offered if action is taken.

In regard to SARC’s concerns, I think we need sanctions for this sort of behaviour. Essentially we are talking about people who have been elected to public office and are failing in their responsibilities to the members of the public who elected them. They are withdrawing from the process and potentially making the council unworkable. If they are elected to a role, they should fill it unless there is some compelling

reason not to. This is not a retrospective provision, so if anyone acts in this way they will know precisely what the consequences will be.

The other issue is the car spaces and vessel moorings, and now the storage spaces. As the member for Shepparton said, it raises an important basic principle of no taxation without representation. This has been a basic tenet of Western democratic society since at least the American Revolution — the War of American Independence. Obviously we are not going to see tea tipped into Victoria Harbour, but it is an important issue and not just for the City of Melbourne, which has been the subject of much of the commentary. It is an issue for every council in the state of Victoria. We need a wide-ranging inquiry into the implications of these sorts of changes to the franchise.

There have been a couple of major changes in the way business is done which impact on this issue. One is the practice of subdividing assets that previously may have been in one holding, and the other is the development of private investment going into infrastructure. That means things like communications towers, which have also been the subject of commentary, need to be taken into consideration. House amendments to deal with the storage space issue have now been circulated.

I suggest to the Minister for Local Government that with regard to the rating issue in particular it might be useful to have the valuer-general consider these issues and report to the minister on the implications of these changing trends for the future of rating and the implications for the franchise. That at least would provide us with a starting point for the community to properly consider these changes once we have got this election cycle out of the way.

There are other issues that I would have liked to have taken up, particularly with regard to what is not in the legislation in respect of the City of Melbourne, but I think the member for Shepparton has canvassed those issues well. While there are some things I would rather were not in here, and there are certainly some things I would rather were in here, we have to deal with what we have got, and on the whole it is not too bad so we are happy to go with it.

Sitting suspended 12:59 p.m. until 2:03 p.m.

Business interrupted pursuant to standing orders.

QUESTIONS WITHOUT NOTICE

Transport: freight and logistics strategy

Mr BAILLIEU (Leader of the Opposition) — My question is to the Premier. I refer to the government's failure to plan for transport and in particular to the Premier's failure to deliver on the government's freight and logistics strategy first promised in 2001 and repeated in various forms in 2002 and 2003, again in 2004, further in 2005, also in 2006, then in 2007 and of course most recently in the government's response to the Melbourne 2030 audit just five weeks ago, and I ask: when will that strategy be ready, or is the Premier concerned about rushing the project?

Mr BRUMBY (Premier) — I am certainly advised that, in contrast to the focus of the government on these issues in the state, at the 2006 state election there was not a single mention of the word 'freight' in Liberal Party policies — not one!

Honourable members interjecting.

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

Mr BRUMBY — What I do know is that among all the analysts and commentators Victoria is described as the freight and logistics capital of Australia. We move more freight more efficiently that any other capital city in Australia.

The Leader of the Opposition asks about the plans we have in place. One of the plans we have in place to move more freight and more containers and make our city more efficient is deepening the channels of the port of Melbourne. We support that project on this side of the house, unlike the equivocation from the Liberal Party on that side of the house. We are investing $1.3 billion in the biggest publicly funded road project in the state's history, widening the Monash-West Gate route. This will increase the volume of that by almost 50 per cent. Guess what a lot of the use on the Monash-West Gate is? It is freight. We are investing more than $500 million in the ring-road around Geelong. We are investing hundreds of millions of dollars on the Deer Park bypass. We are investing hundreds of millions of dollars duplicating the Calder Highway to Bendigo.

In all these areas we have a stronger focus on freight and logistics than any other state in Australia. If you look at the assets we have in this state, whether it be the port of Melbourne — —

Honourable members interjecting.

The SPEAKER — Order! The Minister for Health! The member for Burwood is warned!

Mr Baillieu — On a point of order, Speaker, the Premier is debating the question. He was asked when the freight and logistics strategy would be ready. If it is going to be further delayed, then all he has to do is advise the house.

The SPEAKER — Order! I do not uphold the point of order. The Premier is being relevant to the question asked.

Mr BRUMBY — Then there is the huge amount of freight which is shifted across country Victoria. We have committed $42.7 million to and begun the task of upgrading country rail lines. We bought back the network. We paid $133.8 million to buy back the network which was sold off by the Kennett government. We have bought it back. We are fixing up the gold lines as recommended by Tim Fischer. With the commonwealth we are spending $73 million to fix up the line to Mildura. On top of all that, in partnership with the federal government and the ARTC (Australian Rail Track Corporation), we are spending $501 million putting in the standard gauge line.

The Leader of the Opposition is of course entitled to his view and his opinions, but I know that when I was up in the north-east to announce this with the ARTC and the Minister for Public Transport, it was described by the mayor and others in business there as the biggest, single investment ever made in the north-east of Victoria. Guess what area it is?

Honourable members interjecting.

Mr BRUMBY — Bill was there supporting it. He thinks it is a great strategy. He thinks we have got a great strategy.

Honourable members interjecting.

The SPEAKER — Order! The member for Kew! I warn the Leader of the Opposition. This will be a very long question time if members continue to interject in this manner.

Mr Donnellan interjected.

The SPEAKER — Order! I warn the member for Narre Warren North.

Mr BRUMBY — As I have said, we have had a clear and consistent view about positioning our state as the freight and logistics capital of Australia, and I believe that most, if not all, independent commentators would say that we are the freight and logistics capital of Australia. I did some quick arithmetic on the projects that I have just referred to, which are all either under construction, have been completed or are about to be commenced. There is about $3 billion-plus of investment there when you think of the Monash-West Gate, channel deepening and the north-east. Of course our freight strategy — and I have the various plans here — includes those projects and includes Meeting Our Transport Challenges.

Honourable members interjecting.

The SPEAKER — Order! I suggest the member for South-West Coast and the member for Scoresby should cease interjecting in that manner, as should the member for Kilsyth, the member for Ferntree Gully and the member for Warrandyte.

Mr BRUMBY — What about Bass?

The SPEAKER — Order! The member for Bass as well.

Mr BRUMBY — Where would we be without Bass? We have a plan. It is a good plan. As I say, I am surprised the Leader of the Liberal Party would ask this question today. He was the leader at the last election, and there was not a single mention of freight in Liberal Party policies.

Kororoit electorate: government initiatives

Mr NARDELLA (Melton) — My question is to the Premier. Can the Premier outline to the house how the Brumby Labor government has invested in Kororoit and will continue taking action to ensure it is the best place to live, work and raise a family?

Mr BRUMBY (Premier) — I want to thank the member for Melton for his good question and his longstanding support for the western suburbs. I think it is instructive to look at what has occurred in the western suburbs of Melbourne, and in particular in the Kororoit electorate, during the period in which we have been in government. If you look at the things that do matter and make a difference to people lives — education, health, transport and jobs — there have been significant investments in all of these areas under our government.

I am pleased to advise the house that since 1999 we have built 11 new schools in the western suburbs; we have invested $48 million in the Kororoit electorate alone; Kings Park Primary School and Deer Park West Primary School have been modernised; and we are building the new Caroline Springs College. Two of the

four campuses of that school have been completed and construction is continuing at the Brookside and Springside campuses. I visited Caroline Springs College just a few weeks ago. It is a magnificent investment in this area. It has great staff, a great community and kids who are doing well in that school — families who want to get on and get the best possible education.

If you look at the investment you find that is 1500 additional teachers in the western suburbs of Melbourne. As I have said, there are 11 new schools. We should remind the house that we have built 11 new schools; the Liberal government in the 1990s closed and sold off 10 schools.

In health, the Western Hospital was allocated $73.5 million in the recent state budget. There are more than 500 additional nurses in the western suburbs. Again, we are investing in hospitals. We are expanding services. We are increasing elective treatment. There are 500-plus nurses. Under the former Liberal government two hospitals were closed and nurses were sacked.

In police, we have increased the number of front-line police: 27.7 per cent in Brimbank and 22.6 per cent in Melton. Crime is down by more than 20 per cent. Some ABS (Australian Bureau of Statistics) figures were released today which confirm that Victoria remains the safest state in Australia — and we are proud of that.

This year building approvals in the west are just under $1 billion in value, twice what they were in 1999. Population has grown by 26 per cent under our government — it grew by just 13 per cent under the coalition — and of course the unemployment rate is 4.7 per cent in the west, compared with 9 per cent when we were elected.

All this is about a very strong commitment by our government to the western suburbs. We have a strong commitment to Melbourne and a strong commitment to the west and to the state as a whole. We have seen significant benefits there in education, in health and in transport. Work is well under way of course on the Deer Park bypass and the Taylors Road underpass. All these are positive things for the area. I think we have a good record and a good story to tell there, and obviously we look forward to building on that in the years ahead.

Water: Victorian plan

Mr RYAN (Leader of The Nationals) — My question is to the Premier. I refer the Premier to the government's failure to plan for Victoria's water management and to the white paper which was released four years ago in June 2004 with the then Premier describing it as 'the most comprehensive action plan in Victoria's history to secure sustainable water supplies for the state's future', and further to the white paper itself, which states that 'the government will develop five regional sustainable water strategies' and that these strategies will be prepared 'over the next four years', and I ask: with the four years now gone, is it not the fact that only the central water strategy, which the government largely ignored, has been completed and the other four plans are still in the pipeline?

Mr BRUMBY (Premier) — I am surprised by the question from the Leader of The Nationals, because it is only a couple of weeks ago in this Parliament in response to an Auditor-General's report that The Nationals and the Liberal Party accused us of doing too much, too soon.

An honourable member interjected.

Mr BRUMBY — That is exactly right! Today we have The Nationals saying we have not done anything. I move around the state a fair bit — —

Honourable members interjecting.

The SPEAKER — Order! I am conscious that it is Thursday, and I have had a special request not to ask members to leave on Thursdays, but I will if pushed.

Mr BRUMBY — Until very recently the largest water-saving project in Australia was the Wimmera–Mallee pipeline, saving 100 billion litres of water. This is a partnership project with the federal government, but the fact of the matter is that this project, announced in this Parliament in 2003 with budget funding then — an initiative of the Labor government — would never have happened without our Labor government here in Victoria. More than half a billion dollars of investment — —

Mr Ryan interjected.

Mr BRUMBY — I know it is a project strongly supported by the Leader of The Nationals, isn't it?

Mr Ryan — It is indeed.

Mr BRUMBY — It is indeed. And who is doing it? It is a Labor government — our government.

Honourable members interjecting.

The SPEAKER — Order! While being very aware that this is the last question time for some weeks, I still

ask for some cooperation. If the Leader of The Nationals and the Minister for Water would like to continue their conversation, they can do so outside the chamber.

Mr BRUMBY — We know that The Nationals spent a long time thinking about that project, but the government that actually did it was ours. It is a great project, and I think I can say that it is one that every member of this house without exception would be proud of.

I said that until recently it was the largest water-saving project in Australia. It has now been replaced by another project which is the largest water-saving project in Australia, and that of course is the food bowl project. I note that this week the *Shepparton News* states:

> The economic benefits of the food bowl modernisation project have started flowing to the Goulburn Valley, with 200 contractors expected to begin work on the project next week.
>
> 'On-site teams involving 130 subcontractors and 18 excavators are working on 110 sites on these channels, performing civil and structural works … chief executive Murray Smith said.
>
> He said the workforce would peak next week, with 200 subcontractors —

on site.

This is a project stage 1 of which will save more than 200 billion litres and stage 2 of which will save 400 billion litres. It is a great project again being delivered by a Labor government.

When you go to the east of the state, to Gippsland, the Gippsland Water Factory is being put in place there, again by the Labor government. The Minister for Water made some comments about that project yesterday. Needless to say, without that project, without water recycling, we would not have seen the investment by Australian Paper at Maryvale of almost $400 million — again an investment secured and facilitated by our Labor government.

When the Leader of The Nationals purports that there is no plan across the state, that is not accurate. There is a bigger investment occurring in water. We have the Wimmera–Mallee pipeline, we have the food bowl project, we have desalination, we have pipes that are linking to Bendigo and we have the super-pipe to Ballarat. We have the biggest investment in water infrastructure in this state. Unlike the piecemeal approach, which was a hallmark of the 1990s, we are the first government to put in place a sustainable water strategy across the whole of Victoria: in every region, in every part of the city, and in every part of the country. We are drought proofing the state and making sure that we can enjoy a strong economy and a strong quality of life for decades to come.

Questions interrupted.

DISTINGUISHED VISITOR

The SPEAKER — Order! Before calling the member for Derrimut, I welcome to the gallery today a former member for Warrandyte, Phil Honeywood.

Questions resumed.

Sport: western suburbs

Mr LANGUILLER (Derrimut) — My question is to the Minister for Sport, Recreation and Youth Affairs. I refer the minister to the government's commitment to make Victoria the best to live, work and raise a family, and I ask: can the minister outline to the house what action the Brumby government is taking to ensure the people of the western suburbs have access to the best community facilities and elite sports facilities?

Mr MERLINO (Minister for Sport, Recreation and Youth Affairs) — I thank the member for Derrimut for his question and for his strong support for the western suburbs. Just last week I joined the Deputy Premier and the Labor candidate for Kororoit, Marlene Kairouz, in Caroline Springs to announce that the Brumby government will invest $300 000 in two all-weather synthetic pitches at Northlake Reserve.

The west is the fastest growing region in Melbourne, which is why the Brumby government has delivered to the region record levels of funding for first-class community sports facilities. Our record in the west is second to none. In Altona, Labor invested $1.75 million in a complete redevelopment of the Altona Leisure Centre, a terrific facility that is located just a few minutes from the site of the former Altona hospital — a hospital which we all know was closed down in the 1990s by the Liberal government, when the Leader of the Opposition was president of the state Liberal Party.

In Sunshine, Labor is delivering $3.4 million to restore the Sunshine outdoor pool, which is a great win for the community which fought so hard to save it. The pool will once again be a fantastic community hub. It is located just a few minutes from the former Maidstone Primary School, a school sold off in the 1990s by the Liberal government. In Braybrook the Brumby Labor government has also contributed close to $100 000 towards redeveloping Braybrook Park, creating free

facilities for tennis, basketball, netball and soccer. Braybrook Park is of course just a few minutes from the former Tottenham Primary School, which was also a school sold off in the 1990s by the former Liberal government. Since 2000 this government has delivered over $17 million towards grassroots sporting facilities in the west — an unprecedented level of funding and one of which the Brumby government is very proud.

The question also referred to elite sport. Earlier this month I opened stage 1 of the massive redevelopment of the Western Bulldogs ground, the Whitten Oval. The Brumby government invested $4 million in this new state-of-the-art centre, which is a massive win for every aspiring athlete in the western region. The redevelopment forms part of an elite sports triangle, comprising the Whitten Oval, Victoria University and Maribyrnong College, with its fantastic sports program. That program will deliver the best coaching, the best training, the best science and the best infrastructure for young athletes in the west.

The vice-chancellor of Victoria University, Professor Elizabeth Harman, had this to say:

> VU's partnership with the Bulldogs brings together two of the most influential organisations in Melbourne's west and by pooling our resources we can bring substantial benefits to families, schools, teachers, social clubs and community groups.

Patrick Smith wrote in the *Australian:*

> Simply put it is fantastic … As fine as it is for the football team, it … also embraces the broader community. It is so good opposition clubs and other codes are jealous.

The Brumby Labor government does not strip communities of their schools and hospitals. We build communities and invest in them. We do not neglect, we do not trash and we do not abandon regions for decades and then fly in during a by-election and make promises we have no intention of honouring. Whether it be through improving facilities at local parks and local pools or by providing the very best facilities for our elite young athletes, it is only the Brumby Labor government that will deliver for the west, ensuring that the west is the best place to live, work, and raise a family.

Public transport: ticketing system

Mr MULDER (Polwarth) — I refer the Premier to the government's failure to plan for the future of Victoria's public transport, and I ask: will the Premier explain the Transport Ticketing Authority's stakeholder relationships and organisational chart for the delivery of myki which shows that the Treasurer has no relationship with the Minister for Public Transport, the Department of Premier and Cabinet is disconnected from the Department of Transport, Kamco does not communicate with Yarra Trams and Connex and Metlink just do not talk any more?

Mr BRUMBY (Premier) — What we have seen in the last few years in Melbourne and indeed across the state is exceptionally strong growth in patronage on our public transport system. We have seen it in Melbourne. We have had growth of 12 per cent-plus in train usage over the last two years, and we are, by the way, seeing similar growth this year. Since we put in place the fast rail links to the regions and new rolling stock we have seen an astronomical rise in patronage on V/Line system services. People are coming back to using rail because we are providing increased investment, improved services and a lower cost of usage for people in V/Line areas and in zone 3.

In the period since I have become Premier we have launched a new timetable with 200 extra train services a week, we have opened the new electrified line to Craigieburn and new stations at Craigieburn and Roxburgh Park and added new services from Craigieburn, we have rolled out the early bird scheme, and we are the only state in Australia — —

Mr Mulder — On a point of order, Speaker, the Premier is debating the question. I asked him if he could explain his organisational chart and how it works.

The SPEAKER — Order! There is no need to repeat the question, as the member knows. The Premier is debating the question, and I ask him to come back to it.

Mr BRUMBY — I will of course answer the question, Speaker. My understanding is that the member asked about our plans for public transport, and that is what I am addressing. We have purchased eight new metropolitan trains, we have purchased eight extra V/Line carriages, we have rolled out new bus routes, particularly from North Melbourne to Parkville, and of course we have commenced a major upgrade of the St Kilda Road tramway.

Mr Mulder — On a point of order, Speaker, the Premier continues to debate the question. I ask him to answer the question in relation to how the organisational chart works — who talks to whom and how does it actually work?

Mr Batchelor — On the point of order, Speaker, in the first part of the question the member for Polwarth asked about future plans and what we are doing in relation to public transport planning, and the Premier is

entitled to talk about what we are actually doing to meet that future demand.

The SPEAKER — Order! I uphold the point of order of the member for Polwarth and ask the Premier to stop debating the question.

Mr BRUMBY — As I said, we have put in place significant new investments in our public transport system, and we will make further investments in the years ahead.

Police: government initiatives

Mr NOONAN (Williamstown) — My question is for the Minister for Police and Emergency Services. I refer the minister to the Brumby government's commitment to make Victoria the best place to live, work and raise a family, and I ask: can the minister advise the house how the government's record investment in police is reducing crime and making Victoria a safer place to live?

Mr CAMERON (Minister for Police and Emergency Services) — I thank the honourable member for his question and for his interest in police and community safety. Victoria Police has a record budget and record resources, and that has only occurred under a Brumby Labor government. In the first two terms we have seen 1400 more police and we have seen another 350 more in this term — and where are they? They are out in stations, and they are out doing a great job across this great state. In Caroline Springs they are in the police station. It is in general elections, not by-elections, where you get to set a plan for the whole state. In 2002 there was one party that said as part of its statewide plan that there should be a police station at Caroline Springs. There were two parties in this great house that could not care less and said, 'No, go to buggery', in effect, to the people of Caroline Springs. I can tell members that the party that was for Caroline Springs — —

Honourable members interjecting.

The SPEAKER — Order! I ask the minister to confine his remarks to parliamentary language.

Mr CAMERON — Perhaps they said, 'Go dash it', then. Today the ABS (Australian Bureau of Statistics) has released figures, and the report, *Recorded Crimes — Victims* survey for 2007, goes a long way to painting a very positive picture of what we see in policing in Victoria. The report released this morning by the ABS shows that Victoria remains — —

Honourable members interjecting.

The SPEAKER — Order! The member for Warrandyte should not interject in that manner. He has already been warned during this question time. I also ask the member for Bayswater to cease interjecting in that manner, and the member for Kilsyth.

Mr Hodgett interjected.

The SPEAKER — Order! I warn the member for Kilsyth. The member for Kilsyth will not be warned again.

Ms Beattie interjected.

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

Interjection from gallery.

The SPEAKER — Order! The former member for Warrandyte is warned.

Mr CAMERON — The former member for Warrandyte will be aware that the Chief Commissioner of Police, Christine Nixon, makes it clear that Victoria is the safest place in Australia, and today's ABS figures add further support to that, with the lowest crime rates against the person in any state. The *Recorded Crimes — Victims* report is one of two ABS reports that attempt to measure crime and victimisation across Australia. The other one is the ABS report *Crime and Safety, Australia*. When you have a look at that report you see it shows that Victoria has the lowest number of crimes against the person and the second lowest prevalence of crime when it comes to property offences.

The good work of police is reflected across the whole state, including in the electorate of Kororoit, where we see the crime rate in Brimbank down by 21 per cent and in Melton down by 30 per cent. There has been an additional allocation of police in Brimbank, where numbers are up by 27 per cent, and an additional allocation in the Melton police service area, where numbers are up by 22.6 per cent. What we have is police out on the beat and out on the streets, not only doing a good job in the shopping centres and in the communities but also out on our roads. When we have a look at hoons we see that 309 hoons in the Kororoit area have been taken off the roads for first offences. There are some, including those opposite, who would say that the hoon laws are too tough. They would say that for a first offence you should simply get a warning.

An honourable member interjected.

Mr CAMERON — That is right, they would say you should simply get a warning. We believe those first

offenders should be taken off the road rather than simply being sent a letter saying, 'Dear Mr Hoon, would you please be nice on our streets?'. One side of this house believes that hoons in Kororoit have to be tackled, and that is Labor. We have a record investment in police and a record investment in police in the Kororoit electorate. We congratulate Christine Nixon on what she has been able to do with record resources, and we congratulate police on the work that they do across the whole state.

Transport: new department

Mr BAILLIEU (Leader of the Opposition) — My question is to the Premier. I refer the Premier to his government's advertisement which appeared on Friday, 20 June, seeking a new director of public transport and which, amongst other things, states that a knowledge of transport and the public sector is 'certainly not seen as essential' but 'the patience to deal with ambiguity' is, and I ask: is there anyone in this government who knows anything about public transport?

Mr BRUMBY (Premier) — As honourable members would be aware, some weeks ago I restructured government departments, removed the former Department of Infrastructure and created a new Department of Transport. I did that to put a stronger focus on transport issues across government. It is no secret, as I said, that at a period in which we are experiencing the largest population boom in the state's history — bigger than the postwar migration boom and bigger than the gold rush of the 1850s — we have pressure on our transport system.

There is a standard rule of thumb used in these things, which is that for every additional person in your state, on average there are an additional four transport trips or movements per day. If you add 80 000 people, as we did last year in Melbourne, you have a lot of people using motor vehicles, including cars, and a lot of people using trams and trains.

We created the Department of Transport to put a stronger focus on the transport system. I just make this point; however you want to analyse the data, whether it be investment in major roads and road infrastructure, investment in trams, investment in rolling stock, investment in trains, investment in grid extensions or investment in country roads, our government has a vastly superior record to that of the Liberal government of the 1990s. We have been investing in public transport. We did not sell off the country freight network.

Mr Ryan interjected.

Mr BRUMBY — Here we go. You did not sell off — —

Honourable members interjecting.

The SPEAKER — Order! I ask the Premier not to debate the question but to come back to answering it.

Mr BRUMBY — As I said at the beginning of my answer — —

Mr Mulder interjected.

The SPEAKER — Order! Question time will go much more smoothly without constant interjections from the member for Polwarth. I ask for his cooperation.

Mr BRUMBY — As I said at the beginning of my answer, I believe there are significant challenges in our transport system. For that reason I removed the Department of Infrastructure and created a new Department of Transport. We are continuing to strengthen that department, and over the course of the second half of this year we will form a final view on all of the Eddington recommendations, plus any other proposals that are put to us from the community, and release a further stage in our transport plan, which will be about continuing to ensure that Victoria has the best transport system anywhere in Australia.

Health: western suburbs

Mrs MADDIGAN (Essendon) — I would like to ask the Minister for Health if he can outline to the house recent Brumby Labor government initiatives to support health services in the western suburbs?

Mr ANDREWS (Minister for Health) — I thank the honourable member for Essendon for her question, and I acknowledge her passionate interest in the best possible health outcomes for her community and the broader western suburbs.

As a government we have substantially increased resources and support for Western Health. Record funding for Western Health of course means that it is able to treat record numbers of patients today and will be able to treat record numbers in the years to come. As the Premier said when answering an earlier question, we, as a government, have increased Western Health's overall ongoing funding by 106 per cent. That will further increase when we make the allocations from this year's budget for the 2008–09 financial year. There will be 106 per cent more funding for Western Health across its campuses. That is record funding to treat record numbers of patients.

That was not always the case. But proudly, under this government, we are committed to giving health services right across the state, but certainly in Melbourne's west, the resources they need to treat more patients and to provide better care. As important as ongoing funding is, capital funding is also important. That is why we are proud to say that we have provided Western Health, again in record terms, with the capital support it needs to ensure that the quality of the buildings of Western Health matches the quality of care provided by the staff at Western Health. That, I think, has been met with the approval of those in the western suburbs, including families in the west and those who are providing that care.

I have spoken before in this house about the proud investments and announcements in the budget in relation to public radiotherapy being brought to the west as a result of $73.5 million in this year's state budget as part of the stage 2 redevelopment of the Sunshine Hospital. That is being delivered by this government. There is $73.5 million for public radiotherapy in the west for the first time ever.

On from that, there is the teaching, training and research facility to ensure that we get the best and brightest clinicians working, training and providing care in the west to benefit the patients of Western Health. That comes as part of a $151.9 million boost in terms of capital infrastructure that is so important for better health outcomes across Western Health.

All this additional investment of course means that we can treat more patients and provide better care. If you look at Sunshine Hospital alone, you will see that we have a situation where there are 36 000 additional emergency department presentations at the hospital now compared to the numbers we inherited in 1999. I put to you, Speaker, and all honourable members that record funding means you can treat record numbers of patients. Similarly, in relation to admissions to the Sunshine Hospital, there have been 16 500 additional admissions because we have provided record funding this year compared to the numbers we inherited in 1999.

I should inform the house of some recent developments. As part of our elective surgery partnership with the federal Rudd government — with the Prime Minister and the federal Minister for Health and Ageing, Nicola Roxon — the Premier and I recently announced substantial new capital works funding as part of the stage 2 elective surgery blitz and the partnership between our government and the commonwealth government. I am pleased to say that will benefit patients, particularly those needing day surgery in the west. There will be $2.6 million in funding as a part of that $35 million capital blitz.

We already do about 6000 extra same-day procedures today compared to 1999, but we can do more and we can do better. In partnership with the commonwealth government that is exactly what we will do, because this government has a plan for the west. It has a record of investing to support better health outcomes in the western suburbs, because this government is led by someone who has a plan for the west and a commitment to the west, unlike other political parties which are led by someone who is far more concerned with Wesfarmers, Westpac and Western Mining Corporation and is not interested in Western Health.

Metropolitan Fire Brigade: Burnley training facility

Mr McINTOSH (Kew) — I refer the Premier to the Metropolitan Fire Brigade's Burnley training facility and in particular to the fact that the facility was delivered late, that the $30 million budget has now been well and truly exceeded, that an additional $12 million had to be spent to clean up the site because of known carcinogens, that the fire hydrants still do not work and that the facility is too small to carry out proper firefighting training, requiring MFB trainees to use Country Fire Authority training facilities instead, and I ask: apart from all of this, how is it all going?

Mr BRUMBY (Premier) — I thank the member for Kew for his question. One very clear point of difference between our government and the former government of this state is the substantial investment that we have made in infrastructure across the state of Victoria. This year we will be investing $4 billion in new schools, new hospitals, new police stations, new fire stations, new roads and new public transport across the state. It is an investment in the future of this state. It is about building for the future, it is about building a better future and it is a hallmark of our Labor government in Victoria.

You can go back to the 1990s when people left this state in droves — —

Mr McIntosh — On a point of order, Speaker, the Premier is clearly debating the question. I ask you to draw him back and get him to answer the question about how the Burnley fire station is going.

The SPEAKER — Order! I uphold the point of order.

Mr BRUMBY — Speaker, I think it is fair to say that it was a fairly broad question: 'How's it all going?'.

We are investing, as I said, in projects. There is the new children's hospital, which is the biggest and the best children's hospital being constructed anywhere in Australia. There is the new convention centre being constructed, and paid for — —

Mr Baillieu — On a point of order, Speaker, the Premier is debating the question. I invite you to ask him to return to the question about the fire brigade's training facility.

The SPEAKER — Order! I have asked the Premier to address the question. The question was 'How are you going?'. The question was exceedingly broad; the preamble to the question was rather narrow. I will allow the Premier to answer according to standing orders, which require that he is relevant to the question. I do ask that the Premier, while being relevant to the question, make reference to the preamble to, or beginning of, the question.

Mr BRUMBY — As I have said, there is the new convention centre, which we are building as well, with 5000 seats and a 6-star energy rating — the biggest and the best convention centre anywhere in Australia. There is the new rectangular stadium, giving us the best sports precinct anywhere in the world.

Mr Baillieu — On a point of order, Speaker, I think the people of Victoria could be forgiven for believing that the Premier was trying to avoid the question. To the best of my knowledge the Metropolitan Fire Brigade is not conducting its fire training at the convention centre. I invite you to ask him to return to the question of the fire brigade's training facility at Burnley. We appreciate it is an embarrassment to the Premier, but he might give the Victorian public the decency of an answer.

The SPEAKER — Order! I can deal with the question only as it was asked.

Mr BRUMBY — It is also all going very well out at EastLink, where I was this morning with the Minister for Roads and Ports. Out there we saw the new control system. EastLink is opening in three days. It is the biggest road project in Australia and again a great investment in the state of Victoria.

Dr Napthine — On a point of order, Speaker, I would put it to you that the Premier is debating the question. The question had a preamble relating to the Metropolitan Fire Brigade's Burnley training centre, and then the question was 'Apart from all this, how is it going?'.

Honourable members interjecting.

The SPEAKER — Order! The member for South-West Coast will be heard in silence.

Dr Napthine — For the interest of the Deputy Premier, the 'apart from all that' refers to the issues that were raised, and the 'it' in the question clearly, in any interpretation of the English language, relates to that Burnley fire training centre. That is what the question relates to: How is it — as in the Metropolitan Fire Brigade's Burnley training centre — going? I ask you, Speaker, on any interpretation of the English language, to have the Premier address that question. That is what the people of Victoria want him to answer, that is what the Parliament demands him to answer and that is what, I put to you, standing orders demand him to answer.

Mr Hulls — On the point of order, Speaker, in relation to the particular question, I suggest you were right when you said it was a very broad question, but it has just been reiterated that there was a preamble and then the question was 'apart from that' — meaning apart from the preamble, 'how is it all going?'. So a very broad answer is required to answer a very broad question.

The SPEAKER — Order! As all members know, the Speaker cannot direct a minister how to answer. The answer needs to be relevant. It also needs to be succinct and, even given the interruptions, the answer is heading towards being lengthy. I will be looking for the Premier to conclude his answer. The question, as I understand it, is particularly broad, which is what I have already stated. I ask the Premier to conclude his answer.

Mr BRUMBY — I will conclude my answer, and in conclusion say that it is all going well down at the National Gallery of Victoria, where this morning the Minister for the Arts and I launched the Art Deco 1910–1939 exhibition, another great major event for our city, another fantastic major event.

Mr Baillieu — On a point of order, Speaker, the Premier is debating the question. On the very day that bushfires and firefighting have been the subject of a parliamentary committee report damning of this government, the Premier is seeking to avoid answering a question about the firefighting training facility at Burnley. He is holding fire officers in contempt, the people of Victoria in contempt and this Parliament in contempt. He should answer the question and not play silly games.

The SPEAKER — Order! The Premier is not debating the question. The Premier will conclude his answer.

Mr BRUMBY — There are many other aspects of our investment across the state which are improving the quality of life for all Victorians. The recital hall is another great project. We have a substantial investment in new infrastructure and new services across the state. This is all about making Victoria the best place in Australia to live, to work, to invest and to raise a family.

Rail: St Albans level crossings

Mr SEITZ (Keilor) — My question is for the Minister for Public Transport. It is a question that the media has been waiting for for a long time, and after next Saturday it will be asked by Marlene Kairouz. Can the minister outline to the house how the Brumby Labor government is taking action with regard to the level crossing in St Albans and any other commitments that exist regarding such crossings?

The SPEAKER — Order! The question was not hypothetical, but the preamble to it had a degree of the hypothetical to it. The minister will confine her answer to the latter part of the question.

Ms KOSKY (Minister for Public Transport) — I will indeed, Speaker. I thank the member for his question and for his very strong interest in level crossing issues at St Albans. We as a government take very seriously safety at level crossings and are investing in level crossing improvements in St Albans. We have made major commitments, and we are taking major action. If people want to talk about level crossings in the western region, all they need to do is go down and look at the work that is currently taking place at Taylors Road, St Albans, in relation to grade separation to see the action that is currently being taken there. It is a $54 million project. We have invested the money to improve level crossing safety at Taylors Road by grade separating that level crossing. A massive amount of work has already taken place, and it is expected that the work will be finally complete in early 2009. It is a very large project.

We have put in place the actions. We do not just speak the words, we put in place the actions. This is part of a three-stage process to improve level crossings at St Albans. I have talked about stage 1. The planning for stage 2, which is Main Road, including an underpass of the railway line, is well advanced. VicRoads has a preferred route and is currently undertaking a detailed design. I was asked about action. We are delivering, and we are delivering in very large amounts in relation to level crossings.

I was also asked about other commitments that exist, and I can report to the house on these other commitments. I am aware of a commitment published in the *St Albans-Keilor Advocate* in May 1988. It was a promise 'to give the problem of the rail line urgent attention'. There was another commitment, so it was not just the one commitment. The second commitment was in March 1992. Commitment 2 was, again, published in the *St Albans-Keilor Advocate*, in which it was quoted as 'action on St Albans transport problems would be a top priority'. Commitment 3 was again published in the *St Albans-Keilor Advocate* in August 1992, and it states, 'Help for some traffic "black spots" including the infamous St Albans railway crossing may be just around the corner'.

Those commitments were very, very strong commitments — and not one commitment, not two commitments but three commitments were made. You would have thought that there would have been quick action following those commitments, but nothing was done by the people who gave those commitments. Who gave those commitments? In 1988 commitment 1 was made by a Mr Jeff Kennett, a former Premier; in 1992 commitment 2 was by made by a Mr Alan Brown, a former transport minister; and in August 1992 commitment 3 was made by a Mr Bill Baxter, a former roads minister. There were three commitments and no action until a Labor government got into power. There were commitments prior to the election and then no action. Those people walked away from those commitments, and the people in St Albans were rightly angry about that.

We are currently putting in place all of the works. We have a three-stage plan and we are putting in the works. Members can go out there and see the works we are putting in place. Who should the people of the Kororoit electorate believe? Should they believe the Liberals, with yet another hollow commitment — the fourth commitment, and they have all been hollow — or a government that is doing the work today in St Albans? We are doing the work and will continue to honour our commitments with actions, not words. The choice is clear. The choice is between the government, which has an action plan and is doing the work, and the opposition, which will of course forget the western suburbs and its commitments come 6.00 p.m. on Saturday night.

LOCAL GOVERNMENT AMENDMENT (ELECTIONS) BILL

Second reading

Debate resumed.

Mr STENSHOLT (Burwood) — I am delighted to talk about how it is all going in respect of the Local Government Amendment (Elections) Bill. This is a very timely bill, as I am sure members of the house will appreciate, with the council elections coming up at the end of this year. It is a further step in the extensive reforms of the Labor government. Labor has reformed the constitution, it has reformed the upper house and it has reformed local government and included it in the constitution. Having an election every four years, thereby giving certainty to voters, is part of that reform by the Labor government in respect of local government.

This amendment bill provides for a number of changes as part of that extensive reform process the Labor government has undertaken. I welcome particularly, on behalf of my local councils, the caretaker provisions that are included in this bill. I know, having talked to my councils since the last election, that there was a degree of concern about the caretaker period. The councils welcome the change to the caretaker period from 57 days down to 32 days, bringing it more in line with the state and federal election caretaker period. During this period the council cannot enter into major contracts or entrepreneurial ventures or make decisions about permanent employment of chief executives, and it cannot publish electoral material unless it is only about the election period.

There was an issue during the last election in the city of Boroondara about the publication of material because the local Boroondara bulletin included, during that election caretaker period, details of all the current councillors, many of whom were standing again for election. It included comments by them and many photos of them. I hope the department and the Victorian Electoral Commission will look into the publication by councils of any newspapers or bulletins during the caretaker period, or that they have available during the caretaker period, so as not to give an unfair advantage to any current councillors who may be standing for re-election. I hope the minister will take this into account because there was a complaint, as I understand it, during the last election in respect of that particular matter.

I also note that as part of the reforms in the bill there are particular matters about nominations and the encouragement for people to nominate in person. This is a good move and will ensure that candidates are serious about nominating. In one of my local areas for example, in Boroondara, sometimes the idea of having dummy candidates appears. One of them got elected, but he was in New Zealand. I think he was doing his articles, either during or just after the election period.

I welcome the prohibition on nominations for certain people who have failed to take the oath of office or more importantly, are absent for four consecutive ordinary meetings without leave. As I mentioned before, there was a councillor with the City of Boroondara who never seemed to be there. Eventually it became so embarrassing that he resigned. I welcome the fact that he recognised in the end that he could not do the job because he was not particularly interested in doing the job.

I also note a current situation at Boroondara which has become a bit of an embarrassment. One of the councillors hardly ever turns up — Cr Luke Tobin. That is becoming a bit of a scandal. If people put themselves down for election as councillors they should turn up and do the job, and not fail to turn up at council meetings time after time. It is not an excuse not to turn up and contribute to the work of the council just because you happen to work for a senator in Canberra or something like that. It is an important issue.

I also welcome the changes to the voters roll provisions, and I see that the minister has made some further adjustments. I welcome the fact that people who hardly own any property really should not be given the vote or be added to the roll. This is good legislation continuing the great reforms that the Labor government has undertaken here in Victoria with respect to local government. I commend the bill to the house.

Mr CRISP (Mildura) — The Nationals in coalition are not opposing this bill but we note that there are some amendments from the government. The purpose of the Local Government Amendment (Election) Bill 2008 is to amend the Local Government Act 1989 and the City of Melbourne Act 2001 to facilitate the conduct of local government elections. In summary, the bill is in two parts: the local government amendments and those affecting the City of Melbourne. Victoria has 78 councils and the Melbourne City Council, which has its own act. I thank the member for Shepparton for her comprehensive work on this bill and the detail she outlined in her contribution as the lead speaker. I will not go into the great detail that has already been outlined to the house.

In November, for the first time local government council elections will be held simultaneously across Victoria. This legislation proposes a number of changes in relation to those coming elections. Nominations will now close 32 days before election day, and at noon instead of 4.00 p.m. Nominations are to be signed in the presence of the returning officer. I understand that the Minister for Local Government, who is at the table, has sought to include some of the concerns raised by the member for Shepparton about that last part of the nomination process. Setting the dates for a by-election to allow up to 150 days to avoid elections during the summer holidays is a wise move as well. If a councillor fails to perform certain duties, that councillor will be ineligible for office for a period of four years. There are also some amendments to the voters roll provisions and to do with process and anomalies.

The most interesting aspect of this bill by far is that concerning the City of Melbourne, and it has brought about a lot of debate. I noticed that debate on this in the public arena began in the upper house when a motion was put by a member for Eastern Victoria Region covering a number of issues to do with the Melbourne City Council. That debate was wide ranging in the upper house and raised a large number of issues, many of which are not covered in this bill. Once again, we find that the amendment to this bill before the house seeks to plug yet another gap in what appears to be a very leaky ship, which is the Melbourne City Council's electoral entitlements. I am sure that before very much longer we will again be plugging up more holes. These changes are being made because of debate and pressure about who qualifies for a vote. That goes to the core of people's constitutional rights. I am sure we will hear a lot more public debate about this.

The legislation for Victoria's 78 other councils has a built-in review process, but the City of Melbourne Act does not. Part of this debate has been about whether all this could have been avoided if we had had a built-in process of review for the City of Melbourne legislation. A lot of these issues would have been sorted out at the review stage and we could have come to the house with much clearer guidelines on what is needed to make that council more functional. That would also have taken away some of the need for this continuous amending process.

I am sure the legislation will be back and it will be amended some more. The Nationals will not oppose this bill, but we expect to see quite a bit more work done on it.

Mr BROOKS (Bundoora) — It is a pleasure to be able to speak in the debate on the Local Government Amendment (Elections) Bill 2008. At the outset I would like to congratulate the Minister for Local Government, who is at the table at the moment and listening keenly to this debate, on the way this bill has been brought into this place.

There has been significant consultation. The draft discussion document headed *Better Local Governance* generated a lot of discussion within the local government sector and the community. That process commenced back in 2007 and around 50 submissions were received from councils themselves. This just goes to show the attitude this government has in dealing with local government. It stands in stark contrast to the way we saw the previous government treat local government. It has been mentioned in this house before that this government has a robust relationship with local government but does respect it as a legitimate tier of government.

I would like to mention a couple of clauses very quickly, given the time constraints. Clause 3 deals with the changes to the caretaker period which bring that down to 32 days. That is a very sensible move and one that I am sure was very strongly supported by the local government sector. It allows local governments to do business until the 32-day caretaker period. It allows local governments to get on with their job more efficiently and to make significant decisions about contracts and so on before that period cuts in.

The changes in the bill to voter entitlements and the exclusion of single-vehicle car parks and single-boat moorings are sensible. Clause 26 makes changes to the nomination times and dates. These are minor changes but they add to the consistency of local government election processes. One of the problems in local government elections is that there is some confusion in the community about times and dates and so on of local government elections. Clause 23 prohibits some people from nominating — that is, people who, having been elected to a council, have failed to take the oath of office within three months, councillors who have been absent for four consecutive meetings without leave, and people who fail to attend a call of the council without reasonable excuse, which I note is not a retrospective provision.

The shadow Minister for Local Government mentioned in her contribution that SARC (Scrutiny of Acts and Regulations Committee) had picked up this point. In its *Alert Digest* SARC noted the provisions in the bill concerning entitlement to vote and disqualification from seeking public office and said:

> The committee notes that electoral laws may prescribe matters concerning franchise limitations and qualification and disqualification to hold or nominate for public office.
>
> The question whether these laws prescribe reasonable and non-discriminatory franchise and eligibility limitations is for the Parliament as a whole to consider and determine.

That is what we are doing through this debate. I would say that the bill before us strikes the right balance in protecting the integrity of local government election processes, and I commend it to the house.

Mr WAKELING (Ferntree Gully) — It gives me pleasure to rise to contribute to the debate on the Local Government Amendment (Elections) Bill 2008. The purpose of this bill is to amend the Local Government Act 1989 and the City of Melbourne Act 2001 to facilitate the holding of local government elections and for other purposes. The provisions will come into effect on 15 August this year to enable the changes to be implemented for the next general elections, which of course, as we all know, will be held in November of this year.

This bill introduces a range of new provisions. I will address just some of them. They include the caretaker period being reduced from 57 days to 32 days to bring the local government caretaker period into line with the caretaker period for state and federal elections. Nominations will close 32 days before the election, and they will close at 12 noon — currently, as we all know, that occurs at 4.00 p.m. The bill seeks to make a number of other changes as well.

As somebody who, like many in this house, has served in local government, I am very proud of the work that not only my council has done but also other councils throughout the state have done. I understand firsthand the issues that beset local councils. I also understand the issues and challenges that local governments face given a lack of preparedness by this government to provide them with adequate resources and powers. I recall many discussions about the problems that my council faced in relation to library services, school crossing supervisors and a whole range of other areas where it had to put up with government cost shifting. Over a number of years now this government has shown a preparedness to withdraw money from local government and to rely on local ratepayers to foot the bill to ensure that these important local services are provided. It is imperative that the Minister for Local Government, who is at the table, listen to the concerns of not only members on this side of the house but also of Victorian communities and Victorian councils when they are saying that more needs to be done in this very important area.

In regard to the bill, as has been indicated by members on this side and in particular by the member for Shepparton, who is here in the house, we will not be opposing this bill. However, we have identified a range of concerns we have about the proposed changes. As has been highlighted, there is concern that we are not dealing with the issue of the Melbourne City Council. Concerns have been raised not only within Parliament but outside this house and this building. People in the community and even within the council itself are concerned that there is a need for a review. I implore the government to listen to those concerns and deal with that important issue.

Another concern I have is the piecemeal approach that has been adopted by this government on the whole issue of what type of property ownership should afford someone the right to vote. We have had the matter of car parking spaces and boat moorings come before us. I stand to be corrected, but I was listening to the minister on, I believe, Jon Faine's program last week when the issue was put to him about storage containers and the minister said that he did not know anything about the issue. Yet here we are talking about putting in a change. The first question I have for the minister is: how many other types of properties are there in the communities that he is going to make further changes for; how many more amendments are we going to be seeing before this house?

I would have thought that the first thing the minister would have done would have been to speak to the valuer-general and perhaps ask what type of properties are deemed rateable for the purposes of local government. Then he would have had a list to work from and he would not be relying on Jon Faine's program to highlight these types of issues. Perhaps Neil Mitchell can raise another issue in a week's time and then we will have another amendment coming before the house! I would have thought the first thing the minister would have done was his homework and that he would have identified the areas of concern before making a decision about what is appropriate. Clearly this minister is not in control of his portfolio. He is clearly not in control of this important issue. I believe it is imperative that the minister go away and do his homework.

When I talk about the way this government is treating local government, I have to deal with the grave concerns in the area of planning. This government said it would provide councils with the planning powers they need. For a start there are problems with the fact that the Victorian Civil and Administrative Tribunal can effectively override any planning decision that is made by local government.

Mr Wynne — On the bill!

Mr WAKELING — I am happy to talk about local government. If the minister is not willing to listen to me, I ask him to just sit there and give me the opportunity to talk about these issues, because these are issues that affect local communities. These are issues that affect Victorians. It is imperative that the minister take the time to listen to the concerns of Victorians.

I would have thought the Minister for Local Government, who is at the table, instead of sitting there asking members not to make comments would be gracious enough to let opposition members tell him what it is like rather than getting lip-service from those opposite. He should take the opportunity to understand the concerns of Victorians about this very important issue.

The bill proposes a $2000 fine for candidates, scrutineers and voters who make false declarations. I can understand that, but there is nothing in the bill that applies to campaign workers who are not voters. We have identified so many problems. I have just raised a few, as have the member for Shepparton and the member for Mornington and others. I would have thought that instead of shrugging his shoulders and umming and ahing and thinking, 'Woe is me', he would take the time to listen and to sit down with people like the valuer-general. He should not just listen to us or take it from Jon Faine or his listeners or Neil Mitchell, but he should take it from the valuer-general. He would outline to the minister what areas are rateable. He would tell him about the storage containers and about other properties that attract rates. The minister should not take it from a phone conversation on a radio program. This is about leadership, and I would have thought the minister would show some important leadership on the issue.

Comments have been made by those opposite regarding the operation of councils. I am very pleased at the way my council is operating. With the greatest respect, Acting Speaker, I listened to your contribution earlier, and although I appreciate the position you are currently in, I must say that I found the contribution you made most reprehensible. I would have thought it was inappropriate for a member of this house to besmirch local government councillors. I understand reference was made to a Boroondara councillor. My concern is that such comments are not only inappropriate but are made under parliamentary privilege. I would hope that you, Acting Speaker, would repeat those comments outside this house, because I found them most reprehensible.

Honourable members interjecting.

Mr WAKELING — They were comments made by a government member. I believe it is imperative that we on this side of the house have the capacity to stand up here and point out that if the best members of the government can do is to besmirch councillors, it demonstrates the way in which those opposite are treating them with contempt in this house.

Ms D'Ambrosio — You are sensitive on this issue.

Mr WAKELING — I am not sensitive at all. I am waiting for the member for Burwood to repeat those comments outside this chamber. As I have indicated before, the way in which the minister has handled this bill could have been much better at the very least. We have heard comments on the Jon Faine program and the minister rightly said, 'I know nothing about this; this is the first I have heard of it'. Now a week later this issue is being dealt with.

Ms D'Ambrosio interjected.

Mr WAKELING — If he were a good minister, he would have at least known. I appreciate he does not know everything, but I am sure his advisers, who are in the house, at the very least may have been able to provide some information. Far be it from me to judge the ability of the minister's advisers to provide him with advice. At the very least I would have thought he would have spoken to the valuer-general and asked him to provide that type of information. I believe that while there are some benefits in this legislation the minister needs to do his homework and ensure he gets it right the first time.

Ms MUNT (Mordialloc) — I am very pleased to speak in support of the Local Government Amendment (Elections) Bill 2008. I was in the chair at the start of this debate, so I have heard contributions from both sides of the house — and some have been more interesting than others. The member for Mornington gave a reasoned speech in relation to this bill. The member for Ferntree Gully did not, and I will go into more detail about that later.

In the few moments that are available to me I want to say that the bill does have the in-principle support of the Municipal Association of Victoria and has been subject to wide-ranging consultation with councils. I am amazed when I listen to contributions by members on the other side of the house regarding local councils — the champions of local councils. I am old enough to remember seeing the dumpsters parked outside the Mordialloc council offices when that council was sacked. If that is supporting strong local

representation and if that is supporting democracy and local councillors, I will eat my hat. It does not take much to work out that sacking a council is not too flash for the democratic representation of the third level of government. Perhaps the member for Ferntree Gully is a little younger than me and does not remember back to those long, dark years of the former Kennett government when councils were sacked, but I certainly recall that.

This is another good piece of legislation from the minister and it supports local democracy and councils, which is why it has the support of the Municipal Association of Victoria. In particular I have spoken to one of my councillors who very much welcomes the reduction of the caretaker period from 57 days to 32 days. That longer caretaker period can have the effect of paralysing the work of local councillors when it takes place.

I also welcome the change that provides that candidates must nominate in person. The member for Mornington said that if you cannot actually spare the time to nominate yourself indications are that you will not be an involved and effective councillor. I agree with him absolutely.

I particularly welcome the proposal to exclude the owners of single vehicle car parks, single vessel boat moorings and storage containers from enrolment entitlements and being able to vote in council elections. May I say there was also some mention by the member for Shepparton that if people pay taxes on a car park they should be able to vote in their local council elections. I do not entirely agree, but even so, in the city — in the central business district — many people who own those single car park spaces also own a residence or dwelling that goes with them. They will get a vote anyway. It is eminently fair, it is good common sense, and I commend the bill to the house.

Mr CLARK (Box Hill) — I want to make a few brief remarks about some specific aspects of the bill before the house. I certainly do not intend to repeat the very comprehensive assessment of the bill that has been provided by the member for Shepparton and other speakers. One of the aspects I want to talk about is the provisions relating to the disqualification of candidates in future elections in certain circumstances that are specified. Those circumstances are relatively limited — namely, if they fail to take an oath of office, if they are absent for four consecutive council meetings without leave or if they fail to attend a statutory call of the council and do not provide an excuse that the minister considers reasonable. They are then barred from running for future elections for a period of four years.

The provisions that apply in this bill are relatively confined. Certainly for councillors not to perform their basic duties to the council is a cause of concern, because it is not just their own actions and their own failure to comply with their statutory obligations, but it also has consequences for the proper operation of the council. These matters need to be taken seriously.

I want to sound a note of caution, however, about the principle of councillors being debarred from running for future elections and caution against any extension of that provision, particularly if that extension were to be made based on an exercise by the Minister for Local Government of his or her discretion, because it would be unfortunate if we ended up in a situation where the minister, from whatever side of politics, in effect would be able to not only dismiss a council or a councillor but could also bar that person from any eligibility to run in future council elections.

The current provisions are relatively confined and they relate to matters that are clear breaches by a councillor of his or her duty. They arise, in the case of two of them, independently of any exercise of the minister's discretion; and in the third case the minister exercises a limited discretion which is probably subject to judicial review. The minister confirms that across the table. I would not like to see any future provisions that, for example, councillors who were councillors on a council that was dismissed by the minister were thereby debarred from running in future elections, because that would be cutting across the democratic process and cutting across the right of the people to decide who they want their council representatives to be.

The second aspect of the bill on which I wish to comment is the provision requiring that candidates must lodge their nominations in person or provide a statutory declaration explaining why they are unable to attend in person to so nominate. I understand the member for Shepparton has raised the point about ensuring that an authorised person from the electoral commission is there to receive the nomination whenever a person might arrive to do so. Subject to that qualification, this is a worthwhile amendment. It seems to me it has its origin in events that took place at my local council — the City of Whitehorse Council. One might call these amendments the 'George Droutsas amendments' because they arise out of an issue that has received some currency both locally and in statewide newspapers about Cr Droutsas and his activities in procuring other people to nominate in a council election. I refer in particular to a report in the *Age* of 21 April 2006 which says:

> A senior Victorian government adviser has been accused of misconduct in a local council election, including putting up dummy running mates without their knowledge.

The article referred to one candidate, Ms Raylene Carr, who is reported in the article as having said:

> … she believed Cr Droutsas had filled out nomination forms for several candidates.

Another candidate, Chontel Cutugno, is reported as having said in an affidavit she did not stand as a candidate by choice or free will, and I quote from the same article:

> 'I signed blank documents which I was told by George Droutsas were forms to support him for his re-election', her statement said.
>
> She said she did not realise she was a candidate until local newspapers and residents' groups started phoning her later in the week. At that point she asked to withdraw.

These were matters that were raised before an electoral tribunal — —

Mr Wynne — On a point of order, Acting Speaker, I suggest that the member for Box Hill proceed with some caution in his contribution about this particular matter because it is currently before the courts.

The ACTING SPEAKER (Mr Stensholt) — Order! I thank the minister. I understand that there is a tradition in this Parliament.

Mr CLARK — On the point of order, Acting Speaker, I am proceeding with caution. I was about to say that I understand the matter is before the courts and what I was referring to is something entirely independent to what is before the courts.

The ACTING SPEAKER (Mr Stensholt) — Order! On the point of order, I think it would be best if we leave the matter before the courts.

Mr CLARK — Thank you, Acting Speaker. As I was saying, these matters came up before the electoral tribunal, and the electoral tribunal held that those matters did not result in anything that transgressed the electoral legislation. As the minister has pointed out in his point of order, and as I was about to remark on separately to that, certain charges have been laid which are, as I understand it, still before the courts and I make absolutely no comment on those matters. The reason I cite this case is to make the point that regardless of what the law was, what Cr Droutsas is alleged to have done in this matter would be considered by most ordinary citizens to be completely reprehensible. Accordingly, it is most appropriate and welcome that these amendments are being made in this bill before the house, and they will prevent in the future any such conduct as it appears Cr Droutsas may have engaged in in this case.

It is unfortunate that these transgressions occur because they tend to bring local government as a whole into disrepute. I am sure that many members would concur with me in saying that the vast majority of councillors do a very good job for their communities for relatively low monetary recompense and to the best of their abilities. I can certainly refer to councillors in my part of the world within the City of Boroondara, councillors Nicholas Tragas, Luke Tobin and Dick Menting, all of whom it has been my pleasure to work closely with in seeking to provide better services for the ratepayers and constituents of my part of the world. I think all three of those very fine gentlemen serve their council with distinction.

Similarly in relation to the City of Whitehorse my two ward councillors, Helen Harris and Robert Chong, have both also served their community with distinction. Although Cr Chong and I have been adversaries at a state parliamentary level, I have considerable respect for the good work that he has done for his community as a councillor over the years, and likewise Cr Harris who joined the Whitehorse council more recently. There are a number of very worthwhile innovations for which she deserves credit.

It is good that measures such as the one to which I refer are being enacted in this legislation to ensure that malpractice is eliminated and that those councillors who are elected to serve their communities are elected in a fair, open and democratic process. I might also say that it is important that that democratic process be one that is not only fair and equitable but in terms of the particular electoral regime which applies in any particular municipality it be one which very much has regard to the wishes of the local community as to the form of the subdivision into wards and the basis on which councillors are elected. In that regard I was pleased at the outcome of the recent electoral review of the City of Boroondara. I support that aspect of the bill, and I hope it continues to strengthen local government in Victoria.

Mrs MADDIGAN (Essendon) — I rise to speak in support of the Local Government Amendment (Elections) Bill 2008. I think it would be fairly difficult for any member in this house not to support the measures that are in this bill — although after listening to the member for Ferntree Gully I am not quite sure if that is true of all members in this house. Broadly speaking I think most members support the provisions.

As we seem to have spread over a considerable distance in the discussion on this bill, I remind the house that the bill proposes certain actions. It makes changes to electoral dates and times for councils; it alters candidate nomination processes; it clarifies enrolment requirements for corporations, ratepayers and absentee voters; it amends procedures for council countback processes; it creates offences for making false declarations; and it makes other technical amendments to clarify or correct minor legislative anomalies.

As I said, it would be very difficult to raise an argument not in support of those changes, particularly considering the process the bill has been through. It has been through the process of consideration of the *Better Local Governance* discussion paper which started in November last year and went to February this year. During that process 76 submissions including 50 submissions from councils were received, which is hardly surprising in the circumstances. Perhaps it would be interesting to know which councils made a submission to it, as it is a vital area for councils. Councils provide a great level of government in cooperation with both the state and federal governments, and indeed it is often the level of government which many residents are closer to because it tends to deliver more direct services.

I am glad the Liberal Party supports a bill that supports democracy in councils. This may have been mentioned in passing, because in the past councillors suffered very severely from the removal of their rights. I was a little surprised that the member for Ferntree Gully seemed to be unaware of the history of developments in councils in this state. He might like to look at that before he speaks again on bills relating to local councils, as he might then be able to speak with perhaps a little more authority.

The proposals are excellent; they are quite logical. The caretaker period has been brought into line with that for state and federal government elections, and that seems a logical thing to do. Unlike state parliaments, councils continue to operate in a similar manner to normal during an election period. However, there will be limits. They will not be allowed to enter into a contract or entrepreneurial venture whose total value exceeds $100 000 or 1 per cent of rates, whichever is greater, and a decision to hire or fire a permanent chief executive officer (CEO) or a decision regarding the CEO's remuneration is also excluded. That is very significant, especially as election results can change the structure of a council and the views of councillors on major projects can change significantly, as in fact can the way a council intends to operate in the future.

My view is that to have a vote in council elections you have to be a person who has a little more than a car park in a council area. I must say I find it difficult to support the argument put forward by the member for Ferntree Gully because if you follow it through to its logical conclusion, you could say that if you pay for anything, you should have the right to vote. If you rent a park to play sport in once a week, you should have that right; if you rent a hall once a month in which to practise with your band, you should be able to vote; or if you are part of a community gardening group, you should be able to vote on that basis. If you follow that argument through in relation to the very large number of payments that residents make in a whole range of areas throughout their local council, you will find that the member for Ferntree Gully's argument tends to collapse.

I strongly support the requirement for a person to nominate in person. It seems quite extraordinary that a person would not want to do that if they want to stand for council, especially if they have not done so before. Standing for public office is a very exciting procedure, and certainly anyone who does should want to be part of the structure. In saying that I must say also that I am a very strong supporter of attendance voting, because it is my view that then you have real candidates who really want to be on council and support their community.

Postal voting makes it far too easy for the system to be manipulated and for people to nominate for various reasons. That is up to a council; it is entirely for it to decide. My council has just gone through a process on attendance voting. It decided on postal voting, even though I told the council that it was not a good idea, so I cannot imagine why it came to that conclusion. It just goes to show that councils are independent entities — and they have the right to make decisions in certain areas.

I support the provisions of this bill. I think it will improve councils. It is very timely, of course, with council elections coming up in a few months. I have no doubt we will hear a lot more about them, not only in the local areas in which we live but also in this chamber, before we get to the last Saturday in November. I wish the bill a speedy passage.

Mrs VICTORIA (Bayswater) — I wish to make a contribution on the Local Government Amendment (Elections) Bill 2008. I am certainly not going to knock the majority of initiatives in the bill; some of them are very good, some of them are logical and some of them are well overdue.

The bill amends the Local Government Act of 1989 and the City of Melbourne Act 2001 to facilitate the holding of government elections and has other purposes. Specifically it is to be brought in in time for the next local government general elections in November. This bill will come into effect on 15 August.

Some of the main provisions that other speakers have spoken about that I consider noteworthy include the reduction of the caretaker period from 57 days to 32 days. That, of course, will bring the caretaker period for local government elections into line with those for state and federal elections. So many people use the caretaker manager period as an excuse to do nothing. Reducing that time is a bonus. Nominations would therefore obviously also close 32 days out, and that works in well.

Nominations will close at 12 noon rather than at 4.00 p.m. There has been some speculation as to whether people might be deterred from standing for local office if they cannot lodge their nominations by that time because of work commitments. I can tell members that the local councillors on Maroondah and Knox councils that I work with all work but also dedicate an awful lot of their working hours to their local council position. If you cannot get away for half an hour, or whatever it is, to pop your nomination in, one would question whether you are the right person for the job and whether your employer is supporting you in the role you intend to take in public office.

The next point is a very interesting one. Candidates must nominate in person or provide a statutory declaration explaining why a candidate cannot attend in person. This is interesting for me, because it was brought up with me when this bill was mooted as being one that we were going to debate. A constituent came to me and said, 'I am really pleased about this initiative', and told me of a councillor who — in a manner that we have heard about in other councils — runs dummy running mates. This practice is not acceptable, certainly not given the intended fairness of the election process. Whether it is with or without consent, dummy running mates really do not have a place in government elections at any level.

In the case that was brought to my attention, the councillor in question — and this has happened on several occasions, as the councillor has served more than one term — stood with a pile of nomination papers pre-signed and watched for how many people were nominating in the ward. If, for example, three people had nominated in the ward, then automatically five of this councillor's nomination forms went into the throw as well — in other words, the councillor was trying to throw out the balance there. This is a despicable practice, and I think the councillor, when reading my contribution in *Hansard*, will know who they are. This bill will bring that councillor into line, and it is about time.

Of course, we have councillors who are above board and fantastic to work with. I have worked successfully with councillors in Knox and Maroondah, regardless of their political persuasions — councillors whose only reason for being on the council has been to help their neighbourhood out. Unfortunately some of those councillors will not be standing again; but some of them will, and I am thrilled at that. People like Joe Cossari, Debbie Field and Tony Kamitsis — —

Mr Nardella — I know Joe; he is a terrific bloke.

Mrs VICTORIA — He is a terrific bloke, Joe Cossari. Maureen Naylor, Peter Gurr and so many others have also done a fantastic job, and I pray that some of them go on and continue to do the job for the people of Bayswater and for their wards.

One set of amendments to this bill is to the definition of a rateable property. The amendments exclude properties that are solely for the purpose of parking a single vehicle or mooring a single vessel — the owners or occupiers of such properties are no longer entitled to vote. When I originally read through the second-reading speech, I wondered about storage units, and of course two amendments have been circulated today to provide that somebody who owns or occupies a storage unit is no longer able to vote. The amendments are logical, and it worries me that they were not included originally.

Proposed section 55A removes the limitation to the election period of provisions that prohibit misleading or deceptive electoral matter. Prohibitions will apply at all times. This is logical. It will stop an awful lot of propaganda that gets put into letterboxes outside the election periods by serving councillors and those intending to run. Sometimes in the lead-up to an election, though not within the election period, my letterbox has been very full of some misleading brochures and other materials, and I am pleased that this initiative has been put in.

There is also going to be a new offence for candidate scrutineers and voters who make false declarations. This is logical, and I think we all know of stories about this type of behaviour having gone on. I have to say that when I first decided to stand for preselection, a lot of my childhood friends and members of my family said to me, 'What on earth would you want to do being a

politician? You are going to end up corrupt like the rest of them'. I am pleased to say that I do not think that will ever happen to me, but I am also upset that all politicians, regardless of the level of government, are tarred with the same brush. I can say that there would be fewer than a handful of people in here we could cast aspersions about. Most of us are in it for all the right reasons, which are to further our neighbourhoods and to make sure that our constituents have the best possible services they can have, and we take our roles very seriously. This initiative of bringing in an offence for making false declarations is one that will help to clean up the image of politicians at all levels.

There are a couple of areas of concern. A motion passed in the upper house, supported by the Greens and the Democratic Labor Party, pointed out that Melbourne City Council is the only council that does not have to have an electoral review. I know the Melbourne City Council has its own act, but I am not quite sure why it is exempt from having a review. It does not make sense. One would think that if we were looking at scrutiny — and the government claims to be open and transparent and to believe in that sort of process — then the City of Melbourne should also fall under that banner. There should be a review of the Melbourne City Council, and it should not be exempt. It is no different to any other council. It is slightly larger, perhaps, and has a slightly bigger budget with slightly different areas of responsibility; however, that should not leave it free from scrutiny. The government should also allow ratepayers and residents of the city of Melbourne to have a say on how their council is to operate, and that can only happen with an independent and open review.

As I said, there will also be a fine of up to about $2000 for scrutineers and voters who make false declarations. The only problem with this is that it leaves out campaign workers who are not voters, so people coming in from other districts or electorates to help out and who may have made a false declaration are exempt, and I am not quite sure why they were left off. That provision should really apply to anybody working on a campaign. If it is good for one person, it is good for the next.

I applaud some of the initiatives included in this bill, but I am concerned by the amount of legislation that is coming before the house in all portfolio areas that has not been thoroughly thought through and is open to wide degrees of interpretation. As I say, some of the initiatives here are very good, but I urge the government to have a careful look at all the bills it brings before us to make sure they are watertight before they come to us and not needing to be amended before we even get to debate them.

Mr SCOTT (Preston) — It gives me great pleasure to rise to speak on the Local Government Amendment (Elections) Bill 2008. This is an extremely sensible piece of legislation which makes useful amendments to the legislation in the lead-up to the next round of council elections to be conducted in November 2008. In my contribution I want to touch upon the issues surrounding the amendments relating to franchising in council elections. There are two changes here to the legislation that I particularly want to touch upon. One is the change which people have outlined about storage units and boat moorings. I think it would be hard for anyone in this house to justify boat mooring owners or storage shed owners exercising a franchise in an election. The second issue relates to statutory corporations. I think there would be few members — I would hope no members — of this house who would regard statutory corporations as being appropriate bodies to exercise a franchise in a democratic election. I think that would create an obvious conflict between the establishment of a statutory corporation by an act of Parliament and its exercising of a democratic franchise in a council election.

Another issue I want to touch upon is the technical amendment relating to the calculation of transfer values in a PR (proportional representation) process. I think this is a sensible amendment. There is nothing wrong with the amendment and it corrects an anomaly, but perhaps it would be wise for future acts of Parliament more broadly, when dealing with mathematical concepts, to use algebra and mathematical logical expressions to deal with such issues rather than simply using legalese, because often the terms used can be somewhat confusing. It would be better if explanatory memorandums were provided in future. This does not apply in this case, as it is quite clear, but I think that would be a logical thing to do in future such acts dealing with accounting processes for PR. They can be quite complex matters and are not easily expressed in the sort of language — —

Dr Napthine — Just ask George; he knows about numbers.

Mr SCOTT — George does know about numbers, indeed. Otherwise this act is a very sensible piece of legislation which I support completely. I commend the bill to the house.

Dr NAPTHINE (South-West Coast) — I am concerned about changes that will provide a situation where you might have taxation without representation.

If you are going to have taxation, you ought to have the right to representation. I think that is one of the principles — —

Business interrupted pursuant to standing orders.

The ACTING SPEAKER (Mr Ingram) — Order! The time set down for consideration of items on the government business program has expired. I am required to put the questions necessary to deal with the bill.

Motion agreed to.

Read second time.

Circulated amendments

Circulated government amendments as follows agreed to:

1. Clause 3, page 3, line 15, after "**1988**" insert—

   "; or

   (c) storage, being a single lockable unit with a floor area not exceeding 25 square metres".

2. Clause 39, line 13, after "**1988**" insert—

   "; or

   (c) storage, being a single lockable unit with a floor area not exceeding 25 square metres".

Third reading

Question agreed to.

Read third time.

UNCLAIMED MONEY BILL

Second reading

Debate resumed from earlier this day; motion of Mr HOLDING (Minister for Finance, WorkCover and the Transport Accident Commission).

Motion agreed to.

Read second time.

Third reading

Motion agreed to.

Read third time.

CRIMES (CONTROLLED OPERATIONS) AMENDMENT BILL

Second reading

Debate resumed from 24 June; motion of Mr HULLS (Attorney-General).

Motion agreed to.

Read second time.

Third reading

Motion agreed to.

Read third time.

COURTS LEGISLATION AMENDMENT (JURIES AND OTHER MATTERS) BILL

Second reading

Debate resumed from 24 June; motion of Mr HULLS (Attorney-General).

Motion agreed to.

Read second time.

Third reading

The ACTING SPEAKER (Mr Ingram) — Order! I advise the house that I am of the opinion that the third reading of this bill requires to be passed by an absolute majority. As there is not an absolute majority of the members of the house present, I ask the Clerk to ring the bells.

Bells rung.

Members having assembled in chamber:

Motion agreed to by absolute majority.

Read third time.

MELBOURNE CRICKET GROUND AMENDMENT BILL

Second reading

Debate resumed from 24 June; motion of Mr MERLINO (Minister for Sport, Recreation and Youth Affairs).

Motion agreed to.

Read second time.

Third reading

Motion agreed to.

Read third time.

PUBLIC HEALTH AND WELLBEING BILL

Second reading

Debate resumed from 25 June; motion of Mr ANDREWS (Minister for Health).

Motion agreed to.

Read second time.

Third reading

The ACTING SPEAKER (Mr Ingram) — Order! As the required statement of intention has been made under section 85(5)(c) of the Constitution Act 1975, the third reading of the bill is required to be passed by an absolute majority.

Motion agreed to by absolute majority.

Read third time.

HERITAGE AMENDMENT BILL

Statement of compatibility

Mr BATCHELOR (Minister for Community Development) tabled following statement in accordance with Charter of Human Rights and Responsibilities Act:

In accordance with section 28 of the Charter of Human Rights and Responsibilities, I make this statement of compatibility with respect to the Heritage Amendment Bill 2008.

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

Overview of bill

The bill provides for a number of changes to the operation of the Heritage Act 1995. In particular:

the Heritage Council's heritage registration processes are being amended to ensure only a single hearing is required on whether or not a place should be included in the heritage register;

the Historic Shipwrecks Advisory Committee is to be abolished;

a new infringeable offence of not complying with a heritage permit and its conditions is created;

a provision is amended to clarify that financial security can be used to ensure compliance with a condition on a heritage permit; and

the certificate section of the heritage register is amended to include reference to world heritage environs areas.

Human rights issues

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

The relevant right under the charter which the bill engages is:

Section 20: A person must not be deprived of his or her property other than in accordance with law.

Clauses 5, 6, 7 and 8 of the bill amend the existing procedures of the Heritage Council in relation to the entry of places or objects in the Victorian Heritage Register. In particular, these clauses provide for a single hearing to take place with regard to whether or not a place should be entered in the heritage register. However, the provisions impose no new requirements on owners. The single hearing process will reduce delays, uncertainty and costs to the owner of a property.

When a place or object is entered in the heritage register an owner has to seek a heritage approval prior to undertaking any works or alterations to the place or object. The entry of a place in the heritage register does not deprive a person of their property, but does impose some limitations on the unfettered use of a property, in that works and alteration can only be undertaken with a heritage permit issued under the act. However, extensive negotiations occur between Heritage Victoria and the owner or custodian of a nominated place or object. Any restrictions on the use of owners' property are in accordance with law and accord with the purpose of the act, which is to maintain and protect Victoria's historic cultural heritage.

Accordingly, it is considered that these clauses, while engaging the right to property protected by section 20 of the charter, do not limit that right.

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

The bill does not limit any human right, and therefore it is not necessary to consider section 7(2) of the charter.

Conclusion

I consider that the bill is compatible with the Charter of Human Rights and Responsibilities, because while it engages a human right it does not limit that right.

PETER BATCHELOR MP
Minister for Community Development

Second reading

Mr BATCHELOR (Minister for Community Development) — I move:

That this bill be now read a second time.

The provisions of the Heritage Act 1995 protect and conserve Victoria's unique cultural heritage places and objects, ranging from grand mansions and homesteads to the humble miners cottage; cathedrals to chapels; corner shops to the Royal Exhibition Building; domestic and botanic gardens; avenues of honour; shipwrecks; objects such as the Eureka flag and documents such as the miners right and the monster suffrage petition.

The act has served the Victorian community well, but as with any legislation, there is always scope for improvements, to make it more efficient and effective. This is the basis of the bill.

The principal amendment relates to the heritage registration procedures of the Heritage Council to remove the provisional determination provision. This amendment was requested by the Heritage Council of Victoria which is concerned that the provision, which can result in two hearings before the Heritage Council, has resulted in confusion, delays and costs to all parties involved, which may include the owner, nominator, local government, or the National Trust.

Currently the executive director, following an assessment of a nomination of a place or object to the heritage register, can recommend to the Heritage Council that the place or object not be included. This recommendation is given public notice for 60 days to allow written submissions. If written submissions are received, and the National Trust or a person with a real and substantial interest requests it, a hearing must be held before the Heritage Council's registrations committee on the recommendation not to include.

Following the hearing the Heritage Council's registrations committee can determine that the place or object not be entered in the heritage register or that the place or object may be of cultural heritage significance and provisionally determine to include the place or object in the heritage register.

As the Heritage Council's recommendation to include the place or object is different from the executive director's original recommendation, notification including a public notice has to be given and 60 days allowed for written submissions. If submissions are received, and the National Trust or a person with a real and substantial interest requests it, a hearing must be held before the Heritage Council's registrations committee on the recommendation to include. In these cases two hearings are required to be held before the issue of whether or not a place or object should be included in the heritage register is resolved.

Since 2000 there have been 11 cases determined where the Heritage Council's registrations committee has been required to consider the matter twice before the issue of registration has been resolved. The average period from the executive director's recommendation to final decision has averaged 13 months.

An example was a group of pine trees at Shoreham, which the executive director recommended not be included in the heritage register. This recommendation was the subject of a hearing which resulted in the Heritage Council's registrations committee determining that the place may be of cultural heritage significance and provisionally including the place in the heritage register. This recommendation was itself subject to objections and a second hearing of the Heritage Council's registrations committee, which determined that the place should be included in the heritage register. This process took 13 months and resulted in confusion, particularly in the local community, and in delays and costs to all parties involved.

The bill will provide for a single hearing by the Heritage Council's registrations committee at which the issue of whether or not a place or object should be included in the heritage register is considered and resolved. This proposal has broad support as it will reduce delays, costs and community confusion.

In 2004 the Royal Exhibition Building and the Carlton Gardens were inscribed in the World Heritage List. Amendments to the Heritage Act in 2004 gave recognition to this and made provision for the Minister for Planning to declare a world heritage environs area for the site. The 2004 amendment, however, did not include reference to the world heritage environs area in the section of the act for issuing a certificate as to whether or not a place is affected by the act. The bill corrects this oversight.

The executive director issues approximately 300 heritage permits each year for a wide range of works and alteration to places and objects on the heritage register. As provided for under the act, conditions are imposed on permits to ensure the approved works are carried out appropriately. These may require that heritage registered trees and important fabric is protected during construction; that a range of conservation works are undertaken as part of the development; that an archival record is undertaken of the place prior to the works commencing; or an interpretation plan is implemented as part of the development.

The majority of owners and developers comply with conditions on heritage permits. Failure to comply with a

condition on a permit can, however, compromise a successful conservation outcome. Whilst it is an offence under the Heritage Act to carry out works to a heritage registered place without a permit, unlike the Planning and Environment Act 1987, the current provisions of the Heritage Act do not have a specific offence of not complying with a heritage permit, including conditions.

This creates an anomaly where if a place is covered by a heritage overlay in the planning scheme the responsible authority can enforce breaches of conditions on a permit by a penalty infringement notice or a summary offence, but if the place is on the state heritage register, the executive director cannot. The only option would be to pursue an indictable offence, which in most cases would be disproportionate to the level of the offence.

The lack of this specific offence is considered to be a weakness in the current enforcement provisions and accordingly, the bill introduces a new offence of non-compliance with a heritage permit. This will be made a prescribed offence for the purpose of a penalty infringement notice, with 5 penalty units for a person and 10 penalty units for a body corporate. It is also a summary offence with a maximum of 120 penalty units for a person and 600 penalty units for a body corporate.

In approving a heritage permit the executive director can require financial security to ensure the satisfactory completion of works approved under the permit. This normally relates to the completion of an agreed range of conservation works to a building, following which the financial security is returned. The level of financial security is based on the scope of the works involved and is usually agreed with the applicant. In some instances the executive director approves temporary works, such as display banners or installing a relocatable building, with a condition that they be removed by a specified date. Financial security to ensure compliance with this condition has been discussed with applicants, but the act does not provide for these circumstances. The bill provides that financial security can be required to ensure compliance with the condition of a heritage permit.

The Historic Shipwrecks Advisory Committee was established under the Historic Shipwrecks Act 1982. The provisions for its establishment, which are very prescriptive, and its roles were included in the Heritage Act. Since 1995 the Heritage Council has appointed a range of other advisory committees to provide it with policy advice on archaeology, industrial engineering, heritage, landscapes, religious places, collections, and technical issues. These committees comprise a broad range of experts from across a wide field.

While the Historic Shipwrecks Advisory Committee has served the Heritage Council and Victorian community well, the prescriptive process for appointment and its roles are not consistent with other advisory committees. The bill removes reference to the Historic Shipwrecks Advisory Committee. This would not impact on the work of the committee which would be reconstituted by the Heritage Council under the committee provisions of the act with a broader remit to advise on all maritime heritage issues.

To enable matters commenced under the provisions of the current act to be concluded, the bill includes transitional provisions.

I commend the bill to the house.

Debate adjourned on motion of Mr CLARK (Box Hill).

Debate adjourned until Thursday, 10 July.

BUILDING AMENDMENT BILL

Statement of compatibility

Mr BATCHELOR (Minister for Community Development) tabled following statement in accordance with Charter of Human Rights and Responsibilities Act:

In accordance with section 28 of the Charter of Human Rights and Responsibilities, I make this statement of compatibility with respect to the Building Amendment Bill 2008.

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

Overview of bill

The purpose of the bill is to amend the Building Act 1993 to increase the consumer protection provided by the act by improving the capacity of the Building Practitioners Board (BPB) and the Plumbing Industry Commission (PIC) to discipline registered building practitioners and registered or licensed plumbers who do not comply with the act and the regulations made under the act as well as other related legislation.

The bill will also make amendments to the act to improve the operation of the regulatory scheme provided for by the act.

Finally the bill will take the opportunity to clarify terminology used in part 12A of the act.

Human rights issues

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

Section 13: privacy and reputation

Section 13 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 right to privacy extends to the disclosure of personal information about the person.

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.

Clause 5, clause 6 and clause 19 interfere with the right to privacy, however, the interference is not unlawful or arbitrary for the following reasons:

Clause 5 and clause 6 (application for registration and beyond)

The proposed measure requires an applicant for registration as a building practitioner to provide the BPB with information demonstrating their 'good character'. A non-exhaustive list of factors going to good character will be provided. The proposed measure changes a system of regular disclosure of personal information, and creates a new requirement for its collection by the BPB.

The information is required to assess the good character of applicants before registration, and to provide a means to continually assess registrants' good character. The interference is reasonable because building practitioners deal directly with the public and the potential for conflict and dispute is high. They enter into contracts involving large sums of money and are often required to have unsupervised access to homes and property. It is vital that the industry consists of honest practitioners who are able to act appropriately in all situations.

The legislation will specify the precise circumstances in which the interference with privacy will occur and does not give the BPB a broad discretion to interfere with a person's privacy.

Clause 19 (use of photographs)

This proposal gives the Plumbing Industry Commission (PIC) power to endorse the licence or registration cards of plumbing practitioners with their photographs. It supports the PIC's current power to require applicants for licensing or registration to supply their photographs.

The power will only be used to endorse applicants' photographs on registration and licence cards and for internal use by the PIC in its computerised registration/licence system. It will assist consumers to confirm a practitioner's identity, the currency of their licence and/or registration, and the classes of plumbing work they are entitled to perform.

The interferences are mitigated by the existing protection of section 259A of the act, which prevents a member or former member of the PIC or anyone employed or connected with the PIC to make improper use of any information provided to the PIC.

For all of the above reasons, there is no limitation on the right to privacy.

Section 25(1): right to be presumed innocent

Section 25(1) of the charter recognises an individual's right to be presumed innocent until proved guilty according to law.

Clause 10 (section 179B — conduct of company or partnership to be conduct of building practitioner director or partner)

This proposal deems the director of a company to be responsible for the professional conduct of the company for the purposes of inquiry by the BPB, where they are a registered building practitioner, nominated as the registered building practitioner on the building permit. The BPB is a professional disciplinary body. The right to be presumed innocent is not engaged because the measure relates only to inquiry by the BPB, and does not involve any criminal offence or infringement or hearing by a court.

Section 26: right not to be tried or punished more than once

Section 26 of the charter recognises a person's right not to be tried or punished more than once for an offence in respect of which he or she has already been finally convicted or acquitted in accordance with law.

Clause 9 (disciplinary action — building practitioners)

This proposal provides a new ground for the BPB to inquire into the professional conduct of a building practitioner for failure to comply with a requirement of the Domestic Building Contracts Act 1995 (DBCA). Inquiries into the professional conduct of practitioners are carried out by the BPB under sections 178 and 179 of the Building Act. The BPB is a professional disciplinary body which inquires only into building practitioners conduct. The right not to be tried or punished more than once is not engaged, as the proposal relates only to inquiry by the BPB, and does not involve any criminal offence or hearing by a court.

Section 24: fair hearing

Section 24(1) of the charter recognises an individual's right to have a proceeding determined by a competent, independent and impartial court or tribunal after a fair and public hearing.

Currently the BPB may suspend a practitioner's registration pending an inquiry if it is considered to be in the interests and the safety of the public. The word 'safety' is generally limited to the 'physical' safety of a person.

Clause 8 (section 178(3) — inquiry into conduct of registered building practitioner)

This proposal extends the BPB's existing discretion to immediately suspend a practitioner's registration pending (i.e. before) inquiry, to circumstances where the public interest is at risk. For example, this is where a practitioner's repeated misconduct exposes current or future consumers to unacceptable risks, such as economic loss or where registration was gained using fraud or misrepresentation.

As a consequential measure clause 4 includes section 178 in the provisions of section 146(2) of the act, which excludes certain decisions from being stayed. This means that these decisions have immediate effect unless the Building Appeals Board directs otherwise.

These measures limit the right to a fair hearing but the limit is reasonable and can be demonstrably justified under section 7 of the charter.

(a) the nature of the right being limited

Fair hearing is an important right which is central to our justice system. The purpose of the right is to ensure the proper administration of justice. It is concerned with procedural fairness and the requirement that a court or tribunal be unbiased, independent and impartial.

(b) the importance of the purpose of the limitation

The limitation is for an important purpose: to protect the public where harm could be caused by the continued conduct of a building practitioner.

(c) the nature and extent of the limitation

The right is only limited to the extent that a person's registration is suspended until there is a full hearing at the inquiry. Further, the measures will be only be used where a high threshold is satisfied and where the BPB has determined through its preliminary assessment power that it will hold an inquiry. Additionally, a person's appeal rights are preserved because any decision by the BPB, including the decision to suspend registration pending inquiry, is subject to appeal to the Building Appeals Board.

(d) the relationship between the limitation and its purpose

There is a direct relationship between the limitation and the purpose of protection of the public.

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

There are no less restrictive means reasonably available to achieve the purpose of the limitation.

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.

PETER BATCHELOR, MP
Minister for Community Development

Second reading

Mr BATCHELOR (Minister for Community Development) — I move:

That this bill be now read a second time.

The Brumby Labor government's investment in making Victoria the best place to live, work and raise a family is attracting more people to Melbourne and Victoria faster than predicted.

Victoria's population is booming because people value our state's livability. Population growth is good for our economy, it creates jobs and it strengthens communities. All this activity is generating a major growth in building services.

ABS statistics show that building approvals in Victoria jumped 48 per cent in January of this year, which provided a record value for that month of $2.64 billion. This growth is well ahead of the national growth of 15.7 per cent. The figures show confidence in the Victorian economy as more people are investing in new buildings and thereby creating new jobs.

In its report *Housing Regulation in Victoria — Building Better Outcomes*, released by the Treasurer on 17 April 2006, the Victorian Competition and Efficiency Commission stated that 'Practitioner registration and licensing are intended to help achieve good building outcomes and to strengthen consumer confidence in the industry'. It further stated that 'The building permit and registration system must be enforced to be effective'.

The Building Practitioners Board (BPB) is critical for ensuring that issues relating to the conduct and ability to practise of registered building practitioners are dealt with effectively and appropriately. A review of the provisions of the act relating to the board has found that additional powers are needed to address gaps in its effectiveness.

This bill responds to that need. The proposed amendments will enable Victoria's building regulation system to deal more effectively with consumer complaints.

The bill will:

improve consumer protection and enhance the standards of building and plumbing practitioners; and

improve the operation of regulatory schemes established under the Building Act 1993.

Many different types of building practitioners are covered by this legislation including builders, building surveyors, building inspectors, quantity surveyors, engineers and draftspersons.

The Building Act 1993 established the Building Practitioners Board, which registers building practitioners and undertakes inquiries into the activities of those registered building practitioners. The board is the front line in ensuring the quality of people in the industry.

Overview of disciplinary powers

The current powers of the board to impose sanctions for breaches of the act are not sufficiently flexible and do not provide for a proportional response to the range of breaches which the board hears.

Where it identifies a knowledge or practice 'gap', the board lacks the power to require a registered practitioner to undertake a course or training. Additionally, the power to cancel registration is of limited value, as currently a practitioner whose registration has been cancelled can simply reapply for registration and the board must register the practitioner if the requirements of section 169 of the act have been fulfilled, unless the board can demonstrate that the applicant is not of good character.

There is no intermediate sanction between the lowest level — i.e., a reprimand — and the highest levels — i.e., cancellation or suspension of registration for up to three years. The maximum penalty of 50 penalty units has limited leeway to provide an effective response to the nature of the breach.

The bill provides the board with a new range of powers from reprimand, to suspension, cancellation, disqualification, increased fines, and requiring a person to complete training or instruction.

The amendments will provide a new power to disqualify a person from being registered for up to three years. This can be added to the power to cancel registration to ensure that a practitioner cannot turn around the next day after registration has been cancelled and apply for new registration.

They increase the maximum available fine to 100 penalty units for each inquiry. This brings the fine to the limit available under the act. To provide for consistency, the level to which the Plumbing Industry Commission can issue a penalty will also be raised to 100 penalty units.

They also extend the grounds for suspension of registration prior to holding an inquiry, where it is in the interests of the public to do so. This will be used only where the practitioner's conduct poses a significant risk to the public or it has been demonstrated that they are not a fit and proper person to operate as a registered building practitioner.

These new and improved powers will assist the board to effectively discipline or remove practitioners who do not comply with the requirements of the act and regulations, and improve the standing of the industry.

The bill also provides a new power to determine the good character of an applicant as part of its decision making on whether to register the person. In addition, practitioners will be required to advise the board of any change to the 'good character' information provided in their application. This will enable the board to inquire into any impact that change of information should have on the practitioner's registration.

Company directors deemed responsible

The amendment will also clarify and strengthen the link between the conduct of a building company and the registered building practitioner nominated on the building permit so that the director is responsible for the work and conduct of the company.

A significant proportion of domestic building work in Victoria is carried out by companies. Such companies are required to have at least one director who is a registered building practitioner. However, the actual building work may be carried out by an unregistered building practitioner.

Where breaches of the act or regulations are alleged, it can be difficult for the board to bring an inquiry against a registered building practitioner. In this circumstance the consumer may have no redress against the registered building practitioner who is responsible for the conduct of the company and the board may be unable to impose any disciplinary sanction in respect of breaches of the act.

The amendment 'deems' the director of a company, or partner, to be responsible for the conduct of the company.

Building surveyors

The bill contains two provisions affecting building surveyors. The first clarifies the role of municipal building surveyors working outside municipal districts. The second will implement a two-tiered building surveyor system as part of national reforms.

Victoria introduced a competitive environment for the issuing of building and occupancy permits in 1993, through a privatised system that allowed for 'private' building surveyors to issue building and occupancy permits anywhere in the state.

Under the current act it is uncertain whether a municipal building surveyor or other council-employed building surveyor can act outside the municipal district with the full powers of a municipal building surveyor or with the more limited powers of a private building surveyor.

The bill clarifies that a municipal building surveyor working outside the municipal district will have the same role and powers of a private building surveyor while still retaining the title municipal building surveyor. This clarification will not impact on current arrangements under sections 191,192, 214 to 216 and 221 of the act.

The second of the amendments will enable adoption of the COAG national accreditation framework. Victoria is signatory to an agreement of the Australian Building Codes Board to implement a national two-tiered building surveyor/certifier system.

The bill will recognise that there are two types of building surveyors. One will be a building surveyor (unlimited) who is unrestricted in the scope of work and the other will be a building surveyor (limited) whose scope of work will be limited to practising in respect of buildings up to three storeys in height and a maximum floor area of 2000 square metres.

With a shortage of building surveyors currently in the system this amendment will increase the number of building surveyors available to issue building permits while still maintaining protection of the consumer.

A person who is currently registered as a building surveyor will be grandfathered into the unlimited category. The required qualifications will be set under regulations in the same manner as for other building practitioners.

Plumbers

The Building Act also regulates plumbing work under part 12A of the act, and this bill provides amendments that specifically address limitations of the current plumbing regulations under that part.

The Plumbing Industry Commission has the power to suspend a plumber where a plumber is found in breach of the act and regulations. In some cases there are mitigating circumstances that may have impacted on the plumber's actions and behaviours.

The proposed amendment will enable the Plumbing Industry Commission to have the flexibility to allow it to respond to mitigating circumstances argued during the inquiry and, where appropriate, enable a practitioner to continue working in his or her trade while carrying out the requirements of the order, which could include conditions to be complied with.

In the event that the plumber has breached the act and/or regulations during the period that the suspension has been suspended or has failed to comply with the conditions imposed, the Plumbing Industry Commission will have the power to reinstate the suspension following an inquiry.

The bill will also amend the definition of completed work for the purpose of the issue of a compliance certificate for plumbing work. Currently a compliance certificate is issued when the plumbing work is completed. 'Completed' currently means when it is used or capable of being used.

This definition does not reflect the changing nature of the plumbing industry where plumbers are being contracted to undertake aspects of plumbing work. In this case a plumber would not be required to issue a compliance certificate for the work that they have completed. This places a responsibility on the final plumber along the chain, as they would have to certify work which they did not complete or supervise.

As part of this proposal, the bill provides a mechanism for obtaining a compliance certificate where a plumber has walked off the job before completing the plumbing work and does not intend to return.

The bill also clarifies some terminology used in the act and makes other machinery amendments. One such amendment is making it an offence to use the title of plumbing practitioner when not registered or licensed as a plumber.

Conclusion

This bill updates the powers of the Building Practitioners Board, providing more flexibility and greater powers to better reflect the realities of the breaches occurring in the industry. It provides a mechanism to reinforce the responsibility of a registered builder who is a director of a building company for work carried out by the company. It also implements national reforms to address the shortage of surveyors and clarifies the powers of municipal building surveyors, and provides a better regulatory framework for the plumbing industry.

This bill will strengthen consumer protection and increase consumer confidence in domestic building, and result in a more reputable building and plumbing profession in Victoria.

I commend the bill to the house.

Debate adjourned on motion of Mr CLARK (Box Hill).

Debate adjourned until Thursday, 10 July.

EVIDENCE BILL

Statement of compatibility

Mr HULLS (Attorney-General) tabled following statement in accordance with Charter of Human Rights and Responsibilities Act:

In accordance with section 28 of the Charter of Human Rights and Responsibilities, I make this statement of compatibility with respect to the Evidence Bill 2008 (the bill).

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

Overview of bill

The purpose of the bill is to promote and maintain uniformity and harmonisation of evidence laws across Australian jurisdictions. The bill clarifies evidence laws by 'codifying' complex common law rules, rewriting current statutory rules of evidence in a clear and concise manner and organising these rules in a logical order.

The policy behind the bill is that all relevant and reliable evidence that is of an appropriate probative value should be admissible in court proceedings, unless such evidence would cause unfair prejudice to a party to those proceedings.

The bill contains overarching provisions giving broad judicial discretions to exclude evidence or limit its use in certain circumstances. These judicial discretions operate as safeguards that protect and balance the rights of parties to proceedings (civil and criminal), the rights of witnesses and the importance of the court hearing all relevant, reliable and probative evidence. They are consistent with and give effect to the rights under the charter, particularly the right to a fair hearing under section 24(1). The overarching judicial discretions and safeguards operate together with other specific safeguards in the bill.

The primary purpose of the bill is to set out the rules of evidence that apply to all proceedings in a relevant court with the aim of ensuring a fair hearing for persons appearing before the courts.

Human rights issues

The following analysis contains a discussion of each of the charter rights raised by the bill.

Section 8(3): equal protection by the law

Section 8(3) of the charter provides that every person is equal before the law and is entitled to the equal protection of the law without discrimination. Discrimination means discrimination within the meaning of the Equal Opportunity Act 1985 (EO Act) on the basis of an attribute set out in section 6 of that act. This right is engaged on a number of occasions by the bill where, prima facie, there appears to be discrimination on the basis of one or more of the attributes under the EO Act. However, under the charter, the right to be free from discrimination in section 8(3) is qualified by section 8(4), which provides that measures taken for the purpose of assisting or advancing a person or groups of persons disadvantaged because of discrimination do not constitute discrimination under the charter. This recognises that substantive equality is not necessarily achieved by treating everyone equally, and that affirmative action or positive discrimination may be necessary to achieve equality for some groups in the community.

The following provisions engage the right to equal protection before the law but the right is not limited because of the qualifying provision contained in section 8(4) of the charter:

Clause 30 — Interpreters

Clause 31 — Deaf and mute witnesses

Clause 41 — Improper questions

Clause 42 — Leading questions

Clause 61 — Exceptions to the hearsay rule dependent on competency

Clause 72 — Exception — Aboriginal and Torres Strait Islander traditional laws and customs (exception to the hearsay rule)

Clause 78A — Exception — Aboriginal and Torres Strait Islander traditional laws and customs (exception to the opinion rule)

Clause 85 — Criminal proceedings — reliability of admissions by defendants

Clause 165A — Warnings in relation to children's evidence

Clause 13

Clause 13 changes the existing test for determining the competence of a witness. The test for competence is not based upon existence of a disability. Rather, it is focused on the capacity of the individual witness to understand and answer questions put to them. Although the clause includes persons who, by reason of a disability, do not have the capacity to understand a question about a fact or give an answer, the clause is not limited to such persons. Incapacity can be 'for any reason'. Further, the test is only met where the incapacity cannot be overcome and clause 13(2) ensures that a finding that a person is incapable of understanding and answering questions in relation to one fact does not preclude the person from giving evidence in relation to other facts. The test for competence under clause 13 is considerably more inclusive than the existing test. By focusing on the capacity of the individual to understand and answer questions, rather than the existence of a disability, clause 13 gives effect to the rights of persons with disabilities to recognition and equality before the law.

Clause 165

Clause 165 requires a warning to be given to a jury, if a party so requests, regarding the unreliability of certain kinds of evidence, including for reasons of age, ill health, injury or the like. This limits the right of persons with disabilities or of advanced age to be equal before the law.

However, the limit upon the right is reasonable and justifiable in a free and democratic society for the purposes of section 7(2) of the charter having regard to the following factors:

(a) the nature of the right being limited

Freedom from discrimination and the right of all people to be treated equally by the law regardless of any disability or impairment.

(b) the importance of the purpose of the limitation

The purpose of this limitation is to give effect to an accused person's right to a fair trial by ensuring that warnings can be given to a jury regarding unreliable evidence.

(c) the nature and extent of the limitation

The court has a discretion to give a warning to the jury regarding evidence the reliability of which may be affected by age or disability. It is only where reliability of evidence is affected that the warning can be given. There is no automatic assumption that persons of advancing age or with disabilities will give unreliable evidence. A judge will need to be satisfied that the evidence may be unreliable in the individual circumstances of each case.

(d) the relationship between the limitation and its purpose

The ability to give a warning is directly and rationally connected with the purpose of ensuring a fair trial as it is limited to circumstances in which the reliability of the evidence may be affected by age or disability.

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

There are no less restrictive means of achieving this purpose.

(f) other relevant factors

It is also important to note the safeguard in clause 165(3) that enables the judge to refuse to give a warning if there are good reasons for not doing so.

(g) conclusion

This is a reasonable limitation of the right to recognition and equality before the law because the primary aim of ensuring that an accused person has a fair trial is furthered by the capacity to warn a jury that evidence may be unreliable because of factors affecting a witness.

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 following provisions engage and limit the right to freedom of movement because they provide for a person to be required to come before the court to give evidence or empower the court to take further action if a witness fails to attend proceedings, such as issuing a warrant or a fine. To the extent that a person is required to attend the court under these provisions then the person's freedom of movement is limited:

Clause 12 — Competence and compellability

Clause 36 — Person may be examined without subpoena or other process

Clause 46 — Leave to recall witness

Clause 169 — Failure or refusal to comply with requests

Clause 194 — Witnesses failing to attend proceedings

However, the limit upon the right is clearly reasonable and justifiable in a free and democratic society for the purposes of section 7(2) of the charter having regard to the following factors:

(a) the nature of the right being limited

The right to 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 limitation is important because it enables a court to examine relevant, competent and compellable witnesses who may hold relevant evidence and or information which may bring to light the truth of disputed facts and evidence. The ability to secure the presence of such witnesses is essential to the effective administration of the justice system and the right to a fair hearing.

(c) the nature and extent of the limitation

Clauses 12, 46 and 169 limit the person's freedom of movement to the extent that a person may be compelled to be physically present at the court or another location for a limited time for the purpose of giving evidence.

Clause 36 limits a person's freedom of movement to the extent that the person cannot leave the court until excused by the court from giving evidence.

Clause 194 limits a person's freedom of movement to the extent that a person who has failed to attend proceedings may be apprehended and brought before a court.

(d) the relationship between the limitation and its purpose

The limitation on the free movement of a person by requiring the presence of the person at court to give evidence is directly and rationally connected to the purpose of ensuring the effective administration of the justice system and the right to a fair hearing.

(e) less restrictive means reasonably available to achieve the purpose

There are no less restrictive means of achieving this purpose.

(f) other relevant factors

It is also important to note the practice of courts to allow witnesses to leave the court temporarily if their evidence is not required immediately, and to release witnesses once they have given evidence. In addition, the court's ability to issue warrants, fines or make other enforcement orders under clause 194 is a discretionary one.

(g) conclusion

These are reasonable limitations of the right to freedom of movement because the justice system would not be able to function if the courts did not have the power to compel persons to attend before them and give evidence.

Section 13(a): right to privacy and reputation

Section 13(a) of the charter requires that a public authority must not unlawfully or arbitrarily interfere with a person's family or home. 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 limit the right if the interference is neither arbitrary nor unlawful. Arbitrariness will not arise if the restrictions on privacy accord with the objectives of the charter and are reasonable given the circumstances. An interference will not be unlawful if the law, which authorises the interference, is precise and circumscribed and determined on a case-by-case basis.

The right to privacy under section 13(a) of the charter is engaged by the following provisions of the bill because a witness may be required to divulge personal information including visual identification evidence, or privileged information. In each circumstance, the right to privacy is not limited because the interference is provided for in law and will occur in circumscribed and precise circumstances subject to the court's discretion on a case-by-case basis:

Clause 12 — Competence and compellability

Clause 29 — Manner and form of questioning witnesses and their responses

Clause 48 — Proof of contents of documents

Clause 114 — Exclusion of visual identification evidence

Clause 118 — Legal advice

Clause 119 — Litigation

Clause 120 — Unrepresented parties

Clause 121 — Loss of client legal privilege — generally

Clause 122 — Loss of client legal privilege — consent and related matters

Clause 123 — Loss of client legal privilege — defendants

Clause 125 — Loss of client legal privilege — misconduct

Clause 126 — Loss of client legal privilege — related communications and documents

Clause 127 — Religious confessions

Clause 131 — Exclusion of evidence of settlement

Clause 133 — Court may inspect etc. documents

Clause 169 — Failure or refusal to comply with requests

Clause 178 — Convictions, acquittals and other judicial proceedings

Clause 179 — Proof of identity of convicted persons — affidavits by members of state or territory police forces

Clause 180 — Proof of identity of convicted persons — affidavits by members of Australian Federal Police

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 not to express. This right is engaged by a number of provisions of the bill, which would compel a person to answer certain questions or express certain information to the court. 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. The bill clarifies evidence laws with the aim of ensuring that all relevant and reliable evidence that is of an appropriate probative value should be admissible unless such evidence would cause unfair prejudice to a party to a court proceeding. This is a key element of public order.

The following clauses of the bill constitute lawful restrictions on the freedom of expression under section 15(3) of the charter:

Clause 10 — Parliamentary privilege preserved

Clause 12 — Competence and compellability

Clause 15 — Compellability — Sovereign and others

Clause 16 — Competence and compellability — judges and jurors

Clause 29 — Manner and form of questioning witnesses and their responses

Clause 37 — Leading questions

Clause 38 — Unfavourable witnesses

Clause 39 — Limits on re-examination

Clause 41 — Improper questions

Clause 101 — Further restrictions on tendency evidence and coincidence evidence adduced by prosecution

Clause 103 — Exception — re-establishing credibility

Clause 121 — Loss of client legal privilege — generally

Clause 122 — Loss of client legal privilege — consent and related matters

Clause 123 — Loss of client legal privilege — defendants

Clause 125 — Loss of client legal privilege — misconduct

Clause 126 — Loss of client legal privilege — related communications and documents

Clause 127 — Religious confessions

Clause 131 — Exclusion of evidence of settlement negotiations

Clause 145 — Certain Crown certificates

Clause 169 — Failure or refusal to comply with requests

Clause 194 — Witnesses failing to attend proceedings

Clause 195 — Prohibited question not to be published

Section 19: cultural rights

Section 19(2) provides that Aboriginal persons hold distinct cultural rights and must not be denied cultural rights, including the right to maintain their kinship ties with other members of their community.

Kinship ties play an important role in Aboriginal communities. The notion of kinship ties is closely linked to other cultural and religious practices.

Clause 18 of the bill provides that the court may exercise its discretion to excuse a person from the requirement to give evidence against a spouse, de facto partner, parent or child, where there is a likelihood that harm would or might be caused (whether directly or indirectly) to the person or to the relationship between the person and the defendant, and the

nature and extent of that harm outweighs the desirability of having the evidence given. The persons who may be excused from giving evidence under this provision are only the spouses, de facto partners, parents and children of the defendant.

The judicial discretion to excuse a person from giving evidence does not extend to all persons who have a relationship with the defendant, for example, siblings, aunts or uncles. Where a person has kinship ties with the defendant, other than as a spouse, de facto partner, parent or child, they may be compelled to give evidence against the defendant. While this will not necessarily result in a severance of the kinship ties it has the potential to cause harm to the kinship relationship, and the right in section 19(2) may therefore limited.

However, to the extent that the right may be limited, it is reasonable and justifiable in a free and democratic society for the purposes of section 7(2) of the charter having regard to the following factors:

(a) the nature of the right being limited

The right of an individual to maintain their kinship ties is an important Aboriginal cultural right.

(b) the importance of the purpose of the limitation

The purpose of the limitation is to ensure that all relevant and reliable evidence that is of an appropriate probative value is admissible.

(c) the nature and extent of the limitation

The right to maintain kinship ties is limited only as far as the kinship relationship does not fall within the definition of spouse, de facto partner, parent or child. These relationships are defined broadly in the bill and extend the group of persons who may be subject to the judicial discretion under the current law to include persons in a same-sex de facto relationship, adoptive parents and children, and persons with whom a child is living as if the child were a member of the person's family (even where there is no biological relationship). Aboriginal cultural practices whereby a child lives with a person with whom they have kinship ties as if they were a member of the person's family are therefore accommodated because such persons are included in the class of persons who may object to giving evidence. The right is limited to the extent that a person shares kinship ties with the defendant but falls outside the class of persons covered by clause 18.

(d) the relationship between the limitation and its purpose

The extent of the limitation is directly and rationally connected to the desirability of ensuring that all relevant and reliable evidence that is of an appropriate probative value is admissible. It would be undesirable to extend the operation of clause 18 to all persons who share kinship ties with a defendant, as this is potentially a very broad class of people and would undermine the ability to ensure that important evidence can be obtained. The definition of spouse, de facto partner, parent or child will include a broad class of persons who share kinship ties with the defendant, and the provision provides an appropriate balance between the preservation and maintenance of close relationships and the need to maximise the ability to adduce relevant, probative evidence.

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

Less restrictive means of achieving this result are not available. On balance, the limitation is reasonable and appropriate to its objective.

(f) other relevant factors

There are no other relevant factors.

(g) conclusion

The extent of the limitation is proportionate to the desirability of ensuring that all relevant and reliable evidence that is of an appropriate probative value should be admissible.

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 not arbitrarily. The following clauses of the bill engage the right because they provide for a person to be required to produce documents or for the impounding of documents. In each instance, the deprivation of property is in accordance with law and there is no limitation on the right:

Clause 35 — Effect of calling for production of documents

Clause 36 — Person may be examined without subpoena or other process

Clause 131A — Application of division to preliminary proceedings of courts

Clause 133 — Court may inspect etc. documents

Clause 169 — Failure or refusal to comply with requests

Clause 188 — Impounding documents

Section 21: right to liberty and security of person

Section 21(3) 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 194 of the bill concerns witnesses who fail to attend proceedings. Once certain matters are established, the court may issue a warrant to apprehend the witness and bring the witness before the court. The provision empowers a court to exercise a discretion to issue a warrant to apprehend the witness, as one of a number of actions a court may take to compel a person to attend proceedings. The court will assess the need to issue a warrant on a case-by-case basis, and any resultant arrest will therefore not be arbitrary but will occur when it is reasonable in all the circumstances for the purpose of compelling a person to attend proceedings. The provision also provides that the court may direct that a person be released immediately on bail. The right is not limited as the deprivation of liberty will be on grounds and in accordance with procedures established by law.

Section 24: right to a fair hearing

Section 24 of the charter guarantees the right to a fair and public hearing. Almost every provision of the bill engages the right.

The right is afforded to persons charged with a criminal offence and parties to civil proceedings. However, what amounts to a 'fair' hearing takes account of all relevant interests including those of the accused, the victim, witnesses and society. For example, it may be in the interests of the accused to know the name of a police informant. However, the right to a fair hearing is not breached by the privilege in respect of public interest immunity in clause 130, which enables that information to be withheld from the accused where those interests are outweighed by the public interest in preserving secrecy or confidentiality.

The balancing of rights required by the charter has essentially been undertaken by both the Australian Law Reform Commission and the Victorian Law Reform Commission on whose reports this bill is based. In addition, in most cases the courts are given a broad discretion, which will ensure that the provisions are applied to ensure a fair hearing in the individual circumstances of the case. Further, clause 11 of the bill expressly preserves the powers of a court with respect to abuse of process.

For these reasons, I have not included in this statement of compatibility a detailed analysis of the application of the balancing exercise in respect of each of the provisions of the bill.

It is, however, appropriate to discuss the power to exclude improperly or illegally obtained evidence pursuant to clause 138 of the bill. Improperly obtained evidence could include evidence obtained in breach of a charter right. Such evidence is not automatically excluded. Rather clause 138 requires that a balancing exercise be undertaken to determine whether the desirability of admitting the evidence outweighs the undesirability of admitting evidence that has been obtained improperly or illegally. A non-exhaustive list of factors to be taken into account is set out in clause 138(3). In some cases, this will result in the evidence being excluded. In others, it may be admissible.

As already stated, the right to a fair hearing involves a balancing of all relevant interests. The balancing approach undertaken pursuant to clause 138 is similar to that developed by the New Zealand courts in respect of the right to a fair trial under the New Zealand Bill of Rights Act. As the New Zealand courts have recognised, a prima facie exclusionary rule does not give sufficient weight to the interests of the community or the victim; namely, that persons who are guilty of serious offences should not go unpunished: *R v. Shaheed* [2002] 2 NZLR 377.

I have concluded that the approach to the exclusion of evidence under clause 138 is compatible with the right to a fair hearing in section 24 of the charter.

Conclusion

I consider that the bill is compatible with the human rights charter because, even though it does limit human rights, the limitations are reasonable and proportionate.

ROB HULLS, MP
Attorney-General

Second reading

Mr HULLS (Attorney-General) — I move:

That this bill be now read a second time.

This bill is the first of two bills to bring into effect the Uniform Evidence Act (UEA) in Victoria. A further bill repealing most of the Evidence Act 1958 the subject matter of which is dealt with in this bill, and integrating the new legislation into the statute book will be introduced early next year.

The laws of evidence lie at the heart of the conduct of both criminal and civil court proceedings. Victoria has laboured under outdated and complex evidence laws, which are poorly organised, and difficult to locate and follow. In the justice statement in 2004, the government committed to improving the accessibility and consistency of legislation. A significant part of this commitment was to introduce the UEA in Victoria. This bill is an important step towards delivering on that promise.

The UEA arose out of a comprehensive review of evidence laws by the Australian Law Reform Commission (ALRC) in the 1980s. In its 1987 report, the ALRC observed:

> … the law of evidence is badly in need of reform in all areas. The present law is the product of unsystematic statutory and judicial developments. It is a highly complex body of law which is arcane even to most legal practitioners. It contains traps and pitfalls which are likely to leave the unrepresented litigant baffled, frustrated and defeated.

The ALRC produced a model bill to provide a modernised, structured and reasoned approach to the laws of evidence.

The commonwealth, New South Wales and Tasmanian parliaments have enacted legislation based substantially on the ALRC's model bill.

As far back as 1996, the Scrutiny of Acts and Regulations Committee expressed the view that the UEA would be a significant improvement on the existing common law and statutory provisions in Victoria.

More recently, the Australian, New South Wales and Victorian Law Reform Commissions completed a joint review of the operation of the UEA. The commissions found that the UEA was working well, but required some finetuning. The bill I am introducing contains a range of amendments to improve the UEA based largely on the commissions recommendations. To maintain uniformity, the Standing Committee of Attorneys-General has endorsed those amendments.

While these amendments make some important improvements to the UEA, they do not alter the guiding principles underpinning the UEA, which govern the reforms contained in the Evidence Bill 2008. I will briefly discuss three of these principles.

Firstly, the primary role of the laws of evidence is to facilitate the fact finding task of the courts by enabling parties to produce the most probative evidence available to them.

Secondly, the different nature and objectives of civil and criminal trials require a more stringent approach to be taken in criminal trials to the admission of evidence against an accused person. The balance between the prosecution and defence has been kept in mind at all times. A less detailed and more flexible approach should be taken to the admissibility of evidence in civil proceedings. Generally, subject to considerations of fairness and costs, the rules should permit a party to tender all of the relevant evidence it has.

Thirdly, the parties must be given, and feel they have had, a fair hearing. To enhance predictability, the rules should be clear to enable preparation for, and conduct of, trials and tend to minimise judicial discretion, particularly in the rules governing the admissibility of evidence.

In reframing the law of evidence in Victoria, the bill imposes organisation on a miscellaneous collection of rules that have been developed on a case by case basis by the courts. It is structured so that the provisions follow the order in which issues ordinarily arise in trials. Whilst the bill codifies many aspects of the law of evidence, it is not intended to operate as an exhaustive code. In this regard, the bill expressly preserves the operation of other acts which make specific provision on evidentiary matters. It also preserves the principles and rules of common law and equity on evidence, except in so far as the contrary intention appears in the bill. However, because the bill is comprehensive, the scope for operation of these principles and rules will be extremely limited.

Major changes to Victorian law implemented by this bill

Unfavourable witnesses

The common law currently requires that a witness be declared hostile before they can be cross-examined by the party who called them. The test for determining whether a witness is to be declared hostile requires the party to show that the witness is deliberately withholding material evidence.

The bill allows for a party who called a witness to question that witness as though they were cross-examining them, with the leave of the court, where the witness has given evidence unfavourable to that party. This will, for example, make it easier for prosecutors to cross-examine uncooperative witnesses who may not meet the higher common law test. In combination with other sections, it will also allow them to lead evidence of the witness' original statement to police, and for those statements to be available to the jury as evidence of what happened.

Hearsay

The hearsay rule prevents the admission of evidence of a previous representation of a person for the purposes of proving the existence of a fact asserted by that person in the representation.

There is a miscellany of exceptions to this rule at common law. The bill provides a more liberal and structured approach to hearsay evidence. It contains a set of carefully constructed exceptions which allow hearsay evidence to be admitted where it may be the best available account of what occurred. There are stricter requirements imposed in relation to criminal proceedings.

The main departure from the common law is contained in clause 60 of the bill, which allows evidence admitted for a purpose other than as proof of the facts asserted to also be used as evidence of the facts asserted. For example, a prior inconsistent statement of a witness may be admitted as evidence relevant to the credibility of that witness. In that instance, the evidence may also be used as evidence of the facts asserted in the prior statement.

The provision avoids the need to give complex, and at times nonsensical, directions to juries about the use to be made of the evidence. The exceptions are subject to other protections in the act, such as directions about the relative reliability of hearsay evidence. The hearsay rule is also made inapplicable in relation to evidence of admissions, which has its own set of exceptions.

Admissions

Admissions by a party against their interests are an exception to the hearsay rule. Both the common law and the UEA have rules restricting the admissibility of evidence of an admission where circumstances may have compromised the integrity of the evidence. At common law, the requirement is that the admission was voluntary, and that the person's will was not overborne at the time the admission was made.

Clause 84 of the bill excludes evidence of admission if it was influenced by violent, oppressive or inhumane conduct or threats of such conduct. Clause 85 applies in criminal proceedings in addition to clause 84 and provides that evidence of admissions made by a defendant to an investigating official are not admissible unless the circumstances in which the admissions were made make it unlikely that the truth of the admission was adversely affected.

The privilege against self-incrimination

Currently, in Victoria, if a witness can establish that there is a real risk that in answering a question their evidence would thus incriminate them in an offence, the court cannot require them to give the evidence.

The UEA takes a different approach. The court can require such evidence to be given if the interests of justice require it. The witness is then issued with a certificate preventing the use of that evidence, or derived evidence, from being used against the witness in subsequent proceedings against them.

This enables the court to receive relevant evidence, while protecting the witness from any adverse consequences of giving self-incriminating evidence.

In response to the High Court decision in *Cornwell v. The Queen* [2007] HCA 12, the clause provides that where a certificate is given, it has effect even if the granting of the certificate is subsequently called into question.

Warnings

There are a multitude of warnings which a judge is required to give a jury in relation to evaluating evidence. Failure to give these warnings or giving inadequate warnings is a frequent ground of appeal in criminal cases.

While common law warning requirements will remain applicable, the bill makes it clear that in most cases a party is to request a warning before it must be given. This places a certain onus on counsel to make a forensic decision to request a warning and reduces the likelihood that the failure to give a warning may constitute a valid ground of appeal. However, there is still an overriding obligation upon the judge to prevent a miscarriage of justice. As a result, if the judge was of the view that the requirements for a warning were met and counsel had failed to apply for the warning, the judge would be bound to ask counsel (in the absence of the jury) whether such a warning was requested.

Overview of the Evidence Bill 2008

The bill is divided into the following five chapters —

chapter 1 deals with the application of the act;

chapter 2 deals with adducing evidence;

chapter 3 deals with admissibility of evidence;

chapter 4 deals with matters of proof; and

chapter 5 deals with miscellaneous issues and the dictionary.

As mentioned, the bill is structured in the order in which the issues would normally arise in a typical trial.

I will now summarise some additional key features of the bill.

Chapter 2 deals with adducing evidence. It is divided into three parts, relating to witnesses, documents and other evidence.

Clauses 12 and 13 of the bill provide that every person is presumed competent to give evidence unless the contrary is proved. There are some exceptions including heads of state, judges and jurors in certain circumstances. The competency provisions have been drafted with the intent that as many people as possible should be competent witnesses, with the particular difficulties faced by children and people with intellectual disabilities firmly in mind.

The bill replicates the substance of recent amendments to the Evidence Act 1958 provisions dealing with children's evidence, but importantly extends those provisions to any witness who is incapable of understanding that in giving evidence he or she is under an obligation to give truthful evidence. The competency provisions of the bill represent a significant advance on the present requirement that an adult witness understand the nature and consequences of an oath.

Clause 18 of the bill makes it clear that members of families of a defendant in a criminal proceeding are competent and compellable witnesses. However, such persons may object to giving evidence as a witness for the prosecution and, in certain circumstances, will not be required to give evidence. In this regard, members of a family include spouses, de facto partners (including same-sex partners), parents, natural and adoptive children and children living in the household of a de facto as though they are the children of the defendant. This provision seeks to strike a balance between maintaining and protecting families and facilitating the administration of justice.

Clause 41 differs from the model uniform evidence legislation, which imposes a mandatory obligation to prohibit 'disallowable' questions from being put to any witness. Instead, this bill provides for a 'two-tiered' approach. It gives the court a discretion to disallow improper questions put to any witness and imposes a duty to disallow improper questions put to vulnerable witnesses. Children and people with a cognitive impairment or intellectual disability are vulnerable witnesses. The court may also consider other witnesses to be vulnerable depending upon their individual characteristics or the circumstances of the proceeding.

One area in which the bill makes extensive changes is in relation to documentary evidence. Part 2.2 sets out the way in which documents can be proved. It abolishes the original document rule under common law, which requires that the contents of documents be proved by production of the original document. It permits parties to use originals, copies, transcripts, computer printouts, business extracts and official printed copies of public documents. Safeguards are provided in relation to the testing of documents and the means by which documents have been produced or kept. In addition, clause 147 facilitates the proof of documents produced in the course of business. The presumption is drafted sufficiently widely to cover reports based on a query of a database or a printout from a document imaging system.

These significant reforms bring evidence law up to date with record-keeping technology. The abolition of the original document rule will remove the requirement for retention of hard copy documents and files by businesses and not-for-profit organisations for evidentiary purposes, and the requirement for the storage of hard copy documents and records. This will result in a substantial reduction in administrative burden for business and not-for-profit organisations and savings in the millions of dollars per year.

In 2006 this government introduced the Reducing the Regulatory Burden initiative (RRBI) to reduce the administrative burden on business through the review of and changes to regulation. Funding has been approved through this initiative to implement the Evidence Bill.

Ms Asher — It is a bit of spin, no substance; the usual form for this government.

Mr HULLS — It is called the Reducing the Regulatory Burden initiative, or RRBI.

The funding obtained from the RRBI will support some key activities including training programs for justice system agencies, dissemination of information such as changes to the original document rule to peak industry bodies and businesses, updating operating procedures, manuals and handbooks, and revising IT systems content.

Chapter 3 of the bill contains comprehensive rules to control the admissibility of evidence. The primary evidentiary rule is that if evidence is relevant in a proceeding, it is admissible unless it is excluded under one of the exclusionary rules set out in the bill. Evidence that is not relevant is not admissible.

The exclusionary rules in the bill build upon, but rationalise and reform, the existing law. They include general discretions to exclude evidence where its probative value is substantially outweighed by the danger that the evidence might be unfairly prejudicial to a party or misleading or a waste of time.

As noted, the bill retains a rule excluding hearsay evidence. A significant change created by this rule is that an unintended implied assertion is not hearsay. For example, a child saying, when answering the phone, 'Hello, Daddy', is not hearsay if it is led to prove it was the child's father who was the other party to the telephone conversation.

The exceptions to the rule are divided into provisions relating to firsthand hearsay — that is, evidence given by a person who heard or saw the representation made by a person who had personal knowledge of the fact in question — and more remote hearsay.

Clause 193 includes a power for courts to develop rules, consistent with the provisions of the bill, relating to the pretrial discovery and exchange of documents, with the power to exclude evidence offered in violation of those rules.

Evidence that falls into specified categories of more remote hearsay can be admitted on the basis of reliability and/or necessity. The categories include government and commercial records, reputation as to family relationships and public rights, certain telecommunications, commercial labels and tags and evidence in interlocutory proceedings.

Clause 72 provides a specific exception to the hearsay rule in relation to evidence of a representation about the existence or content of traditional laws and customs of an Aboriginal or Torres Strait Islander group. This is specifically designed to overcome the difficulties that have arisen in relation to the assessment of Aboriginal oral history evidence.

Clause 76 sets out the general rule that opinion evidence is not admissible to prove a fact asserted by the opinion. However, the opinion rule does not apply to evidence of an opinion based on what a person saw, heard or otherwise noticed about a matter or event that is an account of the person's perception.

Clause 78A provides a specific exception to the opinion rule for evidence of an opinion expressed by a member of an Aboriginal or Torres Strait Islander group about the existence or otherwise of the traditional laws and customs of that group.

Also, a person with specialised knowledge based on training, study or experience may give evidence of his or her opinion if it is wholly or substantially based on that specialist knowledge.

I have previously referred to the operation of clauses 84 and 85 in relation to the admissibility of admissions against interest.

Clause 86 makes inadmissible any document (excluding sound recording or transcripts) purporting to be a 'record of interview' by an investigating official unless signed or otherwise acknowledged by marking by the defendant. The clause will not affect current procedures including tape recording interviews or in relation to summary offences in other acts, which will continue to operate and to the extent of any inconsistency will override this provision.

Clause 90 gives the court discretion to refuse to admit prosecution evidence of an admission if it would be unfair to the accused, having regard to the circumstances in which the admission was made.

Part 3.6 provides for the admissibility of evidence relating to the conduct, reputation, character and tendency of parties and witnesses, which is relevant to a fact in issue. For example, evidence may be admitted to prove that a person has or had a tendency to act in a particular way if notice has been given and the evidence has significant probative value. Tendency and coincidence evidence is not admissible, however, in criminal proceedings unless the probative value of such evidence substantially outweighs any prejudicial effect that it may have on the defendant.

Clause 102 provides that evidence that is relevant only to the credibility of a witness is not admissible, subject to a number of exceptions relating to cross-examination and expert witnesses. Protections are also provided for accused persons in criminal trials. Clause 110 permits in criminal proceedings a defendant to adduce evidence about his or her own good character. Where such evidence is adduced by a defendant, the prosecution is then permitted to adduce evidence that the defendant is not a person of good character.

Part 3.10 deals with privileges. The client-lawyer privilege is continued broadly along traditional lines. It protects communications made in the context of a professional relationship between a lawyer and client or between a client's lawyers involving the provision of independent legal advice. In addition, protection is given to communications between a lawyer or a client and third parties which are made for the dominant purpose of obtaining legal advice or assistance related to pending or anticipated litigation.

The bill differs from the model uniform evidence legislation in that it does not include the professional confidential relationships privilege. This privilege is subject to further consideration given the different provisions adopted by New South Wales and the commonwealth. When introducing its Evidence Amendment Bill 2008 recently, the commonwealth government indicated its intention to further consider this privilege as part of the development of its response to the Australian Law Reform Commission's report *Privilege in Perspective*. This provides a valuable opportunity for further work to promote uniformity in relation to this important privilege, prior to Victoria including such provisions within its evidence laws.

Clause 127 protects clergy from being required to divulge religious confessions in circumstances where there is a ritual of confessing one's sins to a member of the clergy.

In their review of the UEA, the commissions recommended that the privilege provisions also apply to preliminary proceedings of courts and non-curial settings. Clause 131A implements this recommendation in part. It provides that for the extension of the privileges to pretrial court proceedings, but not to non-curial settings.

Chapter 4 deals with matters of proof. Part 4.3 facilitates the proof of evidence produced by machines, documents produced in the course of business, documents attested by a justice of the peace, a lawyer or a public notary, the execution of documents, seals, documents more than 20 years old, and matters of official record. It also establishes certain rebuttable presumptions about the postage and receipt of postal articles et cetera. Clause 161 provides for presumptions in relation to the sending and receipt of electronic communications. Clause 164 abolishes any rules requiring some classes of evidence to be corroborated.

Clause 165 provides for judges to warn the jury about the unreliability of certain kinds of evidence, including hearsay evidence, evidence of admissions and evidence affected by the age or ill-health of the witness.

Clause 165A limits the capacity of judges to warn a jury about the evidence of a child and largely replicates the current law in Victoria. Clause 165B regulates warnings which are given to juries in criminal proceedings where there has been a delay resulting in significant forensic disadvantage to the accused. It is consistent with, and will replace, the current provisions in the Crimes Act 1958.

Part 4.6 provides for certain procedural matters, such as requests to produce documents or call witnesses, proof by affidavits, proof of foreign law and certificates of expert opinions et cetera.

Chapter 5 of the bill deals with miscellaneous matters, including the rights of parties to waive the rules of evidence and to make agreements as to facts. The dictionary is also included in chapter 5 and provides the definitions of words and expressions in the bill. The definition of de facto partner rightly includes same-sex couples and couples who have registered their relationship under the Relationships Act 2008. It has been drafted to ensure maximum consistency with relevant definitions in existing state and territory legislation across Australia.

Victoria has waited a long time for the reform of its evidence laws. The introduction of this bill is part of a much larger overhaul of Victoria's justice legislation set out in the justice statement 2004. It brings Victoria's evidence law into the current century and enhances the operation of our legal system through increased efficiency brought about, in part, through harmonisation with other state, territory and commonwealth legislation.

I commend the bill to the house.

Debate adjourned on motion of Mr CLARK (Box Hill).

Debate adjourned until Thursday, 10 July.

FAMILY VIOLENCE PROTECTION BILL

Statement of compatibility

Mr HULLS (Attorney-General) tabled following statement in accordance with Charter of Human Rights and Responsibilities Act:

In my opinion, the Family Violence Protection Bill 2008, as introduced to the Legislative Assembly, is compatible with the human rights protected by the charter. I base my opinion on the reasons outlined in this statement.

Overview of bill

The bill recognises the following principles:

- non-violence is a fundamental social value that must be promoted
- family violence is a fundamental violation of human rights and is unacceptable in any form
- family violence is not acceptable in any community or culture
- in responding to family violence and promoting the safety of persons who have experienced family violence, the justice system should treat the views of victims of family violence with respect

In enacting this bill, the following features of family violence are also recognised:

- while anyone can be a victim or perpetrator of family violence, family violence is predominantly committed by men against women, children and other vulnerable persons
- children who are exposed to the effects of family violence are particularly vulnerable and exposure to family violence may have a serious impact on children's current and future physical, psychological and emotional well being
- family violence
  - affects the entire community
  - occurs in all areas of society, regardless of location, socioeconomic and health status, age, culture, gender, sexual identity, ability, ethnicity or religion
- family violence extends beyond physical and sexual violence and may involve emotional, psychological or economic abuse
- family violence may involve overt or subtle exploitation of power imbalances and may consist of isolated incidents or patterns of abuse over a period of time

The bill seeks to:

- maximise safety for persons who have experienced family violence
- reduce and prevent family violence to the greatest extent possible
- promote the accountability of perpetrators of family violence for their actions

The bill achieves this by providing an effective and accessible system of family violence intervention orders and family violence safety notices and creating offences for contraventions of these orders and notices.

Human rights issues

Section 8: right to recognition and equality before the law

Section 8 of the charter establishes a series of equality rights. The right to recognition as a person before the law means that the law must recognise that all people have legal rights. The right of every person to equality before the law and to the equal protection of the law without discrimination means that the government ought not discriminate against any person, and the content of all legislation ought not be discriminatory.

However, formal equality may cause unequal outcomes, so to achieve substantive equality, differences of treatment may be necessary. To this end, section 8(4) of the charter provides that certain differential measures do not constitute discrimination, namely, measures 'taken for the purpose of assisting or advancing persons or groups of persons disadvantaged because of discrimination'.

Special provisions for children

Clause 70 of the bill engages section 8(3) of the charter in that it discriminates on the basis of age and disability. Nevertheless, the clause falls within the exception provided for in section 8(4) of the charter, as it provides special measures taken to assist or advance persons or groups of persons disadvantaged because of discrimination.

Clause 67 of the bill raises section 8(3) of the charter as it discriminates on the basis of age. Nevertheless, the clause falls within the bounds of section 8(4) because it constitutes a special measure taken to assist or advance children. In addition, the provision is consistent with section 17(2) of the charter.

Clause 45 of the bill engages and limits the right contained in section 8(3) of the charter as, under clause 17(c)(iv), only a child above the age of 14 may make an application for a family violence intervention order.

Importance of the purpose of the limitation

The limitation is designed to enable children who are of an appropriate age and maturity to make their own application to the court where protection is required. The limitation recognises that children under 14 are generally less mature and therefore less capable of making such an application. In this respect, the provision is likely to be protective and consistent with the interests of children and hence consistent with section 17(2) of the charter.

Nature and extent of the limitation

The nature and extent of the limitation is such that children under 14 years of age cannot make applications on their own behalf. Nevertheless, a parent of a child, a police officer or any other person (with a parent's consent) may apply on behalf of a child, and a child may also be included in an application in respect of a parent (clause 47 of the bill). The court can also make family violence intervention orders of its own motion to protect children. Accordingly, the nature and extent of the limitation is confined.

Relationship between the limitation and its purpose

The limitation is rational because it recognises the capabilities of children and maturity levels of children of different ages. The limitation is proportionate because it applies only to children under 14 and in any event, others may apply on behalf of children if necessary.

Any less restrictive means reasonably available

None apparent.

On balance, the limitation is reasonable and demonstrably justified in a free and democratic society.

Section 10(c): right not to be subjected to medical treatment without his or her full, free and informed consent

Section 10(c) of the charter protects a person's right not to be subjected to medical treatment unless they have 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.

Clause 130 engages, and limits, section 10(c) of the charter. It requires, on the order of a court, that a person attend counselling (which constitutes a form of medical treatment).

The importance of the purpose of the limitation

The limitation is important as it operates to ensure that a respondent receives treatment that is intended to address their violent behaviour. In this sense, it works to change a respondent's violent behaviour in respect of which a family violence intervention order has been made. Thus, the limitation also operates indirectly to promote the right to life (pursuant to section 9 of the charter) and the right of families and children to protection (under section 17 of the charter).

The nature and extent of the limitation

The extent of the limitation is restricted to requiring a respondent to attend at a particular location for counselling treatment for a fixed period of time.

The relationship between the limitation and its purpose

Given the importance of the purpose, the limitation is both rational and proportionate.

Any less restrictive means reasonably available

None apparent.

On balance, the limitation is reasonable and demonstrably justified in a free and democratic society.

Section 12: freedom of movement and

Section 14: freedom of religion and

Section 21: right to liberty and security

This section of the statement discusses clauses which engage the right to freedom of movement in section 12. Certain clauses also engage the rights in section 14 and section 21 which are also discussed where relevant.

Section 12 of the charter protects various rights in relation to freedom of movement. These rights include the right to move freely within Victoria, the right to choose where to live in Victoria, and the right to be free to enter and leave Victoria. The rights conferred by section 12 apply only to persons who are 'lawfully' within Victoria.

Compulsion to attend court

Clauses 49, 32(d) and 134 in the bill require a person to attend at court at a particular time and place, either as a party or as a witness. To this extent, they limit a person's freedom of movement.

Importance of the purpose of the limitation

The limitation of the right to freedom of movement is important in these clauses because they all ensure:

> the attendance at court and participation of persons who may be significantly affected by the court's decision
>
> the court will have access to the best evidence when making decisions

Nature and extent of the limitation

Under clause 49, a respondent is required to physically appear before a court to give evidence. The limitation is restricted in that it only applies to a respondent to an application for a family violence intervention order.

A person may be summonsed, pursuant to clause 32, to attend court on a particular date in order for a court to hear an application. Non-attendance at court is not an offence; however, the court may make an order in the absence of a person.

The limitation in clause 134 is confined to requiring the author of a report to attend court and give evidence, where ordered to do so by a court.

Relationship between the limitation and its purpose

There is a direct relationship between the limitation provided for in clauses 49, 32 and 132 for the purpose of ensuring the effective operation of the justice system by compelling a respondent to attend court so that the court may make enquires to establish the truth where there are disputed facts or questions of law.

Any less restrictive means reasonably available

None apparent.

On balance, the limitation is reasonable and demonstrably justified in a free and democratic society.

Compulsion to attend counselling

In a similar context, both clauses 129 and 130 engage and limit the right to freedom of movement provided for in section 12 of the charter. This is because a respondent is compelled to attend an interview or any subsequent counselling which is ordered, at a particular time and place, and is guilty of an offence if they fail to do so, without reasonable excuse.

The importance of the purpose of the limitation

The limitation is important because it provides for the assessment of the respondent's suitability for counselling and, if appropriate, requirement to attend counselling. Therefore, it aims to change a respondent's violent behaviour in respect of which a family violence intervention order has been made. The limitation also operates indirectly to promote the right to life (pursuant to section 9 of the charter) and the right of families and children to protection (under section 17 of the charter).

The nature and extent of the limitation

The extent of the limitation is restricted to requiring a respondent to attend an interview and any subsequent counselling sessions. This is not considered to be a significant limitation. Further, the counselling order regime is presently a trial only, and is currently due to sunset two years after the commencement of the bill.

The relationship between the limitation and its purpose

The limitation is both rational and proportionate, given the importance of the purpose and the restricted circumstances in which the limitation operates.

Any less restrictive means reasonably available

None apparent.

On balance, the limitation is reasonable and demonstrably justified in a free and democratic society.

Restricting where a person may be and who they may contact

Insofar as a respondent may be excluded from a protected person's residence, or may be prohibited from being within a particular distance of a person or prohibited from approaching a person (by telephone or otherwise) pursuant to clause 81, the right to freedom of movement is engaged and limited.

Further, clauses 26 and 29 engage, and limit, the right to freedom of movement provided for in section 12 of the charter. This is because a person may be prohibited from living in the family home and going within a certain distance of family members, the family home or other places, such as the protected person's workplace.

It is possible that, in certain circumstances, clauses 81(2)(e), 26 and 29 could engage and limit section 14 of the charter (freedom of thought, conscience, religion and belief). This is because the clauses could result in a person being prohibited from being within a specified distance of a particular spiritual leader or religious centre.

The importance of the purpose of the limitation

In each case, the reason for the limitation is highly important, as it operates to protect a protected person from further family violence. In this sense, the limit on the rights is balanced against the protection of families and children and the right to life.

The nature and extent of the limitation

Although a respondent may be excluded from certain areas or places, a respondent does have the right, under clause 109 of the bill, to apply for the variation or revocation of a family violence intervention order if there is a change in circumstances.

The operation of clauses 26 and 29 means that a respondent may be prohibited from living in the family home and going within a certain distance of family members, the family home or other places. However, a family violence safety notice is of limited duration (up to 72 hours), may only be made after hours (that is, after 5.00 p.m. or before 9.00 a.m. on a weekday, and at any time on a weekend or public holiday),

may only be made in circumstances which require an urgent response and are subject to the supervision of the courts.

The relationship between the limitation and its purpose

The relationship between the limitation and its purpose is both rational and proportionate, given that the legitimate objective of the provisions is to protect a protected person and any children of a respondent from a respondent by, in the case of clause 81, imposing conditions which restrict a respondent from coming within a certain distance of a protected person and from accessing certain places, including a protected person's residence.

Clauses 26 and 29 aim to protect a person from further family violence. A respondent's rights are protected by the fact that they may be granted access to particular places that they are prohibited from entering or going near in circumstances where they are accompanied by a police officer and the police officer has made all reasonable enquiries to ensure that this is practical in the circumstances. The limitation balances the rights of a respondent and the rights of a protected person.

Any less restrictive means available

None apparent.

On balance, the limitation in each clause is reasonable and demonstrably justified in a free and democratic society.

Arrest and detention of a person

Several clauses in the bill provide for the arrest and detention of a person.

Clauses 50, 51, 52, 124 and 38 engage and limit section 12 of the charter as a respondent may be arrested and detained or held in custody, or bailed in accordance with the provisions of the Bail Act 1977.

Further, clause 15 engages and limits the right in section 12 of the charter, as it provides for the detention of a person if they fail to comply with a direction given under clause 14.

The importance of the purpose of the limitation

The limitations that these clauses create are important because they are each designed to protect people from family violence prior to a hearing for a family violence intervention order or charges for contraventions of intervention orders or safety notices being determined by the court.

The nature and extent of the limitation

The limitation created by clauses 50, 51 and 52 is confined to empowering a police officer to arrest and detain a respondent, hold them in custody, or bail them in accordance with the provisions of the Bail Act 1977. This may only occur subsequent to the issuing of a warrant by a registrar or magistrate in situations of urgency.

In the case of clause 124, when a police officer believes on reasonable grounds that a person has breached a family violence intervention order, they can arrest and detain that person without a warrant.

The limitation in clause 15 is restricted to situations where a person refuses to comply with a direction under clause 14 and had been informed that a failure to comply with such a direction may result in the person being apprehended and detained. The nature and extent of the limitation is also minimised by the context in which any detention occurs, namely the protection of another person from family violence. This is further enhanced by the fact that the period for which a person may be apprehended and detained is limited to six hours (with a possible extension to 10 hours by a court order).

Under clause 38, when a police officer believes on reasonable grounds that a person has contravened a family violence safety notice, they can arrest and detain that person without a warrant. Arrest for a contravention of a family violence safety notice can only be made if police believe on reasonable grounds that a person has committed an offence under clause 37 of the bill.

The relationship between the limitation and its purpose

The limitation that each of the clauses imposes is rational and proportionate, given that the legitimate objective of the provisions is to protect a person from further family violence incidents, a breach of a family violence safety notice, or a breach of a family violence intervention order. Furthermore, rights to bail remain available to a respondent. Thus, the limitation strikes a fair balance between the rights of a respondent and the rights of a protected person.

Any less restrictive means reasonably available

None apparent.

On balance, the limitation is reasonable and demonstrably justified in a free and democratic society.

Clauses 50, 124, 38 and 18 also engage the right to liberty in section 21 of the charter which provides that a person must not be subjected to arbitrary arrest or detention, and must not be deprived of his or her liberty except on grounds and in accordance with procedures established by law. However, none of these clauses limit the right to liberty because the arrest or detention is not arbitrary and the deprivation of liberty is on grounds and in accordance with procedures established by law. In light of these reasonable and carefully supervised limits, the detention, and any court authorised extension, is not arbitrary.

Direction to attend a particular location

Clause 14 engages and limits section 12 of the charter, the right to freedom of movement. This is because a police officer may direct a person to remain or go to and remain at a specified location (while the officer seeks a family violence safety notice, warrant or interim intervention order), where it is reasonable in the circumstances.

The importance of the purpose of the limitation

The limitation is important as it operates to protect a protected person from family violence. In this sense, the limit on the right to freedom of movement is balanced against the protection of families and children and the right to life.

The nature and extent of the limitation

When a police officer intends to make an application for a family violence intervention order or a family violence safety notice, the officer may direct a person to remain or go to and remain at a particular location. The person must be warned of the consequences of failing to comply with the direction.

The relationship between the limitation and its purpose

The limitation is rational and proportionate to the purpose it seeks to achieve, given that the legitimate objective of the provision is to protect a protected person from family violence. The limitation balances the rights of a respondent and the rights of a protected person.

Any less restrictive means reasonably available

None apparent.

On balance, the limitation is reasonable and demonstrably justified in a free and democratic society.

Section 13: privacy

Section 13 confers a number of rights regarding privacy. Specifically, a person has a right not to have their privacy, family or home unlawfully or arbitrarily interfered with or their reputation unlawfully attacked.

Privacy encapsulates concepts of personal autonomy and human dignity. It encompasses the idea that individuals should have an area of autonomous development, interaction and liberty — a 'private sphere' free from government intervention and from excessive unsolicited intervention by other individuals. Privacy comprises bodily, territorial, communications and information privacy.

Disclosure of personal information

Part 4 engages the right to privacy because a person's personal information, such as the person's name and address, may be divulged to a court in an application for a family violence intervention order. In particular:

> Clause 45 of the bill empowers a police officer to make an application for a family violence intervention order, regardless of whether an affected family member consents to such an application being made.
>
> Clause 85 engages the right as it requires the court to ask a respondent who is excluded from a protected person's residence to provide a court with an address for service; however, there is no penalty if a respondent fails to give such an address.

In addition:

> Clause 156 engages the right because where a court makes a family violence intervention order against a carer, the registrar is required to serve a copy of the order on the carer's employer or organisation for whom the carer provides the care to the client.
>
> Clause 32 engages the right to privacy because it provides for personal information to be included in family violence safety notices.
>
> Clauses 140, 141, 142 and 143 of the bill all deal with the confidentiality of personal information disclosed in the process of determining whether counselling orders are appropriate and any subsequent counselling sessions. The provisions engage the right to privacy because they provide for disclosure of personal information in certain limited circumstances.
>
> Clause 207 of the bill obliges certain public sector organisations to disclose information they hold about a respondent to a police officer if that police officer applies for such information in order to serve documents.

While these provisions interfere with a person's right to privacy, they do so in a manner that is neither unlawful nor arbitrary. This is because there are proper processes through which the information is divulged and the purpose of the interference is in accordance with the provisions, aims and objectives of the charter (particularly section 17, which provides for the protection of children and families).

Further, in relation to part 4, the information is provided to the court only and the bill restricts publication of proceedings in relation to family violence, thus ensuring that a person's personal details are only divulged to a limited class of recipients. Also, the privacy of any third party is protected, as the bill provides that where a respondent gives an address for service that is not their place of residence or work, any other person may refuse to consent to the use of the address as the address for service of documents under the bill, invalidating the address for service of documents in the process (see clauses 85(4) and 33).

Privacy of the home

Clause 159 of the bill engages the right to privacy of the home because it provides in certain circumstances for a search for firearms, firearms authority, ammunition and weapons without warrant, of a person's home or former home. Clause 157 engages the right because it allows a premises to be searched for a person without warrant, in certain circumstances. Clause 160 engages the right because it allows for a search of third parties' premises for firearms or weapons under warrant.

Additionally, the exclusion of a respondent from a protected person's residence, may have the effect of interfering with a respondent's right to privacy of the home. Such exclusion is provided for clause 81(2)(b), clause 82, clause 83 (in relation to child respondents) and clause 29 of the bill.

However, in each instance, the right to privacy of the home is not limited as the interference is lawful and not arbitrary. The interference is not arbitrary because it is in accordance with the provisions, aims and objectives of the charter (particularly section 17, which provides for the protection of children and families) and is reasonable in the circumstances (where the intent is to protect a person from further family violence incidents). Further, in relation to the provisions which provide for exclusion of a respondent from a protected person's residence, any exclusion only occurs if either police officers (in the case of a family violence safety notice) or a court (in respect of a family violence intervention order) consider it is necessary in the circumstances. Further, in respect of child respondents, clause 83 imposes an obligation on a court to be satisfied as to number of matters (for example, the availability of alternative accommodation) before making an order excluding a child respondent from a residence. Therefore, the interference with the right is neither unlawful nor arbitrary and the right is not limited.

Bodily privacy

The right to privacy provided by section 13 of the charter is also engaged by clause 16 of the bill which allows a police officer to conduct a personal search of a person subject to a direction or detention under the holding powers. The clause is

designed to ensure the safety of police officers, third parties and the directed person.

The clause does not, however, limit the right to privacy because any interference is lawful and not arbitrary. It is legitimate that a police officer should be able to search a person or items in their possession where that police officer believes, on reasonable grounds, that the person is carrying dangerous objects or possesses objects that may assist them to escape.

Further, the clause clearly and precisely sets out the circumstances that do not amount to sufficient grounds for conducting a search. Therefore, a belief that searching the person or any vehicle, package or thing in the person's possession would provide evidence that an offence has been, or is being, committed is not by itself sufficient grounds for conducting the search.

Section 15: freedom of expression

Section 15 establishes a number of rights relating to freedom of expression. It protects the right to hold an opinion without interference and the right to seek, receive and impart both information and 'ideas of all kinds' anywhere and in any form. Section 15(3) of the charter, however, contains a specific limitation on the right to freedom of expression. This invites consideration of particular matters that are identified as ones which, when satisfied, specifically justify a restriction on the right.

The application of section 15(3) involves satisfying a number of conditions. First, the relevant restriction proposed on the right to freedom of expression must be 'lawful'. Second, the relevant restriction must be imposed for a particular purpose, either to respect the rights and reputation of other persons, or in order to protect national security, public order, public health, or public morality. Third, the relevant restriction must be 'reasonably necessary' for one of these purposes.

Clause 81(2)(d) (prohibiting contact of protected person), clause 193 (court declaring a person to be a vexatious litigant), clause 166 (limiting publication of identifying information from proceedings) and clause 17 (limiting who a person can contact if they are detained by police under a holding power) are all clauses which engage the right to freedom of expression under section 15(2) of the charter. However, the clauses all constitute lawful restrictions on the right to freedom of expression because each restriction is for the purpose of public order and the effective operation of the justice system. Further, the restriction in clause 166 is also a lawful restriction to respect the rights of other persons, namely, the right of other persons to privacy protected in section 13 of the charter. In addition, clause 17 does not restrict communication with a friend or relative (other than the affected family member) and is therefore consistent with the rights of families in section 17(1) of the charter.

Restriction on children giving evidence

Clause 45 also engages, and limits, section 15(2) of the charter. This is because a child is restricted from giving evidence in a proceeding in respect of an application for a family violence intervention order.

The importance of the purpose of the limitation

The purpose of the limitation is to protect the best interests of a child, as provided for under section 17(2) of the charter.

The nature and extent of the limitation

The restriction on the giving of evidence only applies to persons under the age of 18. The extent of the limitation is circumscribed because a court is required to consider, when determining whether to allow a child to give evidence, the desirability of protecting children from unnecessary exposure to the court system and the harm that could occur to a child and to family relationships if a child gave evidence.

The relationship between the limitation and its purpose

There is a direct relationship between the limitation and the purpose of protecting the best interests of the child.

Any less restrictive means available

None apparent.

On balance, the limitation is reasonable and demonstrably justified in a free and democratic society.

Compulsion to provide information to court

Clauses 129 and 134 engage, and limit, the right to freedom of expression because they provide for a specified person to be required to express information in an report for the court regarding an assessment of eligibility for counselling and may require that person to give evidence at a hearing to which the report relates.

The importance of the purpose of the limitation

The limitations in clauses 129 and 134 are important as they operate to ensure that a court is provided with relevant evidence about the eligibility of a respondent for counselling which is necessary for the court to determine whether it should order a person to attend counselling under clause 130.

The nature and extent of the limitation

In the case of clause 129, the limitation is restricted to requiring a report to be provided to the court, whilst clause 134 requires a person to give evidence in person to the court.

The relationship between the limitation and its purpose

Given the importance of the purpose, the limitation is both rational and proportionate.

Any less restrictive means reasonably available

None apparent.

On balance, the limitation is reasonable and demonstrably justified in a free and democratic society.

Section 17: protection of families and children

Section 17 provides for the protection of families and children. The charter provides that families must be protected by society and the state. However, while family unity is an important charter right, it must be balanced with other rights. Section 17(1) might be qualified by the special right of children to protection in section 17(2) (for example, when children are removed from a situation of family violence). The bill achieves an appropriate balance between the protection of the family unit (section 17(1) of the charter), the protection of the rights of family members to life (in

section 9) and security of the person (in section 21) and the protection of the rights of the child to such protection as in his or her best interests (in section 17(2)).

Section 20: property rights

Section 20 establishes a right not to be deprived of property other than in accordance with law.

Division 5 of part 4 governs the conditions that may be made in respect of family violence intervention orders. Several clauses in this part engage the right to property, in particular:

> Clause 81(2)(b) enables a family violence intervention order to include a condition which excludes a respondent from a protected person's residence.
>
> Clause 86 (and clause 81(2)(c)) empowers a court to make conditions in relation to the personal property of parties.

Various provisions in part 7, which deal with the search and seizure of firearms and weapons, also engage the right to property contained in section 20 of the charter.

However, in each instance, any deprivation of property is not arbitrary because it has a legitimate objective, the protection of a protected person as well as other family members. Further, clause 88 explicitly states that the inclusion of a condition relating to personal property in a family violence intervention order does not affect any underlying rights a protected person or a respondent may have in relation to the ownership of the property. Therefore, to the extent that these clauses allow for the deprivation of property, the deprivation is in accordance with law and there is no limitation on the right.

Section 24: fair hearing

Section 24 guarantees the right to a fair and public hearing. The right to a fair hearing applies in both civil and criminal proceedings and in courts and tribunals. The requirement for a fair hearing applies to all stages in proceedings and applies in relation to proceedings in any Victorian court or tribunal.

The purpose of the right to a fair hearing is to ensure the proper administration of justice. This right is concerned with procedural fairness (that is, the right of a party to be heard and to respond to any allegations made against them, and the requirement that the court or tribunal be unbiased, independent and impartial) rather than the substantive fairness of a decision or judgement of a court or tribunal (that is, the merits of the decision).

Rules of evidence

This right is engaged, but not limited, by clause 65 which provides that the court is not bound by rules of evidence in proceedings for a family violence intervention order. Clause 65 does not apply to proceedings for contraventions of family violence intervention orders, which are criminal in nature.

The rule in clause 65 operates in a context in which there are often no witnesses to family violence and the content of statements made by a victim to family, friends or doctors may be the only available evidence. A court, even if not strictly bound by the rules of evidence, must act judicially and impartially. Clause 65 specifies that in determining what evidence to admit, a court must be satisfied that it is just and equitable to admit such evidence, and that the probative value of the evidence is not substantially outweighed by the danger that the evidence might be unfairly prejudicial to a party, or misleading or confusing. Thus, while the right is engaged, it is not limited, because a person will still have the proceeding decided by a competent, independent and impartial court after a fair and public hearing.

A further safeguard is provided for in clause 66 which states that where evidence is admitted in an affidavit or sworn statement, a party to proceedings may, with leave of the court, cross-examine a person who gives evidence by way of affidavit or written statement. This power is in addition to a party's general right to cross-examine witnesses.

Accessibility of the court and court processes

Clause 69 (and clause 269 in relation to the Victorian Civil and Administrative Tribunal) provide for alternative arrangements for giving evidence and conducting proceedings. These provisions engage, but do not limit the right to a fair hearing because a person will still have the proceeding decided by a competent, independent and impartial court after a fair and public hearing. Where such alternative arrangements are taken in relation to children, they are in their best interests and therefore work to promote section 17 of the charter, which recognises the special right of children to protection.

Vexatious litigants

Clause 193 provides that a court may, after hearing or giving a person an opportunity to be heard, make an order declaring a person a vexatious litigant which means that person may not make an application for a family violence intervention order without leave of the court. Clause 196 provides that a person who is declared to be a vexatious litigant may appeal against the order only with leave of the court. Clause 197 provides that a person may apply to vary, set aside or revoke the order only with the leave of a magistrate of the court.

The vexatious litigant provisions engage but do not limit the right to a fair hearing because the provisions do not restrict the person's right to a fair hearing before the court in relation to whether they are to be declared a vexatious litigant and there are a number of safeguards to ensure that the person is guaranteed a fair hearing in relation to challenging the order. The restriction on the person making applications for a family violence intervention order does not engage the right because at that stage a person is not a party to civil proceedings in respect of the family violence intervention order. The provisions preserve the right of a person to seek leave to apply for a family violence intervention and the person will be able to do so where there is no abuse of process. This additional requirement for vexatious litigants exists to protect people from unsubstantiated claims and to ensure the effective operation of the justice system.

A public hearing

Clause 166 of the bill restricts the reporting of family violence intervention order proceedings and clause 68 enables a court to close proceedings to the public. Clauses 69 and 269 enable a court or Victorian Civil and Administrative Tribunal to admit evidence via closed circuit television in courts and the tribunal respectively. These clauses engage the right to a fair hearing which includes the right to a public hearing.

However, sections 24(2) and (3) of the charter enable a court or tribunal to exclude persons or the general public from a hearing and to prohibit the publication of judgements or decisions made by a court. Therefore, these provisions fall within a lawful restriction on the right to a public hearing and do not limit the right.

Right to be heard

It may be argued that clause 173 engages the right to a fair hearing because it enables the Children's Court to vary or revoke a family violence intervention order of its own motion. However, there is no limitation on the right to a fair hearing because under clause 173(3), the court may only act on its own motion if notice is given of the court's intention and parties have the opportunity to be heard.

Applications for interim orders

Clause 54 of the bill engages and limits section 24 of the charter. This is because an application for an interim order may be determined by a court whether or not a respondent has been given notice of the application and whether or not the respondent is present at the time an order is granted.

Importance of the purpose of the limitation

The purpose of the limitation is to ensure the safety of an affected family member from family violence (or to preserve property or protect a child in those circumstances) as swiftly as possible. This is an important purpose in the context of family violence, and the limitation promotes the right to life (section 9 of the charter) which arguably imposes a positive obligation on public authorities, including Victoria Police, to protect the lives of Victorians in certain circumstances.

Nature and extent of the limitation

The nature and extent of the limitation is confined because the duration of an interim order is limited. The order ceases to have effect as soon as the application is finally determined, which is likely to occur within a short period of time.

Further, there are safeguards in place. These include that an applicant must arrange for an application to be served on a respondent as soon as practicable after an order is made (clause 48); a court cannot make an interim order unless it is supported by oral or affidavit evidence (clause 55) (although it can if the application is made by telephone, fax or other electronic communication); and if a respondent is not present, a court must give them a written explanation of the relevant matters set out in the order (clause 57(2)). In addition, the bill provides scope for an application to be made for the variation or revocation of an interim family violence intervention order (clause 100). Unless the interim order is preceded by a family violence safety notice (the terms of which may apply until the interim order is served), a respondent will not be criminally liable for a breach of an interim order until it is served.

Relationship between the limitation and its purpose

Given the importance of the context in which such orders are made, and the safeguards referred to above, the limitation is rational and proportionate to its purpose.

Any less restrictive means reasonably available

None apparent.

On balance, the limitation is reasonable and demonstrably justified in a free and democratic society.

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

Section 25(1) protects the presumption of innocence in criminal proceedings. The presumption of innocence is a well-recognised civil and political right and a fundamental principle of the common law. Section 25(1) covers persons charged with an offence whether it is indictable or summary. It requires that the prosecution bears the onus of proving that the accused committed the offence and must prove all elements of a criminal offence.

Provisions that merely place an evidential burden on a defendant (that is, the burden of showing that there is sufficient evidence to raise an issue) with respect to any available exception or defence do not generally limit the right to be presumed innocent because the prosecution still bears the legal burden of disproving that matter beyond reasonable doubt.

Clauses 129 and 130 of the bill engage, but do not limit, the right to be presumed innocent pursuant to section 25(1) of the charter. Clauses 129(5) and 130(4) provide that a defendant who, without reasonable excuse, fails to attend an interview or subsequent counselling (as applicable) is guilty of an offence. This places an evidential burden on a respondent with respect to raising such an exception or defence, and the clauses are therefore compatible with the presumption of innocence.

Conclusion

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

ROB HULLS, MP
Attorney-General

Second reading

Mr HULLS (Attorney-General) — I move:

That this bill be now read a second time.

Family violence is a scourge on our community. Every week in Victoria, hundreds of victims turn to the police or the courts as they respond to violence in their own homes. Even more people are victims of family violence but do not report it to police. Family violence is committed by partners, relatives and other family members — those who are supposed to love and care rather than abuse and dominate.

It was in recognition of this fact that the Crimes (Family Violence) Act 1987 was enacted — almost 21 years ago. That act established a civil system of intervention orders to protect victims from further incidents of family violence. Over the last two decades, many Victorians have relied on this system for protection from abusers. However, it is time to review

the protection we offer, particularly to women and children, from violent behaviour that we should not tolerate anywhere — let alone or especially in the home.

In November 2002, the government referred the Crimes (Family Violence) Act to the Victorian Law Reform Commission (VLRC) for review. In March 2006, the VLRC released its final report on this legislation, with a range of recommendations for legislative, procedural and cultural change.

In its report, the VLRC found that:

> historically, the legal response to family violence has been inadequate because its particular dynamics and effects have not been well understood. Many people continue to be unaware of the specific characteristics of family violence. It is often seen as covering only physical assault; it may be regarded as something which occurs rarely or as behaviour which is a private family matter and not the business of others.

The Family Violence Protection Bill will replace the Crimes (Family Violence) Act for family violence intervention orders. This bill makes it crystal clear that family violence is not just a private issue — it is a public problem and requires a strong legislative response.

I will outline some of the key features of the bill and explain how these features will improve the civil intervention order system for those experiencing violence at the hands of family members.

Features of the bill

Preamble and purposes

A new bill addressing family violence must send a strong message about what we as a government and community know and believe about family violence.

This bill begins with a preamble that sets out the features of family violence that are recognised by this Parliament. It makes the principles underpinning this legislation crystal clear. Family violence should not be tolerated.

This preamble will ensure that those using, applying or subject to this legislation have a shared understanding of what family violence is, and why it must be prevented. It will promote consistency in the justice system and guide training and implementation initiatives.

The bill has three primary purposes:

> to maximise safety for children and adults who have experienced family violence;
>
> to prevent and reduce family violence to the greatest extent possible;
>
> to promote the accountability of perpetrators of family violence for their actions.

Definition of family violence

The bill includes a comprehensive definition of family violence. The definition captures the full range of behaviours that a person subject to family violence might endure, including physical, sexual, economic and emotional abuse. The bill provides examples of this type of behaviour to show that family violence is a broad concept. A comprehensive definition of family violence will mean the dynamics and patterns of family violence will be better recognised by the justice system and lead to better protection.

Definition of family member

A family violence intervention order can only be sought against a family member, so it is important to get the definition of 'family member' right. The majority of family relationships are covered by the existing legislation, but the broad concept of 'family' in our contemporary society meant the definition of family member needed to be expanded. Therefore, the bill includes the relationships covered by the existing legislation (such as husbands and wives, partners and relatives), along with some additions, including, for example, a relative according to Aboriginal or Torres Strait Islander tradition or contemporary social practice.

The bill also provides protection for a victim who is in a 'family-like relationship' with the alleged perpetrator. This category is designed to cover those relationships which may not be strictly family but which are so close that the dynamics of the relationship are family-like and any violence in the relationship approximates the features of family violence. This includes carers of persons with a disability who are in a 'family-like relationship' with their client.

'Associates' of applicants and respondents are also deemed to be family members to ensure that third parties connected to the family do not perpetrate, or become victims of, family violence.

These changes will ensure that the family violence intervention order system is available and accessible to those living in contemporary family situations.

Holding powers

The bill essentially replicates the holding powers provisions in the Crimes (Family Violence) Act with a few key changes to allow them to be used in conjunction with family violence safety notices, interim variations to existing intervention orders and to give police new search powers.

After-hours protection

A key issue identified in the VLRC report concerned access to protection outside of court hours. In response, the bill establishes a system of police-issued family violence safety notices for use outside of court hours to provide another tool to police to ensure that immediate protection is available when police respond to an incident.

The notice system will be trialled and independently evaluated to determine whether it is providing an effective response to emergency family violence situations after hours. As a trial, it will sunset after two years unless the repeal provision is itself repealed. The Chief Commissioner of Police and the Chief Magistrate will also be required to provide an annual report to the Attorney-General on the operation of the family violence safety notice system.

The bill also provides a court-based system of interim orders and warrants. Police will be able to apply to the court via telephone or fax for an interim order or for a warrant to arrest the respondent after hours. The bill also provides that electronic communication can be used where available.

Family violence intervention orders

Of course, the centrepiece of the Family Violence Protection Bill is an enhanced system of family violence intervention orders.

Grounds

There are two types of family violence intervention orders — interim orders and final orders.

Interim intervention orders are designed to provide short-term, speedy protection to victims of family violence until the court can hear all the evidence and make a final determination. An interim intervention order can be made:

to ensure the safety of the affected family member

to preserve the affected family member's property

to protect a child who has been subjected to family violence committed by the respondent.

Interim intervention orders can be made without the respondent present but are only effective once they are served on the respondent. In appropriate circumstances, police can use their holding powers to assist with serving the respondent.

Final orders are designed to provide longer-term protection to victims of family violence. Such an order can be made if the court is satisfied, on the balance of probabilities, that the respondent has committed family violence against the affected family member and is likely to do so again. Like interim orders, they can be made without the respondent present, but only if the respondent has been served with the application and has notice of the hearing. The final order is only effective once it is served on the respondent. Final orders can be of any duration.

Giving evidence in court

The VLRC report found that giving evidence about family violence in court can be one of the most difficult and traumatic aspects for victims accessing the existing intervention order system.

To ameliorate this impact, the bill includes various changes to how evidence is given and considered in court. For example, the bill provides that alternative ways of giving evidence will be available, such as the use of closed circuit television and permitting support persons to be beside the witness.

The VLRC also found that the operation of the usual rules of evidence, especially hearsay, can put unnecessary barriers in the way of a court hearing and determining a matter. Consequently, the bill provides that a court can hear any reliable and probative evidence that it sees fit, but not admit evidence it considers unfairly prejudicial. The court will still be bound to apply the protective rules of evidence such as those relating to unfair or harassing questioning and ensuring the competency of all witnesses.

The bill prohibits a respondent directly cross-examining a protected witness, such as the victim, children and others the court declares protected witnesses, unless that witness is an adult and consents to being cross-examined by the respondent and the court decides it would not have a harmful impact upon the protected witness. This prohibition is designed to protect victims and other vulnerable persons, who can find direct questioning by the respondent both intimidating and traumatic.

If the respondent is prevented from directly cross-examining a protected witness and still wishes to cross-examine the witness, they must arrange legal representation to do so. Where the respondent does not arrange representation, the court must order Victoria Legal Aid to provide representation for the purpose of cross-examination. Where this occurs, Victoria Legal Aid must also provide representation to the applicant, if it is not a police application. This is to ensure that a respondent will not be given an unfair advantage over an applicant by being provided with legal representation. In practice, Victoria Legal Aid will not represent both parties, because this would involve a conflict of interest. Instead, Victoria Legal Aid would fund another legal representative to represent one or both of the parties.

Children in the Court System

The bill recognises that, wherever possible, children should be protected from exposure to the court system. The bill provides that children should not be present in court or give evidence unless the court gives leave.

The bill also recognises that, if a person applies for an intervention order on behalf of a child, it may not be appropriate for that child to have an active role in the court proceedings. While the child, as a party, can be legally represented, this will only be done with the leave of the court. The court, in making such a decision, must consider the desirability of protecting children from unnecessary exposure to the court system and the harm that could occur to the child and family relationships if the child is directly represented in the proceedings. No other party can apply for a child to be represented. Such a step must be initiated and allowed by the court.

Exclusion conditions

The bill makes a number of changes to the existing law to enable victims of family violence, who wish to, to remain in the home and have the violent person excluded. The VLRC saw this as a very important change, finding that:

> various Australian studies have found that women and children are severely economically, educationally and socially disadvantaged if they need to leave their homes due to family violence, and that there is a high risk they will become homeless.

The bill requires the court to consider whether an adult respondent should be excluded from the victim's residence, having regard to a number of factors which emphasise the desirability of keeping the victim and the victim's children within their network of social supports.

The court will initiate consideration of whether a violent adult respondent should remain in the home. This approach is intended to shield the victim from further victimisation if the respondent perceives that the victim initiated the exclusion.

However, the bill takes a different approach where the respondent is a child, in order to make sure that a child will not be excluded from the family home without appropriate supports. The court must establish that there are appropriate support and housing options for a child respondent before the court can exclude a child respondent from the family home. For an Aboriginal child respondent, the court must also consider a range of matters around cultural connection for that child.

Child contact

A difficult issue identified by the VLRC is how child contact arrangements should be made where there is a family violence intervention order in place protecting one parent from another. The VLRC was concerned that the process of arranging child contact can lead to further harassment of the protected person by the respondent to the order.

The bill provides that the court must prohibit any contact between a respondent and child if it has safety concerns. However, if the court is satisfied that safety would not be jeopardised, the court may allow the parties to make arrangements about contact with children in a manner that will minimise any risk to the protected person and the child's safety. The arrangements must be recorded in writing. Arrangements about who a child lives, spends time or communicates with will not be made conditions of a family violence intervention order. Such matters will continue to be made by the parties (if the court considers this is safe) by agreement or under the commonwealth's Family Law Act.

Firearms and weapons

The intersection of the Crimes (Family Violence) Act and the Firearms Act 1996 has always been complex. This bill seeks to clarify the interaction of the two regimes.

The bill makes it clear that, just as under the Crimes (Family Violence) Act, if a firearms licence, permit or authority is expressly revoked in an intervention order, that decision cannot be appealed or reviewed under the Firearms Act. This is because the magistrate, who has heard all the circumstances of the family violence

incident, has determined that a firearms licence, permit or authority is no longer appropriate. However, the respondent is entitled to appeal the decision to the County Court (or if the President of the Children's Court, who is a County Court judge, made the decision, the Supreme Court).

If a magistrate makes a final intervention order but makes no order as to firearms or firearms licences, permits or authorities, the respondent becomes a prohibited person under the Firearms Act and cannot possess, use or carry a firearm. However, the respondent can apply to the court to be deemed not a prohibited person or be permitted to retain firearms and hold a firearms licence, permit or authority under section 189 of the Firearms Act.

To clarify the existing law, the bill amends the definition of 'prohibited person' in the Firearms Act to create two categories of 'prohibited person' by virtue of the making of an intervention order. It will now be clear in both the family violence legislation and the Firearms Act which category of prohibited person can seek review under the Firearms Act.

The bill also extends the regime of search, seizure and forfeiture of firearms to prohibited weapons and certain controlled weapons like spear guns, batons and cudgels listed in the Control of Weapons Regulations.

Search and seizure

The bill gives police a power to enter and search without warrant for firearms, defined weapons, ammunition and firearms licences, permits and authorities. Before doing so, the police officer must be satisfied that there are grounds for issuing a family violence safety notice or making an intervention order and also have reasonable grounds to suspect or is aware that the person is in possession of these things. Searches without warrant are limited to the current or past residence of the person or the place where the incident of family violence occurred.

Despite this wide search power, the police will still need to obtain a warrant to search for firearms, defined weapons, ammunition and firearms licences, permits and authorities in other premises, for example the homes of neighbours or extended family.

The bill also creates a new power for police to direct, in certain defined circumstances, the surrender of any firearms, defined weapons, ammunition and firearms licences, permits and authorities that the police are aware of, or suspect on reasonable grounds, are in the person's possession.

Vexatious litigants

The VLRC found that in some situations, the family violence intervention order system can be used against victims to further harass and control them.

The bill therefore provides a fair and accessible system for protecting victims from vexatious litigants in family violence proceedings. If a person is declared a vexatious litigant by either the Chief Magistrate, a Deputy Chief Magistrate or the President of the Children's Court, then that person will not be able to commence any proceedings under the act unless they have first obtained leave from a magistrate. This will ensure that unmeritorious applications brought by a vexatious litigant can be assessed by magistrates before being allowed to proceed. A protected person will only need to attend court if the application appears on its face to have merit and not be an abuse of process.

Section 85 of the Constitution Act 1975

I wish to make a statement under section 85(5) of the Constitution Act 1975 on the reasons for altering or varying that section by this bill.

Clause 208 of the bill provides that it is the intention of clauses 118 and 120 of the bill to alter or vary section 85 of the Constitution Act.

Clause 118 provides that if the applicant for a family violence intervention order was not the protected person and that applicant is appealing a decision, then the appeal cannot proceed unless the protected person or those with responsibility for the protected person (such as a parent or guardian) consents to the appeal. The reason for varying the Supreme Court's jurisdiction in this manner is to ensure that a protected person or a person with the responsibility for a protected person can decide what matters are appealed on their behalf or on behalf of those for whom they have responsibility.

Clause 120 provides that there is no further appeal from an appeal decision of the Supreme Court. This is appropriate as the rights of the parties in such cases have been tested in a hearing by the President of the Children's Court and the Supreme Court and further appeals could result in a proliferation of proceedings. This may result in the attendance of those subject to family violence at numerous traumatic court hearings. If new facts and circumstances emerge, then the respondent for an order may seek a variation or revocation of the family violence intervention order from the Magistrates' Court.

Tenancy provisions

The bill makes a range of changes to the Residential Tenancies Act 1997 to ensure that there are mechanisms to align residential tenancies with the family violence intervention order system. These amendments may enable victims to remain in their home where they wish to and therefore reduce the risk of homelessness, poverty and social dislocation following family violence.

Stalking intervention orders

The Crimes (Family Violence) Act provides for a system of family violence intervention orders and stalking intervention orders. This bill deals solely with family violence intervention orders as recommended by the VLRC.

This bill repeals the Crimes (Family Violence) Act but adds a provision in section 21A of the Crimes Act 1958 to the effect that, despite the repeal, the Crimes (Family Violence) Act continues to apply to stalking intervention orders. It is my intention to bring a stalking intervention order bill before Parliament this year to preserve the current system of stalking intervention orders. This will be an interim measure whilst the Department of Justice conducts a comprehensive review of the intervention order system for non-family members. The review will look at who should be able to obtain an intervention order against whom and in what circumstances. It will also examine the extent to which some matters currently subject to applications for a stalking intervention order could be resolved in conjunction with, or instead by, an alternative dispute resolution service.

A key part of the review will also involve examining the issue of violence in relationships between a person with a disability and their carer in circumstances where the relationship is not family-like and so falls outside the jurisdiction of the Family Violence Protection Bill.

Conclusion

I have highlighted some of the most important elements of the bill.

In conclusion, I would like to thank the Victorian Law Reform Commission for its report that underpins many of the changes in this bill. I would also like to thank those organisations which have advocated tirelessly for the rights of those experiencing family violence to be safe in their own homes by demanding something better from the justice system.

But most of all I would like to thank all those victims who have come forward and shared their very intimate and personal experiences in the hope that the justice system would be improved for those who come after them. It is the government's firm commitment that this new legislation will be one part of a process to improve the justice system's response to family violence in Victoria.

I commend the bill to the house.

Debate adjourned on motion of Mr CLARK (Box Hill).

Debate adjourned until Thursday, 10 July.

VICTORIA LAW FOUNDATION BILL

Statement of compatibility

Mr HULLS (Attorney-General) tabled following statement in accordance with Charter of Human Rights and Responsibilities Act:

In accordance with section 28 of the Charter of Human Rights and Responsibilities, I make this statement of compatibility with respect to the Victoria Law Foundation Bill 2008.

In my opinion, the Victoria Law Foundation Bill 2008, as introduced to the Legislative Assembly, is compatible with the human rights protected by the charter. I base my opinion on the reasons outlined in this statement.

Overview of bill

The bill re-enacts the Victoria Law Foundation Act 1978 to modernise and refresh the functions and governance structure of the Victoria Law Foundation (the foundation). The foundation currently provides a range of services to the Victorian community to improve its understanding of the law and access to the justice system. This will continue under the bill, with an increased focus on providing community legal education and information on the law and the justice system.

The bill will reduce the members of the foundation from a maximum of 16 to a maximum of 8. The bill will also change the selection criteria for membership from positions representative of certain interest groups, to appointments based on a range of skills relevant to managing a small statutory body effectively. Members of the foundation will be appointed by the Attorney-General for a period of three years based on these selection criteria. Members of the foundation will only be able to be dismissed by the Attorney-General for specific reasons, such as insolvency or failure to attend a number of board meetings. The bill also contains provisions with respect to conduct of meetings, conflict of interest, and employment of staff.

Human rights issues

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

The bill does not raise any human rights issues.

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

As the bill does not raise any human rights issues, it does not limit any human right and therefore it is not necessary to consider section 7(2) of the charter.

Conclusion

I consider that the bill is compatible with the Charter of Human Rights and Responsibilities because it does not raise any human rights issues.

Rob Hulls, MP
Attorney-General

Second reading

Mr HULLS (Attorney-General) — I move:

That this bill be now read a second time.

The Victoria Law Foundation (VLF) was established in 1967 to improve access to justice. Over its 40 years it has played an important role in making the justice system more accessible to the Victorian community. The VLF provides grants to community legal centres for community legal education programs, publishes plain English legal resources, coordinates events such as Law Week, provides resources for law libraries and conducts other activities to educate the community and the legal profession about the law.

Since 1967, the objectives of the VLF have not been reviewed and a number of other organisations have been established in Victoria whose functions overlap with those of the VLF.

Similarly, the governance structure of the VLF has not been reviewed since its inception. Modern policy on appointments to government bodies has shifted from giving places around the board table to representatives of interest groups to a more open recruitment approach that seeks people with the right skill sets to drive the performance of statutory bodies.

Therefore in January 2007, the Department of Justice commissioned an independent review of the objectives and organisational structure of the VLF in order to refresh and modernise the organisation. This review consulted extensively with the VLF and other stakeholders and reported in July 2007 with a number of recommendations to improve the objectives and organisational structure of the VLF.

The report recommended legislative amendments which appear in this bill. These included that:

the function of the VLF be focused on improving information provision on the law and access to the law

up to 8 members of the VLF be appointed based on skills and experience required to direct the business of the VLF

the members should be appointed, after consultation with the Chief Justice, Law Institute of Victoria and the Victorian Bar.

The bill also reflects the government's policy to modernise all acts over 10 years old. While in many other respects the bill replicates provisions in the current act, a number of modern updates have also been included, such as:

the replacement of the statutory president with an appointed chairperson

an update to the financial powers of the VLF to be consistent with the Borrowing and Investment Powers Act 1987

the inclusion of a conflict of interest provision that requires members of the VLF to declare if they have a personal interest in any matter being decided by the VLF, for example an application for grant funding.

I would like to take this opportunity to express my thanks to the members of the current board of the VLF who have contributed to the development of this legislation and have provided their expertise and time to the VLF over many years. I particularly extend my thanks to the chief justice who has served as an outstanding president of the VLF for many years.

I commend the bill to the house.

Debate adjourned on motion of Mr CLARK (Box Hill).

Debate adjourned until Thursday, 10 July.

PUBLIC HOLIDAYS AMENDMENT BILL

Statement of compatibility

Mr HELPER (Minister for Small Business) 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 Public Holidays Amendment Bill 2008 ('the bill').

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

Overview of bill

The bill amends the Public Holidays Act 1993 ('the 1993 act') to provide greater certainty as to the arrangements for public holidays in Victoria, repeal provisions relating to the appointment of public holidays by non-metropolitan councils and to provide for a public holiday on Melbourne Cup Day or a substituted day to be observed in all parts of Victoria.

Public holiday entitlements in Victoria are substantially affected by the Workplace Relations Act 1996 (cth). The majority of Victorian workers are employed under commonwealth instruments, with the conditions established in these instruments taking precedence over those established in the act. The direct application of the act is therefore extremely limited. However, the act does play a significant role in informing these instruments, as many incorporate public holidays declared by a state law.

Human rights issues

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

The bill may be said to engage the following human rights protected by the charter:

Section 14: freedom of thought, conscience, religion and belief

Section 14 of the charter provides that everyone has the right to freedom of religion, including the freedom to have or adopt a religion or belief of that person's choice. Section 14 also provides that a person must not be coerced or restrained in a way that limits her or his freedom to have or adopt a religion in worship, observance, practice or teaching.

Clause 5, new section 6(e), (f), (g), (k), (l) and (m) may be said to engage the right to freedom of religion because it, in appointing certain Christian holidays as public holidays, may be perceived to promote a particular religion thereby engaging the right to freedom of religion. It is arguable that the appointment of these days as public holidays has the effect of placing subtle pressure on adherents of non-Christian faiths to observe the holidays of a religion that they do not practice (see *R v. Edwards Books and Art* [1986] 2 SCR 713).

Section 8: recognition and equality before the law

Section 8 of the charter prohibits discrimination on the basis of the prohibited attributes set out in the Equal Opportunity Act 1995, including religious belief or activity (s. 6(j)). While it could be argued that the appointment of these days as public holidays treats Christians and adherents to non-Christian religions differently, I do not consider that any benefit is conferred on or detriment suffered by either group. All persons are entitled to the same number of days of holiday leave. The bill does not limit employers' obligations, under the Equal Opportunity Act 1995, to make reasonable allowance for employees' religious beliefs, including in relation to terms of requests for leave to enable employees to observe their religious holidays.

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 religion, I consider that the limitation is reasonable, in accordance with section 7(2) of the charter. I provide the following reasons for this view.

(a) the nature of the right being limited

The right to freedom of religion protects the right to hold certain religious beliefs and to demonstrate those beliefs through acts such as worship and observance of religious holidays.

(b) the importance of the purpose of the limitation

The purpose of proclaiming the days referred to in proposed section 6(e), (f), (g), (k), (l) and (m) is to prescribe common days of rest and holidays for employees employed under Victorian law. In preserving these days as public holidays, the bill maintains consistency with public holidays in other states and territories. While originally appointed as public holidays in order to observe days of significance for Christians, the purpose of appointing these days as public holidays can now be said to have a secular basis. The second-reading speech for the 1993 act describes the act's purpose as ensuring consistency and certainty for the observance of public holidays.

There are certain social-capital gains from the observance of public holidays. Public holidays have been found to facilitate the coordination of leisure time and as a result increase the benefit derived from holidays by allowing people to maintain social and family contacts more easily. This benefit is said to include some additional direct benefit from the common enjoyment of that time, as well as building social cohesion and social capital. Studies have demonstrated that the benefits that flow from improved social cohesion and social capital include faster economic growth, better health and lower social costs. I therefore consider that the common observance of public holidays is a significant and important objective. In *R v. Edwards Books and Art*, the Canadian Supreme Court upheld a law which banned Sunday trading on the basis that the limit of the right to freedom of religion was justified because the secular purpose of providing a common day of rest for workers was sufficiently important to justify limiting the right.

(c) the nature and extent of the limitation

The extent to which this provision limits the right is minimal. In appointing certain days as public holidays, these provisions do not restrain persons from having or adopting religious beliefs nor prevent religious practice, worship or observance of holidays. As noted above, the bill does not limit employers' obligations under the Equal Opportunity Act.

(d) the relationship between the limitation and its purpose

The relationship between the limitation and its purpose is rational and proportionate. It is rational for Parliament to design a legislative regime providing for public holidays that maintains consistency with other states and territories. While the purpose of proclaiming these days to be public holidays is

now considered to be secular, it is reasonable for Parliament to select public holiday dates that are historically based on Christian holidays. The 2006 Australian census states that 63.9 per cent of Australians identify as being of Christian religion. In declaring certain days based on Christian holidays as public holidays, the law goes no further than is required to achieve the objective of common, certain public holidays for all persons employed under Victorian law.

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

It would not achieve the purpose of certainty and consistency in public holiday legislation to prescribe the same number of public holidays per year but permit employees to select the days on which they would observe their holidays. Accordingly, there are no less restrictive means reasonably available to achieve the purpose of the limitation. As noted above, the vast majority of employees in Victoria are subject to the federal regime.

Conclusion

I consider that the bill is compatible with the charter because, although it could be said to limit freedom of religion, the limitations are reasonable under section 7(2) of the charter.

HON. JOE HELPER, MP
Minister for Small Business

Second reading

Mr HELPER (Minister for Small Business) — I move:

That this bill be now read a second time

This bill meets the government's commitment to provide employers and employees with greater certainty about Victorian public holidays, and is in accordance with the ALP's policy platform.

Most importantly, this bill provides the same number of public holidays to all Victorians.

The government foreshadowed its intention to change the public holidays legislation in August 2007 when the government wrote to non-metropolitan mayors to encourage the adoption of Melbourne Cup Day or a local equivalent day as a public holiday in regional Victoria. This bill is in keeping with the government's letter to mayors.

Public holidays, as distinct from annual leave, are an important means by which the community is able to enjoy shared leisure time, or an occasion with common symbolic meaning.

At present, existing public holiday arrangements mean Victoria has a public holiday regime that in effect does not guarantee all Victorians the same number of public holidays each year.

Further, the existing legislation leads to uncertainty about the treatment of public holidays when they fall on weekends including New Year's Day, Australia Day, Christmas Day and Boxing Day.

This bill gives Victorians certainty about public holidays and will allow improved planning for Victorian businesses and employees.

Specifically, this bill will take away the inequality that has existed for many Victorians since Melbourne Cup Day became a public holiday for metropolitan Melbourne in the mid-1870s.

Melbourne Cup Day is acknowledged and celebrated as a special day of national significance around the country, and yet it is mandated as a public holiday only in metropolitan Melbourne.

Non-metropolitan municipal districts may at their discretion, declare Melbourne Cup Day or an alternative day as a public holiday in their municipal district.

In 2007, only 25 of the 48 non-metropolitan municipal districts actually elected to declare either a full or a half-day public holiday on Melbourne Cup Day or an alternative day.

The remaining 23 municipal districts did not declare a local public holiday, which meant one less holiday per year for Victorians in those municipal districts.

This bill corrects that inequality and ensures that a public holiday will be held on Melbourne Cup Day or on an alternative day in every metropolitan and municipal district throughout Victoria.

In the future, non-metropolitan councils will apply to the minister within 90 days of Melbourne Cup Day, and nominate an alternative public holiday that will apply to their entire municipal district.

In effect, the Public Holidays Amendment Bill 2008 will ensure that all Victorians, whether they live in regional, rural, or metropolitan Victoria, will be entitled to enjoy either Melbourne Cup Day or an alternative, given that everyone has the same total number of public holidays each year.

This bill will also address the uncertainty surrounding the treatment of public holidays when they fall on weekends, namely, New Year's Day, Australia Day, Christmas Day, and Boxing Day.

Previously, when a public holiday fell on a weekend the treatment was to do nothing; gazette a substitute public

holiday just for that year; or gazette an additional public holiday just for that year.

Uncertainty from one occasion to the next over what action will be taken by the government is confusing for employers and employees and hinders efficient planning.

This bill will formalise in legislation the individual gazettal arrangements for public holidays falling on weekends that have already been made over the past decade. That is, the bill effectively provides for substituted and additional holidays in legislation rather than on an ad hoc gazettal basis.

Specifically, the bill will amend the act to provide automatically:

an additional public holiday when New Year's Day falls on a weekend, so that the following Monday is also a public holiday;

a substitute public holiday when Australia Day falls on a weekend;

a substitute public holiday when Christmas Day falls on a weekend; and

an additional public holiday when Boxing Day falls on a weekend.

The bill ensures Victorian public holidays legislation aligns with the Australian Industrial Relations Commission test case.

These amendments are important because the Victorian public holidays legislation plays a significant role in informing the minimum conditions for employee entitlements in many employment awards.

More directly, it provides entitlements for the small number of Victorian employees who are not covered by federal awards, and those employees are found mostly in unincorporated microbusinesses.

In preparation for the changes to this legislation, the government undertook extensive consultation to determine the quantifiable costs and benefits to business, employees, and Victorian taxpayers.

Individual small businesses as well as employer and employee representatives were consulted. The overwhelming reaction to the proposed changes was positive.

Foremost among the benefits to business is a reduction in uncertainty surrounding the treatment of public holidays that fall on a weekend.

These amendments are to be effective from the date of royal assent. However, public holidays already gazetted for 2008 will stand. Non-metropolitan Victorian regions that had not previously received a Melbourne Cup Day holiday will have a Melbourne Cup Day public holiday from this year onwards.

By legislating for 11 public holidays per year for all Victorians, this bill benefits the work-life balance of working Victorians, and provides productivity benefits for the Victorian economy.

I commend this bill to the house.

Debate adjourned on motion of Ms ASHER (Brighton).

Debate adjourned until Thursday, 10 July.

Remaining business postponed on motion of Mr WYNNE (Minister for Housing).

ADJOURNMENT

The SPEAKER — Order! The question is:

That the house do now adjourn.

Water: desalination plant

Mr K. SMITH (Bass) — I wish to raise a matter for the Minister for Environment and Climate Change in the other house. I ask the minister to inquire within his Department of Sustainability and Environment who was stupid enough to not consult with any of the three local government areas of Bass Coast, South Gippsland and Cardinia when they planned the proposed north–south electrical grid connection — the 75-kilometre-long and 500-metre-wide easement — running from Tynong to Kilcunda and the proposed desalination plant. He should also inquire into why this $3.1 billion project has progressed so far and yet the government does not know how the plant is going to be powered. When the minister finds the person who made these decisions, he should sack them for the stress that they have caused the people of the area.

We must ask: will the 120-megawatt grid-powered connection wire be the choice? Will it be a gas-fired generator at the site or will it be a hybrid connection of wind power backed up by gas-fired generators? The tactics of the department in sending its thought police in to tell the people their properties will be devalued to a huge extent by the easement came as a complete shock to all the people involved. This is good farming and pasture land, and the activities of these people will be curtailed. The proposed overhead powerlines will be a

blight on the visual amenity of the area, and it will stop a lot of areas of farming activity.

The project has been a farce from the start. Two of the options I mentioned may be used in the easement. How many of these farms may also have the water pipe to Melbourne running through their properties along the same easement? Will it be powerlines, and will it be gas and power or power and gas? Ninety megawatts of power is to be used on this site. That is 10 times the power used by the Chadstone shopping centre, so a huge amount of power is going to be used. Where will the government get the wind-powered electricity from, as all the available wind power is already committed? Do the powerlines have to be above ground or can they be buried? Do they have to run down this particular easement? Can the easement not go down the disused railway line from Nyora to Kilcunda? We know the powerlines can go underground, as does the 177-kilometre-long 220-megawatt line that runs from the Monash substation in north-eastern South Australia to Mildura — they can be buried.

The minister must find out why more than 200 landowners have had this stress put on them unnecessarily. The Minister for Water said that he has consulted widely on every aspect of this project. That is not true; it is a lie. Now is the time for real consultation and not for just telling people what is going to happen to them. The whole project has been a farce. It has been developed for the Premier so he can stand up — —

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

Melbourne Health: substance use and mental illness treatment team

Mr LANGUILLER (Derrimut) — The action I seek from the Minister for Mental Health is to provide financial support to Melbourne Health's substance use and mental illness treatment team — otherwise known as SUMITT. As Parliamentary Secretary for Human Services I understand firsthand the need for support services that provide treatment to those Victorians living with a mental illness who are also affected by substance abuse. Dual diagnosis patients — those who are affected by mental illness and substance abuse — often require specialist services that are equipped to deal with their specific mental health and rehabilitation needs concurrently.

As well as assisting individual services in planning and establishing dual diagnosis practices within their services, SUMITT also works with the Enhanced Statewide Education and Training project in the design and delivery of dual diagnosis training across mental health and drug and alcohol workforces. The SUMITT service has been in operation since 1998, and it has been pivotal in providing these types of clients in the northern and western suburbs with critical outreach support. I understand that the service can no longer operate from its Footscray location, and I ask the minister to provide the necessary funding to enable SUMITT's relocation and ensure that this valuable community service continues to operate.

SUMITT is an outreach-based program that delivers services to five Melbourne metropolitan area mental health services, two metropolitan drug and alcohol services, the Early Psychosis Prevention and Intervention Centre, and four rural area mental health and drug and alcohol services.

One aim of SUMITT is to provide closer integration of mental health services and drug and alcohol services. These services have evolved separately over the last few decades. The separation of the services sometimes complicates the diagnosis of comorbid mental illness and substance abuse and may make it difficult to deliver integrated treatment of both disorders. The involvement of other services such as primary care in the treatment of mental illness and substance abuse adds to the complexity of treating clients with difficult problems. I recommend that the minister consider very seriously funding SUMITT, which provides a very good service in the western and northern suburbs, for the purpose of its relocation.

Water: north–south pipeline

Mr WALSH (Swan Hill) — I wish to raise a matter for the Minister for Water. The action I seek from the Minister for Water is that he and his government stop the north–south pipeline project.

Dr Napthine — Plug the Pipe!

Mr WALSH — Plug the Pipe, as the member for South-West Coast says. The Nationals and the people of northern Victoria believe that the food bowl upgrade should continue but that whatever savings are achieved should actually stay in the Murray–Darling Basin. In asking the minister to stop the north–south pipeline, I draw the minister's attention and the Parliament's attention to the Murray-Darling Basin Commission's sustainable rivers audit summary report entitled *Murray–Darling Basin Rivers — Ecosystem Health Check, 2004–2007*, which was handed down recently. That report states that the lowest ranking valleys are the Murrumbidgee and the Goulburn, and that they are in very poor health. If you go through this report, which is

a report of the 23 river systems in the Murray–Darling Basin, you will see that it says that the Goulburn Valley river ecosystem is in very poor health.

The report goes on to say:

> The Goulburn Valley fish community was in extremely poor condition …
>
> …
>
> The Goulburn Valley macroinvertebrate community had a condition index (MI) of 50 and was in poor condition.
>
> …
>
> The Goulburn Valley was in poor hydrological condition.

If you read that report, you would ask the question, 'Why would you take water away from the Goulburn River and bring it to Melbourne?'. In our view, to finish the food bowl project the government should put in an additional $300 million to replace what Melbourne Water is scheduled to put in. Then Melbourne Water would have those funds plus the $700 million from a pipeline that it would not have to build. Melbourne Water could then spend that money introducing recycling and stormwater projects in Melbourne.

When asking the minister to stop the north–south pipeline, I draw the Parliament's attention to table 3.7 on page 18 of the *Food Bowl Modernisation Project — Steering Committee Report* which shows that Melbourne's water in 2010 will be made up of 10 billion litres that will be stored in the Lake Eildon water quality reserve in 2009–10; and 10 billion litres will also allocated from that reserve in 2010–11. That is a total of 20 billion litres of environmental water that could go towards solving some of the problems we have talked about regarding the Goulburn River. That water is going to be piped to Melbourne when Melbourne has other options.

I reinforce my argument to the house that we would like to see Melbourne Water instigating serious reuse projects and stormwater harvesting so that Melbourne can actually look after its own water needs, rather than rob the Goulburn River of environmental water that is so desperately needed by a river that has the poorest health of any river in the Murray–Darling Basin.

Yarra Trail: Darebin link

Ms RICHARDSON (Northcote) — The matter I raise is for the Minister for Environment and Climate Change in the other place. It concerns the proposed link between the Darebin Creek Trail, the Yarra Trail and a bridge over the Yarra River. I call on the minister to take action to ensure this important project is completed as soon as possible. The completion of this important trail and bridge, which will link six trails, was identified as a Labor priority in its Linking People and Spaces strategy. Labor allocated $2 million to the completion of the link and further elevated the project as a key government priority.

Local community groups, including the Darebin and the Yarra bicycle users group, the Darebin Parklands Association, the South Alphington and Fairfield Civic Association, Alphington Primary School, the community coalition for Darebin, the Darebin Creek management committee, friends of Darebin parklands and Bicycle Victoria, have all supported and fought for this particular project. They are all to be commended for their efforts.

The residents in my community also overwhelmingly support the completion of the trail. Parks Victoria presented plans and sought consent from the local councils of Darebin, Banyule, Yarra and Boroondara. Ever efficient, the Darebin City Council, led by Labor mayor Peter Stephenson, was the first council to overwhelmingly support the plans. Darebin City Council is currently completing the bridge under Darebin Road using funds which have been contributed by the state Labor government.

Despite the opposition of the former mayor of Boroondara City Council, Phillip Healey, I understand that the council's urban planning committee has granted a planning permit to Parks Victoria. The end is hopefully in sight, because Parks Victoria has decided to call on the Victorian Civil and Administrative Tribunal to resolve the matter. This will mean that all objections can be heard together and any conditions placed on the project will apply to all councils concerned.

I cannot stress enough the importance of this project to my local community. There have been some voices — like that of the member for Kew, for example — opposing the trail route because of environmental concerns. Can I suggest to him that he reconsider his position in light of the fact that the route has negligible environmental impacts on the billabong as it is well removed from that sensitive area. The ecology consultant of Boroondara City Council, Mr Graeme Lorimer, advised the council that these concerns were simply unfounded. Given this advice, I sincerely hope that the objections of the member for Kew are not attempts to undermine the entire project. That would be a pretty shabby position, in my view.

At present if you want to cross the Yarra River you have to go across the Chandler bridge which is

particularly hazardous if you are on a bicycle; you would not cross that bridge on foot. The Labor government has clearly recognised the significance of this link and has funded it accordingly. An overwhelming majority of community organisations and residents support this link. Therefore I call on the minister to take immediate action to ensure the link is completed as soon as possible.

Racing Victoria: general manager, integrity services

Dr NAPTHINE (South-West Coast) — I wish to raise a matter for the Minister for Racing. The action I seek is for the minister to join me in requesting that His Honour Judge Gordon Lewis examine whether Dayle Brown is suitable to be appointed to the position of general manager, integrity services, at Racing Victoria Ltd (RVL). Soon after Mr Brown's appointment to this position, many serious allegations were made about him. However, it seems that Racing Victoria is more concerned about chasing whistleblowers within its organisation than properly scrutinising the allegations raised about Mr Brown. I refer to a press release from Racing Victoria of 24 June which says:

> The RVL board has today ordered … an external and independent investigation … to enable the board to take appropriate actions against any employees who have improperly leaked confidential information. The investigation is to be undertaken by RVL's auditor Deloitte Touche Tomastu.

What RVL does not say about Dayle Brown, which is revealed in its press release of 17 June when it talks about his appointment to the position, is this:

> He is currently the manager of the forensic and risk service in Melbourne with leading global consulting firm Deloitte Touche Tomastu.

RVL has asked Dayle Brown's firm to investigate who is leaking and whistleblowing about him at RVL! That is absolutely ludicrous. We need a full independent investigation by Judge Lewis about the suitability of Mr Brown to do this. It is imperative for the future of racing that all stakeholders have confidence in the integrity of racing.

Retiring chief steward Des Gleeson is held in the highest esteem across the world. It is essential that the new appointee not only be beyond reproach but also be seen to be beyond reproach. There are real concerns about this appointment. I was told by three independent sources three or four weeks before he was appointed that Mr Brown was a lay-down misère to get this job. Since his appointment, there have been allegations that he and a fellow police officer received $30 000 from Mr Paul Pavlovski, who was later convicted of drug offences, for a private investigation. Mr Brown was questioned by the Queensland Police Service on the $30 000 issue.

There are allegations that he illegally misused his Victoria Police identification in South Australia while pursuing this private mission. There are questions about him failing on more than one occasion to provide full and accurate declarations. There are a very serious issues raised about the suitability of Mr Dayle Brown to be in this position. I have already written to Judge Lewis, and I ask the Minister for Racing to join me in asking for this proper investigation.

Housing: Raglan-Ingles estate, Port Melbourne

Mr FOLEY (Albert Park) — I wish to raise a matter for the Minister for Housing — and what a fine job he is doing for the people of Victoria. The action I seek from the minister is that his department install flywire screens in the units which do not have them at the Raglan Street, Port Melbourne, public housing estate in my electorate. The flats on the ground floor have security screens but those on the upper floors do not. Tenants have approached me because, particularly in the summertime, they would like to get some breeze through their units. To allow this outcome, tenants would like to see security screens installed for those units that currently do not have them. This would allow them to keep out pests of all varieties as well as avoid costly and environmentally unfriendly air conditioning.

Such a request would round off the government's redevelopment of this estate from the previous walk-ups to the combination of modern — indeed, stylish — family, singles and high-care accommodation in this important Port Melbourne estate. The redevelopment of the estate under this government forms one part of the important public and social housing that the district of Albert Park contains. The diversity of housing stock, whether in the large high-rise public housing estates, the infill accommodation or the array of rooming-house and social and community housing provided through the likes of the Port Phillip Housing Association, the South Port Housing Group and St Kilda Community Housing, provides homes and community for many of my constituents. It is the basis of the diversity of the community and enjoys widespread community support.

I know the government shares my view that public tenants have the right to be included in the community and to have a decent place to call home. That is why I have been concerned to learn of some public debate generated by members of the Liberal Party in the Port

Melbourne community who have sought to oppose community housing and to typecast it in the worst of stereotypical forms that are both offensive and wrong. Public tenants engage as citizens in communities that they have long been part of and which are fortunate enough to share in high-quality services. The narrow self-interest of a few individuals who seek to make personal political gain by slagging off public and community housing does not justify attempts to exclude our fellow citizens from communities like Port Melbourne.

I know the government shares my view that the small number of people in the community who oppose public housing programs will not be allowed to divide the community support for housing equity. Whilst this request for flywire or safety screens is perhaps not the largest project on the minister's plate, his support for this would not only be welcomed by the residents of Raglan Street and Ingles Street but would be yet another expression of this government's recognition of the rights of our public tenants and community housing tenants to be treated with decency and to be fully included in our community— unlike the opposition and its few local representatives in my electorate.

Food: regulations

Mr TILLEY (Benambra) — I wish to raise a matter for the attention of the Minister for Agriculture. The action I seek is to have the minister review the way that small meat retailers comply with legislation, with a view to making compliance easier and fairer for small meat retailers without compromising food safety. Last year's inquiry into health regulations for the food industry, entitled *Simplifying the Menu — Food Regulation in Victoria*, placed particular emphasis on ensuring that small business is not tied up with red tape and that Victorian businesses operate under a regime that allows them to remain competitive.

The inquiry received many submissions from across all food industry sectors. The final report in September 2007 made many recommendations to assist in streamlining laws and making them more workable. In that sense it has been a commendable action. The problem as it relates to small meat retailers such as butchers is that the Victorian government agreed to nationalise standards across the entire meat industry from the biggest wholesale exporter down to the corner store butcher. In its infinite wisdom the bureaucracy has seen fit to also standardise food safety regulations and protocols so that very small businesses have to comply with the same stringent standards as exporters do.

The federal government, with the agreement of the states, has thus placed a huge and completely unnecessary strain on our domestic producers by forcing them to comply with these standards. The government's own report clearly shows that there has not been a single case reported of a food-borne illness outbreak originating from a butcher's shop in the last 10 years.

The Victorian government's inquiry recommendations have shown a willingness to do this in other food-handling areas such as restaurants and cafes, and I call on the government to extend the same goodwill and common sense to small meat retailers. The regulations invariably involve a sea of unnecessary paperwork that has no demonstrable bearing on the end result. The latest round of regulations being imposed involves compulsory listeria testing of swabs taken from operators premises. These swabs are taken by the operators themselves, without supervision, and it is easy to see that there is the distinct possibility that the system will be a failure because the correct procedures were not followed. Regardless of this, the tests are compulsory and ongoing and the costs of labour and testing are borne by the operator. Large operators are capable of absorbing these costs; smaller ones are not. Large operators are handed a distinct market advantage over their smaller competitors.

Due to these ridiculous regulations, small butchers are closing previously profitable aspects of their business, such as smallgoods production, thus making their overall long-term viability distinctly shaky. Red tape not necessary for good public health outcomes is choking the industry. The demise of the small end of the industry will lead to increased unemployment, lack of choice and eventually lack of competition for consumers. The only winners will be large producers and importers.

This government is imposing more costs and red tape on small business in a way that will fail to fix the problem — —

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

Planning: Banyule

Mr BROOKS (Bundoora) — I wish to raise a matter for the attention of the Minister for Planning in the other place. The specific action I seek is that the minister meet with councillors and senior officers of Banyule City Council. Recently the member for Ivanhoe and I met with the mayor of Banyule, Cr Wayne Phillips, and senior management — —

Dr Napthine — Good man, Wayne Phillips!

Mr BROOKS — I will come to that. We met at their request to discuss a range of issues that the mayor wanted to raise. Amongst those were a number of planning issues that the council had concern with and wanted to have further dialogue with the government about. In particular it wanted to discuss development assessment committees and the impact they might have on the Greensborough project.

Members might be aware that the Greensborough project is a redevelopment of the eastern side of the Greensborough activity centre, a project driven by Banyule council which this government has funded to the tune of $7 million. It is a fantastic concept around a new regional aquatic facility, new public space and a range of other components. The council is going out very shortly with a community consultation process to explain to the community the finer detail of that project, so we will wait and see how that pans out.

The council also raised the issue of tree protection controls. I do not think it has a proposal yet to put to the government, but it is something that I am sure could be discussed with the Minister for Planning to get some idea of what sort of agreement they could have with the government over tree protection controls in Banyule, given that Banyule is an area that has a neighbourhood character that is built upon the significant tree canopy in that area.

It is slightly ironic to have planning concerns expressed to us by Cr Phillips, given that he was a member of the Kennett government that gave us the Good Design Guide. He seems to have had a conversion to being a planning conservationist these days. It was a meeting that was held in good spirits and I am sure that a meeting with the minister would be advantageous. The member for Ivanhoe, the member for Eltham and I have made a number of representations to the minister and the department on behalf of Banyule in terms of its neighbourhood character amendments, and I am sure that will be another issue that Cr Phillips and his councillors would want to discuss. I request that the Minister for Planning meet with Banyule City Council, if he can.

Multicultural affairs: funding

Mr KOTSIRAS (Bulleen) — I raise a matter for the Premier in his role as Minister for Multicultural Affairs. The action I seek is for the Premier to investigate whether the Victorian Multicultural Commission (VMC) is placing political demands on our multicultural communities, especially with regard to the $3.6 million community grants program. I have been advised that some community groups are promised funding or an audience with the government on the understanding that they do not invite members of the opposition to attend their functions or, if opposition members do attend, they are asked not to speak. If this is true then it makes a farce of this government's rhetoric that it respects our cultural and religious diversity. If it is true, what it is doing is using our multicultural communities as a political football to be used to score cheap political points by the Labor Party.

In the government's own propaganda which was tabled today, titled *Victorian Government Achievements in Multicultural Affairs* and edited by the minister's office according to advice that I have received, the government claims that Victoria's diversity is integral to the state's economic success and social development. Unfortunately, if the allegations are true that the VMC and some Labor members of Parliament are threatening organisations with a cut in funding or support if they involve members of the opposition, then this is nothing more than a disgrace and political interference of the worst kind.

I therefore call upon the Premier to investigate whether organisations have been advised not to allow members of the opposition to speak at or attend various functions and whether any Labor members of Parliament are also involved in this intimidation. We used to have bipartisan support for multicultural affairs, but that ended in 1999 when the Labor Party came into government. We have had nine dark years of a Labor government with regard to multicultural affairs. I call upon all community groups to notify me if intimidation and scare tactics are being used. If public servants or government members are politicising the $3.6 million in the community grants program they should be condemned by the Premier.

I have had advice from not only one, two or three but a number of community groups that this government is interfering and placing political demands on community organisations not to invite members of the opposition to attend, and if they do attend, not to speak.

Mr Nardella — That is rubbish and you know it.

Mr KOTSIRAS — The member for Melton knows it is true because there are members on that side who demand that community groups do not allow Liberal members to speak at functions, which is appalling. This is the first time this has happened — since 1999. Under our government we allowed the then opposition as well as government members to speak. It is about time that

the Premier investigated this and reported back to advise whether it is occurring.

Planning: Moonee Ponds land

Mrs MADDIGAN (Essendon) — I raise a matter for the Minister for Finance, WorkCover and the Transport Accident Commission in relation to some land in Moonee Ponds, and particularly ask for the assistance of his land and property group to expedite the transfer of some Crown land to the City of Moonee Valley. This land is on the corner of Bent and Johnson streets, but is generally known as Bent Street. It has been a matter of discussion for some time. It is a mixture of Crown land, some of it on very old title, and some of it is land that was acquired for the Tullamarine Freeway. Of course we all remember the Tullamarine Freeway: that was a free road to drive on until the Kennett government put a charge on it.

Moonee Valley Council would be keen to have this land now for recreational purposes, and it has recently had some discussions with the minister's department. The action I seek from the minister and his department, if possible, is to try to have this land transferred fairly quickly. Obviously there is a cost and Moonee Valley Council is well aware of that.

There has been a small level of contamination on the land. I understand that Moonee Valley Council has had an assessment made of the cost of its removal, because it contains some asbestos, cement and other materials. Obviously it would like to see those costs as part of the negotiation price, as it will have to pay to have those materials removed or the land regenerated before it can be opened up as parkland. The land would be a great asset to the community of Moonee Ponds. It is near the Moonee Ponds Creek.

I would appreciate the assistance of the minister and his department in having that land transferred as quickly as possible.

Responses

Mr HULLS (Minister for Racing) — I will address an issue that has been raised by the shadow Minister for Racing, the member for South-West Coast. The member asked about the inquiry by Judge Gordon Lewis in relation to the racing industry. I remind the member that Judge Lewis has very broad terms of reference. He was asked to review the integrity aspect of the industry and take into account a number of issues, including whether integrity services should remain a function alongside the commercial and development roles of the controlling bodies or be separately provided independent of those roles; secondly, if the case can be made for a separation of functions, whether they should be delivered individually for each code or across all three codes; thirdly, ensuring that adequate pathways exist for the escalation of integrity issues to the appropriate levels of governance regardless of the seniority or influence of any individuals concerned; fourthly, developing an integrity assurance structure and culture that is fully transparent, accountable and incapable of undue influence by external interests; and finally, any other aspect of the provision of integrity services and systems that the reviewer deems to be appropriate.

Those are wide terms of reference, and ultimately it will be a matter for Judge Lewis to report back to me particularly in relation to an integrity structure that continues to lead the nation when it comes to integrity and to ensure that Victoria continues to lead the nation in relation to racing generally.

The member also raised an issue in relation to an internal review that Racing Victoria Ltd is conducting. I have repeated in this house on numerous occasions that RVL is an independent corporate entity set up under the Corporations Law, and it would be totally inappropriate for the minister to interfere with the independence of that organisation. I have faith in that organisation, but the member raised an issue about an internal review and whether or not Mr Brown and the firm that Mr Brown works for should be conducting an investigation in relation to a leak. I have no doubt that, given the independent organisation that RVL is, it will look at that matter. That will be entirely a matter for it; I do not intend to interfere with its decision-making process.

However, the member also repeated some allegations he has made under parliamentary privilege in this place over the last couple of days. What he failed to advise the house is that today he has received a letter from lawyers acting for Dayle Brown. The shadow Minister for Racing failed to advise the house that lawyers for Mr Brown have made it quite clear that the allegations he has made are completely false — 'completely' false, they say in their letter. I have a copy of that letter because it was courtesy copied to me. In relation to allegations raised by the shadow minister on Tuesday, they say:

> … both implications are mischievously false and we can only assume that you —

that is, the member for South-West Coast —

> were well aware of that falsity.

They go on to say:

> We can only assume that you had available to you a copy of the affidavit sworn by our client on 11 June 2008; there was in fact no affidavit dated 7 June 2008.

As was alleged by the honourable member in this house on Tuesday. They go on:

> You must have been well aware that the only point of that affidavit was to rebut in trenchant terms a scurrilous allegation which had been recently made in the course of the attempted character assassination campaign which our client has faced and which you have now personally involved yourself.

The lawyers for Dayle Brown then go on to talk about the allegations that were made by the honourable member in this place yesterday. I refer to page 2 of their letter where they refer to the question that was asked in this place yesterday and they say:

> The 'particular allegations' —

they were allegations in relation to a sum of money —

> to which you refer are as false as they are malicious. By this we do not mean that there is nothing at all in the allegations themselves; of course there is not. They are utterly and completely without foundation. We mean instead that no such allegations have ever been made against our client to his knowledge and you must have been well aware of this — that is until you made the allegations in Parliament yesterday. Let us test that. What conceivable foundation did you have for suggesting that any such allegations had been made and by who? We challenge you to respond to that question.

They then go on to say a number of things, including:

> Let us make our client's position clear. The statements attributed to you are not only grossly defamatory but in the present context are a continuation of the public campaign of the attempted character assassination of our client in relation to his employment with RVL with which you have now seen fit to associate yourself with. There has been no such allegation; if there was it has no foundation whatsoever; and, you must have been well aware of these facts.

Dr Napthine interjected.

Mr HULLS — I know the member is very sensitive about this.

Dr Napthine — On a point of order, Speaker, in the interests of accuracy I suggest the minister should quote where the letter refers to questions raised with Mr Brown about the $30 000. They are in that same letter — issues raised by the Queensland police.

The SPEAKER — Order! There is no point of order.

Mr HULLS — Not only is there no point of order but the shadow minister knows there is no point of order. The letter goes on:

> It is one thing for you as the shadow Minister for Racing to hold and express views or raise questions on reasonable grounds in relation to the suitability of persons appointed to an important position in the racing industry. It is quite another for you without any foundation, let alone reasonable foundation, to make scurrilous and serious allegations under cover of parliamentary privilege with the deliberate view of attempting to have his character blackened and his employment terminated.
>
> You may care to know that the matters relating to the South Australian incident to which you have referred were fully disclosed to the board of Harness Racing Victoria, then chaired by the late Ian McEwan —

and I might add that Tom Reynolds, Liberal minister, was the minister at the time —

> when our client was appointed by it as a stipendiary steward. They were disclosed to the board of examiners when our client was admitted to practise as a barrister and solicitor of the Supreme Court … they were fully disclosed to the board of RVL and to an independent consulting firm retained by RVL to conduct probity investigations in relation to his appointment. Far from attempting to conceal these matters which took place long ago our client has fully disclosed them …
>
> You are well aware that our client has no legal redress against you for what you have said in Parliament. However that may be we invite you to do the honourable thing and to publicly correct your erroneous and defamatory statements and to apologise to our client. If not then you should be prepared to repeat your statements outside of Parliament so as to enable our client to sue you for defamation.

The real issue here is not the integrity of RVL but the integrity of the shadow minister sitting opposite. That is the real question here. The shadow minister is doing his utmost to talk down the great racing industry in this state. This is an industry that employs thousands and thousands of young Victorians right around the state; it is an industry that is held in the highest regard right around the world. Despite that, we have a shadow minister who comes into this place and tries to talk down the industry. However, if the letter from the lawyers is indeed accurate, what the member has done is worse than that — he has deliberately used his position in this place to defame a person based on false allegations. It is not about the credibility of RVL, it is about the credibility of the shadow Minister for Racing.

The challenge is for the member to walk outside this place and make the same allegations and then get a writ and have those allegations tested in an independent court of law. My guess is that he does not have the guts to do it. If he is so sure of his facts, that is all he has to do, but he does not have the guts. He is using cowards

castle to not only defame people but to talk down the industry. He can do it now, or alternatively, if he does not have the guts to do that, he can stand up and apologise. Based on the letter the member has received, very serious allegations have been made about his credibility. The member ought to have the guts to either make these statements outside the house or at least stand up and apologise.

If he is not prepared to do that, this is a leadership test for the Leader of the Opposition. The Leader of the Opposition ought now have an investigation into the shadow Minister for Racing. If the accusations that are made in this letter from Voitin Walker Davis, signed today and sent today to the shadow Minister for Racing, are true and the shadow minister is not prepared to make those allegations outside this place or apologise, then the Leader of the Opposition has no choice but to get rid of him.

Mr WYNNE (Minister for Local Government) — A matter was raised with me by the member for Albert Park in relation to a housing issue. The member has raised with me a question about screens at Raglan Street, Port Melbourne. I thank the member for Albert Park for raising the matter and acknowledge his longstanding interest in public and social housing — it goes back many years. I have had a number of opportunities to be with the member for Albert Park in his electorate when dealing with a range of public housing matters. A very warm welcome is always provided to me there, and the embrace of the public and social housing tenants of the new member for Albert Park is evident to me.

When we came to government in 1999 the existing stock of public housing was dysfunctional, poorly maintained, unsafe and in many respects a smouldering wreck. To turn that around we have had in essence to dramatically increase the spend on physical improvements and redevelopments. In fact in eight years this government has spent nearly $2.1 billion on physical improvements and redevelopments — nearly double the commitment of the previous government.

As you know, Speaker, this government has made social and public housing one of its key social justice outcomes. The record investment in the last budget of $500 million attests yet again to the ongoing commitment of the government — the biggest commitment to social and public housing by any state government ever. Of course it comes on top of a commitment every year by the government above and beyond the commitment required under the commonwealth-state housing agreement to public and social housing. By any measure the record of this government is a proud record in relation to the refurbishment, redevelopment and construction of public housing. I must say how delighted I am to have this rare opportunity to be the Minister for Housing.

Can I say specifically in relation to the Raglan Street estate, which the member for Albert Park points out is an estate that has undergone extensive upgrades and improvements, that it is a wonderful estate with a fantastic group of public housing tenants. I understand there are 12 dwellings that require flyscreens. I indicate to the member that I expect work will be completed by the end of July so that going into the summer months the residents will be able to enjoy the amenity of that area, especially the sea breezes that move through that part of the world.

It is incumbent upon us as members of Parliament to stand up for public and social housing. It was very disturbing to hear the member for Albert Park say that some people for very spurious and erroneous reasons seek to object to public housing developments. I find people who undertake those sorts of activities very disingenuous. Often they will couch there objections in a form they find socially acceptable, such as concerns about car parking or various other amenity matters, when in truth many of them simply do not want poor people living near them. They have the erroneous view that public housing tenants will affect their property values, that public housing developments will be areas of social decline and crime and all this other nonsense and erroneous accusations.

Can I put to rest those sorts of disgraceful accusations made against the good public housing tenants not only in the electorate of Albert Park but right across the state who want to get on with their lives in a secure environment and who are paying 25 per cent of their income to be able to live in stable and secure public housing. That is the business I am in, and that is the business this state government is in. We will resist those people who mistakenly seek to frustrate the efforts of the public housing authority to legitimately construct new public housing.

In relation to the other matters that were brought to the attention of the house, the member for Bass raised a matter for the attention of the Minister for Environment and Climate Change in the other place regarding consultation on easements for powerlines and the construction of the desalination plant. I will make sure that matter is passed on for the minister's attention.

The member for Derrimut raised a matter for the Minister for Mental Health in relation to a Melbourne health organisation known as SUMITT, seeking her

support for the potential relocation of that facility from Footscray to an alternative venue.

The member for Swan Hill raised a matter for the Minister for Water with a fairly blunt request to stop the north–south pipeline project. I will make sure the minister is aware of that request. It is a very interesting request and one that I think will be new to him, but I am sure he will take that in good grace as he normally would.

The member for Northcote raised a matter for the attention of the Minister for Environment and Climate Change in the other place for funding to link the Darebin-Yarra bicycle trails, which is a much-needed link.

The member for Benambra raised a matter for the attention of the Minister for Agriculture in relation to small retailers and the difficulties that he described in relation to complying with regulations. I will make sure the minister is aware of that.

The member for Bundoora raised a matter for the attention of the Minister for Planning in the other place in relation to a request by Banyule City Council for a meeting with the minister, specifically relating to the development of approval committees and tree protection patrols. I will make sure the minister is aware of that.

The member for Bulleen raised a matter for the attention of the Premier seeking an investigation into allegations that members of the opposition were not allowed to attend and speak at a range of ethnic functions where Victorian Multicultural Commission grants may have been involved. I will direct that matter to the attention of the Premier.

The member for Essendon raised a matter for the Minister for Finance, WorkCover and the Transport Accident Commission in relation to a transfer of some Crown land in Bent Street, Moonee Ponds, to the City of Moonee Valley for the proposed purpose of parkland, which would be an excellent result.

The SPEAKER — Order! The house is now adjourned.

House adjourned 6:15 p.m. until Tuesday, 29 July.