PARLIAMENT OF VICTORIA

PARLIAMENTARY DEBATES (HANSARD)

LEGISLATIVE ASSEMBLY

FIFTY-SIXTH PARLIAMENT

FIRST SESSION

Thursday, 9 October 2008

(Extract from book 13)

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By authority of the Victorian Government Printer

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Professor DAVID de KRETSER, AC

The Lieutenant-Governor

The Honourable Justice MARILYN WARREN, AC

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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
Allan, Ms Jacinta Marie	Bendigo East	ALP	Lindell, Ms Jennifer Margaret	Carrum	ALP
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Blackwood, Mr Gary John	Narracan	LP	Morand, Ms Maxine Veronica	Mount Waverley	ALP
Bracks, Mr Stephen Phillip [1]	Williamstown	ALP	Morris, Mr David Charles	Mornington	LP
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Burgess, Mr Neale Ronald	Hastings	LP	Napthine, Dr Denis Vincent	South-West Coast	LP
Cameron, Mr Robert Graham	Bendigo West	ALP	Nardella, Mr Donato Antonio	Melton	ALP
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
Crutchfield, Mr Michael Paul	South Barwon	ALP	Overington, Ms Karen Marie	Ballarat West	ALP
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Delahunty, Mr Hugh Francis	Lowan	Nats	Pandazopoulos, Mr John	Dandenong	ALP
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Donnellan, Mr Luke Anthony	Narre Warren North	ALP	Pike, Ms Bronwyn Jane	Melbourne	ALP
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
Fyffe, Mrs Christine Ann	Evelyn	LP	Ryan, Mr Peter Julian	Gippsland South	Nats
Graley, Ms Judith Ann	Narre Warren South	ALP	Scott, Mr Robin David	Preston	ALP
Green, Ms Danielle Louise	Yan Yean	ALP	Seitz, Mr George	Keilor	ALP
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
Hodgett, Mr David John	Kilsyth	LP	Thompson, Mr Murray Hamilton Ross	Sandringham	LP
Holding, Mr Timothy James	Lyndhurst	ALP	Thomson, Ms Marsha Rose	Footscray	ALP
Howard, Mr Geoffrey Kemp	Ballarat East	ALP	Thwaites, Mr Johnstone William [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
[3] Resigned 2 June 2008
[4] Elected 28 June 2008
[5] Elected 15 September 2007
[6] Resigned 6 August 2007

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THURSDAY, 9 OCTOBER 2008

CONTENTS

Thursday, 9 October 2008

The SPEAKER (Hon. Jenny Lindell) took the chair at 9.35 a.m. and read the prayer.

BUSINESS OF THE HOUSE

Notices of motion: removal

The SPEAKER — Order! I wish to advise the house that under standing order 144 notices of motion 98 to 101 and 204 to 215 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.

PETITIONS

Following petitions presented to house:

Health Information Exchange: funding

To the Legislative Assembly of Victoria:

This petition of residents of Victoria who support the continuation of the after-hours needle exchange service of the Health Information Exchange located in the Salvation Army Crisis Centre, Grey Street, St Kilda, draws to the attention of the house our request that the Victorian government continue to support the after-hours work of the needle exchange service. The petitioners therefore request that the Legislative Assembly ensures this important service continues to receive funding to allow it to play its vital role of health information, support and assistance to some of our most vulnerable community members.

By Mr FOLEY (Albert Park) (565 signatures)

Tormore–Boronia roads, Boronia: traffic lights

To the Legislative Assembly of Victoria:

The petition of residents in Victoria draws to the attention of the house the intersection of Tormore Road and Boronia Road, Boronia. Residents' frustration with using this intersection has grown significantly due to the danger posed when using it. Residents that have signed this petition want traffic signals installed at this intersection as soon as possible.

The petition therefore requests that the Legislative Assembly of Victoria instruct VicRoads to install traffic signals at the Tormore Road and Boronia Road intersection in Boronia and remove existing pedestrian signal 40 metres from the intersection.

By Mr WAKELING (Ferntree Gully) (70 signatures)

Murray River: access

To the Legislative Assembly of Victoria:

In opposition to the proposal set forward by the Victorian Environmental Assessment Council (VEAC) to the Victorian government to change existing public land along the Murray River to a national park. Restricting camping and access along 16 600 km river frontages.

By Mr CRISP (Mildura) (418 signatures)

Tabled

Ordered that petition presented by honourable member for Ferntree Gully be considered next day on motion of Mr WAKELING (Ferntree Gully).

Ordered that petition presented by honourable member for Mildura be considered next day on motion of Mr CRISP (Mildura).

INSPECTOR OF MUNICIPAL ADMINISTRATION

Ballarat City Council

Mr WYNNE (Minister for Local Government), by leave, presented report.

Tabled.

Ordered to be printed.

PUBLIC ACCOUNTS AND ESTIMATES COMMITTEE

Report 2007–08

Mr STENSHOLT (Burwood) presented report.

Tabled.

Ordered to be printed.

SUPREME COURT OF VICTORIA

Report 2006–07

Mr HULLS (Attorney-General) presented report by command of the Governor.

Tabled.

DOCUMENTS

Tabled by Clerk:

Financial Management Act 1994 — Report from the Minister for Agriculture that he had received the 2007–08 report of PrimeSafe

Greyhound Racing Victoria — Report 2007–08

Members of Parliament (Register of Interests) Act 1978 — Summary of Returns June 2008 and Summary of Variations Notified between 26 June 2008 and 8 October 2008 and Summary of Primary Return July 2008 — Ordered to be printed

Police Integrity, Office of — Report 2007–08 — Ordered to be printed

Public Record Office Victoria — Report 2007–08.

OUTER SUBURBAN/INTERFACE SERVICES AND DEVELOPMENT COMMITTEE

Sustainable development of agribusiness in outer suburban Melbourne

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

That, under section 33 of the Parliamentary Committees Act 2003, an inquiry into sustainable development of agribusiness in outer suburban Melbourne be referred to the Outer Suburban/Interface Services and Development Committee for consideration and report no later than 31 August 2009 on the major issues relating to the production, processing and distribution of agricultural products in the interface municipalities and peri-urban areas of Melbourne and, in particular, the committee is requested to:

(1) identify the types of agricultural sectors operating in interface municipalities and peri-urban areas;

(2) examine the role of agribusiness in enhancing economic growth, increasing jobs and the sector's contribution towards promoting healthy, sustainable and prosperous outer suburban areas;

(3) investigate the role of planning in encouraging the development of agribusiness;

(4) analyse the options for sustainable food production, including environmental stewardship and local food production;

(5) investigate impediments faced by the industry to its long-term growth and sustainability and recommend options to resolve these barriers;

(6) highlight niche and well-performing sectors operating in the interface of Melbourne, with particular reference to viticulture, horticulture and sustainable agriculture;

(7) examine exemplary programs supported by governments (at all levels), the private sector and non-government organisations, which assist the sustainability of the agribusiness sector; and

(8) investigate national and international initiatives relevant to these issues.

Motion agreed to.

MEMBERS STATEMENTS

Port Phillip Bay: channel deepening

Ms ASHER (Brighton) — The Brumby government should be condemned for not providing compensation for tourism operators affected by channel deepening. The Port Phillip Bay Tourism Task Force, which is mainly constituted by tourism operators, gave the government a proposal in March this year, Tourism Alliance Victoria has been lobbying for three years for compensation for small tourism businesses as a consequence of channel deepening and the state opposition in November 2007 moved an amendment to the Port Services Act to this effect, but the government opposed compensation.

Tourism is of significant economic benefit, and these businesses are now being badly affected. Most of these operations are small businesses along the bay — dive operators and the like — and many of them are being adversely affected by the channel deepening process. Peak season started in September. As I said, Tourism Alliance Victoria and the Port Phillip Bay Tourism Task Force have presented to the government a substantial compensation program for these businesses, and the government has not responded to it.

I call on the government to announce a tourism compensation package for these small businesses that are adversely affected by an important government project, a package which shows that the government understands adverse impacts of major projects. This package needs to be announced immediately, as peak season has now commenced.

Hawthorn Football Club: premiership

Mr MERLINO (Minister for Sport, Recreation and Youth Affairs) — I rise to congratulate the magnificent Hawthorn Football Club on its victory at the 2008 Australian Football League Grand Final. As a Hawthorn member and supporter, to win the premiership after 17 years was a wonderful experience for me and my family.

It was all the sweeter given that back in 1996 it seemed that Hawthorn was destined to disappear in a merger with the Melbourne Football Club. I will never forget the merger match in round 22 in 1996. Hawthorn and Melbourne supporters went to the game not knowing if it was the last time they were ever going to see their beloved clubs play. In a fittingly spirited and powerful game Jason Dunstall kicked 10 goals to bring up his ton and the Hawks won the game; Chris Langford took off his guernsey and waved it proudly and defiantly to the crowd. Thanks to people such as Don Scott, Ian Dicker and many hundreds of volunteers the club was saved.

As sports minister now, that experience in 1996 remains with me. The social importance of the Australian Football League clubs to the Victorian community is profound, and I am proud that the Brumby government is supporting all Victorian clubs in redeveloping their facilities and opening them up to the community.

Getting back to 2008, it will be remembered as a classic grand final. Congratulations go to captain Sam Mitchell, Norm Smith medallist Luke Hodge, veteran Shane Crawford, all of the Hawks players, coach Alastair Clarkson, football manager Mark Evans and all of the coaching staff. Well done to chief executive officer Ian Robson, Jason Dunstall and other board members and staff — and of course president Jeff Kennett. If only his politics were as good as his football club!

Drought: government assistance

Mrs POWELL (Shepparton) — I have received many calls from farmers who are angry that the Victorian government has not reinstated the municipal rate subsidy and other drought support programs. They ask me if the Brumby government believes this drought is over. Many local farmers have been hit with massive rate increases due to the recent revaluations of their properties, and the 50 per cent rate rebate from the state government would be a huge benefit to them.

The City of Greater Shepparton Council has advised me that it has also received inquiries from rural ratepayers who are worried that the subsidy has not been extended to cover this current rating year. It advised me that over 920 assessments received the government's exceptional circumstances municipal rate subsidies in the 2007–08 year, totalling in excess of $780 000 and with individual subsidies ranging from $90 to $6000. Irrigators have received unprecedentedly low water allocations, with those on the Goulburn system receiving only 9 per cent. Worsening drought conditions, low water allocations and likely crop failures mean the crisis in country Victoria is not over. The Brumby government is causing greater stress to farmers when it will not respond to pleas from the coalition to reinstate the 50 per cent municipal rate subsidy to lessen the burden on families.

I also call on the government to reinstate other drought support initiatives it has cut, including on-farm productivity improvement grants; the drought apprenticeship retention bonus; fixed water charge rebates; catchment management authority drought employment programs; the emergency volunteer support framework; the Small Towns Development Fund; Rural Skills Connect programs; and mental health early intervention teams. I call on the government to listen to country people.

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

Mitcham Primary School: 120th anniversary

Mr ROBINSON (Minister for Gaming) — Saturday, 18 October, will be a red-letter day for the Mitcham Primary School. The school community will be celebrating the school's 120th anniversary, and a range of activities are planned. There will be a cake cutting, there will be plaques, there will be a facility dedication in the name of a couple of key contributors and there will be special performances. The exceptional school choir will attend and perform.

Mitcham Primary School is outstanding. Ian Sloane, as the principal since 1999, has overseen the school's complete rebuilding with, let it be said, very generous support from the state government. The school has great facilities and delivers great student learning outcomes. I want to congratulate the school council led by president Tim Flora and ably assisted by council members Steve McVeagh, Bryan Smith, Allan Palmer, Su Seng Hoh, Mark Gearing, Ian Wu, Judith Ryall and Andrew Cock.

I encourage all former students as well as local residents to join in these exciting 120th anniversary celebrations on 18 October.

Templestowe Road, Bulleen: upgrade

Mr KOTSIRAS (Bulleen) — I once again call on this uncaring, arrogant government to provide funding for the complete upgrade of Templestowe Road. Despite my having raised this matter in the house on numerous occasions, it seems the government refuses to listen, refuses to act and sits idly by enjoying the delights of being in government with all its perks while

offering no relief to the families using Templestowe Road. This is a dangerous stretch of road.

Local residents find it a real challenge to cross this road, as there is only one set of traffic lights between Thompsons Road and Bridge Street. Manningham City Council understands the dangerous situation that confronts local residents and will continue to lobby VicRoads for action on this stretch of road. However, according to the *Manningham Leader,* the government is ignoring the request for assistance. An article in that newspaper states:

> VicRoads has shelved a traffic signal project for the Bridge Street intersection after it was deemed low priority compared to other similar sites in Victoria and would yield little benefit for the cost.

It seems that this government is putting cost before lives and safety. The article goes on to say that Mervyn Hayman-Danker said:

> We also have the situation where people use their cars to get across the road, buy their things, and then drive back.

Imagine the situation where local residents have to get into their cars simply to cross to the other side of the road. I have asked the minister to come to the electorate to see how dangerous this stretch of road is, but the minister has refused to do so. I ask the minister again to provide the funding which is needed to upgrade this stretch of the road.

Monash Medical Centre: computerised tomography scanner

Ms BARKER (Oakleigh) — I was very pleased to be present at Monash Medical Centre, Clayton, on Tuesday of this week when the Premier and the Minister for Health officially launched the state-of-the art Aquilion ONE dynamic volume CT (computerised tomography) scanner, the world's most advanced and first dynamic volume CT scanner.

The Brumby government will invest $2 million for the purchase and operational costs of the scanner, continuing its efforts to ensure Victorians have access to the highest quality health technology to benefit diagnosis, treatment and care. Toshiba, the developer of this remarkable 320-slice CT scanner, has chosen Southern Health's Monash Medical Centre as its luminary site for CT research and clinical education in the Southern Hemisphere. There are six other luminary sites for this research, training and education in cardiac CT, but these are all in the Northern Hemisphere.

I congratulate Shelley Park, chief executive of Southern Health, and the board for their work in developing the partnership with Toshiba. I also congratulate and thank Professor Ian Meredith, professor of cardiology, Monash University, and director of MonashHeart, for his commitment to medical advances in this important field and for his work to ensure the location of this scanner at Clayton.

On the day of the launch we were very honoured to have with us Mr Kenichiro Katsumata, executive vice-president, Toshiba Japan; Mr Hiroshi Kurihara, managing director, Toshiba Australia; and Mr Nick Swan, general manager, medical division, Toshiba Australia. This is a major international coup for Victoria, and it is an important further step in the provision of the highest quality health care for our community.

Drought: government assistance

Mr DELAHUNTY (Lowan) — With drought conditions continuing to have an enormous impact on western Victoria, I again call on the Brumby government to reinstate drought assistance programs to assist farmers who are suffering economic, environmental and mental hardship from the lack of rain. The agriculture sector has a big influence on the economic and employment activity in the Lowan electorate, and with the lack of general rain and with our Wimmera water storages at 6.4 per cent the Brumby government must reinstate support programs such as municipal and water rate subsidies and farm productivity grants.

The federal government has continued EC (exceptional circumstances) drought declarations for most municipalities in country Victoria, but the Brumby government is still sitting on its hands. We should not be surprised as it was in the delivery of the May budget that the Brumby government told us the drought was over. Today local governments, rural financial counsellors and others are meeting to try to address growing concerns for country communities affected by this drought.

With the slowing economy and the world financial crisis there is a growing lack of confidence in the future and an air of doom and gloom. In the Lowan electorate, with crop failures and minimal water allocation, there is increasing anxiety, and therefore it is urgent that state government assistance is provided now!

Ellen Churchill

Ms CAMPBELL (Pascoe Vale) — The mouse that roared: Ellen Churchill's right to the truth. I pay tribute to Ellen Churchill of Oak Park for refusing to allow

bureaucracy to rewrite history. On 3 December 2007 at l0.45 p.m., after a long illness, Frank Churchill died with his wife, Ellen, and family by his side. Frank was in palliative care at the Northern Hospital. The nursing staff noted his time of death as 10.45 p.m., but as the covering doctor did not certify death until 15 minutes past midnight on 4 December, that was the recorded date of death. When Ellen Churchill took the hospital's administration to task about the wrong date on the death certificate, she was told that procedure had been followed and that was that. That was 'the system'. For three months Ellen persistently fought for her Frank's rights and she now has a reissued death certificate stating the correct date.

When Frank Churchill's Masonic Lodge made a donation on his behalf to the Northern Hospital and Ellen was invited to attend the cheque presentation in the boardroom, she was overwhelmed when Marie Glynn, director, medical operations, from the Northern Hospital spoke. She congratulated Ellen on her determination and persistence in getting the right date recorded on Frank's certificate. She went on to say that as a result the hospital has now changed its system. Nurses or doctors on duty can now declare time of death instead of having to wait to be sighted by the covering doctor.

I too congratulate Ellen Churchill for not accepting what was wrong. Ellen told me that with the change in the system, no-one else will have this problem.

Monash Freeway: noise barriers

Mr O'BRIEN (Malvern) — Last Saturday I had the pleasure of attending a rally conducted at the Monash Freeway. The rally was organised by the Noise Abatement Action Group, very ably led by concerned local resident Justin McKernan. The purpose of this rally was to send a clear message to the government that the level of noise on the Monash is far too high and the government needs to fix it.

This is an issue that affects not only my constituents on the south side of the Monash Freeway but also those of the Leader of the Opposition and the member for Burwood. If the government knows what is good for it and if it has any consideration for the political future of the member for Burwood, it should take this issue seriously and increase the noise attenuation on the Monash Freeway.

My residents have been absolutely dudded by this government. The Brumby government claims noise attenuation is required only to a 68-decibel level. This flies in the face of written documentation from 1995, 1998 and 2001, which was under the current government, all of which refers to 63 decibels being the required level of noise attenuation on that section of the Monash.

The government spokesperson was quoted in the paper on Sunday as saying that the 63-decibel level applies only to the design life of the project. The Monash Freeway is still operating. It has not finished. Its design life is continuing, and those residents deserve decent noise attenuation to 63 decibels.

Yea Wetlands: Womindjeka Day

Mr HARDMAN (Seymour) — I rise to congratulate the Yea Wetlands Committee and its many volunteers and supporters whose dedication and drive have created a wonderful wetlands. Yea Wetlands has been developed over a number of years as the result of the drive of the committee led by Russell Wealands, whose enthusiasm for the wetlands has garnered support from others who continually give countless hours of time and expertise over many years to improve the area.

On Saturday, 4 October, the wetlands committee held its Womindjeka Day, or welcoming day, to promote the wetlands and to educate and celebrate the wetlands and its links to indigenous culture and to indigenous plants and animals that have returned to the wetlands. It was a wonderful day, and we launched the Yea Wetlands stage 2 infrastructure project, which is a $97 000 project that includes $65 000 from the Small Towns Development Fund. Stage 2 included 700 hours of volunteer work from the local community and contractors. All the schools were involved. The Country Fire Authority Flowerdale brigade helped to water the plants, and many other people also got involved in helping.

The project put in place a lot of infrastructure to make the wetlands even more accessible. Over 1000 plants have been put in. What you see as you walk around the wetlands is great biodiversity. The place is noisy with indigenous birds and frogs. I really recommend that people stop and have a look.

Austin Hospital: funding

Mr R. SMITH (Warrandyte) — I rise to speak on the release of the *Your Hospitals* report, which was damning on this government's management of health issues in this state. My colleague the member for Bayswater earlier this week highlighted the appalling situation at Maroondah Hospital, but I would like to

make mention of another hospital that my constituents use, the Austin.

It is a shame that I am the one forced to make these comments, filling the vacuum created by the member for Ivanhoe, who has refused to advocate for the resources needed at a hospital in his own electorate. There are 1000 more patients on the waiting list than at the same time last year. There has been a 90 per cent increase from 2006–07 to 2007–08 in the number of patients waiting more than 90 days for surgery. In the same period there has been a 27 per cent increase in the number of patients waiting more than one year for surgery, there has been a 23 per cent increase in the time spent on hospital bypass and two out of three semi-urgent patients are not treated in the clinically appropriate time frame

These are damning statistics, and they certainly highlight the truth of the *Herald Sun* survey of medical professionals earlier this year, which showed almost 50 per cent of those surveyed thought the Minister for Health was doing a below-average job.

Victorian hospitals, doctors, nurses and patients are all suffering under the enormous pressure of eight years of incompetence from this Labor government. The Brumby government needs to get in touch with the basic health needs of Victorians. Its refusal to listen to Victorians' concerns shows how out of touch it is.

Casey central secondary college: future

Ms GRALEY (Narre Warren South) — Recently I joined a number of parents and children at the site of the new Casey central secondary college with Ian McKenzie, who will be the inaugural principal of the college. Most recently Ian has been the principal of Kambrya College in Berwick South. Under his leadership the college has won praise for its adoption of innovative approaches to teaching and learning. Ian recognises that our children are more than ever international citizens who require a global perspective in their education, but at the same time they also need to feel a connection to their local community. As Ian is fond of saying, Casey central will be a school of the community, for the community, in the community.

Ably supported by members of the Casey central secondary college steering committee, the members of which include Matthew Bell, Robert Ryan, Kirsty Jillings, Linda Tomich, Jo Sandys, Tracey Jackson, Carmel Spruhan, John Perry and Ann Nicholls, Ian intends to create a great educational environment which supports healthy and active lifestyles. Throughout his career, Ian has expected only the highest standards of himself, his teachers and his students. Casey central secondary college could not have a better leader to set it on the right path in these exciting early years. Casey central secondary college is 1 of 11 schools that will be built as a public-private partnership project by the Brumby Labor government. Ian told me that he has been impressed with the standard of the designs that have been presented by different consortiums.

I would also like to commend staff and students at Hillsmeade Primary School, especially principal Ann Nicholls and a dedicated group of school councillors who obviously love their kids and want the best education for them. With its enthusiastic assistance, Hillsmeade Primary School will host Casey central secondary college in 2009.

Housing: Ferntree Gully electorate

Mr WAKELING (Ferntree Gully) — I wish to raise the issue of public housing for the attention of the house. Housing is becoming inaccessible to many constituents in the Ferntree Gully electorate because of the unaffordability of available housing and a rental vacancy rate of only 1 per cent. However, it is very clear that the Brumby Government has no plans to cope with the increased need of disadvantaged families; it has taken no action despite the growing waiting list for public housing. Residents of the Ferntree Gully electorate are hurting from the failure of the Brumby Government to adequately plan for this issue.

Government inaction has led to many families waiting more than six years for suitable housing. Someone being without suitable housing for six years is inexcusable, and the Brumby government must be held accountable for these unforgivable waiting lists. I call on the government to take immediate action to ease the plight of our state's ever growing waiting list of residents seeking public housing.

Angliss Hospital: funding

Mr WAKELING — I would like to raise serious concerns in relation to the Angliss Hospital. The government continues to fail Victorians by the mismanagement of health facilities, providing the lowest level of per capita hospital funding of any state. The Brumby Labor government cannot be trusted with Victoria's health care. The recent *Your Hospitals* report for 2007–08 has demonstrated that the Angliss Hospital has had a 27 per cent increase over the previous 12 months in the number of patients waiting more than 8 hours on an emergency department trolley, and a 54 per cent increase in the number of patients waiting more than 4 hours before being treated. Victorians

deserve better. They need more hospital beds. The government's arrogant refusal to listen to Victorian's concerns shows how stale and out of touch this government is.

Ron Sells

Mr CRUTCHFIELD (South Barwon) — It saddens me to inform the house that in the early hours of 9 September Geelong lost a true football legend, Ron Sells, to illness. Ron was in his 70th year. He is survived by his wife of 47 years, Lorraine, his 10 children and his 26 grandchildren.

Ron played about 300 senior games of football, the vast majority at St Peters Football Club. He won four league and seven club best and fairest awards. He captained coached St Peters for eight years and represented Geelong on many occasions at an interleague level. He coached at North Shore Football Club for three seasons — from 1969 to 1971 — turning the team from easybeats into a competitive side. He returned to St Peter's in 1972, when he was named the best player of the finals with his team finishing runner-up. Ron was three times the captain-coach of the Geelong interleague team and was widely regarded as the best local player ever seen. He was a player who had a sixth sense about the game. Ron will be remembered in the football history books as a true legend of the game in Geelong.

As the last coach of St Peter's Football Club, I attended St Peter's Legends Day this year. I enjoyed a conversation with Ron, which was as usual centred around his love of family and football. He not only had many of his children and grandchildren there, but it was particularly thrilling to see his grandson, Josh — Stephen's son — playing that day with Ron's famous no. 16 on his back. He was in his element, there with friends, family and football.

At his funeral a friend of mine and a son of Ron, Stephen Sells, said it best. He said if you were a friend of Ronnie Sells, you were friend for life. Ron Sells was very much a loved man, not only by family but also by his many close friends and the wider Geelong football fraternity. My condolences to the Sells family. May he rest in peace.

Country Fire Authority: Traralgon station

Mr NORTHE (Morwell) — The new Traralgon fire station is currently under construction and, once complete, will be a welcome addition for Country Fire Authority members and volunteers along with the local community. However, there are significant concerns in regard to the funding of this project. Prior to the 2006 state election Labor pledged $4.3 million for the construction of a new Traralgon fire station and was content to publicise this financial commitment, as is detailed in the *Traralgon Journal* of 7 November 2006.

However, the Brumby government has now seen fit to commit only $3.35 million and has effectively left the Traralgon fire brigade to pick up some of the tab. I have previously written to the Minister for Police and Emergency Services on this issue and his response was poor, to say the least. The minister claimed the cost differential between the initial pledge and the current financial commitment can be attributed to:

> … the initial project costings …

What a poor response. It sums up this government's inability to manage money and major projects. This is cold comfort for the Traralgon Fire Brigade, which is now expected to raise funds somewhere in the vicinity of $200 000 for a project to which government was initially going to contribute $4.3 million but will now commit only $3.35 million. The Brumby government should honour its initial pledge to this project and support the Traralgon Fire Brigade as it promised to do in November 2006. The Traralgon Fire Brigade, its members and volunteers, along with the local community, have been short-changed by this government and this will not be forgotten.

Brookland Greens estate, Cranbourne: landfill gas

Mr PERERA (Cranbourne) — The old Stevensons Road landfill site at Cranbourne is not a state government asset nor is it managed by the state government. However, the Brumby government is on the ground supporting the Brookland Greens estate residents in their time of need. The Brumby government has provided $3 million to assist with the installation of in-home gas monitors and to undertake house modification work such as gas venting. More than 243 gas monitors have been installed to date.

The government has established immediate emergency grants of up to $1067 and temporary accommodation hardship grants of up to $8650 per affected household. It has also provided residents with free legal advice and established a one-stop 24-hour assistance phone line.

The Brumby government has approved an additional $700 000 to the Victorian Ombudsman to ensure his inquiry is thorough and timely. The Ombudsman has the powers to summon witnesses, require the production of documents and take evidence under oath from any person. He has powers to investigate elected

councillors, members of Parliament as well as public servants. He has powers to enter the premises of an authority to inspect the premises or anything in them. He can also override certain privileges which usually protect disclosure of information.

The report of the Ombudsman disclosing guilty parties will be made public. That will be the time to consider compensation, because it is only fair that all the guilty parties make contributions towards any compensation package.

It is unfortunate that the opposition is using the residents of Brookland Greens estate as a political football. The opposition cannot deliver; opposition members only play games with residents' emotions. The government delivers. A number of ministers, including the Minister for Police and Emergency Services, the Minister for Community Services, the Minister for Environment and Climate Change — —

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

Rail: Wodonga bypass

Mr TILLEY (Benambra) — Inquiries are being made as to whether two rail tracks were originally to be built between Wodonga and Albury as part of the Wodonga rail bypass project. A departmental officer from the federal government's Department of Infrastructure, Transport, Regional Development and Local Government has indicated that the department is yet to receive a project proposal report from the Victorian Minister for Public Transport, the responsible minister for this major infrastructure project.

It has taken nine years to get the Wodonga rail relocation project going from when funding was first made available by the former state and federal Liberal-Nationals coalition governments. The Brumby Labor government simply has not dotted the i's and crossed the t's with this major infrastructure project. Wodonga cannot afford for this project to be deferred and delayed any longer. Despite the Premier's recent visit, he has been unable to convince the Minister for Public Transport that this is urgent and shows maladministration on a grand scale by Labor.

We are racing head-on into an economic downturn and, as we have already begun to see, the Brumby Labor government will use this as an excuse for delays, postponements and anything else it seeks to apportion blame about. Labor loves creating hollow logs by promising a project in one financial year but delaying and releasing money much later. The fact that the federal government is yet to receive a project report must mean that further delays are anticipated. This must be resolved immediately. If not, the Premier's flying visit to Wodonga will have been just more words, all at a time when the Wodonga small business community and the community generally want and need real dollars and a definite timetable for the Wodonga rail bypass project.

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

Wal Hopkins

Ms THOMSON (Footscray) — I wish to acknowledge the amazing contribution of Wal Hopkins. Wal joined the 1st Footscray District Scouts when he was 11 years of age in 1935. He became a scout leader at the age of 16 due to the lack of leaders during World War II. He has won many scouting accolades, including the Silver Kangaroo, which is the highest award in Australian scouting, in 1998. He also has seven life memberships, and those include: the Footscray and District Hospital, where he is a life governor; and life memberships of both the Victorian Football League and Footscray District League Umpires Association. That includes 16 years of country football as well.

Wal is a life member of the Footscray YMCA. He joined the YMCA in 1964 and served there for 31 years. In 1984 Wal was the Footscray Citizen of the Year, and he was asked to join the Footscray Community Activities Coordinating Committee to help organise activities to promote welfare in the Footscray community. Wal was honoured with an Order of Australia in 1998.

Wal is 83 years of age. He still works tirelessly for the community, and he is an honorary commissioner of the Kariwara Scouts. I think Wal is an inspiration to everyone in how to lead an active life.

Human rights: government policy

Mr CLARK (Box Hill) — I rise to condemn the hypocrisy towards and contempt for human rights displayed by the Brumby government. We have before this house a bill that defies the Declaration on the Rights of the Child and the Convention on the Rights of the Child by providing for the separation of a child from its mother. Before the other house we have a bill that defies articles 18(1) and (2) of the International Covenant on Civil and Political Rights by forcing doctors to be complicit with acts which they find abhorrent. Members would be appalled if another jurisdiction in the world were to say that a doctor could

only escape being obliged to take part in or assist with the execution of a prisoner if they were willing to nominate another doctor who would be prepared to do so, or if a jurisdiction were to say that a doctor could only refuse to perform female genital mutilation of a child if they were able to refer the parents to another doctor who would be prepared to conduct that mutilation.

All honourable members and all civilised people should appreciate the strong moral beliefs of others, even if they disagree with them. Yet the Brumby government is prepared to defy not only its own charter but international human rights on this score by imposing a measure that is demonstrably unnecessary, even in the terms of its own logic, and in defiance of the internationally guaranteed rights of freedom of conscience and religion.

Sri Lankan community: seniors festival

Mr LANGUILLER (Derrimut) — I wish to place on record that on Saturday, 4 October, I represented the government and the Minister for Senior Victorians at the multicultural seniors festival organised by the Sri Lankan community of Victoria in partnership with SCATS (Sri Lankan Study Centre for Advancement of Technology and Social Welfare), which is ably chaired by my friend Mr Gamini Perera at VU (Victoria University) in the electorate of Derrimut. I also wish to acknowledge that many MPs, including the honourable member for Cranbourne who is Sri Lankan-born, also attended. In addition I wish to extend the government's and my personal appreciation to the director of public affairs to the president, Mr Irugalbandara. I also wish to acknowledge that the high commissioner, Mr Walgampaya, attended the event, and the senior adviser to the National Organisation for Sri Lankan Senior Citizens was also present. I am delighted and honoured to have them as my guests visiting the Victorian Parliament today.

All of us recognise the important work done by the Sri Lankan community in Victoria, and in particular the tireless work undertaken by SCATS which benefits a wide range of people, including the young, old, women, jobseekers, high school students and the many talented members of the Sri Lankan community. SCATS has persistently enriched social and cultural life for all Victorians and we are proud to have them.

The SPEAKER — Order! The time set aside for members statements has expired.

ASSISTED REPRODUCTIVE TREATMENT BILL

Consideration in detail

Debate resumed from 8 October.

Clause 41

Mr CLARK (Box Hill) — I do not want to reiterate in full the points we discussed last night regarding clause 41, but for the record I want to make it clear that I — and many other honourable members, I believe — consider this clause goes even further than clause 40 in terms of the sweeping powers it gives to the patient review panel to approve surrogacy arrangements, even if they do not comply with the criteria laid down in clause 40. As I indicated last night, concern is compounded by the fact that there is no explicit requirement to have regard to the welfare of the child in relation to clauses 40 or 41. We do not know who is going to make up the patient review panel; it is entirely at the discretion of the minister. We do not even know the criteria that will be applied for the appointment of all but one member of the panel.

The appeal provisions are all loaded against the child in that appeals can only be made from a decision of the patient review panel if that panel's decision is not to approve the surrogacy arrangement. There is no provision for a party such as the authority or anybody else to appear before the panel to look at the proposal from the point of view of the welfare of the child who is to be born and to advocate on behalf of that child to ensure that their interests are in fact taken into account, as the Attorney General has told us so many times will be the case. The fact there is an absence of any explicit mechanism to give effect to the broad statement of principle contained in the earlier part of the bill in clause 5 shows that statement is just a platitude. As I have said on many occasions before, this bill puts the interests of adults first and the interests of children a very distant second.

Mr HUDSON (Bentleigh) — With respect to clause 41 and its relationship to clause 40, I articulated my concerns last night, and in the interests of time I do not propose to add anything to that now.

Mr THOMPSON (Sandringham) — In considering the bill and looking at clause 41, there is the issue of what is in the best interests of the child. Consideration of what will advance the best interests of the child has been a dominant feature in our legislation over a long time. I quote clause 5 and note that a guiding principle of the legislation is as follows:

> It is Parliament's intention that the following principles be given effect in administering this Act, carrying out functions under this Act, and in the carrying out of activities regulated by this Act —
>
> (a) the welfare and interests of persons born or to be born as a result of treatment procedures are paramount …

What we have before the house is a bill which involves a fight for the next generation. We have a situation where families are being deconstructed and the Labor Party is pulling the wool over people's eyes. Legislation is being introduced into the chamber which is not in the best interests of children.

I would argue that the best interests of children are served by their having a mother and a father. That is the optimum arrangement. The best interests of a child are a mother and father. There are myriad examples that the Attorney-General would have had experience of in the past, where there have been single-parent families for whom the struggle is tougher. People do their very best, and we must respect the contributions of parents who do do their best. We must respect our common humanity in a wide variety of circumstances and contexts and respect individuals in their life's journey and the judgements they make — and I do not condemn people who are in a variety of circumstances. We are also accountable for the welfare of children. However, we are not accountable for decisions that people make for their own lives.

Clause 41 is another clause under which the patient review panel may approve non-complying surrogacy arrangements in exceptional circumstances. The patient review panel is a body that is appointed by the relevant minister in the government of the day. What are the qualities that a patient review panel will bring to its decision making and to its judgements? Are the decisions going to be made in the best interests of the social parents or the biological parents, or are decisions going to be made in the best interests of the children?

We do not know what the outcome of the legislation before the house today will be in full, but I guarantee that, as is the case with the people that are lobbying members today — the people from Tangled Webs, who have presented their cases and who do not know their genetic inheritance owing to the failure of the law to respond to their circumstances or the inappropriate application of the law in denying them information about their biological inheritance — this is a critical factor for children who do not know their biological inheritance. Who is prepared to fight for the next generation? Who is prepared to make judgements based upon sound, longitudinal studies of the impact of such decision-making arrangements in the wider world?

The clause before the house, as I have already noted, deals with the approval of non-complying surrogacy arrangements in exceptional circumstances. The outcomes of adjudications by that tribunal or panel will be predetermined by whether the members of which that panel is composed feel that meeting the needs and aspirations of social parents should be put ahead of the best interests of children and the value of being cared for and supported on a lifelong basis in a loving and enduring relationship. The clause states:

> The Patient Review Panel may approve a surrogacy arrangement, despite failing to be satisfied of the matters referred to in section 40(1) in relation to the arrangement, if the Panel believes —
>
> (a) the circumstances of the proposed surrogacy — —

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

House divided on clause:

Ayes, 46

Allan, Ms	Langdon, Mr (*Teller*)
Andrews, Mr	Languiller, Mr
Batchelor, Mr	Lim, Mr
Beattie, Ms	Lobato, Ms
Brooks, Mr	Lupton, Mr
Brumby, Mr	Maddigan, Mrs
Cameron, Mr	Marshall, Ms
Carli, Mr	Morand, Ms
Crutchfield, Mr	Munt, Ms
D'Ambrosio, Ms	Nardella, Mr
Donnellan, Mr	Neville, Ms
Duncan, Ms	Noonan, Mr
Eren, Mr	Overington, Ms
Foley, Mr	Pallas, Mr
Graley, Ms	Perera, Mr
Green, Ms	Pike, Ms
Hardman, Mr	Richardson, Ms
Harkness, Dr	Robinson, Mr
Helper, Mr	Scott, Mr
Herbert, Mr	Stensholt, Mr
Holding, Mr	Thomson, Ms
Howard, Mr (*Teller*)	Trezise, Mr
Hulls, Mr	Wynne, Mr

Noes, 28

Blackwood, Mr (*Teller*)	Northe, Mr
Burgess, Mr	O'Brien, Mr
Campbell, Ms	Powell, Mrs
Clark, Mr	Ryan, Mr
Crisp, Mr	Seitz, Mr
Delahunty, Mr	Smith, Mr K.
Fyffe, Mrs	Sykes, Dr
Hodgett, Mr	Thompson, Mr
Hudson, Mr	Tilley, Mr
Ingram, Mr	Victoria, Mrs
Jasper, Mr	Wakeling, Mr
Kairouz, Ms	Walsh, Mr

Kotsiras, Mr (*Teller*)	Weller, Mr
Merlino, Mr	Wells, Mr

Clause agreed to.

Clause 42

Mr CLARK (Box Hill) — This clause applies to surrogacy arrangements and requirements for criminal record and child protection order checks, similar to those that apply to other assisted reproductive treatments. I notice in the amendments circulated by the member for Bentleigh that he nominated clause 42 as one to be omitted. In speaking yesterday I assumed that was part of the amendments he was proposing.

Honourable members interjecting.

The DEPUTY SPEAKER — Order! If members wish to leave the chamber, I ask them to do so quickly and quietly. I need to hear the member for Box Hill.

Mr CLARK — I had been assuming that this was part of the member's proposal to amend clause 40 and omit clause 41, but I now see that it deals with a different subject. Now that the house has cleared following the division and the honourable member has had an opportunity to return to his place, if the member for Bentleigh still considers that clause 42 ought to be omitted from the bill, could he indicate to the house the reasons for that.

Mr HUDSON (Bentleigh) — My amendment to omit clause 42 was consequential on my other amendments on surrogacy, and I do not propose to proceed with that amendment at this time.

Mr THOMPSON (Sandringham) — I would like to put a general question to the Attorney-General. A question has come up generally in relation to surrogacy and what possibility there is of single men under adoption practices in Victoria — —

The DEPUTY SPEAKER — Order! I have been fairly lenient in terms of the way the clauses have been addressed. We are addressing clause 42. As the member for Box Hill said in his contribution just a moment ago, we are dealing with a different subject. I ask the member for Sandringham to be relevant to clause 42.

Mr Burgess — On a point of order, Deputy Speaker, it is very clear from the legislation — or at least there is a platitude in the legislation that implies it — that this is about the rights of the child and the protection of the child.

The DEPUTY SPEAKER — Order! That is not a point of order. If the member for Hastings wishes to contribute to debate on clause 42, I will call him after the member for Sandringham.

Mr THOMPSON — I thank the Chair for her guidance in this debate in difficult circumstances where, contrary to the government's commitment to introducing family-friendly hours for the chamber, we have debated the bill until the early hours of the morning. We have resumed this morning — —

The DEPUTY SPEAKER — Order! The member will speak on the clause.

Mr Hulls — Get relevant!

Mr THOMPSON — I welcome the interjection to be relevant, because what we are doing — —

The DEPUTY SPEAKER — Order! The member knows interjections are to be ignored.

Mr THOMPSON — We are fighting for the next generation. I think the purpose of checks of this nature is of value. They may be of some perfunctory value in terms of the aggregate best interests of the child, and it is the best interests of the child that we are talking about. The Attorney-General maintains that this legislation is in the best interests of the child. He has had some difficulty stating the configuration of all arrangements in a forthright manner, but this clause introduces a requirement that will serve to advance the best interests of the child by ensuring there are not prior convictions for assault or other factors in a person's background that may make them not a good custodial parent. A clause that improves the operation of the arrangement, whether it be in this area or adoption or other areas in terms of working with children in a junior sporting context or otherwise, is of importance and value.

However, there was a question. The Attorney-General is welcome to say he does not know; there may be staff in the chamber who are able to help. I just want him to comment whether in the case of adoption these reflect the parallel requirements in the area of prospective adoptees — —

The DEPUTY SPEAKER — Order! The debate is in regard to surrogacy and clause 42, not adoption.

Mr THOMPSON — I appreciate that, but there is little difference in a variety of circumstances. Whether a surrogate mother provides a child under a surrogacy arrangement or someone takes on the parenting of a child received from a surrogate mother or via adoption,

there are still the best interests of the child to be considered. I was just wondering whether the Attorney-General felt free to comment on that in any way, noting the value in a surrogacy arrangement and how, in terms of criminal record checks, this might differ in the case of adoption and whether any other benchmarks that look after the welfare of a child in an adoption context are not incorporated into this clause at the moment.

I think that would be of benefit to the house and would reassure members on the government backbench who may not all have been following the debate and understood — —

Honourable members interjecting.

The DEPUTY SPEAKER — Order! The member for Sandringham without assistance, and on the clause.

Mr THOMPSON — Not all members of the government backbench have been following the debate — I did not say 'not all members' inferring that numbers of members on the government backbench — —

Honourable members interjecting.

The DEPUTY SPEAKER — Order! The member for Sandringham will speak through the Chair and ignore interjections. I ask members to stop interjecting.

Mr THOMPSON — I welcome the interjection. If the member for Macedon wishes to draw me further on it — —

The DEPUTY SPEAKER — Order! I have asked the member for Sandringham to ignore interjections and to speak through the Chair. I seek his cooperation and that of other members. The member for Sandringham, through the Chair.

Mr THOMPSON — The interjection was, 'Where's Ted been?'. I can assure the member for Geelong that he certainly was not in the parliamentary bar last night.

The DEPUTY SPEAKER — Order! I asked the member for Sandringham to ignore interjections and speak through the Chair. I ask for his cooperation this morning.

Mr THOMPSON — I appreciate your forbearance, Deputy Speaker. I think this is a good measure, but if there were any other measures that the Attorney-General was able to comment on in contrasting this circumstance with adoption, it would be welcome.

The DEPUTY SPEAKER — Order! The member's time has expired. Before I call the member for Benalla I ask members, if they wish to speak once another member has concluded, to rise in their place straightaway, otherwise it makes it difficult to run the program.

Dr SYKES (Benalla) — I have not been present for the debate this morning, but in relation to clause 42 I would like guidance from the Attorney-General as to the effectiveness of the safeguards covered by paragraph (a) — that is, the requirement that a criminal record check be sighted. The basis of that question and my seeking guidance from the Attorney-General is that it is my understanding that there are something like 3000 convicted sex offenders in the state of Victoria but that is generally understood and accepted to be a only very small proportion of people who commit sex offences against children. My question is simply, first of all, whether my understanding is correct — that is, there are 3000 or thereabouts known sex offenders but that is only a very small proportion of people who perpetrate sex offences against children? If that is the case, what is the level of confidence in this safeguard, knowing that it identifies only a small proportion of those who may present a risk to the child?

Mr HULLS (Attorney-General) — This clause in relation to police checks is an appropriate clause.

Clause agreed to.

Clause 43

The DEPUTY SPEAKER — Order! Before I call the member for Bentleigh to move amendment 6 in his name I will just make him aware that if this amendment is not agreed to then he cannot move his amendments 10, 18 to 22 and 33 because they are consequential.

Mr HUDSON (Bentleigh) — I move:

6. Clause 43, lines 27 and 28, omit "if the surrogate mother's oocyte is to be used in the conception of the child,".

This part of the bill deals with the question of counselling and legal information, and of course that is an incredibly important element of what should be provided to prospective surrogate mothers. But it is also the first part of the bill that raises the question of a surrogate mother being able to use her own eggs for the purposes of conceiving a child, and, as a consequence, that is why I am moving an amendment to this clause.

I want to put to the house that even if you accept, as many members did in the debate last night, that a surrogate mother should be able to carry someone else's eggs to gestate that child, to give birth and then to relinquish that child — and I pointed to some of the potentially harmful elements of that which I think we should learn from the adoption experience — this is qualitatively different because what we are talking about here is a surrogate mother using her own eggs to gestate a child, to bear that child and to give birth to it. She has a genetic link to that child; she is related to that child. To me that seems to magnify some of the problems that I have sought to bring to the attention of the house during this debate.

Indeed it was an issue which was raised quite significantly by a number of those who made submissions to the Victorian Law Reform Commission inquiry and argued that only what is being called gestational surrogacy should be used — that is, surrogacy that does not involve a woman using her own eggs. The reason for that was that a surrogate mother is less likely to experience the difficulty of giving up a child who is genetically related to her. In gestational surrogacy the child is not genetically related to her; in partial surrogacy it is. The commission noted that it may be easier for surrogates to regard the commissioning couple as the child's parents if their eggs and sperm have been used in the conception of that child. It also means that any child who is born as a result of these arrangements is not the genetic sibling of any other children of the surrogate mother.

We need to look at the research in this area. There has been an Australian study on the psychological and social experience of women who have acted as surrogates. What that research indicates is that those women said that not being a genetic parent was important. They indicated that using the commissioning couple's eggs and sperm helped them to treat the pregnancy differently from pregnancies which involved their own children.

I just want to quote from one of the women who spoke to the commission and as reported on page 177. She said:

> [The baby] is not part of me … it's their egg, their sperm … Basically I am just growing it, so it's not part of me. I am just helping it grow. I couldn't do it if it wasn't my sister and it was any part of [my partner] and myself.

I think we should also note that in the Australian Capital Territory, which is regarded as having some of the most liberal laws in relation to surrogacy, surrogacy is permitted only when genetic parentage and gestation are separated. Section 24 of the Parentage Act of 2004 states that the commissioning couple can only be recognised as the parents of the child if the surrogate and the parents are not the genetic parents of the child and at least one member of the commissioning couple is a genetic parent of the child. You can see that the Australian Capital Territory, even with laws which are regarded to be amongst the most liberal in the country, has sought to separate out this genetic connection for the surrogate mother from the question of the ultimate parentage of that child.

This is a huge qualitative difference, and I urge members to think about that in considering how they vote on this bill. Surrogate mothers should not be put in the position of relinquishing their own genetic child for the purpose of a surrogacy arrangement. I will not go back over the issues I have raised in relation to relinquishment and what we can learn from adoption, but I urge members to support this amendment.

Mr CLARK (Box Hill) — I rise to support the member for Bentleigh's amendment. The amendment formally omits a reference to the use of a surrogate mother's oocyte for the conception of the child, but this amendment will in fact be a test of the entire question of partial surrogacy. That is where the surrogate mother supplies the egg which is used to bear the child. Those members who believe that partial surrogacy should not be permitted by this bill should vote in favour of the member for Bentleigh's amendment which is currently before us because in effect that will be the only opportunity they have to vote for the omission of partial surrogacy from the bill.

The member for Bentleigh put the case very well for the exclusion of partial surrogacy in the case where the surrogate mother has provided the egg. Perfectly understandably and naturally in accordance with human nature, human biology and human evolution the mother will regard that child as her own child despite whatever feelings and knowledge she may have at an intellectual level knowing she is carrying it for surrogacy, human nature and human biology are going to operate to form a very close bond between the mother and the child, and it is highly likely that at the end of the pregnancy the woman is going to find it extremely difficult to relinquish the child. It is just imposing an unreal expectation on a huge number of women who might choose to go into this process. You might say that is up to them. If they go into it with full knowledge and with fully informed consent et cetera, so be it.

However, there are times when we make a social judgement that fully informed consent is not enough, because experience demonstrates that in a substantial number of cases it has very adverse consequences not

only for the person concerned but for others around them — in this case potentially for the child, potentially for the commissioning parents, potentially for the surrogate mother's partner and so forth. It is an arrangement which is fraught with difficulty and serious problems.

It is not something that is being argued just by those who are opposed to or have reservations about surrogacy in general. The member for Doncaster and I met with representatives of one of the leading in-vitro fertilisation clinics in this state, and they informed us that they also thought that partial surrogacy had very serious implications and that on the basis of all of the studies and experience that they were aware of they would not be willing to offer partial surrogacy services because they regard it as just too difficult and having too many potentially serious and adverse consequences. This is not an argument which is coming from just one particular perspective or one particular set of views on life issues or family issues. A wide spectrum of people share the concern about partial surrogacy, and that concern is reinforced by the examples that the member for Bentleigh gave about what the situation is in other jurisdictions.

I would say that regardless of members' views on the issue of surrogacy in general they should be turning their minds particularly and separately to the issue of partial surrogacy and reaching the conclusion that the adverse consequences not only for the surrogate mother but for everyone else involved are just too grave to authorise that practice under this legislation.

Mr THOMPSON (Sandringham) — In commenting on this aspect of the bill and the amendment proposed by the member for Bentleigh I would like to place on record some notes that were delivered to me by Pauline Peile, a now retired senior counsellor and acting manager of the Adoption and Family Records Service — formally Adoption Information Services, Department of Human Services — for 16 years, consultant and adviser in the infertility treatment area for many years, both before and after the establishment of the Infertility Treatment Authority, and Meredith Lenne, former Adoption and Family Records Service counsellor and adopted person with a longstanding involvement in support for matters of concern to the adoption and donor-conceived community.

They presented the concern that currently the NHMRC (National Health and Medical Research Council) does not permit a donor's egg to be used in a surrogacy arrangement but that at page 9 the second-reading speech for this bill states there will be no limitation placed on a surrogate mother using her own egg as part of the treatment procedures. They note that this is an important change to legislation, which seems to be being introduced almost by stealth, with strong legal implications for all people participating in a surrogacy agreement. They go on to note in information forwarded to me and perhaps to other members:

> The reality for the 'surrogate' is that the mother of the child, either biologically by gestation or genetically by using her own ovum, is the legal mother unless she elects not to be.

They note that no mother should be subject to the legal consequences of bearing a child. They suggest that this is discriminatory treatment and possible exploitation of a fertile mother. A New Zealand writer, Joss Shawyer, in a book entitled *Death by Adoption*, outlined the circumstances of mothers who had relinquished children.

In proposing an amendment to clause 43(b) to omit the words 'if the surrogate mother's oocyte is to be used in the conception of a child', the member for Bentleigh, if I understood him correctly, has expressed concern about the biological link and genetic inheritance existing between a woman and a child. There is a difference if a donor ovum is used, but forever and a day there will be this inextricable link between a mother and child; whatever the social parenting arrangements may be, that biological link will never be lost. There would be countless examples. I ran through examples the other day in a review of English literature, citing characters who had had the experience of encountering their biological relations later in life.

In relation to the bill before the house, and particularly the clause under consideration and the amendment proposed to it by the member for Bentleigh, the experience of adoption informs us of the immense psychological, social and other impacts of a parent relinquishing a child either where their own progeny is involved in the adoption arrangement, or as with this particular clause, in the case of a surrogacy arrangement. I therefore support the member for Bentleigh in the concerns he raised. There are parallel examples of those concerns being raised in countless studies around the world which document the grief and anguish of relinquishing parents.

A number of years ago the language used referred to 'the adoption triangle' and 'the competing interests' of the biological parent, the social parent and the child. I regard the interest of the child in maintaining some link with the biological parent as fundamental. Bringing about a range of socially engineered arrangements should be approached with the greatest caution possible. Therefore I think the concerns put carefully

and earnestly to the house by the member for Bentleigh warrant very careful consideration. As I indicated earlier, the situation of women around the world throughout human history who have been relinquishing parents is that the uncertainty in their own minds as they might seek to understand the life journey of the child, if they have not had the chance to do so, has had a tragic impact on them.

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

Ms CAMPBELL (Pascoe Vale) — I had the benefit of receiving a briefing from Monash IVF counselling services, and very good written advice was provided to those who bothered to go to meeting room K on Tuesday. In that briefing a range of issues were raised. One that was of particular concern to Monash IVF representatives was partial surrogacy, which is what we are talking about here. On surrogacy in general they outlined that all surrogacy arrangements had to be approved by the patient review panel, and they had already raised concerns about the composition of that panel. They highlighted the amendments which mean that women who are unlikely to become pregnant or give birth to a child other than through the treatment of ART (assisted reproductive technology) will now be eligible for treatment. These relevant amendments to the substantive act are contained in the bill we are debating.

The Monash IVF representatives outlined concerns they had about partial surrogacy and the surrogacy cooling-off period — and the clause we are currently talking about deals with partial surrogacy. They contrasted a woman supplying her own eggs for the surrogacy arrangement with a case where there is a genetic relationship between the surrogate and the child. They were quite clear that a genetic relationship between the surrogate and the child increases the risk of there being difficulty for the surrogate in emotionally detaching herself from her child in utero. It is her egg, it is her child that she is carrying and in every other circumstance in which a woman's egg results in her becoming pregnant there develops a link between her and the child, and this is no exception. Why are there concerns about a woman being in a sense obliged to emotionally detach herself from the child growing within her? Rita Alesi said to us that it may increase the risk of the surrogate reneging on the relinquishment of the child to the commissioning couple.

I would not want to be the judge or the magistrate assessing what to do in such circumstances if this ended up in court. If you have a legal relationship as a surrogate with the commissioning couple and you decide to renege on the arrangement, that is fraught with emotional turmoil for the commissioning couple, who have had the chance to think that they are going to become parents to a child who is being gestated by somebody else. It highlights to me all the questions that make surrogacy an issue such that I could never vote for it, because it dissociates the biological, social and parenting connections a child should be able to have intact if humanly possible. When we are talking about partial surrogacy we are really highlighting the connection of the genetic mother — obviously the gestational mother — and the effect of that upon her.

I commend the insightful amendment moved by the member for Bentleigh. His reference to the study, which has been well documented and is available to those who care to read it, is good. Members in the upper house who may not have had the opportunity to see it before now should read that report.

Mr THOMPSON (Sandringham) — Further to the importance of the relationship between the surrogate mother and use of her gamete for the purpose of producing a child and the notion that the child be surrendered later on, in the adoption debate it was understood by feminist Joss Shawyer of New Zealand in the book *Death by Adoption*, Cicada Press, New Zealand (1979) at page 4, that:

> The very act of adoption is a denial of the right of the child to her natural heritage — her birthright — the most basic right a person has, to know who she is.

There are a range of competing views regarding who people are. I refer to a paper I wrote many years ago quoting Piattelli-Palmarini. At page 21, I said:

> Piattelli-Palmarini directs attention to the oscillating moods between an aristocratic, sometimes racist, gene-bound conception of mankind and a pan-culturalist view of the newborn baby as was to be imprinted … On the one hand there is the Marxist view that 'man is a nexus of the social relations in which he is embedded'.
>
> On the other hand Piattelli-Palmarini refers to the influence of the genetic program on behaviour and social adaptability being more powerful than previously considered in the light of research undertaken on monozygotic twins reared apart.

There are a number of different investigations. Piattelli-Palmarini had drawn attention to the mark of genetic determinism influencing certain infectious diseases, mental illnesses, acquisitiveness and quantifiable intellectual performances in their work.

Returning to my paper at page 23, I said:

> It is not possible to define in precise terms the nature of genetic inheritance and the extent of its contribution as opposed to the social environment. The point to be made is

> that a child is a random assortment of maternal and paternal heritage' to which is combined a 'considerable addition of cultural conditioning'.

The object of the amendment proposed by the member for Bentleigh is one that seems to take into account the value of the biological inheritance to the child but also the value of the relationship between a mother, which in an adoption sense is the relinquishing mother. While I alluded to some negative features of genetic inheritance, it should also be noted that there are more favourable areas of genetic inheritance, and these include appearance, physical characteristics, height, weight, colouring, personality, disposition, intelligence, creativity and interests.

In this context there is a lifelong interrelationship between the biological parent and the child as a life unfolds and develops. The emotional attachment of the natural biological mother is one that is not to be understated and we as legislators should not lightly embark upon this journey where a woman who is a surrogate mother is placed in that situation on a basis where she becomes the incubator of the child but then is obliged to relinquish her own child even though there is this mysterious and inextricable relationship between mother and child.

A number of other relationships are important, and now is not quite the time to go into the right of a child in this context to know their own biological inheritance. It is tied up in a range of rights that should attach to parents and also to children. In terms of the natural parents, in the case of adoption it was once noted that the relinquishing parents would not want the ghosts of the past raised because they would have made new relationships and forgotten the mistakes of the past, there being a need or right to remain anonymous. It is only in more recent times in the adoption realm that the best interests of the child have been a dominant consideration.

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

Mr HULLS (Attorney-General) — Just briefly, the effect of this amendment would be to ban partial surrogacy in Victoria. I do not support this amendment. Partial surrogacy is currently not banned in Victoria. This would be turning back the clock. The Victorian Law Reform Commission considered whether partial surrogacy should be permitted, and it concluded that it is difficult to generalise about the value of genetic connections in family relationships because individuals obviously place different weight on the genetic connection to their parents and children.

Obviously if a commissioning parent does not have any eggs to contribute, it may well be difficult to find an egg donor and a surrogate mother. Partial surrogacy may enable the commissioning mother to have a genetic connection to the child — for example, if the commissioning mother's sister is the surrogate mother, using her eggs would preserve the genetic connection with the child. As a result the law reform commission recommended that partial surrogacy should not be prohibited in Victoria. It is not prohibited now.

The law reform commission recommended that all forms of surrogacy should be carefully regulated. This cautious approach is reflected in the bill, and there are a whole range of regulations that are set out under the legislation. Victorians are already able to have children through partial surrogacy. This bill establishes a robust and stringent framework to ensure that the best interests of children, surrogate mothers and commissioning parents are protected. The measures proposed to protect these parties are careful and considered, and on that basis I do not support the amendment.

Ms CAMPBELL (Pascoe Vale) — My last contribution to the debate focused on the woman. I now mention briefly the interests of the child based on the advice provided by Monash IVF Counselling Services to parliamentarians who attended the briefing on Tuesday. The advice states:

> The genetic relationship of the child to the surrogate mother may not be 'in the best interests of the child' in that the child may experience feelings of rejection-abandonment from the surrogate mother.

If the Attorney-General believes there is some merit in having a surrogate related to the commissioning parents, this particular clause could have been more confined. It could have been confined to surrogates who are within a familial relationship, like two sisters, as the attorney outlined. That is not what we are debating here. We are debating partial surrogacy from anybody, and I repeat again the advice from Rita Alesi, manager of Monash IVF Counselling Services, when she said:

> The genetic relationship of the child to the surrogate mother may not be 'in the best interests of the child' in that the child may experience feelings of rejection-abandonment from the surrogate mother.

Monash IVF has grave concerns about partial surrogacy and would not be supporting it.

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

Ayes, 46

Allan, Ms	Langdon, Mr (*Teller*)
Andrews, Mr	Languiller, Mr

Batchelor, Mr	Lim, Mr
Beattie, Ms	Lobato, Ms
Brumby, Mr	Lupton, Mr
Cameron, Mr	Maddigan, Mrs
Carli, Mr	Marshall, Ms (*Teller*)
Crutchfield, Mr	Morand, Ms
D'Ambrosio, Ms	Munt, Ms
Donnellan, Mr	Nardella, Mr
Duncan, Ms	Neville, Ms
Eren, Mr	Noonan, Mr
Foley, Mr	Overington, Ms
Graley, Ms	Pallas, Mr
Green, Ms	Perera, Mr
Hardman, Mr	Pike, Ms
Harkness, Dr	Richardson, Ms
Helper, Mr	Robinson, Mr
Herbert, Mr	Scott, Mr
Holding, Mr	Stensholt, Mr
Howard, Mr	Thomson, Ms
Hulls, Mr	Trezise, Mr
Kosky, Ms	Wynne, Mr

Noes, 30

Blackwood, Mr	Merlino, Mr
Brooks, Mr	Morris, Mr
Burgess, Mr	O'Brien, Mr
Campbell, Ms	Powell, Mrs
Clark, Mr	Ryan, Mr
Crisp, Mr	Seitz, Mr
Delahunty, Mr	Smith, Mr K.
Dixon, Mr	Smith, Mr R. (*Teller*)
Fyffe, Mrs	Sykes, Dr
Hodgett, Mr	Thompson, Mr
Hudson, Mr	Tilley, Mr (*Teller*)
Ingram, Mr	Wakeling, Mr
Jasper, Mr	Weller, Mr
Kairouz, Ms	Wells, Mr
Kotsiras, Mr	Wooldridge, Ms

Amendment defeated.

The DEPUTY SPEAKER — Order! As I indicated previously to the member for Bentleigh, he will now not be able to move amendments 10, 18 to 22 and 33, as they are consequential. I call on the member for Pascoe Vale to move amendment 5 standing in her name.

Ms CAMPBELL (Pascoe Vale) — As amendment 5 in my name is the same as amendment 1 in my name, I do not propose to repeat that by moving amendment 5.

Clause agreed to.

Clause 44

Mr WELLS (Scoresby) — I would like to ask a number of questions of the Attorney-General regarding surrogacy costs. Clause 44(1) states:

> A surrogate mother must not receive any material benefit or advantage as a result of a surrogacy arrangement.

And there are penalties. Clause 44(2) states:

> Subsection (1) does not prevent a surrogate mother being reimbursed for the prescribed costs actually incurred by the surrogate mother as a direct consequence of entering into the surrogacy arrangement.

I am wondering if I could just put a couple of scenarios to the Attorney-General. To go to the first scenario, if the surrogate mother gives birth to the child but for some reason the commissioning parents refuse to accept the newborn, what happens with regard to the costs? Is the surrogate mother able to sue the commissioning parents for the costs that she has incurred? Further, is she able to sue for maintenance of that child as he or she grows through their life?

Mr Foley interjected.

Mr WELLS — I did not get an answer, so why should I not be able to ask the question during the consideration-in-detail stage?

The DEPUTY SPEAKER — Order! The member for Albert Park is out of his chair and disorderly.

Mr WELLS — That was just a stupid interjection.

The DEPUTY SPEAKER — Order! The member for Scoresby will address his remarks through the Chair. The member for Albert Park and the Minister for Health should leave the chamber if they wish to behave in that manner.

Mr WELLS — To go to the second scenario, the surrogate mother is proceeding with the pregnancy but during the pregnancy has discovered that the unborn has a disability. The commissioning parents want the surrogate mother to abort, but the surrogate mother refuses and the commissioning parents walk away. What happens with regard to the costs of maintaining the child?

The third scenario is if the surrogate mother refuses to hand over the child, do the commissioning parents have a right to sue the surrogate mother for the costs the commissioning parents have incurred?

The last scenario is if the commissioning parents divorce or separate, or there is a death and they are no longer in a position to be able to accept a child when it is born, what happens to the surrogacy costs for the surrogate mother and the ongoing maintenance of the child?

Mr HULLS (Attorney-General) — I am happy to put my answers to the honourable member's questions in writing. In relation to the first issue he raised, the

child is, at law, the child of the woman who gave birth. She and her partner, if any, are responsible for the child. The surrogate mother would only be able to receive reimbursement of expenses actually incurred as a direct consequence of entering the surrogacy arrangement.

On the second issue raised by the member for Scoresby, the surrogate mother is the person who, in conjunction with her treating medical practitioner, makes the decision about whether to terminate a pregnancy. In this situation the surrogate mother would only be able to receive reimbursement of the expenses actually incurred as a direct consequence of entering into a surrogacy arrangement. The surrogate mother would remain the legal parent of a child.

In relation to the third matter, the commissioning parents are not eligible for compensation under the legislation. On the last matter that was raised by the honourable member, the surrogate would still be able to receive reimbursement of expenses actually incurred as a direct consequence of entering into the surrogacy arrangement.

I am more than happy to write to the honourable member and answer his specific questions in further detail after I read the *Daily Hansard* tomorrow.

Mr THOMPSON (Sandringham) — I again seek clarification from the Attorney-General on the clause and the points that were just raised by the shadow Treasurer, which were matters that were also raised during the briefing on the bill. If a child who has been commissioned and has been born to a surrogate mother is established to have a disability and the commissioning parents do not wish for that child to be delivered, but the surrogate mother wishes to have the child delivered, who bears responsibility for that child? While we are on this particular clause as well— —

The DEPUTY SPEAKER — Order! I agree we are on a particular clause. I ask the member to speak to it.

Mr THOMPSON — We sat through some antisocial sitting hours last night. This is a clause that will be voted on at some stage in the next 24 hours. The Attorney-General suggested he will get back to the member for Scoresby by way of a letter tomorrow. The vote on this legislation is a conscience vote on which every member of this chamber needs to formulate a view. Every member across the government backbench, every member across the government middle bench and every member across the government frontbench will need to come to a determination as to whether these arrangements are just and fair, and yet the Attorney-General is not able to provide a fair and reasonable answer to the house on important questions that may determine whether people will find the capacity and the courage to understand what might be in the best interests of the child.

With a range of social engineering arrangements there will be multiple ramifications not envisaged at the moment. Before we actually vote on this particular clause, I ask the Attorney-General to provide an answer to the house. He is responsible for this legislation, and he is responsible for the scenarios that might be presented. If he is not in a position to answer the question before the house, then I think the bill should be deferred until he is so that members actually know what principles they are voting on in the house today.

It is no light matter if there is disagreement regarding a termination on the basis of disability. What if the surrogate mother is advised that the baby has a cleft palate or a harelip, but the commissioning parents feel that is a disability they do not wish to take on board regarding the child they commissioned? What if a child has spina bifida or a more serious medical condition? Is there going to be this interplay taking place later on?

The next question I want to ask that might have been answered is: if the surrogate mother actually delivers the child and the child is full term, who bears the cost of attendant medical expenses over the next 5, 10 or 20 years? I seek some wider clarification from the Attorney-General about this matter, because we are speaking about human life that should be respected and supported, and we should act in what might be understood to be the best interests of the child in a variety of different contexts. Clause 44 says:

> (2) Subsection (1) does not prevent a surrogate mother being reimbursed for the prescribed costs actually incurred by the surrogate mother as a direct consequence of entering into the surrogacy arrangement.

But what are the indirect costs that might be incurred as a result of the surrogacy arrangement? In the event of a dispute arising, are legal expenses the costs incurred as a direct consequence of the surrogacy arrangement, or is it just envisioned that it is the medical costs, nursing costs and hospital costs that are incurred? Or is that a matter that will be underpinned by Victoria Legal Aid for which there is a means test for access and arrangements? As the Attorney-General knows, medical expenses are considerable.

The surrogacy costs provision in clause 44 also says:

> (3) To the extent that a surrogacy arrangement provides for a matter other than the reimbursement for costs actually incurred by the surrogate mother the arrangement is void and unenforceable.

Are legal costs included in this particular provision? Returning to the issue I raised before, members will be voting on this clause at some stage in the next 24 hours. Unless the members of the government benches are treated as wood ducks — and they do not know what they are voting on and they do not know the implications of what they are voting on — I think we deserve — —

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

Mr HULLS (Attorney-General) — I have already addressed the matters raised by the honourable member in my answer to the honourable member for Scoresby. I indicated that I will be giving the honourable member for Scoresby the further courtesy of writing to him in relation to these matters. I am quite sure, if the honourable member for Sandringham wants to have a look at the letter to the honourable member for Scoresby, that will be a matter for the honourable member for Scoresby.

Mr CLARK (Box Hill) — I thank the Attorney-General for the information he has provided to the house in response to the issues raised by the member for Scoresby, including the fact that he has had those answers prepared on prior notice from the member for Scoresby. I do not disagree with what the Attorney-General said to the house in response to those queries in terms of it being an accurate reflection of what the clause says. Unfortunately I do not think the answer took us much beyond what the clause already says, and indeed the mere fact that it did not does highlight the open-endedness of that clause as it stands.

The essence of the Attorney-General's answer to each of the questions was that expenses or costs could be reimbursed to the extent that they were a direct consequence of entering into the surrogacy arrangement. But the critical issue is: what is meant by the term 'direct consequence of entering into the surrogacy arrangement'? On the one view that represents the costs incurred during the course of the pregnancy — for example, any medical costs or possibly travel expenses that are not reimbursed to the surrogate mother from other sources, costs of entering into hospital for giving birth and possibly travel expenses there. But you then move on to questions such as whether loss of income to the surrogate mother during the latter stages of pregnancy, when she is unable to work, count as a direct consequence. You can argue that both ways. You can certainly say, 'But for the fact she entered into the surrogacy arrangement she would not have lost her income', and the loss of the income follows virtually inexorably from the fact that the surrogacy arrangement was entered into and therefore that is a direct consequence.

Similarly, with the examples that the member for Scoresby raised — if the commissioning parents walk away from the surrogacy arrangement and the child therefore remains with the surrogate mother and she therefore incurs a range of expenses — on one very reasonable view that also is a direct cost of entering into the surrogacy arrangement. That links into two other aspects of the clause. The first is that it is not all costs incurred as a direct consequence of entering into the surrogacy arrangement that are able to be reimbursed; it is only the prescribed costs. In essence what this clause is doing is giving to the government, through what it recommends to Governor in Council, the authority to prescribe a very broad latitude as to the costs related to the surrogacy arrangement that will be liable to be reimbursed. In effect this house is giving to the government scope to make effectively broad policy because there is a huge difference between prescribing costs that only relate to the medical and perhaps travel and other ancillary expenses of the pregnancy on the one hand, versus saying, 'If a surrogacy does not proceed, a direct cost to the mother is the ongoing cost of rearing the child and therefore that will be prescribed'. That is a very broad policy discretion the clause gives to the government.

I think the member for Sandringham is right in saying that these issues do deserve to be discussed and placed on the record in this house. Certainly I appreciate the fact that the Attorney-General has undertaken to write to the member for Scoresby, but the information should be before the house in the public arena at the time of this debate.

The next aspect that I refer to, which is a new aspect of the clause, relates to clause 44(3) that provides:

> To the extent that a surrogacy arrangement provides for a matter other than the reimbursement for costs actually incurred by the surrogate mother the arrangement is void and unenforceable.

On my first examination of the bill it seemed to me that it was intended to allow surrogacy arrangements to be legally enforceable other than for the limitation on reimbursement of costs. But on my reading of subclause (3) I think the government's intention is that the aspect relating to reimbursement of the costs that are permitted to be reimbursed under this clause is not void, so that aspect can be sued on, but the government's intention is that no other aspect of the surrogacy agreement can be sued on for damages, even leaving aside specific performance, and that all other aspects of the bill other than reimbursement of what is

permitted is void and enforceable. I would be grateful if the Attorney-General could respond to that.

Mr THOMPSON (Sandringham) — Clause 44 has the heading 'Surrogacy costs', and research indicates that there certainly are costs in relation to relinquishment. Fifty per cent of birth parents that were interviewed in an adoption study said they continued to have feelings of loss, pain and mourning over the child they had relinquished. Examples of such expressions were: 'I never get over the feeling of loss'; 'I still have feelings of guilt and pain when I think about it'; 'Whenever I see a child I wonder if it is her' — —

The DEPUTY SPEAKER — Order! I ask the member for Sandringham to concentrate on the clause before us. I ask him for some cooperation.

Mr THOMPSON — I do note it has the heading 'Surrogacy costs', and they are not just financial costs involved in this particular equation. I just wish to widen the scope of the clause to present facts to the chamber on an issue on which members will be required to vote regarding the costs of relinquishment that appear in myriad documented studies.

The DEPUTY SPEAKER — Order! I understand what the member for Sandringham is indicating, but I ask him not to widen the subject of the clause but to talk on the clause. I ask for his cooperation.

Mr THOMPSON — In going through the material benefit or advantage as a result of surrogacy arrangement there are penalties involved. I am not sure what the enforcement process will be and how these costs will actually be computed. In going through this process while there is partial reimbursement of expenses incurred, I do not know that the surrogate mother can ever be fully reimbursed for the circumstances that she may confront as a relinquishing parent. It is a very acute issue which has led in other contexts to great distress. What costs can recompense the mother who relinquishes a child where that feeling of grief and concern is more profound on an anniversary date of the child's birth? In our discussion on the previous clause the member for Bentleigh made valid points which I — —

The DEPUTY SPEAKER — Order! I again ask the member for Sandringham to restrict his remarks to the content of clause 44, and I again ask him for his cooperation.

Mr THOMPSON — I am pleased to stick to a narrower discussion on surrogacy costs out of respect to the Chair in this instance. I think the Attorney-General outlined to the house responses to questions asked by the member for Scoresby, who raised good points. I was in the chamber. I was following the responses while preparing my own contribution to the debate, and yet I am not in a position where I feel fully informed of the issues that have been raised.

To the extent that each member in this chamber is voting on an issue in relation to costs, I think it is important that they be aware of the wider implications of the clauses being proposed by the Attorney-General. I think it helps promote good democracy. I think it helps the ability of members to judge matters wisely in a way that will benefit their constituents and relinquishing surrogate mothers in relation to how they are reimbursed as a result of the surrogacy arrangement. It is arguable that the experience that they go through involves much more than just the immediate costs incurred by the surrogate mother as a direct consequence of entering into the surrogacy arrangement. There are questions of adequacy as to what the reimbursement is. I appreciate there may be a public policy rationale so that there is not an industry created for financial return, but it is an area where there are complexities.

Perhaps the Attorney-General would be kind enough to detail what happens in circumstances where there is a request for a termination and the surrogate mother does not wish to terminate. Who bears the responsibility for the child? An answer to that question will help me in my own deliberations on this bill. The 88 members in this chamber may also be interested. I just want to find out whether it is the commissioning parent who carries responsibility for the child or whether it is the surrogate mother — —

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

Mr CLARK (Box Hill) — I paused for a moment to see if the Attorney-General was going to rise to respond either to the matter that I raised and that has not been addressed or the matter raised by the member for Sandringham, but the Attorney-General did not rise. I think the member for Sandringham is right in saying that these issues do need to be thrashed out and put on the record in this house. In particular I repeat the point that to date the Attorney-General has offered no comment to the house on the issue of whether it is the government's intention that no other aspect of the surrogacy agreement be legally enforceable other than the right of the surrogate mother to bring proceedings against the commissioning parents to recover reimbursement for what the bill describes as the costs incurred by the surrogate mother.

Clause agreed to.

Clause 45

The DEPUTY SPEAKER — Order! The question is:

That clause 45 stand part of the bill.

All those in favour say aye. All those against say no.

I cannot hear the member for Sandringham on a point of order as I have already put the question.

I think the ayes have it.

Clause agreed to.

Mr Thompson — On a point of order, Deputy Speaker, we left this chamber in the early hours of the morning and we are back here again today. I was anticipating that somebody else might be speaking on this clause. There is a very short, serious question that I would like to raise in relation to — —

The DEPUTY SPEAKER — Order! I am sorry, I have already put the question. I try to pause in between the Clerk announcing the clause we are debating and the question or amendment that is being dealt with on it. I think in this instance the member for Sandringham should understand that he needs to stand at some stage before I put the question. I have already put the question. I do not uphold the point of order.

Mr Thompson — On a further point of order, Deputy Speaker, this is a conscience debate. It is not a debate which is being led by one individual on either side of the table who has the responsibility to rise and sit on an alternate basis across the table. There are a number of members who are contributing to the debate. We are trying to work through a bill in earnest — —

The DEPUTY SPEAKER — Order! I will not hear more on the point of order. There is one way in which this can be resolved, and that is that the will of the house seeks that the question be put again. Is it the will of the house that the question be put again?

Mr Thompson — No.

The DEPUTY SPEAKER — Order! The member for Sandringham has just said no against his own request, therefore the will of the house is not there. I tried to explain to the member for Sandringham the way this process works. I understand he wishes to speak. I am sure that he can speak on numerous occasions on other clauses, but in this instance I will not — —

Mr Thompson interjected.

The DEPUTY SPEAKER — Order! The question has been put and carried.

Mr Thompson — I had 2 hours sleep last night and there is an important matter I would like to raise.

The DEPUTY SPEAKER — Order! The member for Sandringham should sit down. I make two points. One is that when the Chair rises the member will sit down and cease speaking, and I ask the member for Sandringham to pay due respect to the Chair. The second point is that the member will wait until I call him on a point of order before he stands and just starts speaking.

As I indicated before, I think I have given appropriate leeway during this debate for people to be able to rise and make a contribution. I have put the question. The will of the house is not there for the question to be put again. I will move on. I ask the member for Sandringham for his cooperation.

Heading to part 5

Mr Thompson — On a point of order, I respect the Chair, but I just would like to make the point to the house — —

The DEPUTY SPEAKER — Order! I think the member for Sandringham has made his point very clear. I understand his position, but we will move on.

Before I call the member for Kororoit to move amendment 1 standing in her name, I advise the house that if this amendment is not agreed to the member for Kororoit will not be able to move her remaining amendments because they are consequential. I therefore advise her to address the principles of all her amendments rather than limiting herself to amendment 1.

Ms KAIROUZ (Kororoit) — I invite members to vote against the heading to part 5.

The bill proposes to allow a registered provider to use a dead person's gametes; or to implant an embryo created using the gametes of a now deceased person, using assisted reproductive processes that will result in a child being born to the deceased person and their partner; or alternatively, if the deceased partner is a woman, a surrogacy arrangement can be commissioned.

The death of a loved one is certainly something that none of us would like to experience, but unfortunately, for various reasons, many of us will experience it, and

support and sympathy should be given in all circumstances. Using gametes from a deceased partner for procreative purposes may be a touching act to some people. However, sympathy should not form the framework to create law and public policy or, more importantly, the reason for creating a child.

An adult wanting a child who is automatically born an orphan should not have priority over the child's basic right to have two living and loving parents. The United Nations Convention on the Rights of the Child explicitly states that in all issues involving children, the rights of the child have priority over other interests.

The notion that posthumous creation is a harmless medical procedure needs to be questioned. Bringing a child into this world who will never have the opportunity to meet both its parents shows disregard for its wellbeing, its needs and dignity. Many complex moral and psychological issues emerge from this medical technique.

In today's culture, procreation using a dead person's gametes is not considered to be the norm and is not widely accepted. The dead adult's interests and desires to create a child are baseless and unjustified; what desires or interests do the dead have?

While many of the achievements of IVF have been celebrated and have brought joy and delight to families who have previously been unable to achieve a pregnancy and form a family, the notion of posthumous creation is challenging and may be considered as macabre. Posthumous creation does not take account of the impact on the child who knows they were created in this way.

Procreation is central to an individual's identity. This procedure deliberately creates a child without a mother or father and guarantees that a child will never have the opportunity of knowing their mother and father. The psychological impact of a child knowing it was conceived following the death of their biological parent will emerge. The loss of a parent in a young child's life is always perceived as a major traumatic event. The understanding of the child that their loss was planned could be devastating. The further complication of the child then understanding that the lost parent may have had no say in their conception could be a further devastation and completely destroy the child's self esteem.

While we need to be sensitive to the grieving family member's desire to produce a child, we as law-makers must consider other important factors such as, as I have mentioned before, the psychological wellbeing of the child who is created.

For various reasons it is the case that many children are raised in a single-parent family. Largely those children know they were created by two loving parents who, to the best of their knowledge, had intended to be intrinsic to their family for many years and to guide their children to maturity. Unlike other children who have two parents, whether they be biological or social, the child who is the result of the posthumous procedure is forever denied the opportunity to know and to have two loving parents in their life.

Mr HULLS (Attorney-General) — Briefly in relation to this matter, I do not support this omission. The member for Kororoit proposes removing all references to the posthumous use of gametes in the bill. Even if this omission were to succeed, it would not outlaw the posthumous use of gametes because the omission is not seeking to replace what is in the bill with anything to regulate the posthumous use of gametes. That would be regulated by the National Health and Medical Research Council, and it has guidelines that permit the posthumous use of gametes, subject to certain conditions. We believe regulating in this legislation the posthumous use of gametes is a far better approach than relying on the National Health and Medical Research Council guidelines alone.

The posthumous use of gametes and embryos is already permitted in Victoria, but the laws, I have to say, are unclear. There are significant anomalies. Members who have followed some of the court cases about these matters, including the case of AB and the like, would know that these confusing laws have led to some stressful and difficult court cases.

The bill proposes a sensible and principled approach to the regulation of the posthumous use of gametes in this state. There will be extensive protections of the interests of the deceased and children born through the use of gametes. The posthumous use of gametes will only be possible if the deceased consented to that use in writing, and of course the gametes are only to be used by the deceased person's partner. All applications for the posthumous use of gametes must be approved by the patient review panel. That panel must have regard particularly to the welfare and interests of the child to be born and the possible impact on the child to be born as a result of the treatment procedure.

Of course, there will be counselling involved. This bill creates a more rigorous and much tighter regulatory regime on the posthumous use of gametes than the

national guidelines provide, so I certainly do not support the omission.

Mr THOMPSON (Sandringham) — I received a missive from the Australian Christian Lobby on this particular clause. It is a sensitive and difficult issue, but in the lobby's submission, which I would like to place on the record, it is noted that the bill allows a child to be conceived after one of its parents has died. This is a very disturbing provision, as it notes:

> It is considered tragic when a pregnant woman's husband or partner dies before the child is born as the child will never have the opportunity to know its father.

However, at least in this scenario the father was alive at the time of the child's conception, meaning that his life and the very early beginnings of his child's life did overlap even if only for a short time. It continues:

> This bill will allow the artificial conception of a child using gametes from a dead person, who will be named as the child's parent on the birth certificate but is not otherwise taken to be a parent of the child (denying the child access to any inheritance from the deceased's estate, for example).
>
> The UN recognises that the child wherever possible should have 'the right to know and be cared for by his or her parents'.

A child has that right pursuant to article 7 of the United Nations Convention on the Rights of the Child of 1989.

If this bill is passed, the state will intentionally allow the conception of a child who will have no possibility at all of knowing one of its parents. In the vast majority of cases there is no way of knowing whether the deceased would have consented to the creation of a child after his or her death. The Australian Christian Lobby notes that the desire of a surviving partner to conceive a child with a deceased partner is understandable if it should be directed towards supporting the person in their grief and not to inflicting further distress by creating a child deprived of the opportunity to know one of its parents.

This particular provision is one where a delicate balance needs to be maintained between the nature of a relationship. There are many circumstances that can be configured with people who may be struggling with cancer over a long period. There might be a very long relationship, and science at different times might allow certain miracles to be created. The counterbalancing argument is that a child should have every opportunity to be supported by two parents and get to know two parents. Therefore I respect the omission proposed by the member for Kororoit and the feeling and argument behind it.

Section 46 is a difficult provision. I note there is a counselling requirement. It also requires the support of the patient review panel. I have earlier raised questions about the panel. We have not come to the patient review panel and its composition, but an ideological approach to this particular issue might make it easier or less easy for the posthumous use of gametes.

It also requires that the deceased person provided written consent for the deceased person's gametes or an embryo created from the deceased person's gametes to be used in a treatment procedure of that kind. That is a further safeguard. In considering a vote on this clause a very difficult balance has to be achieved between the rights of the grieving partner upon the death of a person and the right of a child to have the benefit of two parents who can nurture, support, protect and help them on their life journey.

Heading agreed to; clause 46 agreed to.

Clause 47

Mr CLARK (Box Hill) — I want to draw attention to clause 47 because it provides that the patient review panel must have regard to the possible impact on the child to be born as a result of the treatment procedure. I highlight that because it is in stark contrast to the lack of such a provision in clause 40, which we were debating earlier, as is proposed section 22, which is to be inserted into the Status of Children Act by clause 147 of the bill. When canvassing that subject previously in the debate the Attorney-General's response has been that, notwithstanding the omission of a reference to the welfare of the child in clause 40, clause 5 of the bill, because it refers as a guiding principle to the welfare and interests of the child, ensures that the patient review panel will be required to have regard to the welfare and interests of the child to be born when considering an application under clause 40.

However, that argument is undermined by the fact that clause 47 states expressly in relation to approval of the posthumous use of gametes or an embryo that the patient review panel must have regard to the possible impact on the child to be born as a result. It seems to me that if it is good enough to be included in clause 47, it is good enough to include a similar provision in clause 40. Worse still, it can be argued that the fact that such an express reference is included in clause 47 but omitted from clause 40 tends to the conclusion that the panel is not being directed to have regard to the interests of the child in relation to clause 40 in the same way that it is being directed to have regard to the possible impact on the child in clause 47.

Ms CAMPBELL (Pascoe Vale) — I support the points that have just been outlined. I refrained from speaking on clause 41 because I wanted to take the opportunity once we came to clause 47 to highlight the very point that the member for Box Hill has just raised. Further I draw the attention of the Attorney-General to the fact that the current Victorian Infertility Treatment Act has as its guiding principles, and I quote section 5(1) of the act headed 'Guiding principles':

> It is Parliament's intention that the following principles be given effect in administering this Act, carrying out functions under this Act, and in the carrying out of activities regulated by this Act —
>
> (a) the welfare and interests of any person born or to be born as a result of a treatment procedure are paramount;
>
> (b) human life should be preserved and protected;
>
> (c) the interests of the family should be considered;
>
> (d) infertile couples should be assisted in fulfilling their desire to have children.

Section 5(2) of the guiding principles is absolutely crucial, but it has been omitted from the guiding principles in the Assisted Reproductive Treatment Bill 2008. Section (5)(2) states:

> These principles are listed in descending order of importance and must be applied in that order.

To refresh members' minds, guiding principle (a) states the welfare and interests of any person born or to be born as a result of a treatment procedure are to be paramount. We have put that in clause 47 but not in earlier clauses. I too fear what the member for Box Hill has just raised: that when the courts are required to interpret this Parliament's intention, the fact that the primary interests are listed in one clause — that is, clause 47 — and not in clauses 41 or 40 could cause some confusion.

I think we will be back here in the not-too-distant future — 'spare us' some people might say — moving and debating amendments to this legislation. I am conscious of how the numbers are falling at every vote — how they are being recorded I mean to say, not how they are falling — so it is clear that an amendment such as that raised by the member for Box Hill will not get through this time, but often ministers reflect on what are good amendments — —

The DEPUTY SPEAKER — Order! We are debating clause 47, not any amendment.

Ms CAMPBELL — I put it to the house and the Attorney-General that if in future we are coming back to this kind of legislation, we need to insist that those who draft that future bill ensure that the panel must have regard to the possible impact on the child to be born as a result of the treatment procedure, and it needs to be consistent.

Clause agreed to; clauses 48 to 58 agreed to.

Clause 59

Mr HUDSON (Bentleigh) — I move:

8. Clause 59, lines 7 to 27, omit all words and expressions on these lines and insert —

"person if the applicant —

(a) is an adult; or

(b) is a child and —

(i) the person's parent or guardian has consented to the making of the application; or

(ii) a counsellor has provided counselling to the person and advised the Registrar, in writing, that the person is sufficiently mature to understand the consequences of the disclosure.".

This amendment relates to the disclosure of information. We are dealing here with the threshold question that every donor-conceived child should, I believe, have the right not only to a name, a nationality and identity but as an adult should also have access to identifying information about their biological mother and father. Clause 59 basically creates two categories of children. If you were conceived using gametes donated before 31 December 1997, you are denied access to identifying information unless the donor has given consent to that disclosure. The argument is that until that date donors had not been asked for their consent to the release of this information, and therefore they have a right to privacy. However, I think we have to consider the rights of the child here. This is the paramount consideration. I hope the Attorney-General will give consideration to this amendment. I really do not believe we should tolerate a distinction in this bill between children's rights depending on when they were born. I do not think we should tolerate that distinction.

If we go back to the debate on the Adoption Act in 1984, all members who took part in that debate accepted the paramountcy of the welfare and interests of the child in relation to accessing information. They had exactly the same debate then. It was the same debate about whether the secrecy and closure of records that had occurred in relation to adopted children in the past should be maintained and disclosure should apply only prospectively for children to be adopted in the

future or whether it should apply to all children. At that time members accepted the principle that the right to know about your genetic origins and heritage overrode any concerns about the right of relinquishing parents to privacy.

All sorts of fears were expressed at the time, but in fact what happened was that adopted children who as adults sought to exercise the right to find identifying information about their relinquishing mothers did it responsibly and carefully, and they usually did it through a mediator. There were not the catastrophic consequences that were predicted at the time. In fact it was handled in a very mature and sensible way. Of course all adoptive children now have an automatic right to information, the only caveat being the requirement that they have counselling.

I believe now is the time to give donor-conceived children the same right to information that adopted children have had for nearly 25 years. There is no reason why they should not have access to that information. We should not be creating undesirable differentiations in categories of children. This bill proclaims a right to information about your genetic identity, and it should apply as an absolute right to all children once they turn 18 years of age. A distinction should not be made. We will find that the floodgates will not open on this because for children born before 1988 there are no records. There will be nothing we can do to assist those children to gain access to identifying information about their genetic origins because the information will not exist. But for the children for whom there is information, as a Parliament we have an obligation and a duty to provide them with that access.

The research also shows that a large percentage of donors support the right of their offspring to receive identifying information regarding their birth. We should not allow genealogical bewilderment to continue for these children. We should allow them the same rights that every other child, including adopted children, has. I commend the amendment to the house.

Mr LANGUILLER (Derrimut) — I rise in support of the proposition advanced by the member for Bentleigh, and I am guided in terms of my judgement on it by the important contributions made in this chamber, including those of the Premier and the Attorney-General. I have taken into account the best interests of the child, as both the Premier and indeed the Attorney-General said, and I find it very hard to understand why we should not facilitate access to information to all, irrespective of when they were born. I certainly accept the notion of the bill and have worked through the complex issues and ethical and moral challenges, and in the name of accepting the fundamental notion of the best interests of the child I have formed the view that it is important that the interests of the child override everybody else's interests.

As a member of the Scrutiny of Acts and Regulations Committee I am reminded weekly, fortnightly and monthly that when it comes to human rights there are always competing rights. There are never absolute rights of one or the other; they compete with each other. There may well be some issues in relation to the donor and his or her right to privacy, but when I consider the rights of the donor as against the rights of the child, I respectfully argue that the rights of the child ought prevail. In that light I support the proposition advanced by the member for Bentleigh. I think we ought be consistent, and I think we ought be transparent all the way through.

That is in fact exactly the intention of the Attorney-General and the government in relation to all of the issues associated with these records and access to information. I think this is important; I think it is a good contribution, and I certainly believe the notion advanced by the member for Bentleigh is one that adds value. It takes nothing away, and it delivers on the principle of justice where everybody is equal. I find it very hard to understand — and I ask the Attorney-General if he could kindly give a further explanation — why we ought to discriminate against a group of children in our community. I request that this amendment be taken into account seriously. It has been advanced in the best interests of the child and in good faith. I believe the member for Bentleigh made a contribution of quality which will improve the government's proposed regime. I conclude by asking the Attorney-General if he could furnish us with the argument as to why that should not be the case.

I would welcome, and I think a lot of people would welcome, consideration being given to allowing all the children in Victoria to have access to that information; it is in their best interests. Let us be practical about this as well. I am advised that there would not be too many records anyway, so we are not saying that it will be a massive issue in Victoria — quite the contrary. At some time in an individual's life they may wish to know who their biological parents are, and difficult as it is for us to come to grips with it, that person's rights must ultimately prevail over the donor's rights. I respectfully submit that the amendment moved by the member for Bentleigh is a very good proposition, and I ask members to consider it seriously and support it.

Mr THOMPSON (Sandringham) — I support the amendment moved by the member for Bentleigh and commend him for it. I also support the remarks made by the member for Derrimut on this question.

In the history of adoption in Victoria an examination of both the 1928 and 1964 parliamentary debates relating to the Adoption of Children Act revealed that no consideration had been given to the question of whether the interests of the child were best served by the falsification of birth records and the restriction of access to information. Society has developed in different ways. In debate on the 1920s adoption legislation it was felt that it was advantageous to the child that the birth record be falsified and access to it be restricted. It was felt that it was in the interests of the child and the adoptive parents that there be no indication to the wider world that the child was in fact an adopted child. It appears that the legislative provisions implementing a wall of secrecy around the true biological background of the adopted child were presumed to be for the benefit of the child.

In the 1920s debate in the other place Mr Jones, who was the Minister of Public Works at the time, is reported as saying:

> The importance of complete adoption cannot be too strongly stressed, for the change in status of the child is one that touches its life at every stage and in every phase. From the unfortunate stigma of illegitimacy there is a happy cloak of secrecy …

In the 1964 debate the then member for Kew observed that while the purposes of adoption had varied very much from time to time, it involved today 'a breaking of the ties of the child to its natural parents and the substitution of new ties with the adoptive parents'.

With regard to the general position in Australia the report of the Royal Commission on Human Relationships in 1977 noted:

> … out of concern for finality privacy and security for all parties to the adoption process sealed record procedures were applied in Australia …

The law in that particular instance has since changed, and access has been opened up to adoption records so that people have the opportunity to understand their genetic inheritance.

One of the underlying reasons for the secrecy in the law surrounding donors was the uncertainty relating to inheritance issues. There was no law, and in the in-vitro fertilisation (IVF) field science was moving ahead of laws that regulate, with scientists left in the dark a little bit about how to do it. It was considered by the leading practitioners at the time a virtue on their part if they destroyed records that would enable a person to contact or access a donor, because the donation was made on the condition of anonymity, and also because there could then be no implications in terms of inheritance issues. However, I would argue very strongly that a child has a strong, clear, enduring and fundamental right to an understanding of their genetic inheritance. In my earlier contributions to this debate I alluded to the importance of that.

Just as with adoption I do not believe secrecy surrounding the background of the child is consistent with the best interests of the child, likewise in the IVF field I do not believe secrecy is in the best interests of the child. It might be said that the competing interests have to be balanced in the area of adoption, with the adoption triangle — those of the biological or natural parents, the adoptive parents and the rights of the child. Clause 5 of the bill before the house, however, states that the interests of the child are of paramount concern, and I would argue that as we legislate on these issues we should be proactive and aggressive, to enable children to fully understand their genetic inheritance and to ensure that it not be shrouded in mystery.

Ms CAMPBELL (Pascoe Vale) — We have had the member for Derrimut touch on the subject of rights. It is a subject I want to expand upon. I believe there are absolute rights and there are relative rights. As members of the Scrutiny of Acts and Regulations Committee know, when there are relative rights, these have to be balanced. I have outlined to the house my belief it is an absolute right for any child created through assisted reproductive technologies and assisted reproductive treatment that they not only be the result of their genetic parents but that those genetic parents be their social parents. That is what I think is an absolute right for a child. We have put that proposition to the house on a number of occasions through various divisions. It has been clear that this house does not want to ensure those rights are enacted in this particular legislation, so let us accept that we agree to disagree on that.

What we are now faced with is a situation where there are relative rights. For members who do not quite get this, relative rights are, for example, that I have a right to swing my arm but I do not have the right to swing my arm and hit somebody on the nose with it. This Parliament has to assess the relative rights of the child compared with those of the donor in terms of the secrecy that has gone with donating in the past. The evidence from children who are born as a result of donor gametes is clear. Members who have been in this house this week — and that is all of us — will have

heard me referring a number of times to the briefing in room K. At that briefing donor-conceived children who are now adults called on us for truthful birth certificates. A commissioning mother and her husband, who could not be with us, called for truthful birth certificates, as did Pauline Peile, who used to head a significant area in the Department of Human Services — she is a former senior counsellor and manager at the Adoption and Family Records Service, which was formerly the Adoption Information Service, and she was a consultant and adviser during the establishment and development of services provided by the Infertility Treatment Act. They each put very clearly to us that one non-negotiable in this debate should be to have honest birth certificates.

Members might say, 'Why would you want truthful birth certificates?'. How about each of us for 1 minute and 50 seconds imagining ourselves in the position of a donor-conceived person, or each and every one of us thinks of ourselves as a refugee brought to Australia after the Second World War, or thinks of ourselves as a refugee here from Iraq. In time we will want to know something about who we are and where we have come from. It might be because of medical problems, or it might be something to do with family history. Ignorance of this is quite frankly summed up in the term 'genetic bewilderment'. Each of us wants to know who we are and where we fit into this great community. A birth certificate is the legal document that enables you to do so. How often have we heard about people who might have come out here as young orphans after the Second World War or who lost their parents as refugees in crossing — from Vietnam, for example — who want to know who they are? If the birth records in their country of origin have been destroyed in the process of war, they tell us — and they have told us for decades — how bad that is. There is a new group of people who are appealing to us: 'Help us identify who we are and where we come from so that we can tell our children a little of their family history'.

Mr THOMPSON (Sandringham) — In the realm of adoption there are a number of parallel examples. I referred earlier to Joss Shawyer's book *Death by Adoption*, which was published by Cicada Press New Zealand in 1979. In the case of adoption she noted:

> The very act of adoption is a denial of the right of the child to her natural heritage — her birthright — the most basic right a person has, to know who she is.

That is quoted from page 21 of a paper I wrote many years ago.

Another researcher, H. S. Sants, who is the author of an article entitled 'Genealogical bewilderment in children with substitute parents', which was published by the University College of North Wales, Bangor in 1964, is quoted at page 4 of the Adoption Legislation Review Committee interim report of January 1979. It states Sants's case on adoption:

> Knowledge of one's origins is fundamental to psychological/social wellbeing and identity, and refusal to make information available deprives —

in this case the adoptee —

> of this basic knowledge.

There are a range of factors which influence the mental stability and emotional security of an individual. Different individuals may react in dissimilar ways to the same fact situation. In the case of adoption there is a consistent theme as to why people feel they need to have an understanding of their genetic inheritance and their background and want to know about their factors.

Pages 52 and 53 of a study undertaken by Picton, mentioned at page 26 of my paper I referred to earlier, note that Picton characterised the reasons, in this case adoptees, want to know about their background under five headings. The first one related to identity and the importance of someone knowing who they were. The second heading related to a right. In this study a number of respondents said that it was a natural birthright. Another person said, 'I feel it is a normal basic thing to want to know', and, 'It is a basic human right'. The person indicated that it had done a lot of good to that person to know, and it reinforced their feelings that they had a right to know.

Other people had a desire to meet the parents. In the case of one person they used the language 'to find the parents I never had'. Another person said, 'I wanted to find someone to whom I could relate to emotionally'. Some wanted to find out as a result of curiosity. One person said:

> Plain curiosity … I don't want a mother — I already have one.

Other people indicated multiple reasons as to why they wished to find out, including tracing ancestry, dealing with medical problems, establishing in the case of adoption the reason for relinquishment, and a number of developmental stages that relate to early adolescence, late adolescence and attaining adult legal status. Also, in the case of engagement or pending marriage, there can be a desire for specific knowledge to visualise in concrete and definite terms the biological link that connects an unknown past to an unpredictable future. That is from a book by Sorosky at page 141.

There are also adult matters of a practical nature, such as taking out insurance in the case of illness, civil service disputes and property disputes. In the case of pregnancy it lists a person's concerns regarding possible but unknown hereditary weaknesses. In the case of the death of one or both of the adoptive parents — in this case adoption, but it can be read parallel to the current debate — it creates in an adoptee, or a person conceived through artificial insemination by donor, a feeling of loss or relieves him of the burden of concern and guilt about hurting the adoptive parents. A further factor is that the separation or divorce of the social parents can trigger off feelings of rejection and abandonment. Then there is the notion of crisis in middle age, as the last opportunity for an adoptee to find their birth mother — —

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

Mr HUDSON (Bentleigh) — I want to return to this question, because it is an important question for the Parliament. This Parliament has a fine record in recognising the paramountcy of the rights of the child and fundamental to those rights is the question of understanding and knowing your genetic origins — your identity, where you came from. We have recognised that consistently in legislation before the Parliament. It is recognised in the United Nations Convention on the Rights of the Child, in the Children, Youth and Families Act and in the Adoption Act.

The house had the same debate almost 25 years ago. To members of the Liberal Party, to members of The Nationals as well as to members of my own party I say that members of all parties at that time, including Barry Steggall, a former member for Swan Hill, and Noel Maughan, a former member for Rodney, recognised that the distinction that said that secrecy should surround the records of those who had been adopted out prior to the consideration of the legislation should be swept away, that we cannot countenance as a Parliament different levels of rights for children based on when they were born. That is completely unacceptable. They recognised that they needed to make that change. I am urging the Parliament, 25 years later, to not go backwards on this question today.

I understand the Attorney-General has presented a bill and that these are provisions in the existing act, but we are to pass legislation creating a new act. The Attorney-General has talked about the kind of new rights that will be created out of this act. Here is a fundamental right. It is a right for every child, irrespective of when they were born, to know their genetic inheritance, to know their origins. I believe it is something that should receive bipartisan support.

We should all, in this Parliament, support that right. The consequences of not doing so means we are saying to those children, 'For the rest of your lives you have no right to know where you came from. You have no right to access, without the consent of the donor, information about your genetic inheritance'. It is unacceptable for us to say they cannot get access to that information. They could have a concern about their genetic make-up or about whether they might be passing on some genetic abnormality which may affect their children when they are born. The anonymity that was offered to donors and their right to privacy are important, but they do not override the right that we are considering here today — that is, what is in the best interests of the child and what is in the best interests of those children who are now young adults. They have gone far too long without the right to access that information as an absolute right.

Here is the opportunity for us as a Parliament to do what our predecessors did in 1984, nearly 25 years ago. Here is an opportunity for us to put right a wrong. It was something that should never have been countenanced. Perhaps it was countenanced for good reasons, but those reasons are not sufficient to override the considerations we have before us today. We are saying to these children that they should be hampered forever by not having access to that information and by the fact that their donor will always have the veto. That is not an acceptable position for this Parliament to adopt. We need to have the courage to say, 'Let us respect the rights of the child to have access to that information'.

The Attorney-General has a great record in reform. I ask him to give serious consideration to this amendment and to consider making this historic change which is consistent with the Adoption Act 1984.

Mr CRISP (Mildura) — I find this a most difficult issue to consider as we weigh up the rights of the child, the right to privacy and also the issue of retrospectivity as we try to weave our way through what is fair and what is right. I urge the Attorney-General in his summing up on this issue to guide us, because the principles of privacy, the principles of retrospectivity and the principles of the rights of the child have collided in this legislation. It is an issue that should and is weighing heavily on members, because we are setting precedents as we go forward.

I am mindful of clause 5 which lays out the principle for this legislation, that the rights of the child will be paramount. In supporting the member for Bentleigh's

amendment, if this legislation is to be consistent, then we must be guided by clause 5. However, I am troubled by the areas of retrospectivity and privacy. It will trouble many for a long time to come, and I find it the most difficult of issues.

Ms CAMPBELL (Pascoe Vale) — Let us reflect on what has been passed in this legislation so far. In the guiding principles of the legislation it states that the interests of the child are paramount. We have given a tick to surrogacy and a tick to partial surrogacy; we have ticked single women having access to assisted reproductive treatment; we have ticked single males and females having access to surrogacy; but at this point we have put a cross against allowing children who are now in their 20s, generally speaking, access to their birth certificates.

Today we are trying to put at the very centre of this legislation the interests of the child. As I have asked in my earlier contributions, members should think about what it would be like for them if they were denied what the member for Bentleigh is requesting on behalf of others. If we have ticked off on the other provisions in this legislation, let us say donor-conceived children are going to have the same rights as any other child in this state.

The United Nations Convention on the Rights of the Child recognises that states should have respect and ensure that all children are able to preserve their identity. Those of us who are supporting the member for Bentleigh think that all children should have the same rights to this genetic information.

Debate adjourned on motion of Mr CAMERON (Minister for Police and Emergency Services).

Debate adjourned until later this day.

BUSINESS OF THE HOUSE

Program

Mr CAMERON (Minister for Police and Emergency Services) — I move:

> That the government business program agreed to by the house on 7 October be amended by omitting the order of the day, government business, relating to the Police, Major Crime and Whistleblowers Legislation Amendment Bill.

Motion agreed to.

ASSISTED REPRODUCTIVE TREATMENT BILL

Consideration in detail

Debate resumed from earlier this day; further discussion of clause 59; and Mr HUDSON's amendment:

8. Clause 59, lines 7 to 27, omit all words and expressions on these lines and insert —

"person if the applicant —

(a) is an adult; or

(b) is a child and —

(i) the person's parent or guardian has consented to the making of the application; or

(ii) a counsellor has provided counselling to the person and advised the Registrar, in writing, that the person is sufficiently mature to understand the consequences of the disclosure.".

Mr CLARK (Box Hill) — I and a number of honourable members, I expect, have been on the horns of a dilemma over this issue. On the one hand there are very good reasons for granting children conceived through donor procedures access to information as to their biological parents. On the other hand there is a concern about overturning arrangements that were put in place at the time which offered a promise of anonymity to donors.

We have heard excellent contributions to the debate so far by every member who has spoken. The member for Derrimut in particular is absolutely right in asking the Attorney-General to put to the house the government's reasons for wanting to continue with the preservation of donor anonymity and the prevention of access to donor information by children who are now young adults, because we need to listen to and consider the arguments the government may want to put on that score.

There is no doubting the importance of this to the children concerned. From the presentations that I and other honourable members have heard from these very impressive young adults who have addressed us on various occasions, what is absolutely fundamental to them is their sense of identity. They want to know who they are, what their biological background is, who their biological father was, in most instances, but potentially who their biological mother was as well. There is a sense of loss and lacking a place in the world if they do not have that information. Flowing on from that, they are distressed and angry at being denied that

information or being given the identity of their father as a code letter or number.

At a mundane level our advancing knowledge of public health shows that knowing one's biological ancestry is very important to preserving one's health and safeguarding against possible health risks that may be inherent in one's genes as a result of one's biological parents. For example, not knowing one's father died of a stroke or heart attack in his 40s or 50s may mean that the child concerned does not take precautions they otherwise would if they knew there was a genetic history of that sort of health problem in their ancestry. The case that these children have mounted is very compelling indeed.

As I understand the position — and I hope the Attorney-General puts other facts on the record if I am wrong in this — at the time that these donations were made, the promises of anonymity were made as a private undertaking by the clinic concerned to the individual. Anonymity was not something that was guaranteed by statute at the time that the donor made the donation. If that is the case, my assessment is that the promise of anonymity is a private arrangement between the donor and the clinic. That private arrangement should not be necessarily binding on either the state or certainly on the child conceived. We heard Myfanwy Walker in particular arguing very compellingly that she was not a party to this agreement that promised anonymity, and that private agreement should not be allowed to override her rights. Both as a matter of principle and as a matter of law and normal legal practice, that is right. If it is an arrangement that is what the lawyers refer to as 'inter parties', it does not bind outsiders. If that is the case then that in particular takes me to the conclusion that we should not be statutorily preserving that confidentiality.

Let me add that if previously in statute there has been confidentiality guaranteed by statute but it was not there at the time that the donation was made, then I am not particularly concerned as a matter of fundamental principle about overturning it, because it was a right granted after the event by statute, and statute can again remove that right after the event. If there were donors who made donations under protection of statute there are further points to be made.

Mr HULLS (Attorney-General) — I fully understand the issues that have been raised by members in relation to this matter. I fully understand the concerns that have been raised in other public forums by people who have been born of arrangements that were entered into some time ago.

Can I simply say in relation to this particular bill that, as we know, parents are now counselled and encouraged to disclose their children's origins. The regulatory authority, which is currently the Infertility Treatment Authority, has been facilitating these processes through initiatives such as Time to Tell. Members would also know that we have established a voluntary register for donors and offspring to make contact if they both consent.

The current regime is preserved in this legislation. The current regime in the provisions of this bill seeks to encourage parents to inform their child of their origins and enhance their child's access to donor information. It is true that in the past donors consented to the use of their gametes on the basis of certain undertakings of how they might be contacting the future by their donor-conceived children. Can I say that the provisions that are set out in this legislation obviously encourage parents to inform their child of their origins and also enhance their child's access to donor information. I might also say— and I particularly say this to the member for Bentleigh — increasingly this will become accepted practice.

Mr CLARK (Box Hill) — I thank the Attorney-General for that explanation of the government's position, which in summary is that disclosure is to be encouraged and may, as the Attorney-General foreshadows, become accepted practice. Nonetheless, it seems clear that it is the government's intention that people conceived by donor procedure will not be given a right to access the information where they have not had the right immediately prior to the introduction of the bill. With respect to the Attorney-General, I do not think his answer gave the policy rationale for that nor responded to the arguments put forward by the member for Bentleigh and others as to why it was appropriate and justified to change that position.

I said at the end of my previous remarks that if at any time there had been a statutory guarantee of anonymity at the time a donation was made, then other considerations would have to come into play in addition to simply saying that a private arrangement did not bind the child conceived. The Attorney-General has not responded to that point as to whether or not there are people who, at the time of donation, have the benefit of statutory undertakings of anonymity. However, if there were such persons, then I think the analogy put by the member for Bentleigh regarding adoption is compelling, because he has said — and this was supported by the member for Sandringham — that adoption law in the past has provided for anonymity.

We nonetheless took a decision on public policy grounds that that policy should be reversed. Accordingly we overturned the expectations of people regarding anonymity as a result of statute. To do that is a very big step because it is a retrospective change to a person's statutory rights. It needs to be done for a very compelling reason. It seems to me that if that is what the Parliament has done in relation to adoption, that is on all-fours with what is now being proposed in relation to donor conception. If the government and the Attorney-General were to argue that we would be wrong to make that change in relation to donor conception, the Attorney-General also needs to argue that we were wrong in what we did about adoption, because I cannot see how he can say that we made the right decision in relation to adoption, but that we would be making the wrong decision about donor conception.

In the absence of any compelling argument to the contrary that the Attorney-General may put forward, I am persuaded that the rights of the child concerned need to prevail over whatever expectation or undertakings might have been given to the donor. Accordingly, the amendment should be supported.

Mr STENSHOLT (Burwood) — Having listened to the debate, I am of a mind to support the amendment subject to the Attorney-General's further views, particularly in respect of the experience under the Adoption Act when it was put in place. I seek from the Attorney-General whether he has any legal advice — —

Mr Thompson — On a point of order, Speaker, I draw attention to the state of the house — —

The DEPUTY SPEAKER — Order! I do not uphold the point of order at this time. I have the right to not uphold that sort of point of order. I will not uphold it at this point at 5 minutes before the lunchbreak.

Mr STENSHOLT — As I was saying before the interruption, I ask the Attorney-General whether he has any legal advice about any possible appeal through legal means in respect of the provisions of upholding the privacy claims of donors.

Mr HULLS (Attorney-General) — I have already made my contribution on this matter. I repeat that this bill maintains and preserves the current arrangements. I said at the conclusion of my contribution that I expect the current arrangements increasingly will become accepted practice in the future.

The DEPUTY SPEAKER — Order! The question is:

> That the words proposed to be omitted stand part of the clause.

House divided on omission (members in favour vote no:

Ayes, 41

Allan, Ms	Hulls, Mr
Andrews, Mr	Kosky, Ms
Batchelor, Mr	Lim, Mr
Beattie, Ms	Lupton, Mr
Brumby, Mr	Maddigan, Mrs
Cameron, Mr	Morand, Ms
Carli, Mr	Munt, Ms
Crutchfield, Mr	Nardella, Mr
D'Ambrosio, Ms	Neville, Ms
Donnellan, Mr	Noonan, Mr (*Teller*)
Duncan, Ms	Overington, Ms
Eren, Mr	Pallas, Mr
Foley, Mr	Perera, Mr
Graley, Ms	Pike, Ms
Green, Ms (*Teller)*	Richardson, Ms
Hardman, Mr	Robinson, Mr
Harkness, Dr	Scott, Mr
Helper, Mr	Thomson, Ms
Herbert, Mr	Trezise, Mr
Holding, Mr	Wynne, Mr
Howard, Mr	

Noes, 36

Blackwood, Mr	Marshall, Ms
Brooks, Mr	Merlino, Mr
Burgess, Mr	Morris, Mr (*Teller*)
Campbell, Ms	Northe, Mr
Clark, Mr	O'Brien, Mr
Crisp, Mr (*Teller*)	Powell, Mrs
Delahunty, Mr	Ryan, Mr
Dixon, Mr	Seitz, Mr
Fyffe, Mrs	Smith, Mr K.
Hodgett, Mr	Stensholt, Mr
Hudson, Mr	Smith, Mr R.
Ingram, Mr	Sykes, Dr
Jasper, Mr	Thompson, Mr
Kairouz, Miss	Tilley, Mr
Kotsiras, Mr	Victoria, Mrs
Langdon, Mr	Wakeling, Mr
Languiller, Mr	Walsh, Mr
Lobato, Ms	Wells, Mr

Amendment defeated.

Sitting suspended 1.02 p.m. until 2.03 p.m.

Business interrupted pursuant to standing orders.

Mr Thompson — On a point of order, Speaker, the Parliament was sitting non-family-friendly hours at 2.30 this morning when the Attorney-General was struggling to explain to the people of Victoria and to members of this Parliament the implications of the Assisted Reproductive Treatment Bill 2008. I ask him

to explain to the gallery now what the implications are for the people of Victoria rather than perpetrating a fraud on future generations of Victorian children.

The SPEAKER — Order! There is no point of order. I ask the member — —

Mr Thompson interjected.

Honourable members interjecting.

NAMING AND SUSPENSION OF MEMBER

The SPEAKER — Order! I name Murray Thompson, the honourable member for Sandringham.

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

> That the honourable member for Sandringham be suspended from the service of the house during the remainder of today's sitting.

Dr Napthine — I raise a point of — —

The SPEAKER — Order! There is no point of order. There cannot be a point of order at this stage.

Motion agreed to.

The SPEAKER — Order! Under standing order 127, I ask the honourable member for Sandringham to leave the chamber.

Honourable member for Sandringham withdrew from chamber.

QUESTIONS WITHOUT NOTICE

Economy: global financial crisis

Mr BAILLIEU (Leader of the Opposition) — My question is to the Premier. I refer the Premier to his answer on Tuesday when he confirmed that he had received advice from Treasury on the impact of the global economic crisis for Victoria, and I ask: will the Premier now inform the house and the people of Victoria of Treasury's advice as to the impact on forecasts for unemployment, revenue and debt levels?

Mr BRUMBY (Premier) — I thank the Leader of the Opposition for his question. Through the relevant cabinet mechanisms, and particularly the expenditure review committee, both the Treasurer and the Treasury keep me and the government regularly informed with verbal briefings on the picture of the world economy and its implications for Australia.

My recollection is that I was, I thought, forthright in my response on Tuesday on both questions that I was asked about the international economy. I have made it very clear that the advice from both the Australian Treasury and the Victorian Treasury is obviously that the world economy is much, much slower, and as a consequence economic growth in Australia and Victoria will be slower.

As I have explained to the house on previous occasions, there are a number of budget documents that are released during the course of the year. Generally, if my memory is correct, it is December when the midyear budget update is released, and you would expectif there were any revisions to the major forecasts going forward they would be made by the Treasurer in his release of the midyear budget update at that stage.

But anyone who read the papers today would have seen that in the last quarter growth declined right across the European Union, with negative growth of 0.2 per cent. The United States of America is obviously showing negative growth, and as I have indicated publicly, five of the seven major economies around the world have either a zero or a negative in front of them. In those circumstances economic growth for Australia, for Victoria, and employment growth will be lower than they otherwise would be.

I should say that the unemployment figures were released today. What they show for our state is that Victoria's unemployment rate is 4.4 per cent. It has been below 5 per cent since July 2006 — —

An honourable member interjected.

Mr BRUMBY — So you want to claim the good things, but not the bad things, is that right?

Honourable members interjecting.

The SPEAKER — Order! I warn the member for Warrandyte, I warn the member for South-West Coast and I warn the member for Yuroke. We will not go down this path today. I ask the Premier not to respond to interjections.

Mr BRUMBY — I think it is worthy of note — and obviously this is why the Reserve Bank of Australia cut interest rates by a full 100 basis points earlier this week, by a full percentage point — that in the three months to September this year Australia added 29 300 jobs compared with over 80 000 for the same period last year. So growth has clearly slowed, and that is why I have said last week that the three-point plan that I put forward — —

Mr Baillieu — On a point of order, Speaker, the Premier is debating the question. He has suggested that the people of Victoria must wait until December to learn of revised forecasts. The question I asked was specific about the forecasts. I invite you to ask him to address that question now rather than force the people of Victoria to wait until December.

The SPEAKER — Order! I do not uphold the point of order. I was listening to the Premier quite intently, and he was talking about the unemployment figures that were released just today. The Leader of the Opposition's question clearly asked about unemployment.

Mr Baillieu — Forecasts.

The SPEAKER — Order! The Premier, to continue. Can I suggest to the Premier, though, that even with interruptions he has been speaking for 4 minutes.

Mr BRUMBY — As I have made very clear, the forecast by government is set out each year, and there is a long-established process for that. Governments are not in the business of making predictions one week, changing them the next and making different predictions the week after. We have a budget, we have a midyear budget update and we take into account all of the considerations over that period.

Obviously the Reserve Bank's decision to cut interest rates by 1 percentage point this week will do much to instil more confidence in the economy. It was exactly the right decision, and I believe the other elements that I have been proposing publicly — accelerated and expanded capital works and more support for home buyers — will also stimulate jobs and opportunities.

Employment: regional and rural Victoria

Ms RICHARDSON (Northcote) — My question is to the Premier. Can the Premier outline to the house the actions the Labor government is taking to secure economic certainty and job security for regional Victoria and say whether there are any threats to the security that these initiatives are addressing?

Mr BRUMBY (Premier) — I thank the honourable member for the question and make the point that the very first piece of legislation that our government introduced into this Parliament was the Regional Infrastructure Development Bill. We introduced that legislation because when we came to government we had a huge imbalance in investments, jobs, activity and opportunities between country Victoria and Melbourne. What we promised to do as a government, and what we delivered, was to implement a Regional Infrastructure Development Fund (RIDF) to drive jobs, drive opportunities and drive investment in country Victoria.

I am very pleased to advise the house today that there is now at least one Regional Infrastructure Development Fund project in each of the 48 regional councils across the state. We are pleased with this achievement. In fact I am advised by the Minister for Regional and Rural Development that RIDF has now invested $421.3 million in 201 capital works projects across the state, leveraging more than $1.25 billion of new investment in country Victoria. PricewaterhouseCoopers evaluated the completed RIDF projects. It showed that nearly 4000 jobs have been created on average each year in regional Victoria, and two-thirds of the proponents surveyed said that their project would never have happened if we had not had the Regional Infrastructure Development Fund in place.

This has been a process. It has been a policy that could never have happened under the former Kennett government, and it is a positive initiative which is making a difference around our state. Some of the projects around the place include the new performing arts centre being built in Wangaratta, which I know is very strongly supported by the local member, despite the opposition of the Liberal Party federal member. There is the new Skilled Stadium in Geelong. We assisted with stage 1, we are assisting with stage 2 and we are supporting what has been the renaissance of that ground and that football team in Geelong. The new showgrounds in Shepparton were funded under the Regional Infrastructure Development Fund.

I was at IBM in Ballarat just a few weeks ago with the members for Ballarat East and Ballarat West. The 300 new jobs in Ballarat at the IT park would never happened without the assistance of the Regional Infrastructure Development Fund. There is the recently completed Hepburn Springs bath house, which I understand was opened by the Minister for Regional and Rural Development. We have upgraded regional airports across the state, from Portland in the west to Mallacoota in the east, and of course for the small towns we have committed $61 million to hundreds of small town projects.

As part of what we are doing with the RIDF, we have also backed that with the relocation of certain government agencies: the State Revenue Office to Ballarat, the Rural Finance Corporation to Bendigo and the Transport Accident Commission to Geelong. I note from recent media reports in Geelong that now that the TAC is so advanced in its movement down there, many

other white-collar businesses are moving with them and creating additional jobs and opportunities.

I want to say today that, in addition to all of those things, we have seen a huge investment in aged care, in country hospitals, in country schools and in regional fast rail — of course every step along the way opposed and criticised by those opposite. Patronage on fast rail has grown by 63 per cent over the last three years. It has been a great project.

Finally, can I say that if you look around the state today, as we enter what is internationally a period of slower growth, you will see we have made, I think, very timely investments in major infrastructure. We have the Wimmera–Mallee pipeline in the north-west of the state; the food bowl project in the Goulburn-Murray region, driving jobs and opportunities there with 1700 new jobs; and in the north-east of the state, $501 million for rail standardisation. These are huge jobs and huge investments in infrastructure, which are generating opportunities across the state.

In Geelong of course there is the ring-road, costing $380 million and replacing something like 27 sets of traffic lights. There are all of those things, plus the goldfields super-pipe, which is bringing water to Bendigo and Ballarat. These are great state-building and nation-building projects. We are pleased with the investments we have made. The biggest threat to those investments comes from those opposite.

We have put in place these investments. They are generating jobs and they are generating opportunities, and they are timely investments in major projects at a time of unprecedented international slowdown.

Dairy industry: emission trading

Mr RYAN (Leader of The Nationals) — My question is to the Minister for Regional and Rural Development. I refer to the Victorian government's submission to the carbon pollution reduction scheme green paper and the minister's commentary on that document. I further refer to the Premier's observation yesterday that dairy product is the largest single export from our state, and I ask: given that the dairy manufacturing sector is at severe risk of becoming internationally uncompetitive because of the emission trading scheme, why is it that Victoria's submission makes absolutely no reference to the dairy industry, let alone government proposals to protect it?

Ms ALLAN (Minister for Regional and Rural Development) — I thank the Leader of The Nationals for his question. Of course those of us on this side of the house know that the biggest risk to Victoria's dairy industry is the constant opposition to and blocking of Victoria's food bowl modernisation project — an absolutely critical project for the future of the dairy industry in this state.

Mr Ryan — On a point of order, Speaker, this is question time. I have asked a question, and I ask the minister to respond to the question rather than using this period to abuse the opposition parties.

Mr O'Brien interjected.

The SPEAKER — Order! I warn the member for Malvern.

Mr Batchelor — On the point of order, Speaker, the Minister for Regional and Rural Development was answering the question. The question related to the threats to the Victorian dairy industry, and she was responding exactly in those terms. If the Leader of The Nationals did not want the minister to talk about the dairy industry, he would not have included it. If he did not want the minister to talk about the threats to the dairy industry, he would not have mentioned them either. As he mentioned both, the minister is entitled to respond to both of those issues.

The SPEAKER — Order! I do not uphold the point of order. In particular I do not uphold the point of order because I had not heard the minister refer to the opposition.

Ms ALLAN — Efforts by those of us on this side of the house, the Labor government, have strongly supported the dairy industry over the past nine years. That is why we have seen the Victorian dairy industry continue to go from strength to strength. We have the investment in water infrastructure projects, like the food bowl modernisation project that is providing more water for dairy farmers in northern Victoria, and support in other programs. We have a range of programs in Regional Development Victoria that are about supporting the dairy industry. The cattle underpass program is one of those projects that is absolutely critical to supporting the dairy industry.

Honourable members interjecting.

Ms ALLAN — Members opposite do not like us talking about these projects because they are projects that those opposite would never have delivered.

Mr Ryan — On a point of order, Speaker, the minister is clearly debating the issue. The document about which I have asked her is a submission by the government to the green paper. The dairy industry is

not mentioned in it; I am simply asking why that is so when the government apparently accords such importance to this industry.

The SPEAKER — Order! I do not uphold the point of order. The Leader of The Nationals knows full well that if he widely canvasses issues in the prelude to his question, then the minister is entitled to respond by addressing those comments as well as the question.

Ms ALLAN — It is for these reasons that as the Victorian government has been deliberating on its response to the commonwealth's proposed carbon pollution reduction scheme it has been taking an approach that looks at supporting all of Victoria. We are looking at the regions in Victoria that are most affected. We are looking at supporting the industries in Victoria that are most affected, and we are looking at working with and supporting those communities whether they involve people on low incomes or areas like the Latrobe Valley which we know are going to be most exposed to some of the changes arising from the carbon pollution reduction scheme.

We have taken a holistic approach in developing our response. That is why we make specific reference to areas of trade-exposed energy industries. It is why we have proposed a range of strategies where we can work with the commonwealth government to support those industries and those communities that are most affected. Perhaps the Leader of The Nationals would be advised to go back and reread the document and see the way that the Brumby government is looking at how it can work — —

The SPEAKER — Order! The minister need not offer advice to the Leader of The Nationals in her answer.

Ms ALLAN — Thank you, Speaker, I will take your advice. That is why the Brumby government has put in its submission to the federal government and made it absolutely clear that we want to see an emission trading scheme that supports businesses in adjusting and supports communities through this adjustment phase. This is something we can only achieve by working collaboratively with the commonwealth government. We will continue to pursue the interests of Victoria first. We will put Victoria's interests first and then industry's and the community's to the commonwealth government as we continue to work through this process.

Water: Victorian plan

Mr BROOKS (Bundoora) — My question is to the Minister for Water. I refer the minister to the Brumby government's water plan and the commitment to secure Victoria's water through creating, saving and sharing, and I ask: can the minister outline how Melbourne households and businesses are contributing to this plan and what impact there would be on households and businesses if the Victorian government considered other projects to augment Victoria's water supplies?

Mr HOLDING (Minister for Water) — I thank the member for Bundoora for his question and for his commitment to working with all members in this chamber to provide greater water security for Victorians. As all members of this chamber know, this government has a clear and coherent plan to provide water security for Victorians.

We know that because we are investing in modernising the state's irrigation infrastructure. We know that because we are investing in Australia's largest desalination plant — a non-rainfall-dependent source of water. We know that because we are investing in a statewide water grid that will provide us with greater flexibility in how we manage our water resources in the future. We know that because we are investing in water recycling projects in our regional communities — in Ballarat, Bendigo, Hamilton and at the Gippsland Water Factory — and also in substantial water recycling projects for Melbourne, including upgrades that have already occurred at the western treatment plant at Werribee and the foreshadowed upgrade at the eastern treatment plant, which will provide over 100 billion litres of class A recycled water. We know that because we are investing in conservation programs which are helping businesses, helping industry and helping households to reduce their water use.

It is a comprehensive plan. It is a clear plan. It is a coherent plan of modernising irrigation infrastructure, desalination, a statewide water grid, water recycling and water conservation programs. In developing this plan of course we considered a range of alternatives. We considered the option of constructing further dams, but as I informed the house on Tuesday, we are already facing not only record low rainfalls but even lower inflows into our storages, reservoirs and dams. Therefore you will not provide greater security for Victorians by building yet more storages, yet more dams and yet more reservoirs. We know that in Melbourne our storages are currently at 34.5 per cent. We do not want for the lack of storages. What we need is water to put into those storages, and our plan

involves diversifying our water sources by providing water from desalination.

But there are those who advocate the construction of dams. The Nationals advocate a dam on the Mitchell River. The Leader of the Liberal Party says that it is not proposing to put a dam on the Mitchell River.

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

Mr HOLDING — I will not debate the question. The debate is in the coalition parties over where to put a dam in Victoria. We make it very clear that we do not support dams to provide greater water security for Victorians. We support creating further water sources through diversity and using the water that we have currently more efficiently by upgrading irrigation systems and recycling water.

We also make it clear that recycling is a critical part of our plan, and that is why we are investing $300 million through Melbourne Water to upgrade the eastern treatment plant. There are those who advocate plugging the north–south pipeline and replacing that water with recycled water. You cannot advocate using water from the eastern treatment plant to replace that which would come down the north–south pipeline unless you propose to drink that recycled water. The opposition has made it clear that that is not its policy; therefore there is no new water to come to Victorian households, including Melbourne households, through replacing water from the north–south pipeline with recycled water unless you propose to drink it. It is another example of the opposition having two policies on every issue — two water spokespeople and two water policies. It cannot sort out its position.

The SPEAKER — Order! The minister has concluded his answer.

Hospitals: government performance

Ms WOOLDRIDGE (Doncaster) — My question is to the Minister for Health. I refer the minister to his failure to answer very serious reports raised during yesterday's question time, and I refer him to yet another report from a doctor which appears on the AMA Victoria website of the Australian Medical Association (Victoria), which states:

> At least one of my patients has died this year because we didn't have time for something as basic as properly managing his electrolytes. If the relevant specialist unit wasn't full to the brim and could have taken him on, maybe he'd be alive today

I ask: will the minister now simply advise the house whether or not his department has received similar reports?

Mr ANDREWS (Minister for Health) — I thank the member for Doncaster for her question. If I understand her correctly the posting that she refers to appears on the AMA EBA (enterprise bargaining agreement) blog site. I am not for a moment disputing the quote that she offers or that which was offered yesterday.

Following the question yesterday my office contacted AMA representatives and put it to them that if they are in possession of any information that they think I or officers of my department should have then they should provide it to me. It would be my expectation that if the AMA had information that it felt I or officers of my department should have that it would provide it to me. Again I say that as I understand it — I have not spent time searching the AMA EBA blog site, I freely admit that — the names of any practitioners who might have made a posting are not included there and neither, as I understand it, are the details of any hospital. Again, what I have made clear and what my office has made clear to the AMA is that if it has information that it thinks I or officers of my department should have in order to make further inquiries then it should provide that to us, and it would be my expectation that it would do that.

I simply remake the point I made yesterday that I value and the government values the work of our hospital doctors. That is why we have provided hospitals with the funding to employ extra doctors, indeed record numbers of hospital doctors, across our health system. We are proud of that; they do fine work. The government and I, as the Minister for Health, will continue to support them in the important work they do right throughout our state.

Water: small business

Mr DONNELLAN (Narre Warren North) — My question is to the Minister for Small Business. I refer the minister to the Brumby government's water plan and the commitment to secure Victoria's water through creating, saving and sharing, and I ask: can the minister inform the house how the Brumby government is taking action to provide small business in Victoria with the certainty to prosper and grow?

Mr HELPER (Minister for Small Business) — I thank the honourable member for his question. I want to make my response under three separate headings. Firstly, there is the enormous amount of support that is generated for the small business sector, and indeed for

the Victorian economy, by the building of major water infrastructure works throughout the state by this government. The second area I want to discuss is the value and productive use that the small business sector can make of the additional water that is made available to Victorian communities and cities around the state. Thirdly, I want to indicate the importance to the business sector of certainty that is brought about by having reliable access to water supplies in the future.

Honourable members have heard a number of times about the enormous economic benefit that flows from the construction of so many major projects around the state. Going to the first area, for example, we have heard that 3180 full-time equivalent jobs will be created during the construction of the desalination plant. Of course many of those jobs will be with small business contractors and small business suppliers. Much of the income generated by economic activity is spent in the local economy, and I would have thought the member for Bass would welcome that.

Going to the second area, the desalination plant will also create 150 ongoing full-time equivalent maintenance jobs. Again, many of those jobs will be provided by small businesses, be they contractors or small employer manufacturers et cetera. That is a terrific opportunity for those communities affected by the plant. Over 1729 jobs will be created during construction of the food bowl modernisation project. Again, we think about the many small local contractors in the region who will benefit from that work. As I saw on a recent visit, it will be a tremendous boost to the economy and to the small business sector in that area.

There is also the upgrading of the eastern treatment plant and the other major projects that are happening right around the state. There is also the Wimmera–Mallee pipeline, and the list goes on and on. That activity should be recognised as providing a significant economic boost. When economic pressures are coming to bear on the small business sector these projects will deliver a significant economic stimulus.

There is the opportunity to use the additional water that will be injected into our industries and into our communities to create wealth and economic activity from that water. If you look at the nursery industry or at the bakeries and everything in between, you see there will be an enormous opportunity to build economic activity from the additional water that will be available. That is why the Brumby government is working with the small business sector and industry in general to ensure that it has the opportunity to use that water efficiently to drive as much economic benefit as is possible out of the water opportunities that are coming along.

The third area I indicated I wanted to discuss is that of certainty. The business sector looks for economic certainty as much as it looks for certainty of access to infrastructure and as much as, in relation to this question, it looks for certainty of access to water. These projects build the certainty of access to water by, for example, creating additional water through the desalination plant and in so many different ways making sure that the economy of Victoria benefits from the reliable provision of water. As well this provides certainty into the future for the major investment in the infrastructure projects I outlined before.

Office of Police Integrity: law enforcement assistance program database

Mr McINTOSH (Kew) — My question is to the Minister for Police and Emergency Services. I refer the minister to the Office of Police Integrity annual report, which reveals that the government has still not implemented the OPI's recommendation from 2005 that the LEAP (law enforcement assistance program) database be urgently replaced and to the fact that in 2005 the then Premier stated in relation to the LEAP database:

> We're prepared to do whatever is required to get the best possible system in the future. I'm sick and tired of the mistakes that have been made … in a good system you do not have these mistakes occurring …

I ask: is this just another case of a government that is all talk and no action?

Mr CAMERON (Minister for Police and Emergency Services) — I thank the honourable member for Kew for his question. Certainly the government welcomes the OPI report. We are very proud to have established the Office of Police Integrity. When they see the work that the OPI does I think all honourable members can be very pleased with that, notwithstanding the opposition to the OPI by the Liberal Party at the last election. What the police have said about this — from memory, at Public Accounts and Estimates Committee hearings — is that it is their intention to roll out LEAP during 2010. The police have been saying that for quite some time. That is what the Chief Commissioner of Police has said, and my advice from Victoria Police is that it is a timetable it is still sticking to.

Water: Victorian plan

Mr HARDMAN (Seymour) — My question is to the Minister for Regional and Rural Development. I refer the minister to the Brumby government's water plan and a commitment to secure Victoria's water through creating, saving and sharing, and I ask: can the minister outline to the house what actions the government is taking to attract investment and jobs to regional Victoria through the plan?

Dr Napthine interjected.

The SPEAKER — Order! The member for South-West Coast is warned. He will not be warned again.

Ms ALLAN (Minister for Regional and Rural Development) — I thank the member for Seymour for his question. I am sure the member for Seymour will be very pleased to know that today I can inform the house of even more good news about how the Brumby government's water plan is creating more jobs for regional and rural Victoria — for example, and there has already been reference to it today, the investment in Australia's biggest desalination plant that is being planned for construction down in South Gippsland. The economic benefits of this desalination plant include the injection of more than $1 billion into the Victorian economy. There will be over 3100 jobs created during the construction phase and a further 150 jobs will be created in the ongoing operation of the plant.

I have also already referred this week to the $367 million investment in and the 1720 jobs that are going to be created during the peak construction phases of both the food bowl modernisation project and the Sugarloaf pipeline project across northern Victoria. With the construction of the pipeline now under way we are starting to see some very important economic benefits flow into the region. I am pleased to advise the house today that Melbourne Water has already received expressions of interest from more than 1000 people from the local community who are keen and ready to get to work on the pipeline project.

Not only have we got people wanting to work on the project, a range of contracts for the pipeline have already been awarded to regional businesses. Regional businesses are already receiving work for the construction of site offices, the provision of hardware services, the provision of quarry products, concrete supply and the cartage of water and transport services. In addition the industry capability network has been building up a register of local businesses that are interested in supplying goods and services as well as those works that need to be undertaken along the pipeline itself.

I am very pleased to say there has been a big response to this from communities along the pipeline route as well. I am sure the member for Seymour will be very pleased to know that there are 42 local businesses from around the Yea community that have registered with the industry capability network and the Murrindindi shire their interest in working on this important project.

An honourable member interjected.

Ms ALLAN — There are 42. You have got 1000 people who are ready to go and who want to work on the project and you have got 42 local businesses that are keen to supply goods and services and products to the local community. At a time when we need to look at new infrastructure investment and ways to generate more economic activity, these are important jobs, particularly in smaller communities such as Yea. If you look at the diversity of the sorts of businesses that are benefiting, you will see these range from take-away shops, which are able to provide services to the contractors, all the way through to other services which can be found within the local community. But as we know, all of these jobs and all of these opportunities for local businesses and communities would have been at serious risk from those opposite, who do not have a jobs plan and who do not have a water plan. In fact no-one seems to know what their plan is.

Regional communities are big winners from the Brumby government's water plan, a plan that gives priority to rural communities and farmers, to the environment and to urban centres. This is what good policy is about. Some might even call it common sense. Others, however, I am sad to say, prefer to take a policy approach that is:

> Policy aimed at a few for the benefit of a few at the expense of the overwhelming majority of Victorians.

Whose policy is this? It is the Liberals and The Nationals policy. That is their way. It is not the Brumby government's way — —

The SPEAKER — Order! The minister will conclude.

Ms ALLAN — It is not our way. Our way is to make sure we are investing in infrastructure projects that are securing Victorian jobs and are about securing Victoria's vital water supply.

Police: numbers

Mr McINTOSH (Kew) — My question is to the Minister for Police and Emergency Services. Can the minister advise the house how many of the 339 police stations in Victoria were allocated additional or new officers on a permanent basis in the last 12 months, and is it not a fact that less than 10 stations actually received new permanent officers?

Mr CAMERON (Minister for Police and Emergency Services) — The honourable member for Kew just does not seem to get this point: operational matters are for police. He does not get that point. The Chief Commissioner of Police and the police command allocate police. If we have a look at what has happened in recent times, we see that one side of this house slashed 800 police and that one side of this house has put on more than 1500 police. Quite frankly, when you look at it, this is the side of the house that the public believe in, because we are the side that put on police.

Water: Victorian plan

Ms BARKER (Oakleigh) — My question is to the Minister for Water. I refer the minister to the Brumby government's water plan to secure Victoria's water through creating, saving and sharing. I ask the minister to inform the house how this plan will secure water supplies for all Victorians wherever they live.

Mr HOLDING (Minister for Water) — I thank the member for Oakleigh for her question. As all honourable members know, this government has a clear and coherent plan to provide water security for all Victorians irrespective of where they live.

For Victorians who live in northern Victoria we are embarking on the biggest irrigation upgrade in this country's history. It is a vote of confidence in the future of irrigated horticulture and agriculture in this country. This government supports and was able to secure commonwealth funding for the Sunraysia irrigation modernisation project, an important project for Mildura and the surrounding communities. This government is not only building but has fast-tracked the Wimmera–Mallee pipeline, a vitally important project for communities in the north-western part of the state — for those of the Wimmera-Mallee region, who rely on that stock and domestic system. It is a project that is being built five or six years ahead of schedule, and it is a project that would have never happened under a coalition government in Victoria.

This government is also supporting substantial projects to provide water for Bendigo and Ballarat. We have completed the goldfields super-pipe, a project that was opposed by those opposite and is now embraced by them. This government is building the Gippsland Water Factory, a project that will provide access to recycled water for communities and businesses in Gippsland. This government is building Australia's largest desalination plant, which as well as providing water security for Melbourne will also connect Geelong to that non-rainfall-dependent source of water and potentially also towns in Western Port and South Gippsland. This government has a comprehensive plan to secure water for all Victorians irrespective of where they live.

It is true to say, however, there are alternatives to this plan kicking around; so many alternatives that even the contradictory ones amongst them have been embraced by those opposite. We make it clear that if you plug the north–south pipeline, you will provide less water for Victorians and you will make them pay more for it by forcing them to implement alternatives. That is the inevitable consequence of plugging the north–south pipeline.

You only had to read the *Age* this morning to see the reports of the lamentable performances of the four leaders who sit opposite and their contradictory positions on water policy — —

The SPEAKER — Order! The minister will not take that track. He will address his response to the question and not debate it.

Mr HOLDING — As I have made clear, this government supports a comprehensive plan to provide water security for Victorians. It is a comprehensive plan because it provides diversified water sources. It moves us away from our traditional reliance on surface water collected and stored exclusively in dams, reservoirs and storages, and it moves us instead to diversified water sources, such as desalination and recycled water, and the more efficient use of the water we currently have available through the upgrade of outdated and inefficient irrigation systems.

You cannot have multiple positions on these issues. We know that elections in Victoria are supposed to provide a choice between two opposing positions. It is a bit hard in Victoria when both opposing positions are held by the coalition sitting opposite.

ASSISTED REPRODUCTIVE TREATMENT BILL

Consideration in detail

Debate resumed; further discussion of clause 59.

Clause agreed to; clauses 60 to 82 agreed to.

Clause 83

Mr CLARK (Box Hill) — Clause 83 is the clause that provides for the membership of the patient review panel (PRP). This clause is an appropriate place in which to examine some of the issues I have referred to earlier in the debate about the composition of the membership of the patient review panel. The concern I have, and it has been raised by a number of people who have made representations to me, is that the bill is almost totally silent as to who is going to make up the membership of the patient review panel. When I say 'who', I do not mean the names of the persons concerned, although of course if those persons have been identified as intended appointees, that would be worth knowing. More generally it is about what sort of person the government will be seeking to appoint. What sort of background, what sorts of skills and what sorts of qualities will the government be looking for? The bill is completely silent on this point except in subclause (3) where it says at least one member must have expertise in child protection matters.

Recently in this house the government has argued in relation to the Victoria Law Foundation that it wants to have skills-based boards. It does not want to have representative boards, and it wants to appoint the best available persons to particular bodies. That is a reasonable view to have in relation to government sector bodies which are accountable to the minister, but if that is the government's position on this bill, then the house needs to have some idea of the government's thinking as to what sort of background, skills and experience it is looking for in the people it is going to appoint to the patient review panel.

For the reasons I have already referred to, this panel has extraordinarily sweeping discretions, particularly in relation to the approval of surrogacy; exempting surrogacy arrangements from the normal requirement determinations; whether there is a barrier to the treatment of a person under the act; whether or not to allow the posthumous use of a person's gametes and embryos; the period during which gametes or embryos may be stored or removed from storage; and a range of other matters. It is an important body within the new structure. In effect it is taking over, as far as I can see, some of the roles that up to now have been carried on by the Infertility Treatment Authority. The Infertility Treatment Authority is being renamed the Victorian Assisted Reproductive Treatment Authority, but it is minus a number of functions the ITA currently has. The patient review panel will have an important role in the scheme of the bill; hence this house is entitled to some information as to the government's thinking.

There is a further aspect to this — namely, that subclause (3), as I have indicated, says that at least one member must have expertise in child protection matters. If the government's policy position overall is that it wants a skills-based board and it does not want people coming from particular specified backgrounds or interests or representative capacities, then what are the reasons for the government's designating that at least one member must have expertise in child protection matters, but not nominating others?

Of course we can appreciate the importance of child protection matters. That may well be an aspect of this bill that has not received enough attention to date. The question has to be asked: is the government particularly concerned that there is a vulnerability or a risk in relation to child protection with the new regime that is being established by the bill and the wider range of circumstances in which surrogacy or assisted reproductive treatment are to be permitted? Is that the reason the government has concluded it is particularly important to appoint at least one person with expertise in child protection matters?

There is that question that needs to be resolved on the one hand, and on the other hand unresolved is the question: why is it the government has not chosen to specify other criteria for the appointment of members of the PRP, albeit it has chosen to specify the requirement for at least one member?

Ms PIKE (Minister for Education) — The patient review panel is a very important panel. We note, as the member for Box Hill has said, that at least one member must have expertise in child protection matters. That is because the bill specifies that appropriate police checks have to be undertaken and there is a special focus on child protection matters, the parameters of the bill being configured around the rights of the child. But as the member also correctly identifies, the predecessor body to this bill has been the Infertility Treatment Authority.

I think there has been broad bipartisan consensus that members of that body have had the wide range of legal, medical and bioethical expertise required to meet the requirements they have had under previous legislation. The balance in that committee needs to be upheld at

varying times. Stipulating its membership too precisely does not allow the nominating minister to get the appropriate balance at given points in time. I am certainly confident, upon advice, that this patient review panel will be constituted in a way that meets the requirements under the act.

Mr CLARK (Box Hill) — I thank the Minister for Education for her contribution, based in part, I am sure, on her past experience as Minister for Health. I accept what she is saying, as far as it goes. However, I reiterate the fact that it would be worthwhile for the house to have some understanding of the sorts of skills and backgrounds and expertise that the government is looking to have on this patient review panel. The minister is perfectly correct in saying members of the Infertility Treatment Authority have been drawn from a wide range of backgrounds and expertise. The patient review panel will of course be conducting a much more narrow set of functions than has the Infertility Treatment Authority to date. One might assume that the sort of diversity of membership from which the Infertility Treatment Authority has been drawn is not the same range of membership of which the patient review panel would be composed.

I do not know whether the Attorney-General has obtained any further information from his advisers in the interim, but if he or another minister is not in a position to add more at this stage, I would appreciate being advised further while the bill is between the houses so that I can pass that information on to colleagues in the Legislative Council, because I think it is an important piece of information for members to have when they are considering the bill.

Mr HULLS (Attorney-General) — In relation to the panel's role and constitution, how it is constituted is set out in part 9 of the bill, as we know. That is why this has been raised. There will not be one panel as such. That is why clause 84 exists the way it does. There will be different panels constituted for different matters to be considered from time to time. It is a bit like the Victorian Civil and Administrative Tribunal, where you have expertise in a particular area depending on what the issue is. A panel may have to be constituted in relation to a criminal record check, for instance, so there will be expertise in that field. A panel may have to be constituted in relation to storage matters, so there will be experts in that field. There will be experts from time to time who will constitute different panels depending on exactly what the issue is to be decided.

Clause agreed to; clauses 84 to 95 agreed to.

Clause 96

Mr CLARK (Box Hill) — Clause 96 provides for decisions of the patient review panel that are reviewable. It provides that an application may be made to the Victorian Civil and Administrative Tribunal for a review of various decisions of the patient review panel. The decisions that are subject to application for review to VCAT are a subset of the total range of functions of the panel, or perhaps it is fair to say at least the main ones. The functions of the panel are set out in clause 85. One can compare the list there with the list that is set out in clause 96.

Clause 96 specifically provides that an application can be made for a review of a decision of the panel: that there is a barrier to treatment of a person under the act; not to approve a surrogacy arrangement; not to allow the posthumous use of a person's gametes or embryo; not to approve the period during which the gametes or an embryo may be stored; or to remove or not to remove an embryo from storage. With the exception of the last one of these, each of these items where an application for review can be made applies only where the patient review panel rejects the application that has been made to it.

What that means is that an aggrieved applicant can apply for a review, but as I indicated earlier it is not possible for another party, such as the Victorian Assisted Reproductive Treatment Authority or the minister, to apply for a review when the minister or VARTA is concerned about a decision that the panel has made to permit something. The process seems to be lopsided. The question therefore has to be asked: who is there in the process that is looking at matters from the point of view of the broader interests or the public interest or the interest of persons other than the applicants?

The response that may be given is that that is what the panel is there to do. Its members are not sitting as a tribunal hearing parties contest an issue. They are receiving an application and dealing with the applicant in making a decision on the basis of what the applicant puts to them and presumably on the basis of their own expertise and advice and the fairly broad-ranging powers they have to receive evidence. But what concerns me about that is that the bill specifies that the panel is to proceed by way of a hearing.

Clause 89 refers to the notice of a hearing and clause 90 refers to the conduct of a hearing. Clause 90(3) states in part:

> (a) the proceedings must be conducted with as little formality and technicality as proper consideration of the application permits …

Nonetheless this is specified in terms of the conduct of the hearing. It looks like it will consist of what lawyers refer to as an ex parte hearing where only one party is present and puts a point of view. There would be no-one present at the hearing to put a contrary point of view leading the panel to decide only on the basis of the applicant making representations and perhaps drawing on other material.

That is a concern, because there is a dichotomy between holding a hearing and having the panel be the body that does the evaluation. In any event it has to test and potentially rebut the applicant's arguments. Then that concern is compounded when we get to clause 96, where an application is made to VCAT only when the panel has rejected the applicant's application. The next question then becomes: who puts the alternative point of view at VCAT? The applicant goes to VCAT and asks it to review the decision. Who is the respondent to that application? Is it the panel that is the respondent to the application? If so, the panel would then send along representatives or brief counsel to go to VCAT and argue for its decision to be upheld before VCAT.

These are all important matters to be considered, because at least on the face of it, due to the way the bill has been drafted, it is not internally consistent or logical as to how the process is to operate. As I said earlier, there does not seem to be sufficient facility built in to ensure that the interests of the public and of the child that may be born as a result of the process are properly protected. The applicant has all these various powers and rights, but apart from the panel itself there is nobody else involved in the process to protect the interests of the charter or the public.

Mr HULLS (Attorney-General) — Briefly, as I understand it, we are discussing clause 96 in relation to the Victorian Civil and Administrative Tribunal. Clause 97 deals with who can apply to VCAT and makes it quite clear that an application may only be made by a person whose interests are affected by the decision of the patient review panel or the failure of the panel to act. In relation to the standing itself, there is the Victorian Civil and Administrative Tribunal Act 1998. VCAT has the discretion to decide in all circumstances who has standing.

Mr CLARK (Box Hill) — I do not want to prolong the point unduly, but the Attorney-General's response does not address the issues. He is certainly right in referring to clause 97; that was exactly the point I was making. The person whose interests are affected — namely, the applicant — can make an application for review. There does not seem to be any capacity for the Victorian Assisted Reproductive Treatment Authority, the minister or any other party to make an application for a review.

Again, granted that when the matter gets to the Victorian Civil and Administrative Tribunal the Victorian Civil and Administrative Tribunal Act 1998 provides discretion as to who it may allow to be additional parties. That is all beside the point. The question is — and I am concentrating just on the VCAT aspect of the issue— when the applicant goes to VCAT, who is it that the minister is expecting will be the other party? Is it his office, the Department of Justice or the Department of Human Services? Who are they going to send along? Is it intended that the patient review panel will send someone along? Who are going to be the named parties in the proceeding? Mr Jones or Ms Smith could be the applicant, who will be the named respondent?

However the panel proceeds, whether it proceeds on an ex parte basis, VCAT normally proceeds by parties making submissions to it from both sides of the issue. It is a pretty important question. Who is it that the minister expects, not who VCAT is going to allow, to be at VCAT standing up for the interests of the child, the public or whatever other interests need to be represented outside the interests of those who have applied for the review and who, as I have made crystal clear and with which the minister agrees, are the people who have made the application to the patient review panel in the first place?

Clause agreed to; clauses 97 and 98 agreed to.

Clause 99

Mr CLARK (Box Hill) — Clause 99 is the clause that provides for the establishment of the Victorian Assisted Reproductive Treatment Authority. It is probably an appropriate clause to canvass a number of issues that have been raised with the coalition parties about what is being done about the restructuring of the current Infertility Treatment Authority and, most importantly, counselling services that the authority currently provides to those who seek access to information about donors or children born of donor arrangements. We have already discussed that some of the current functions of the ITA have, in effect, been

moved to the patient review panel. Other functions, particularly the counselling function of the current Infertility Treatment Authority, are also being removed from the authority.

From what the opposition understands, the intention under the new arrangements is that counselling in future will be provided either by a counsellor associated with an infertility or assisted reproductive treatment clinic on the one hand or by counsellors who counsel on adoption at the moment. In relation to the latter, I understand there is a unit within the Department of Human Services that currently provides adoption counselling. It is foreseen that it may take on a substantial part of the counselling role.

I should also add that there is a further function currently performed by the Infertility Treatment Authority that is being removed, and that is the register-keeping functions that are being moved to the Victorian Registry of Births, Deaths and Marriages. The logic behind having the registers kept by the registrar of births, deaths and marriages is understandable because they need to be integrated with birth certificates and other important public records. One would expect that the registrar would have the expertise necessary to do that document-keeping function.

A strong point has been made to us by a number of people who have had experience or involvement with the counselling service currently provided by the ITA — that is, the Adoption and Family Records Service will not have the counselling expertise that is needed, nor will those necessarily associated with the clinics or those associated with the adoption service. What has been strongly and persuasively argued by many people is that at the moment the ITA provides an effective integrated service because people who wish to have access to these donor records come to the ITA.

The ITA has a specialist and effective counselling unit which explains to those seeking access to information the full implications of their request, and puts to them options for a progressive stage-by-stage contact with the donor. It helps manage that process because, as it says, the information that people can find out can be quite confronting — for example, they might arrange initially for anonymous contact between the donor and the child. The parties can exchange information on an anonymous basis and gradually build up the confidence that may eventually lead to a meeting and a full exchange of information. As I understand it, the ITA operates what it calls a mailbox service for that.

What is being put to the coalition parties is that specialist and successful service is going to be lost as a result of the break-up of these different functions of the current Infertility Treatment Authority. That is not an issue that has been raised by people who might have objections to or reservations about large aspects of assisted reproductive treatment and/or surrogacy arrangements. It is being put to us by people who are very supportive of the assisted reproductive treatment that is currently being provided under the auspices of the ITA. Their very strong point is that this counselling service, which many who have contacted us regard as important, is going to be lost. We are told that adoption counselling is very different to counselling on contacting donors because of the far greater complexity involved with donor arrangements. It is a cause of real concern to us that in moving the registers we are losing a lot of valuable expertise and I seek the government's response.

Mr HULLS (Attorney-General) — In relation to the donor registers and counselling services moving from the Infertility Treatment Authority to the Victorian Registry of Births, Deaths and Marriages, and also the Adoption and Family Records Service (AFRS) respectively, can I say to the honourable member that the decision to relocate the donor registers and associated counselling services from ITA to BDM is based on the principle that donor information is for the benefit of children born as a result of donor treatment procedures. As noted by the law reform commission report, which I have no doubt the honourable member has read, a child's access to birth and genetic information should be treated separately from the infertility or treatment needs of his or her parents. The parents' infertility should not prevail upon the child throughout his or her life. Centralising all information about a child's birth will also help to normalise donor conception and will see donor-conceived persons who have the desire for information about their genetic parentage actually accessing this information in the same way as other children in a similar position.

As the honourable member would know, BDM is a key agency in Victoria for the collection and management of identity-related data. Accordingly, it has protocols to internally validate data that is received and to protect its privacy as well. Existing working arrangements between the registry and the Adoption and Family Records Service will provide each donor-register applicant access to prescribed counselling before identifying information is released.

I think the honourable member would agree that the Adoption and Family Records Service has built a pretty impressive reputation over a long period for its

sensitive and confidential service to adoption applicants and more recently, I might say, to wards of the state. It is well placed to expand its services to meet the needs of persons associated with donor-conception services. The ITA has only provided a counselling service for donor-conceived persons for I think the last two years, and AFRS has a number of approved and experienced counsellors who currently provide counselling to adopted people seeking access to information about their birth parents.

The training of those counsellors on details of the Victorian donor register system will commence if and when this bill is passed. The extension of counselling services to AFRS will provide a wider choice of counsellor: male, female, psychologist, social worker and the like. Professional support will be provided and also supervision of counsellors, continuing professional development, continuing professional education and the infrastructure to provide services to meet the anticipated increase in applications.

The bill, as the honourable member would know, also provides that assisted reproductive treatment (ART) clinics will be allowed to provide the counselling for applicants to the central register. This will expand the total number of counsellors who may be able to provide what I think everybody will agree is a very important service.

Mr HUDSON (Bentleigh) — I put on the record that I believe the Infertility Treatment Authority has done an extremely good job in this area. The registers that it has maintained, the search capacity that it has had, the ability it has had to link up different donor-conceived children, as well as link donor-conceived children to their donors, and the counselling service that has been provided has meant that it has been a one-stop shop. I think that has worked well.

I can understand what the government is seeking to achieve with the reforms that have been proposed. It is one of those things we need to keep a watching brief on. What has worked well has been the idea that you could go to one place. The ITA has developed that capacity and profile, and the community knows that that is where you go. When you go there, not only are you going there to get access to information, perhaps for the first time, you can also be referred to the counselling service, and that is an important thing.

We need to see how the new Adoption and Family Record Service works. We did have adoption and counselling for wards of the state together, and I do not think that marriage, if I can use that term, worked as well as was hoped. There was a lot of money invested in it, but it did not work. It has been separated out again, and think we need to make sure we do not lose some of the best features we have in the current system in making these arrangements. I hope the Minister for Health and the Attorney-General will keep a strong watching brief on that to make sure we do not lose what I believe has been a world-class service that has been offered through the records and the counselling service of the Infertility Treatment Authority.

Mr CLARK (Box Hill) — Again I do not disagree with much of the Attorney-General's response, but I do not think what he had to say deals with the concerns I have raised. I am not questioning the logic of moving the recordkeeping function to the Victorian Registry of Births, Deaths and Marriages for the reasons that the Attorney-General gave and for the recordkeeping expertise of the registry. What I am questioning is what seems to be the risk of losing the very good counselling expertise that is currently within the Infertility Treatment Authority.

I am puzzled that the Attorney-General said that he did not want to see the interests of the child subordinated to the parents infertility treatment arrangements, if I heard him correctly. It is odd to see the Attorney-General suddenly standing up and asserting the position of the child on this occasion, given what we have been debating up until now. More importantly, if that is the position, then are we not doing exactly the same thing if counselling is being provided out of the ART clinics? Surely the ART clinics are primarily there to service the infertility or treatment needs of their clients and only secondarily to provide counselling in relation to children. If that is the objective of the change, we seem to be going out of the frying pan and into the fire.

Perhaps most importantly and concretely of all, if we are going to make the change to the registry of births, deaths and marriages, what is going to happen to the staff who currently make up the counselling service within the Infertility Treatment Authority? If the minister is saying, 'Okay, we are going to change the arrangements and we are going to move this body of expertise over to a unit within the Department of Human Services, and they will keep on doing the same job but with an appropriate separation of roles with the registry, and people will still be referred to them, and if not exclusively, certainly as an option', then we would at least know that body of expertise was not going to be broken up.

If on the other hand that function is going to be broken up and scrapped and these staff are going to become redundant over time or be transferred to other duties,

then that core of expertise that has been built up is going to be dissipated. If the Attorney-General is able to answer that very concrete question about the intended fate of the staff who are currently providing that service, perhaps we will have a better understanding of whether the concerns we have raised are indeed concerns that are likely to occur.

Dr NAPTHINE (South-West Coast) — I just wish to make a couple of points on clause 99, which establishes the Victorian Assisted Reproductive Treatment Authority. This sees the cessation of the Infertility Treatment Authority. I want to place on record the thanks of the Victorian community for the work that the ITA has done over many years. It has provided great leadership, direction, advice and decision making in some very difficult and controversial areas. I would like to place on record my thanks to the members of the authority over the years and particularly to its leading chairs in its early stages, Professor Louis Waller and His Honour Ken Marks. I had the honour of working with the ITA from 1992 to 1996 particularly in my role as parliamentary secretary to the Minister for Health. The ITA operated with distinction for the benefit of Victorians in dealing with some very challenging issues in the fields of infertility treatment and assisted reproductive technology (ART).

I also wish to make a point with respect to the donor registry and the counselling service. Philosophically I do not disagree with the decision that is proposed here with regard to relocating these services to their new homes, but what I place on record is the fact that the ITA has done a very good job in delivering these counselling services and managing the donor registry — although I will say that the donor registry did need a little bit of work early in the 90s to get it up to date. There was a lot of work done to try to get the donor registry accurate and to make sure all the agencies and medical clinics that were involved in ART were keeping appropriate and accurate records, which are absolutely essential if we are to fulfil the desire outlined in the guiding principles of allowing those born of assisted reproductive technologies to have access to their genetic history and their genetic records. I think that is absolutely essential, and I support it wholeheartedly.

I do not have any philosophical opposition to what is proposed, but I reiterate the points that have been made by the member for Box Hill and the member for Bentleigh and say that when we are moving it, we should make sure we move the expertise, make sure we move the skilled staff, make sure we move the care and compassion, consideration, open access and open door policy that exists under the ITA. I say to the government that this move has some logic and sense to it, but it is the people that will make it work.

It is very important to recognise that the people who have been operating through the ITA have a great track record, a great sense of understanding of their role and a great sense of empathy with the clients with whom they deal. I would hope and trust that all of that goes to the new agencies so that people who are born of assisted reproductive technologies get all the help and assistance they desire and need to trace their true genetic origin, because I think that is fundamental to one's being, fundamental to one's psychological health and development and fundamental to one's understanding of their physical health and development.

Given the potential passage of this bill, I again refer to the passing of the Infertility Treatment Authority and place on the record our thanks to all those who have been members of it, all those who have worked for it. We all recognise that it has played not only a vital role in this area of controversial law and decision making within Victoria but has also provided leadership in Australia and across the world. I have had the honour of travelling across the world, and the Victorian Infertility Treatment Authority is well respected in all parts of the world in respect of these very important issues. I think the work of the people involved needs to be acknowledged and recognised.

Ms CAMPBELL (Pascoe Vale) — Much of what I have wanted to ask has already been referred to the minister, and I hope he will be able to provide answers to the questions that were asked. I want to place on the record some correspondence from Andrew McLean and his wife whose two children were conceived by egg donation from a known donor and Pauline Peile. In relation to Mr McLean's concerns, it might be helpful to the minister if I say that he is a committee member of the Victorian branch of the Donor Conception Support Group, where his responsibilities are consumer advocacy and education, with particular concerns regarding the rights of children conceived, and he has served on a number of round table discussions and advisory groups for the Infertility Treatment Authority.

Mr McLean's concerns go to the point that the Victorian Registry of Births, Deaths and Marriages already has birth records of all donor-conceived persons born in the state of Victoria. The four registers are not records of birth; they are storages for records of medical treatment. That is the information which is contained at the Infertility Treatment Authority. He does not think, given that the Infertility Treatment Authority's focus has always been not only on having a register but also on counselling, that the registry of births, deaths and

marriages is not an appropriate place for the storage of anyone's medical records and that for that reason alone the move should not proceed.

I would like the minister to put the record straight on how these medical records are going to be stored and follow up on the questions that were asked earlier in relation to the counselling component that currently is highly regarded in the donor-conception community. Under an amended birth records system, the registry of births, deaths and marriages will now be referring people to different places. In the past, under the Infertility Treatment Authority, it was all quite conveniently located. The second point the minister might like to respond to is how the donor community and the donor-conceived community know of these changes, and will the department be putting in place advertising to ensure that people know where to go to get the appropriate services?

Debate adjourned on motion of Mr McINTOSH (Kew).

Debate adjourned until later this day.

LOCAL GOVERNMENT AMENDMENT (COUNCILLOR CONDUCT AND OTHER MATTERS) BILL

Second reading

Debate resumed from 8 October; motion of Mr WYNNE (Minister for Local Government).

Mr NOONAN (Williamstown) — It gives me great pleasure to rise to speak in support of the Local Government Amendment (Councillor Conduct and Other Matters) Bill, because the objective of this bill is to strengthen local democracy and to provide clarity to councillors and the public on the standards of behaviour expected in local public life. The bill continues the Victorian government's reform of the local government sector. I just want to make a brief contribution, because I know other speakers wish to speak on this bill.

The bill importantly creates a benchmark for standards of conduct and introduces a councillor conduct panel arrangement. Importantly conflict-of-interest arrangements will also be strengthened and extended to include council staff. The bill will also provide for the adjustment of councillor and mayoral allowances, including the resources provided to councillors. To those who take an interest in this bill, as I do, the substance probably will not come as much of a surprise because most of the proposed amendments have been flagged in a discussion paper entitled *Better Local Governance*, which was released by the minister for comment back in November of last year. As I understand it, there were over 70 formal submissions, including about 50 from councils and local government peak bodies.

Based on my reading of it, it appears there is widespread in-principle support for establishing many of the new arrangements encompassed in this bill. Additional consultation is taking place with the Department of Justice, including with the Victorian Civil and Administrative Tribunal (VCAT), to ensure that the bill provides for natural justice and does not breach an individual's human rights.

There are a number of substantive components to this bill and time probably does not permit me to go through them all. The centrepiece is probably part 3 of the bill, which inserts principles of councillor conduct and processes to support and enforce good conduct by elected councillors. In looking at sections 76B and 76BA, it is clear that in many respects they align with community standards. Broadly speaking, in plain English terms, the principles will require a number of things from councillors. I will list them quickly. They will require councillors to act with integrity, act impartially in terms of making decisions in the public interest, be open and transparent, avoid conflicts between his or her public duties, act honestly, treat all persons with respect, exercise reasonable care and diligence in decision making, ensure that public resources are used prudently and solely in the public interest, act lawfully in all circumstances and, importantly, provide leadership. Again, I think these are the sorts of characteristics that are consistent with community expectation.

As the minister stated in his second-reading speech on this bill:

> These principles will become part of every council's … code of conduct and be a point of reference for councillor conduct panels and VCAT.

To go to the detail of the councillor conduct panels, one has to understand that they will be established to help councils to enforce their councillor codes of conduct and will be established for a council after a resolution of the council. The panels will consist of people with both legal and local governance experience. The Municipal Association of Victoria will be responsible for forming the two-member panels and will consult with the Victorian Local Governance Association to prepare a list of people suitable to sit on those panels.

The panels will have a number of capacities in terms of disciplining councillors. They include official

reprimands, public apologies, a leave of absence for up to two months and further training or counselling. The role of the Victorian Civil and Administrative Tribunal will be strengthened in this process to allow more serious misconduct cases to be dealt with. VCAT will be able to disqualify councillors, suspend councillors or rule them ineligible to be mayor or chair of a special committee.

In conclusion, I have spoken to my local council, the Hobsons Bay City Council, about this bill, because its views matter to me very much. It did not express any concerns. I suspected that, because it conducts its affairs on a very professional level. If the bill is passed by the Parliament, the amendments should be in place by the November 2008 elections. I commend the bill to the house.

Mr DELAHUNTY (Lowan) — I have to voice my concern about the disgraceful way we have dealt with this bill. This bill was one of the three bills that were on the government business program to be completed by 4.00 p.m. today. We have already voted on of the Energy Legislation Amendment (Retail Competition and Other Matters) Bill, and the Police, Major Crime and Whistleblowers Legislation Amendment Bill has now been taken off the program so that it will not face the guillotine this week. Local government elections are about to take place in Victoria and it is a disgrace that we have only had four speakers — two from the opposition — contribute to this bill. We have been debating a very important bill today; I cannot overemphasise the importance of the Assisted Reproductive Treatment Bill. But the reality is that bill was not on the list of bills to be guillotined. Here we are at 20 minutes to 4 on a Thursday afternoon — 20 minutes before the guillotine — and we finally have the opportunity to bring up concerns about local government. There are many good things happening in local government, but what has happened here today and the amount of time that has been given to us to debate this very important sector highlights the fact that this government does not really take local government seriously.

The issue is further highlighted by the fact that the shadow Minister for Local Government, the member for Shepparton, has been calling for changes. We have had problems right around the state, including places such as Ballarat and Brimbank. This is the underbelly of some of the problems we have seen right across Victoria. As we know, most councillors have their community's interests at heart. These people want to see improper and corrupt behaviour and practices stamped out.

Today we had dumped in front of us this report by the inspector of municipal administration on the investigation into the Ballarat City Council. It has been dumped here at the last minute, just before the council elections, with little time to debate it and little time for it to expose some of the corrupt practices that have been going on across Victoria. It is a disgrace. The Minister for Local Government should have pushed for this to be presented to Parliament earlier and for more time to debate these important issues.

I know there are important matters in the bill. It will amend the Local Government Act 1989 to cover things such as the enforcement of standards of conduct in local government. It will establish principles of councillor conduct. The shadow minister has been calling for this for many years. It is a disgrace that at 5 minutes to midnight we have been given time to debate the bill.

Another provision in the bill is the requirement that a councillor who has a conflict of interest other than exempt interest not take part in either the consideration of or vote on that matter. We strongly support that. There is a requirement for a code of conduct for council staff. It is a good move, but the question of why it has taken so long to do that has been highlighted.

Today we received this investigation into the Ballarat City Council. It relates to an investigation into the civic hall redevelopment processes, building permits obtained by councillors and their associates, directorships of companies owned by councils, the chief executive officer recruitment process, Cr Jones's business interests, and Cr Vendy's involvement in the funding of a film called *The Writer*. There are many concerns in this report. It highlights why we should be debating this issue much more extensively than we will here today.

Turning to the executive summary, in May this year the minister finally put pen to paper and said he would have an inquiry. This inquiry in Ballarat has been called for for nearly 12 months. The member for Keilor has been asking for inquiries into Brimbank and yet no action is being taken by the minister. The executive summary states:

> In the inspectors' view, there is evidence that Cr Gary Anderson … failed to declare a conflict of interest …
>
> …
>
> … there is evidence that Cr Anderson, in three of his register of interests' ordinary returns, failed to disclose the names of companies in which he held an office.
>
> …

> … there is evidence that Cr Anderson failed to disclose a conflict of interest in a special meeting of ordinary council …

It goes on to say there is evidence that Cr Vendy, who is a long-time mayor there, in seven of his register of interests ordinary returns, failed to disclose some matters. It says here that the chief executive officer (CEO), Richard Hancock — now the previous CEO— and the general manager, organisational development, appointed consultants who were paid in excess of $100 000 in fees without even advertising their roles. It says there is evidence that a person appointed to a senior officer position was not included in the register of senior officers' remuneration, for which Mr Hancock was responsible.

The key thing about this is the council's involvement in a film called *The Writer*. The report shows that a $10 000 sponsorship was called for. It infers that Cr Vendy would get the money as long as his daughter was in the film. This shows the problems we have in some local governments. It is very unfortunate it has taken so long for this bill to be brought into this place. We in our party are not opposing the bill; I strongly endorse it. But I must say that we are very disappointed with the disgraceful amount of time that has been given to debate this very important matter.

Mr NARDELLA (Melton) — Let me make it clear to the honourable member for Lowan that he was wrong in regard to what he said to this house a few moments ago. He must be absent-minded because he said nothing has occurred in regard to the City of Brimbank. His own coalition — the opposition parties — referred the Brimbank matters to the Ombudsman. The Ombudsman investigated the matters and then the independent Ombudsman, who has the powers of a royal commission, referred those matters back to the Office of Local Government. The member is wrong in regard to that.

Another thing the member is wrong about is in regard to Ballarat council. He came in here today and referred to the report which has been rightly tabled in the Parliament — that is the appropriate process and one that has been asked for — and he says it has taken too long. Perhaps that is how he operated as a commissioner in the Kennett years, but what he wants is an investigation that is a whitewash or a political witch-hunt. That is what he is calling for instead of a due process that takes the appropriate amount of time, a process that undertakes an investigation so that this Parliament and this minister can make the appropriate decisions.

Decisions have been made following that report. Matters have been referred independently to the appropriate authorities and charges have been laid. On these three matters the honourable member for Lowan is wrong, wrong, wrong.

Let me get to the bill. The bill is important for democracy in this state. It improves transparency and accountability not only for the councillors but also for the staff. If the honourable member for Lowan reads the report, he will see there are faults not only with the councillors but also the staff in the City of Ballarat. This bill takes that into account and deals with those matters. It establishes councillor conduct panels with wide powers. They can reprimand, they can demand public apologies and they can demand councillors take two months leave. There are also other remedial options such as training, counselling and mediation.

The bill makes adjustments to councillor and mayoral allowances. There are codes of conduct not only for councillors but also for their families. It is not just about the vote. We on both sides of the house know that councillors have been involved in debates and been involved in decisions but have not then taken a vote. This excludes councillors from the total process in regard to decisions being made where they or their family has a pecuniary interest. Gift disclosures have been reduced from $500 to $200. The other interesting provision is that mayors can be elected for terms of two years instead of just the one year.

The opposition always claims we are not doing enough. If we are doing something, the opposition says either that it has taken a while for us to do something, or it does not go far enough.

This is appropriate legislation to be put in place at this time to safeguard democracy. We have done it by instituting other reforms and by putting local government into the constitution of the state of Victoria so that councils cannot be dismissed summarily. Unlike the situation under the Kennett government, you just cannot go out there and sack councillors and then impose on municipalities the cronies and lackeys of the government of the day as commissioners, as has been done, to go out and rip off ratepayers like the commissioners did in my community. Those commissioners were appointed by the filthy Kennett government back in the 1990s, and they ripped $32 million from my community.

This is great legislation. It is about democracy; it is about accountability — things that honourable members on the other side of the house have absolutely no understanding of. I support the bill.

Mr WAKELING (Ferntree Gully) — It gives me great pleasure to rise to contribute to the debate on the Local Government Amendment (Councillor Conduct and Other Matters) Bill. As the member for Lowan rightly pointed out, members on this side of the house have been gagged and are unable to contribute fully to this debate. I am looking at the clock. It is counting down very quickly, and I have been allocated only a couple of minutes in which to make my contribution.

As a former councillor with the City of Knox and as someone who was party to a code of conduct that operated in that municipality, I understand the benefits, but it is a shame that we have seen operations in various municipalities around this state where the conduct of certain councillors has been brought into question. It behoves this government to take effective steps to put legislation in place to deal with that. Those opposite say they are dealing with these matters in a timely manner. They have been in power for nine years. This is a government that has had nine years to fix the problem. We have seen problems arising in Brimbank, and the member for Melton pointed out that action had been taken. In fact action was taken after the need for it was raised by the member for Keilor and action was taken by the member for Shepparton. If it had not been for the action of those two people the government would not have been forced to investigate the operations of that council. That is the whole point. There has been a lack of process, a lack of commitment and a lack of willingness by this government to investigate these activities.

Look at the situation in the Ballarat City Council and the actions of two of its councillors. It is quite interesting that a report finally reached this house in the moments before a council is to be elected in that municipality.

The member for Melton and those opposite talk about the dismissal of councils and say that only the Kennett government would have done something like that. I direct their attention to what occurred at the City of Glen Eira. Of course the member will recall that that council was sacked. That was not done by the Kennett government; the council was sacked by the Labor government. It was this government that sought the dismissal of that council, with the support of those opposite, and I am sure it was done with the support of the member for Melton. He is nodding in agreement.

The bill seeks to do a number of things. As you will appreciate, Acting Speaker, I have not been afforded the time to discuss the many issues that need to be discussed. One needs to understand that there are many things this government is failing to do in the area of local government. We have problems in Ballarat, we have had problems in Brimbank and we have had problems in other areas where this government has refused to act or has had to be dragged kicking and screaming. If it were not for people like the members for Keilor and Shepparton these issues may not have seen the light of day.

Mr INGRAM (Gippsland East) — I rise to speak on the Local Government Amendment (Councillor Conduct and Other Matters) Bill. I want to raise a couple of issues which are extremely important and which have been raised with me by my local councils. I hope the minister can respond and alleviate some of the concerns of the councils. They are in relation to the conflict-of-interest provisions in part 4 of the bill and the definition of an assembly of councillors which relates to a planned or scheduled meeting involving at least three councillors and one member of council staff. When those people are in one spot that is considered to be an assembly of councillors.

The bill also includes a requirement for an assembly of councillors to record detailed minutes of the meeting. The issue that has been raised with me is that this is a fairly onerous condition. I understand exactly why that condition has been put in place. I understand the issues that have led to that. Severe conflicts and issues are being discussed that should not be discussed, and councillors have been getting around the rules of accepted council meetings and using these secret meetings, if you like, as a way of avoiding the normal scrutiny of councillors.

But what they believe will be the case if the bill goes through — and I hope the minister can alleviate those concerns — is that it would encompass everything, including a local member sitting down with a couple of councillors and council staff. Everything that was discussed would have to be minuted like a formal council meeting. That would be a very onerous condition and would lead to those meetings not taking place. There is some concern within the councils that this would stifle some of the constructive work that is done not only with members of Parliament but also with other groups within the community, and those meetings would all be declared as formal assemblies of councillors as the definition requires. I would really appreciate it if the minister could give some clarification on that.

I support the bill. I think it is important that this is passed before the council elections, and I wish it a speedy passage through both houses of Parliament.

Mr WYNNE (Minister for Local Government) — May I first thank all members of the house for their contributions to this very important debate. I particularly want to thank the shadow minister, who provided an excellent overview yesterday. We have enjoyed a cooperative relationship in relation to the development of this bill, because it is very much in the broader interests of local government that this bill should proceed today.

While I recognise that there have been some concerns about the so-called lateness of the bill, we always indicated that the bill would be in two tranches. We want to ensure that the bill is put in place prior to the council elections, because we want to make sure that anyone who is standing for local government in the future is very clear about what the legislative framework looks like going forward, and I think both sides of the house would share that aspiration.

In relation to a couple of matters that the shadow minister raised with me, and in particular the matter she raised seeking advice on whether a councillor would have a conflict of interest if they signed a petition, the new provisions that make it a conflict of interest where a person has made a formal submission or objection on a matter may apply to a petition under some circumstances. The limitation will apply where a petition is part of a submission or objection that is being lodged under a legislated right, such as a petition that forms part of a formal submission to the council. The limitation will not apply where a petition is not part of a submission or objection under an enactment, such as a petition lobbying a council to induce traffic-calming measures or matters of that type.

The member for Gippsland East raised a matter with me in relation to potential restrictions on councillors having an engagement with their local member and asked whether these restrictions would stifle the capacity of local councils to function. That is not the intention of the bill. The three criteria are that a meeting will be preplanned, there will be three councillors and administration in attendance and the matter under consideration will be in relation to a council decision itself. It certainly would not stop local members from engaging with the council, as they should appropriately, on a whole range of matters pertaining to local and state government issues.

In conclusion I say that this is a very good bill. I know people right across this chamber passionately support local government more generally. We look forward to the speedy passage of this bill through the Parliament, and we also look forward to the council elections in seven weeks.

Business interrupted pursuant to standing orders.

The DEPUTY SPEAKER — Order! The time set down for consideration of items on the government business program has arrived.

Motion agreed to.

Read second time.

Circulated amendments

Circulated government amendments as follows agreed to:

1. Clause 5, line 34, omit 'factor.".' and insert 'factor; or'.

2. Clause 5, after line 34 insert —

   '( ) the Council is required to increase allowances by an Order in Council under section 74B.".'

3. Clause 22, page 60, line 8, omit "(c)" and insert "(b)".

4. Clause 25, page 65, line 16, omit 'committee.".' and insert 'committee.'.

5. Clause 25, page 65, after line 16 insert—

   'Penalty: 50 penalty units.".'.

6. Clause 93, line 23, omit "81P" and insert "81Q".

Third reading

Motion agreed to.

Read third time.

POLICE, MAJOR CRIME AND WHISTLEBLOWERS LEGISLATION AMENDMENT BILL

Second reading

Debate resumed from 8 October; motion of Mr CAMERON (Minister for Police and Emergency Services); and Mr McINTOSH's amendment:

That all the words after 'That' be omitted with the view of inserting in their place the words 'this bill be withdrawn and redrafted to —

(1) take into account the outcome of extensive public consultations about the proposed amendments to the Police Regulation Act 1958, particularly in relation to implementing appropriate disciplinary procedures for Victoria Police; and

(2) retain the remaining provisions relating to the proposed amendments to the Major Crime (Investigative Powers)

Act 2004, the Police Integrity Act 2008 and the Whistleblowers Protection Act 2001 to enable their urgent passage'.

Mr McINTOSH (Kew) — By leave, I wish to withdraw my reasoned amendment.

Amendment withdrawn by leave.

Mr CAMERON (Minister for Police and Emergency Services) — In summing up on the Police, Major Crime and Whistleblowers Legislation Amendment Bill 2008 I thank honourable members for their contributions. I will highlight a few matters that have been raised. In particular I point out that there are no profound differences between the Office of Police Integrity (OPI) report regarding police discipline and this bill. This bill implements the principles that underpin a new system and recommendations made by the director. The only key recommendation which is not implemented is the recommendation to repeal the section 68 confidence power of the Chief Commissioner of Police to dismiss police members unsuitable to continue as members of the force having regard to their integrity and potential loss of community confidence. The retention is consistent with similar powers operating in New South Wales and Western Australia following royal commissions.

The section 68 power is altered to remove the power of the Police Appeals Board, to reinstate a member dismissed for no-confidence. However, a member can be compensated instead, and this change reflects the special nature of the exercise of the no-confidence power by the chief commissioner.

The Police Appeals Board retains a binding right of appeal over dismissals. A right of judicial review by the Supreme Court is also available to ensure the process is not misused. The right to reinstatement is not taken away for other dismissals. All other dismissals retain a right of reinstatement or compensation through appeal to the Police Appeals Board, as they do now.

The bill does not substantially extend the chief commissioner's powers regarding transfer or promotion. There are no amendments in this regard in the bill. They are in fact existing powers in the existing system. The power to transfer members under disciplinary investigation already exists in section 70, and is not altered in this bill.

The requirements that all members initially appointed have a two-year probation and other members a one-year probation period currently exists in section 8, and it is not altered in the bill. The part-time probationary period will be calculated pro rata and not just operate for two years.

The new powers will allow the chief commissioner to suspend the exercise of police powers by police members who are on long-term leave or secondment in accordance with the Ombudsman's report. It does not affect their status; they remain members of the force. It does not affect rights of entry to police stations. Right of entry to an employment site by a union representative is regulated under the Commonwealth Workplace Relations Act 1996. This suspension of exercise powers is not the same as a member who is suspended for misconduct. A member who is suspended for misconduct is not entitled under the current act to enter a police station.

The honourable member for Kew's reasoned amendment sought that the bill be split. The opposition was prepared to give speedy passage to some parts of the bill, and I thank the honourable member for Kew for flagging that. The honourable member for Kew has now withdrawn his reasoned amendment, and shortly I will be proposing that the bill be split so that we end up with two bills. I thank the opposition for agreeing to a speedy passage of the bill relating to the OPI, whistleblower and major crime matters. I will call that 'the little bill'. The little bill will be able to proceed forthwith.

I would also like to be able to say that the opposition supported the larger bill — that is, the amendments to the Police Regulation Act relating to police discipline and other things. However, the opposition has flagged that it does not support that, or at least does not support that at this stage. As a result it will be held up, presumably in the upper house, where the government does not have control. I call on the Liberal-Nationals coalition to give that bill speedy passage as well. However, I appreciate this has been flagged for a little time, because it is reported in a recent *Police Association Journal* that the police union is doing all it can to have the amendments stopped in the upper house, flagging what I assume must be some sort of an understanding between the union and the Liberal Party to work together to delay the bill.

We have a great Chief Commissioner of Police in Victoria. She came to Victoria with a plan. She wanted to make sure we had a corruption-resistant police force. If you have a look at the things she has done with the CEJA task force and the way she has tackled reform within the police force, you will see it has been excellent. We have seen the establishment of the OPI. She has done what she can under existing laws, but she has wanted these laws for a long time. That is why the

chief commissioner has put forward these proposals. That is why the police have worked to get these proposals put forward. The chief commissioner sought to brief the opposition, the Independent member for Gippsland East and other parties to explain why she wants these changes. The only thing that now stands between where we are at present and the chief commissioner getting what she wants is the Liberal-Nationals coalition. I would hope the Liberal-Nationals coalition will go back and reflect on the reasons the chief commissioner wants this legislation in place.

The honourable member for Kew mentioned the law prior to the 1999 election. In fact prior to the 1999 election there was no binding appeals process; it was all by recommendation. We can compare that to the system that has been put in place here, where the Police Appeals Board can make binding decisions. The only matter where that does not occur is in relation to the confidence power. Even then there can be compensation given, and even then the Police Appeals Board can make a recommendation to the chief commissioner.

I also pick up the remarks of the opposition in relation to fully implementing the Office of Police Integrity's recommendation — that is, not having the confidence power at all and allowing the chief commissioner to effectively certify that because of issues of confidence she is taking this matter out of the hands of the appeal body — in this case, the Police Appeals Board. That is a little bit contradictory to what its position has been in opposing the bill, presumably as per the request of the police union, but I ask the opposition to consider these matters while the bill is between the chambers. I otherwise wish this legislation in its entirety, which will shortly consist of two bills, a speedy passage.

Motion agreed to.

Read second time.

Consideration in detail

The DEPUTY SPEAKER — Order! The house will now consider the bill in detail.

Mr CAMERON (Minister for Police and Emergency Services) — By leave, I move:

That the Police, Major Crime and Whistleblowers Legislation Amendment Bill 2008 be divided into two bills as follows:

(a) A Major Crime (Investigative Powers) and Other Acts Amendment Bill 2008 being the Police, Major Crime and Whistleblowers Legislation Amendment Bill 2008 with the following changes:

(i) Long title as follows:

"A Bill for an Act to amend the **Major Crime (Investigative Powers) Act 2004**, the **Police Integrity Act 2008**, the **Police Regulation Act 1958** and the **Whistleblowers Protection Act 2001** and for other purposes.";

(ii) Short title as follows:

"**Major Crime (Investigative Powers) and Other Acts Amendment Act 2008**";

(iii) Clause 1 as follows:

"**1 Purposes**

The main purposes of this Act are —

(a) to amend the **Major Crime (Investigative Powers) Act 2004** to extend the operation of sections 49 and 50 of that Act;

(b) to amend the **Police Integrity Act 2008** in relation to —

(i) the commencement of criminal proceedings arising out of investigations;

(ii) the protection of the Director and staff of the Office of Police Integrity;

(c) to amend the **Police Regulation Act 1958** in relation to the protection of the Director and staff of the Office of Police Integrity;

(d) to amend the **Whistleblowers Protection Act 2001** to re-enact provisions relating to contempt of the Director, Police Integrity that have expired.";

(iv) Clause 2 as follows:

"**2 Commencement**

(1) This Act (other than Division 1 of Part 3) comes into operation on the day after the day on which this Act receives the Royal Assent.

(2) Division 1 of Part 3 comes into operation on the day on which section 104 of the **Police Integrity Act 2008** comes into operation.":

(v) Parts 2, 3, 4, 5, 6 and 7 of the bill omitted;

(vi) Heading to part 8 of the bill renumbered 2;

(vii) Clause 39 renumbered 3;

(viii) Heading to part 9 of the bill renumbered 3;

(ix) Clause 40 renumbered 4;

(x) Clause 41 renumbered 5;

(xi) Clause 42 renumbered 6;

(xii) Clause 43 renumbered 7, omitting "section 41 of the **Police, Major Crime and Whistleblowers Legislation Amendment Act 2008**" and inserting "section 5 of the **Major Crime (Investigative Powers) and Other Acts Amendment Act 2008**";

(xiii) Clause 44 renumbered 8;

(xiv) Clause 45 renumbered 9;

(xv) Clause 46 renumbered 10;

(xvi) Clause 47 renumbered 11;

(xvii) Clause 48 renumbered 12, omitting "section 45 of the **Police, Major Crime and Whistleblowers Legislation Amendment Act 2008**" and inserting "section 9 of the **Major Crime (Investigative Powers) and Other Acts Amendment Act 2008**";

(xviii) Heading to part 10 renumbered 4;

(xix) Clause 49 renumbered 13, omitting "section 49 of the **Police, Major Crime and Whistleblowers Legislation Amendment Act 2008**" and inserting "section 13 of the **Major Crime (Investigative Powers) and Other Acts Amendment Act 2008**";

(xx) Heading to part 11 renumbered 5;

(xxi) Clause 50 renumbered 14;

(b) A Police Regulation Amendment Bill 2008 being the Police, Major Crime and Whistleblowers Legislation Amendment Bill 2008 with the following changes:

(i) Long title as follows:

"A Bill for an Act to amend the **Police Regulation Act 1958** and other Acts and for other purposes.";

(ii) Short title as follows:

"**Police Regulation Amendment Act 2008**";

(iii) Clause 1 as follows:

"**1 Purposes**

The main purposes of this Act are —

(a) to amend the **Police Regulation Act 1958** in relation to —

(i) the constitution of Victoria Police;

(ii) remedial procedures under the Act;

(iii) the professional development of members of Victoria Police;

(iv) civil proceedings against members of Victoria Police;

(v) the role of protective services officers;

(vi) other minor matters; and

(b) to make consequential amendments to other Acts.";

(iv) Clause 2 as follows:

"**2 Commencement**

(1) This Act (other than sections 4, 8, 9 and 10, Part 3, Part 4, section 34(2) and Part 7) comes into operation on the day after the day on which this Act receives the Royal Assent.

(2) Subject to subsection (5), sections 4, 8, 9 and 10, Part 3, Part 4 (other than section 30(1)) and Part 7 come into operation on a day or days to be proclaimed.

(3) Section 30(1) comes into operation on the later of —

(a) the day on which section 19 of this Act comes into operation;

(b) the day on which section 47 of the **Police Integrity Act 2008** comes into operation.

(4) Section 34(2) comes into operation on the later of —

(a) the day after the day on which this Act receives the Royal Assent;

(b) the day on which section 237 of the **Accident Towing Services Act 2007** comes into operation.

(5) If section 4, 8, 9 or 10 or a provision of Part 3, Part 4 (other than section 30(1)) or Part 7 does not come into operation before 1 December 2009, it comes into operation on that day.";

(v) Clause 35, omitting "**Police, Major Crime and Whistleblowers Legislation Amendment Act 2008**" (wherever occurring) and inserting "**Police Regulation Amendment Act 2008**";

(vi) Parts 8, 9 and 10 of the bill omitted;

(vii) Heading to part 11 renumbered 8;

(viii) Clause 50 renumbered 39;

(c) That each bill be ordered to be printed and considered separately by the house.

Motion agreed to.

MAJOR CRIME (INVESTIGATIVE POWERS) AND OTHER ACTS AMENDMENT BILL

Consideration in detail

Clauses 1 to 14 agreed to.

Bill agreed to without amendment.

Ordered to be read third time later this day.

POLICE REGULATION AMENDMENT BILL

Consideration in detail

Clauses 1 to 39 agreed to.

Bill agreed to without amendment.

Ordered to be read third time later this day.

MAJOR CRIME (INVESTIGATIVE POWERS) AND OTHER ACTS AMENDMENT BILL

Section 85 statement

Mr CAMERON (Minister for Police and Emergency Services) (*By leave*) — I desire to make a statement relating to the Major Crime (Investigative Powers) and Other Acts Amendment Bill 2008. While the amendment to the definition of 'protected person' will clarify the current law, it will alter or vary section 85 of the Constitution Act 1975. Accordingly, I wish to make a statement under section 85 of the Constitution Act 1975 of the reasons for altering or varying that section pursuant to the Police Regulation Act 1958.

Clause 12 of the bill will insert a new section l29A(6) in the Police Regulation Act 1958. It will provide that it is the intention of section 86KJ of the Police Regulation Act 1958 as it applies on and after the commencement of clause 9 of the bill to alter or vary section 85 of the Constitution Act 1975.

Clause 9 of the bill will amend the definition of 'protected person' in section 86KE of the Police Regulation Act 1958. Section 86KE currently defines a 'protected person' in the present tense as someone falling into a category listed in subsections (a) to (e). The bill will amend section 86KE to confirm that the definition of 'protected person' includes someone who previously fell into one of the listed categories.

This amendment will widen the scope of section 86KJ, which currently provides that proceedings against a 'protected person' are limited to acts done in bad faith. The amendment to section 86KE will ensure that a former protected person is entitled to protection under the Police Regulation Act 1958. In this way, the amended definition of a 'protected person' will expand the class of persons to whom the section 86KJ protection applies.

I also wish to make a statement under section 85 of the Constitution Act 1975 of the reasons for altering or varying that section pursuant to the Police Integrity Act 2008.

Clause 7 of the bill will insert a new section 130(2) in the Police Integrity Act 2008. It will provide that it is the intention of section 109 of the Police Integrity Act 2008 as it applies on and after the commencement of clause 5 of the bill to alter or vary section 85 of the Constitution Act 1975.

Sections 104 and 109 of the Police Integrity Act 2008 replicate the provisions of sections 86KE and 86KJ of the Police Regulation Act 1958. These sections ensure that the protection afforded to the director and his staff operates prior to the commencement of sections 104 and 109 of the Police Integrity Act 2008.

The bill will amend the definition of a 'protected person' in section 104 to mirror the amended definition of 'protected person' in section 86KE of the Police Regulation Act 1958. The amended section 104 will widen the scope of section 109 in the same way section 86KE expands the class of persons to whom the section 86KJ protection applies.

Both section 86KJ of the Police Regulation Act 1958 and section 109 of the Police Integrity Act 2008 provide the protection necessary for the director and staff of the OPI to perform their significant public functions properly. To protect OPI investigations, confidential information, and the safety of informers, it is important to clarify beyond doubt that former OPI officers are 'protected persons' under the acts.

It is important that these amendments be made to clarify provisions of the Police Regulation Act 1958 and the Police Integrity Act 2008. Upon enactment, the proposed bill will assist the DPI to carry out the functions of the OPI more effectively and ensure that the OPI can continue to perform its functions of detecting, investigating and preventing police corruption and misconduct.

Third reading

The DEPUTY SPEAKER — Order! I advise the house that 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. 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.

POLICE REGULATION AMENDMENT BILL

Third reading

The DEPUTY SPEAKER — Order! The question is:

That this bill be now read a third time.

Mr McINTOSH (Kew) — I make it abundantly clear that the Liberal Party and The Nationals oppose the bill amending the Police Regulation Act in its current form. The bill proposes significant changes to a wide range of disciplinary and other management areas of Victoria Police, all of which require sufficient time for the Parliament to consult with the wider community.

I note the minister's commitment to a period of time for that consultation in his acceptance of splitting the bill and me withdrawing my reasoned amendment seeking the splitting of that bill. I seek from the minister now an indication of the amount of time he proposes to set aside for the Parliament and the people of Victoria to properly consult in relation to this very significant and important bill.

Mr CAMERON (Minister for Police and Emergency Services) (*By leave*) — Certainly we would hope to be able to progress this legislation in November in another place and while the bill is between here and the other chamber I will have discussions with the member for Kew so that hopefully we can come to an understanding that the matter can progress in November.

House divided on question:

Ayes, 50

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

Noes, 29

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

Question agreed to.

Read third time.

ASSISTED REPRODUCTIVE TREATMENT BILL

Consideration in detail

Debate resumed from earlier this day; further discussion of clause 99.

Mr HULLS (Attorney-General) — In relation to clause 99, which talks about the establishment of the Victorian Assisted Reproductive Treatment Authority, I think there were a number of contributions praising the

authority. I understand those views. The member for Pascoe Vale raised an issue in relation to the central register and medical records. The central register does not deal with medical records; it deals with donor information. I might also indicate that the registry of births, deaths and marriages has strict access requirements. Levels of access protocols are very secure. I think everyone would agree that the Adoption and Family Records Service has very professional and experienced counsellors. I believe that, overall, there will be enhanced service for donors and donor-conceived children. I think the member for Pascoe Vale also raised an issue in relation to advising the public generally. Of course there will be a campaign in relation to that, should this bill be successful.

Clause agreed to; clauses 100 to 146 agreed to.

Clause 147

The DEPUTY SPEAKER — Order! Before calling the member for Pascoe Vale to move amendment 6 standing in her name, I advise that if this amendment is not agreed to, the member for Pascoe Vale cannot move her amendments 7 to 9 because they are consequential. I therefore advise her to address the principles of all those amendments when talking to amendment 6. I call the member for Pascoe Vale to move amendment 6 standing in her name.

Ms CAMPBELL (Pascoe Vale) — Amendment 6 in my name is virtually identical — —

The DEPUTY SPEAKER — Order! Amendment 6 standing in the member's name relates to clause 147, where she wishes to insert lines. It relates to the status of children and women with a female partner. The member is either moving the amendment or withdrawing the amendment.

Ms CAMPBELL (Pascoe Vale) — I withdraw the amendment, because this issue has been canvassed earlier in the debate. It was clear from the will of the house that it did not wish to support that proposal. I respect that the argument still stands, but what also still stands is the fact this house expressed its view in unequivocal terms when we voted on it.

Mr STENSHOLT (Burwood) — I move:

Clause 147, page 100, after line 34 insert —

"19A Surrogacy arrangements where commissioning parents' gametes used

(1) This section applies if a child born under a surrogacy arrangement was conceived using the gametes of the commissioning parents.

(2) Despite section 19, and any other provision of this Act to the contrary, the following presumptions of parentage apply and are irrebuttable —

(a) a commissioning parent who donated the sperm used to conceive the child is presumed to be the father of the child;

(b) a commissioning parent who donated the egg used to conceive the child is presumed to be the mother of the child.

(3) If one commissioning parent is presumed to be a parent of the child under this section, the second commissioning parent (if any) may apply to the court for a substitute parentage order.

(4) A substitute parentage order referred to in subsection (3) may only confer legal parentage on the second commissioning parent in addition to, but not in place of, the commissioning parent who is presumed to be a parent of the child under this section.".

This particular amendment deals with surrogacy arrangements where commissioning parents' gametes are used. This particular amendment asks the Attorney-General to go further than the current bill. It is quite different to many of the other amendments which have been moved today. This amendment will mean that a commissioning parent, who either provides the sperm or donates the egg, should immediately have their name put on the child's birth certificate because they are the biological parent.

Currently in Victoria, as I am advised, the surrogate mother and her partner are actually the legal parents of a child born through a surrogacy arrangement, even if the child is living with the commissioning parents or, for example, if the child is conceived with the gametes of the commissioning father. My amendment talks about a mother and a father, but I was particularly concerned about when the father provides sperm to conceive a child.

The commissioning parents under the current arrangements can apply to the Family Court of Australia for a parenting order or for an adoption order, if they are related to the surrogate mother, which confers limited rights and responsibilities. The commissioning parents are not the legal parents of the child; the surrogate mother and her partner, if any, are named on the child's birth certificate.

I am sure the Attorney-General would agree with me that the bill moves cautiously away from the current situation in the proposals it puts forward. I ask the Attorney-General to go one step further and directly recognise the donation by the commissioning parent, particularly where a male has donated or provided

sperm, and that they immediately be put on the birth certificate. The commissioning is a particular act undertaken by a couple with a surrogate mother. They are intimately involved in this arrangement.

This bill provides extensive arrangements for counselling and for the establishment and carriage of the surrogacy arrangement. It is only a matter of basic human rights that the commissioning parent, when they provide sperm — and I am also suggesting when they donate the egg — be immediately identified.

There is a suggestion that the arrangement suggested in the bill is consistent with standard parentage presumptions. I argue that if the commissioning parents— or commissioning couple in this regard — provide sperm or the egg, they should be immediately identified as such. In human rights terms this is a standard parenting presumption. We should be adopting that in this regard rather than just waiting for 28 days and 6 months after a child is born to then apply for a substitute parentage order.

The commissioning parent is already a parent because they have provided the sperm, for example. If the surrogate mother has a partner who has nothing to do directly with the surrogate arrangement, the partner is put down as the parent, even though one member of the commissioning couple has actually provided the sperm or possibly the egg.

I know this may not be the most perfect way of expressing this particular issue, but I am appealing to the house and stressing the real need to take into account the rights and involvement of the commissioning parents, particularly when they have provided sperm or the egg — they are intimately involved in this issue. The partner of the surrogate mother is not necessarily involved, but the commissioning parent may be providing something, so they are directly the parent, and they should be recognised as such right from the beginning.

I am asking the Attorney-General to take a further reforming step in this regard because I know he is a reforming Attorney-General; he certainly has a marvellous reputation in that regard. I am asking him to be even more reforming and take into account the rights of the commissioning parents as donors, whether they are providing the sperm or the egg to the surrogate mother.

Mr CLARK (Box Hill) — I appreciate the explanation of this amendment that has been given by the member for Burwood. I have some concerns about this amendment. As I understand it, the member is proposing to substitute what is currently in the bill, which is that after a surrogacy arrangement has been entered into and the child has been born, all of the parties — the commissioning parents, the surrogate mother and possibly her partner — would go to court and make an application to the court for a substitute parentage order. What the member for Burwood is saying is that it should instead be an irrebuttable presumption that the person who supplied the biological material, the egg or the sperm, should be deemed to be the parent — the father or mother — of the child.

In one sense I appreciate what the member is aiming at, but there are at least two things that worry me. The first thing is whether there needs to be some independent review of the appropriateness of the commissioning parents becoming the legal parents of the child. From my quick reading of this amendment, that seems to only apply where there is one male or one female commissioning parent. I am not sure what happens in other circumstances— that might also be an issue. Leaving that aside, the amendment, in effect, says that social and legal endorsement will be given to the arrangement that these people make.

I have been highly critical of this whole process — obviously I oppose the bill, and I supported the amendments of the member for Bentleigh to remove surrogacy altogether — but on the assumption that the third reading will be carried and given that the amendments of the member for Bentleigh have been defeated, it seems to me that it is better to have the substitute parentage order made by the court rather than have it follow from automatic presumption of law.

There is a second concern, and I am indebted to the member for South-West Coast for raising this issue with me — that is, what would happen if the member for Burwood's amendment were agreed to and the surrogacy arrangements were to break down and the surrogate mother were not willing to relinquish the child. As I understand it, the male donor of the sperm would be treated as the father. I am not sure what would happen in relation to the mother under the member's amendment — whether the woman who supplied the egg would be the legal — —

Mr Stensholt — Parent.

Mr CLARK — The member says by interjection 'parent'. The amendment says 'mother'. Be that as it may, does that then mean that the male and female donors will be the legal parents of the child and will be able to insist that the child be taken from the surrogate mother, notwithstanding that the surrogate mother does

not want to relinquish the child? These are all very grave concerns that I have about this amendment. I would be interested in any further comment and argument that the member for Burwood may put up, but on the basis of my understanding of his amendment so far it is one that I am not inclined to support.

Mr HULLS (Attorney-General) — I oppose the amendment. I think substitute parentage orders provide a sensible means by which legal parentage of a child born through a surrogacy arrangement can be transferred from the surrogate mother to the commissioning parents. The mechanism is very much based around ensuring that the best interests of the child are protected and also putting some protections in place for the surrogate mother. She must consent to the treatment procedure by which she becomes pregnant. She must consent to relinquish the child once it is born, and she must consent to the substitute parentage order.

If the commissioning father or mother were automatically named as the legal parent of the child at the time the child was born, I think one of the consequences of that would be that the surrogate mother may feel very pressured to give up the child. Her capacity to exercise her free will could be severely undermined. If the surrogate mother decided not to give up the child, there could be some very serious practical implications if the commissioning mother or father were named on the child's birth certificate. The commissioning mother or father may have the power to make decisions on the child's behalf, even though the child would remain living with the surrogate mother. I certainly do not support this amendment. I believe the mechanism in the bill is the most appropriate way of ensuring that the surrogate mother's interests are taken into account. It also gives the court the opportunity to consider whether the proposed parental status is in the best interests of the child.

Mr STENSHOLT (Burwood) — As I mentioned in my presentation, I had not assumed that the wording was ideal. The basis on which I originally sought advice was in respect of only the sperm of the father. I looked at that as being the main case. I am not sure that I fully agree with the Attorney-General. I think he is not necessarily looking fully at the rights of the child.

The commissioning parent who provides the sperm should be immediately recognised as the father rather than have that recognition come later through the court. It is a derogation of both the rights of the child in the long run and of the biological father if the father is not immediately recognised. The so-called rights of the surrogate mother appear to override those of the commissioning parents, particularly of the father. I am happy to stand up for the commissioning male parent and say he should be recognised immediately because he is donating the sperm. I know we say that hard cases make bad law, but in this case it is preferable, particularly if there is a problem, that the biological father be recognised and not somebody who has nothing biologically to do with the child, such as a possible partner of the surrogate mother. Some men have mentioned to me that they have no rights in this regard; it is only when the court order is made that they start to have some rights, but they are never recognised as the biological father. This amendment does seek to do that.

There are always issues in relation to the Family Court, but they have to be worked through. This would be just another of the very many variations of cases which work their way through the Family Court. We should not presume to make that judgement, but rather it should be made in the Family Court, as happens in many cases.

As the member for Box Hill has mentioned, there are some difficulties, and I recognise those. We may not have the perfect situation here, but I think the rights of the commissioning couple need to be more carefully thought through and then put into law. Those rights are genuine. Of course the child also has a presumption to rights, and in my view they are prior rights, to have full and immediate recognition of their biological parentage. As the initiators of the action, the commissioning couple plays a positive and active role, as does the surrogate mother. However, I think the parties who play the initiating role, particularly if they are donating sperm, should be immediately recognised. That is the intent of this amendment. I am prepared to concede to the Attorney-General that perhaps it could be better worded, but I would urge him to consider it as something which is of significant moment and a way of recognising biological parents, particularly in terms of surrogacy.

Amendment defeated.

Mr CLARK (Box Hill) — Clause 147 is a long clause that raises a number of aspects. There are some aspects to which I wish to refer, particularly proposed section 22, which is to be inserted into the Status of Children Act by clause 147. Section 22 says:

> The court may make a substitute parentage order in favour of the commissioning parents if it is satisfied —
>
> (a) that making the order is in the best interests of the child …

It goes on to specify some other criteria. My concern about this clause — and I have raised the issue previously — is that by the time the surrogacy arrangement reaches the court, together with the child who has been born under that arrangement, it is too late for the court to make the decisions that ought to have been made a lot earlier. By the time the matter reaches the court the child will have been born. There is no opportunity for the court to say at that stage that it does not believe the whole notion of the child being conceived under the proposed surrogacy arrangement is likely to be in the best interests of the child who may be born.

We have previously canvassed the fact that clause 40 does not explicitly require the patient review panel to consider the best interests of the child in the way that proposed section 22 does. I continue to vehemently disagree with the Attorney-General that the overriding principle in clause 5 is adequate there. I have already made the point that there is an express requirement to have regard to the child's interests in clause 147 as well as in proposed section 22.

When the application reaches the court, the court is going to be under enormous pressure because it really only has two options — to approve or not approve the making of a substitute parentage order. This will be in circumstances where the surrogate mother has borne the child under an arrangement under which she intended and continues to want to surrender the child to the commissioning parent or parents.

It would throw the child's entire future into disarray or turmoil if the court were to say, 'No, it is not in the best interests of the child for the commissioning parents to be made the substitute parents', because that would require the surrogate mother who did not want to continue to bring up the child to nonetheless continue to have legal responsibility for that child, and no doubt the surrogate mother would then be forced to make decisions as to whether to allow the child to be adopted or whether to change her entire life plans and bring up the child as her own.

The court does not have a full and proper range of choices in that circumstance. The court will have to ask itself in a number of cases, 'What is the least bad outcome for the child?' and choose between making a substitute parent order in favour of a commissioning parent or parents notwithstanding reservations that the court may have about the suitability of that person or persons, or on the other hand saying no and therefore requiring the child to continue to be brought up by the surrogate mother, who by the very fact that she is before the court has indicated that she does not want to bring up the child as her own. That is a most unsatisfactory position for the court to be in. It is certainly not in the best interests of the child that the test be applied only at that stage. The test should have been applied by the patient review panel earlier in the process.

Clause agreed to; clauses 148 and 149 agreed to.

Clause 150

The DEPUTY SPEAKER — Order! Before calling the member for Bentleigh to move amendment 26 standing in his name, I advise that if this amendment is not agreed to, the member will not be able to move amendments 27 to 32 and 35 because they are consequential. I therefore advise him to address the principles of all those amendments when talking to amendment 26.

Mr HUDSON (Bentleigh) — I move:

26. Clause 150, after line 13 insert —

> '"***donor treatment procedure*** means a donor treatment procedure within the meaning of the **Assisted Reproductive Treatment Act 2008**;'.

This amendment relates to the issue of the birth registration of a child. It is an issue that is covered in a number of clauses, including clauses 150, 153 and 154. The intent of my amendments is to ensure that when a donor-conceived child accesses their birth certificate — in the ordinary course of events they will independently access it at the age of 18 — they will have the right to know that there is additional information that they may wish to access about their origins. To me that seems to be a fundamental principle that goes to the question of the rights of a child to know their genetic identity, their origins and how they were created.

What I am seeking to do with this amendment is replicate the arrangements that have applied for a long time in relation to adopted children. Where any adopted child is born, their birth is registered in the register of births, deaths and marriages, and for a long time the words 'schedule 6' appeared at the top of the birth certificate. That was one indicator at a time when there was a lot of secrecy about adoption and children did not know they were adopted to indicate that a person might be adopted. While to all intents and purposes the birth certificates looked the same, the certificates being marked schedule 2 and schedule 6 was a subtle indicator of difference. If a child who thought they might be adopted had gone to organisations such as Jigsaw or the Association of Relinquishing Mothers or the Council of Single Mothers and Their Children or other child welfare and advocacy organisations and

said, 'I think I might be adopted', they would have been told to look at their birth certificate to see whether it was headed 'schedule 6', and that would be something that would help them to find out whether they were adopted.

I think it is in the interests of donor-conceived children for us to have a much more systematic arrangement whereby they can find out that they were donor conceived. I am not suggesting that there be anything different on the birth certificate, because we have moved away from that old system. That was a system that was used in respect of adoption. There are no longer any distinguishing markings on birth certificates, but I am suggesting that we require by law that when a donor-conceived person goes to the Victorian Registry of Births, Deaths and Marriages and asks for their certificate — as I said, it is usually at the age of 18 — they be provided with an addendum to that certificate that says, 'Further information is available'. If the person then wants to pursue that and wants to know what further information is available, then the registry can refer that person to the Adoption and Family Records Service, where they can receive further information, further support and further counselling.

What that will do is create an expectation, a framework in which parents will be impelled or encouraged to tell their children early about the truth of their genetic origins. I think that is something we should be encouraging. It is something that is happening. The process is being opened up more, but we need something more systematic because we know from experience that the earlier you involve your child in the story about their creation and the more you are open about that and convey information about that, the more the child is likely to accept that as a normal and natural part of who they are. It is not a secret. It is not something to be ashamed of. It is not something that should be hidden. It is not something to be avoided. It is a normal and natural part of growing up. It is far better for children to find that out from their parents and to find it out early than to find that out by accident, and that is the purpose of this amendment.

Mr CLARK (Box Hill) — I support the amendments moved by the member for Bentleigh. He proposes what I think is a good solution to a difficult problem. This represents a significant change of policy, but I think it is a change of policy that is worth making. The current policy is in effect that telling a child conceived through assisted reproductive treatment about their origins is something that is within the decision of the social parents of the child, I think probably subject to the possibility that there could be an unsolicited approach to the child from a donor.

Ms Pike interjected.

Mr CLARK — I thank the Minister for Education for saying that the approach would come through the Infertility Treatment Authority (ITA). The current position is that there is no guarantee or assurance to the child that they would find out that their social parents are anything other than their biological parents.

We have canvassed a lot of these issues before and previous reference has been made to the very powerful case that has been put by the young adults who have been conceived in the past by donor conception that they do not as of right even have a way of knowing that they have been conceived by that process. Of course once they know, there are now mechanisms in place whereby they can be reunited with their biological parents, if there happen to be the records available to allow that to happen, and there are counselling mechanisms, as we have discussed. But the critical issue is there is nothing to get that process started unless there is an approach from the donor, the social parents of the child choose to tell them or some other fortuitous event happens in their lives. I think we need to make the policy decision that that is not the appropriate way to go — that a child is entitled to know of their origins for all the reasons that we have spoken about previously.

This amendment, if it is agreed to, will mark a significant change in practice as well as in policy. I appreciate the fact, as I understand it from what has been said to the honourable member for Doncaster and me by one of the ART clinics, that particularly in the case of heterosexual couples, at the moment only a small proportion choose to tell their children about their origins. It does come down to a judgement about whose position and whose wishes should take precedence. As we have discussed again and again throughout this debate, I believe that although it is a very difficult issue, the rights of the child to have a means of finding out their biological origins needs to take priority. That will require a change of practice.

The member for Bentleigh described it very well when he said that once parents know that there will be this flag on the birth certificate, they are going to have to adjust to it and find out ways of informing their children. Some families already choose to do that. We also know that in cases other than those of heterosexual couples the child is inevitably going to ask about their biological father, and we understand that in those circumstances the child is most often told about their origins from a very young age and that makes the process a lot easier for them.

As the member for Bentleigh indicated, the notion of heading up a birth certificate with 'schedule 2' or 'schedule 6' or some cryptic remark like that is not the best way to go. The addendum to the certificate does seem to be the way to go, and on my reading it need not necessarily be physically attached to the certificate but could be a separate sheet. Therefore the addendum need not be handed over to third parties but would always be issued at the point of issue of the birth certificate.

Mr CRISP (Mildura) — What we are looking at here is how we handle the rights to knowledge and then who makes those decisions around that knowledge. As we move forward with technology, more and more people are going to be involved in this process. It is a matter of knowing how to get that process started and how to be fair to all. On one hand you have the biological parents and on the other hand you have the social parents. We have been here before with the Adoption Bill. It is difficult. However, again I will be stressing that in this bill we need to default to clause 5. I am therefore supporting the amendments of the member for Bentleigh. I will reflect on some of the words of the member for Box Hill and go a little further.

The area that I think is relevant in this is the genetic information and technology about inheritable diseases that will be available going forward. This is an area which, as the human genome is mapped, is going to be more and more vital, particularly to ongoing health and preventive health. As we look forward to the generations that are involved here, there will be more and more need for children to be aware of their genetic blueprint. They will then be able to refer back to the genetic information of their biological parents in order to make the assessments and decisions they need to make about their lives.

As this goes forward I think there is going to be a bigger than expected drive to understand and acquire this knowledge, particularly in the area of health and disease prevention. For that reason I think we need to leave a trail that is easily accessible so the information is available and can be utilised by people who are going to acquire knowledge about their futures and their lives and their children's futures given the understanding we have of the human genome. The children of these arrangements we are legislating for today should not be disadvantaged going forward because there is not an easy path to trace their genetic inheritance for their health needs.

Ms CAMPBELL (Pascoe Vale) — This house has passed many pieces of legislation acclaiming equal opportunity. The amendment moved by the member for Bentleigh goes to equal opportunity for children who are conceived via assisted reproductive technology. Families that use that treatment have children. Those children should be given the same rights as any other children. I really feel quite embarrassed that we are even discussing this. Twenty-odd years after the house recognised the importance of people in the adoption community knowing their heritage, here we are in 2008 reminding members that donor-conceived children should have the same kind of rights in their birth certificates. It is basic equal opportunity, and it is just.

The intention of the amendment is to ensure that donor-conceived children have access to identifying information regarding their biology and their heritage. While substitute parenting orders result in closed certificates and ensure that that information is available, as we have heard and read and watched in television shows and documentaries, not all donor-conceived children even become aware of it. Once they do become aware of their conception and their extended familial relations, they want to meet people who are their family. They want to understand their genetic background.

It is not just the children who are asking us to revisit this, it is also the parents of the children who are donor conceived. In the past I have referred to a lady who has spent a lot of time around this Parliament. Her name is Romana Rossi. Romana has taken the opportunity to speak to many members of this house and beyond. She has put to us that in this legislation she wants, as an absolute minimum, all members of the donor-conception community and all members of Parliament to ensure that donor-conceived children have the same benefits, rights and obligations as people within the adoption community. That goes to, as she put it, no. 1, birth certificate information. We are all entitled to truthful birth certificates, and the amendment moved by the member for Bentleigh goes to that very point.

Myfanwy Walker has said to us that truthful birth certificates are a first requirement. It is simple. We need a system akin to the adoption system, with genetic parents on one certificate and legal parents on another, with a mechanism so donor-conceived people can discover independently the truth of their parentage. I appeal to members to think how they would feel if they were never given the opportunity to find out that fact if they were unaware of being donor conceived. Secrecy is something this house discusses in all sorts of legislation. We discuss it on the adjournment, we discuss it in 90-second statements and we raise it in notices of motion. We say it is better to be truthful. People do not get hurt when truth prevails and justice is

delivered in a just world and a just donor-conceived community.

I ask members to consider the amendment moved by the member for Bentleigh. It is good legislation. It is now 2008, and we are probably 20 years behind in bringing in this amendment, but it is good and we should pass it.

Mr HULLS (Attorney-General) — I have certainly considered the amendment, and I do not support it. This bill provides for donor registers to be transferred from the Infertility Treatment Authority to the Victorian Registry of Births, Deaths and Marriages. A key reason for this move is to enhance access to donor information by creating links between the birth register and the donor registers. If this bill is passed by the Parliament, the registrar will prepare to take over responsibility for administering the donor registers. As part of that process the registrar will consider a whole range of issues, including what systems and technologies will need to be put in place to ensure appropriate links between the birth register and the donor registers.

I have concerns about the proposal put forward by the honourable member for Bentleigh, as it would mark donor-conceived people as being different from all other people. Officials sighting a donor-conceived person's birth certificate will immediately know that the person was conceived with donated gametes. I know what the honourable member for Bentleigh is saying: if further information can be obtained, it will become known pretty quickly in the community that people who have to present such a certificate were conceived with donor gametes. I think this proposal has significant implications for a person's privacy, and potentially for their wellbeing. The manner of a child's conception would become a matter of public record, while for people who are conceived naturally the circumstances of conception are private.

A birth certificate is an official document that has important legal effect. People use their birth certificates to apply for things such as passports, to be enrolled at schools, to obtain Centrelink benefits and the like. These organisations would end up being privy to the fact that further information in relation to a person's birth can be obtained, regardless, I have to say, of their need to know. Potentially it deprives parents of the right to disclose a child's donor status at the most appropriate time and in the most appropriate way.

There are other ways donor-conceived children can find out about their genetic origins. Indeed, as we know, parents are encouraged at the time they receive the donation and later through the Time to Tell campaign sponsored by the Infertility Treatment Authority to tell children that they are donor conceived. I believe moving the central and voluntary donor registers to the registry of births, deaths and marriages will greatly improve the linkages to birth registrations and contribute to the ongoing benefits of education campaigns. I believe placing information on a birth certificate reduces the control over when a child learns of the information and the associated safeguards. I disagree with the member for Pascoe Vale. I think creating a certificate which directly or indirectly identifies how a child was conceived would be a retrograde step. We have to remember that section 77(1) of the Adoption Act 1984 specifically requires that there must be no distinction between entries in the register of births and entries in the adopted children register.

I can see no reason why donor-conceived children ought to be treated any differently. I do not support the amendment. I think the safeguards in place are absolutely appropriate. If the birth certificate were to say things such as, 'More information is available' then when a child presents at a post office to reapply for a passport the person at the post office would know that he or she had been donor conceived or born as the result of a surrogacy arrangement or whatever. It certainly used to happen in relation to adoption. It used to be the case that a record was flagged in relation to adoption. People applied for a passport and the person at the passport office would say, 'You are adopted'. I do not think that is appropriate, and going down that path would be a retrograde step.

Mr LANGUILLER (Derrimut) — First of all, I come to this part of the debate on two bases; firstly, as a parent of four children, two of whom I had with my first wife and two of whom I had with my second wife. I also come to this debate, as members would know, as someone who has participated for many years and continues to participate in human rights movements in Latin America. I will refer to this issue as it pertains to the current discussion.

I have enormous respect for the Attorney-General, but I think he is wrong because the current amendment does not contain a provision whereby there is any indication on a birth certificate to the effect that a child is in fact a donor-conceived person. What will happen in effect, as I understand the proposition that the member for Bentleigh has advanced in this house, is that an additional piece of paper — an additional document — will be presented to the person when he or she requests a birth certificate after the age of 18. Those of us who support the proposition advanced by the member for Bentleigh certainly do not wish — and in this sense we

concur with the Attorney-General — to prejudice that person in any way. In other words, if a person from the immigration department or foreign affairs were to request a birth certificate which says something to the effect that a person was adopted, then that person would be exposed and the privacy of the person would be damaged unnecessarily and impinged upon.

The proposition advanced by the member for Bentleigh is fair and reasonable and takes into careful consideration the interests of the child at the point when he or she turns 18. It says that if a person requests their birth certificate, then an additional piece of paper — to put it in plain English — will be presented to that person which will say something to the effect that if he or she so desires, further information can be provided at the register.

Let me conclude by saying that for decades now I have taken part in human rights issues in Uruguay, which is where I come from, in Argentina, where I lived for some time, and also in El Salvador where I spent some time. I have participated in truth commissions and heard horrendous stories of women who unfortunately gave birth to children who were the result of rape whilst they were imprisoned or after being tortured. Guess what? After 1973, and following the military coup in Chile or the war in El Salvador, those children are now saying, 'We want to know'. Extraordinarily enough they want to who their genetic parent is, whoever he may be.

I come to this motion as a parent and as a human rights activist. Nothing serves the interest of the child but the truth. The best interests of a child are served by encouraging parents as early as possible to engage with that child. I did so with my children. A male gay friend said to me, 'We will be the last ones not to want to engage with children if there are two males or two females'. The truth is evident. He or she would have to engage with a child as early as possible.

I respectfully submit to the Attorney-General, and I do so sincerely — and I know the member for Bentleigh would do the same, as would other members who support this amendment — that we concur with him that nothing should be prescribed on the birth certificate itself. An additional document will only be submitted to the person requesting it after the age of 18, and only if he or she wishes it. I appeal to the Attorney-General to consider the amendment as one which enhances what he has moved in the chamber.

Dr NAPTHINE (South-West Coast) — I rise to speak on this important part of the legislation. It goes to the heart of the guiding principles in clause 5(c) which state:

> children born as the result of the use of donated gametes have a right to information about their genetic parents;

That is an addition to the guiding principles, which I welcome greatly. It is an important addition and reflects a real need, which is very important to children born as a result of donated gametes. It is important for their psychological health, for their access to genetic information and for their fundamental understanding of who they are. That by no means reflects negatively on the social parents who raised them, but everybody has a right to know their genetic origins, and I think that is very important. We have just heard a powerful speech from the member for Derrimut about the need for children to know the truth about themselves, and that is important.

In 1995 we took a step forward when we told people donating gametes that the legislation introduced by the previous coalition government said that donors of gametes would be advised at the time of donation that their information would be made available to any children born. That was a significant step forward. It caused controversy at the time, and many people involved in artificial insemination said — and excuse the terrible pun — that supplies of donated sperm would dry up if this information was required and donors were asked to comply with it. But the truth is that it has not, and I think people are more mature and more understanding than we give them credit for.

I fully understand the position of people who do not support this amendment who are saying that every effort will be made to encourage, support, educate and get parents of donor-conceived children to tell their children about their origins so they are fully informed and can seek that information themselves later on. But with all that, we know for a fact that there are, and there will be, cases where children are not told by their social parents, whether it be because those parents die before they think it is an appropriate time to tell the children; whether there is some inadvertence or delay because it is a difficult decision; or whether in some cases it is even a deliberate decision. It may be for all the best reasons that parents can think of. They may think they are doing the right thing, but they are not.

If we are genuinely meeting our guiding principles with respect to the rights of children and their rights to information about their genetic origin, we must have a fail-safe system so that if their social parents do not advise them, or if for some reason they are unable to tell them or if they decide simply not to tell them, those

children will be given the opportunity to be told once they turn 18 years of age.

The proposed amendment has been put forward by the member for Bentleigh in good faith, but I am not sure that it is the most appropriate way of handling the matter. I know there must be a way and it is something we must address. I will support the member's amendment even though I am not absolutely convinced it is the best way. However, we should at least look at it while the bill is between here and the other place to make sure we get it absolutely right.

I understand what the Attorney-General has said — that we cannot have any system that provides an opportunity for discrimination — and I take in good faith the comments of the members for Bentleigh and Derrimut that this system does not allow for discrimination. We must have a fail-safe system because we know that there are some social parents — we hope the number is decreasing — who fail to tell their donor-conceived children that they are donor conceived. Despite all the best education, all of the best will and all the best encouragement, there will still be some who fail to do it. It is unfair to the children not to be provided with that advice. Therefore because I support the concept I support this amendment. If it can be improved, I would ask the government to take it on board and improve it.

Mr HUDSON (Bentleigh) — There was perhaps some confusion about the initial amendment and the substitute amendment, and I really want to clarify that the birth certificate of everyone will be exactly the same. There will be no change to birth certificates. There will be no flag on birth certificates; there will be no notation on birth certificates. That is not what the amendment proposes. The amendment says there will be an addendum that will be provided with the birth certificate, indicating that there is further information available if the person wants to pursue it.

We have got a very difficult problem here. The problem we have is that at the moment there is no trigger for a person to find out, other than voluntary disclosure by the parents or by accident — and a lot of people find out by accident. Unfortunately they often find out by accident through the wrong means. What I am trying to do here through this amendment is to encourage an environment in which social parents are honest with their children. Ironically the community of same-sex relationships does this the best. When you have got Molly and Jane on the birth certificate the child does want to know who dad was, because they find out that other kids at school have dads. They do tell them early, they do talk to them about that early, they do prepare them for it early, and as a consequence those kids grow up much better adjusted for being told this is part of who they are, how they have come into being and about part of their origins and their identity.

I support the Time to Tell campaign by the Infertility Treatment Authority. It has been very successful in encouraging parents and donors and donor-conceived adults to talk and make contact, and I think it is terrific that as a result of that campaign a number of parents have told their children they are donor conceived, and this has been a positive experience for those parents. Clearly there are parents who find it difficult to tell their children. Those parents need to be supported, they need to be supported with counselling and they need to be supported with information. Thankfully there are now a number of tools available, in the form of children's books and DVDs and so forth, on donor conception, which they can use to explain these issues to their children.

What my amendments are designed to do is encourage parents to go down this path, go on this journey with their children, so that by the time they are adults children will know. The earlier they know, the better for children, in terms of their adjustment. If we are leaving this well into adulthood, if we are still going to leave this to accident, if we are still going to leave that to the voluntary disclosure of the parent, then what we are really saying is there are going to be a whole lot of children out there who are still not going to know. And they do have a right to know. This bill proclaims their right to know. This bill says that every child has the right to know about their genetic origins. We need a systematic way to give effect to that.

I believe we are now bringing together donor registers with registers of births, deaths and marriages. Registers of births, deaths and marriages are going to be linked to the counselling and information support service. This is an opportunity to tell that child, give them access to information which they can choose to follow up, if they wish, when they turn 18, which is normally when a child independently accesses their birth certificate. They do not have to follow up the information, but a regime will be created in which parents are a lot more open and honest. We know that a lack of openness, a lack of honesty, secrets and fictions are not in the interest of the child. Ultimately they are damaging to the child; they create problems later on.

I urge members to support this. Everyone will have the same birth certificate. It merely provides an opportunity for the donor-conceived child to be told there is more information available when they are an adult, when

they are old enough and mature enough to receive that information.

Mr CLARK (Box Hill) — I will make a few points additional to what I said earlier in response to some of the arguments by the Attorney-General. As the member for South-West Coast rightly pointed out, clause 5(c) of the bill sets out as a principle Parliament's intention that it be a given that children born as a result of the use of donated gametes have a right to information about their genetic parents. It is a very laudable principle, as the member for South-West Coast said, but it is also a very hollow principle if there is no practical way that a child can find out that they have that right, and they will not find out that they have that right if they do not find out that their social parents are not their biological parents. As in a number of other places in this bill, the principles set out in clause 5 have in fact been ignored and indeed frustrated by the way in which the bill itself is drafted.

Let me also make the point that no-one is talking about discrimination against children born of donor conception. We are talking about the empowerment of those children and achieving equality for them with children born of their natural parents by ensuring that they have an equal ability to know of their genetic origins. It is also worth making the point that in a sense this is a balanced or moderate proposal. The case can well be put that children as of right, at least when they reach 18, are entitled to a full disclosure to their biological heritage in the form of an additional or fuller birth certificate, and that, as I understand it, is the case that has been put very powerfully by Ms Myfanwy Walker.

What this amendment is saying is that we will flag to the person that there is additional information available and then under other provisions in the bill they can make an application and will be directed into counselling to ensure that they are aware of the implications of the information they may be given in going through the processes of being put in touch with their donor parent.

The one point of any substance about what the Attorney-General said in his earlier remarks was the concern he expressed about third parties being able to find out indirectly from what was on the birth certificate that the child's social parents were not the child's biological parents and that there was something different about that child compared with children whose social parents were their biological parents. We could argue about the extent to which that was a problem, but I think the best way of laying the Attorney-General's concerns to rest is to say that that is not actually required by what is being proposed by the member for Bentleigh. His amendment talks about an addendum to the certificate.

As I alluded to, and as the member for Derrimut said, this addendum need not be physically attached to the certificate. It could be attached by a perforated additional section or a whole host of arrangements which would mean there would be nothing in what would be handed to a third party that would disclose that there was something different about the child concerned. It would not disclose to third parties that further information is available about the entry. For all intents and purposes as far as the rest of the world is concerned the birth certificate of that child will look exactly like the birth certificate of any other child. However, as the member for Derrimut rightly stressed, the person to whom the certificate was issued would be given that notification, and when a child applies in their own right as they grow up and are issued with the certificate the statement will come to their attention and at that point they will be empowered to take advantage of the right to have this information, which this Parliament will expect, and the government certainly believes, it should be the right of the child to have.

House divided on amendment:

Ayes, 36

Blackwood, Mr	Merlino, Mr
Brooks, Mr	Morris, Mr
Burgess, Mr	Napthine, Dr
Campbell, Ms	Northe, Mr
Carli, Mr	O'Brien, Mr (*Teller*)
Clark, Mr	Powell, Mrs
Crisp, Mr	Ryan, Mr
Delahunty, Mr	Seitz, Mr
Dixon, Mr	Smith, Mr K.
Fyffe, Mrs	Smith, Mr R. (*Teller*)
Hodgett, Mr	Stensholt, Mr
Hudson, Mr	Sykes, Dr
Ingram, Mr	Tilley, Mr
Jasper, Mr	Victoria, Mrs
Kairouz, Ms	Wakeling, Mr
Kotsiras, Mr	Walsh, Mr
Languiller, Mr	Weller, Mr
Marshall, Ms	Wells, Mr

Noes, 39

Allan, Ms	Langdon, Mr
Andrews, Mr	Lim, Mr
Batchelor, Mr	Lupton, Mr
Beattie, Ms	Maddigan, Mrs
Brumby, Mr	Morand, Ms
Cameron, Mr	Munt, Ms (*Teller*)
Crutchfield, Mr	Nardella, Mr
D'Ambrosio, Ms	Neville, Ms
Donnellan, Mr	Noonan, Mr
Duncan, Ms	Overington, Ms
Eren, Mr	Pallas, Mr
Foley, Mr	Perera, Mr
Graley, Ms	Pike, Ms

Green, Ms
Hardman, Mr
Harkness, Dr
Helper, Mr
Howard, Mr
Hulls, Mr
Kosky, Ms
Richardson, Ms
Robinson, Mr
Scott, Mr
Thomson, Ms
Trezise, Mr (*Teller*)
Wynne, Mr

Amendment defeated.

Clause agreed to; clauses 151 to 153 agreed to.

Clause 154

Mr CLARK (Box Hill) — In relation to clause 154 I raise an important aspect of the package of changes being effected by this bill, and that is the way in which details of parentage under a surrogate birth arrangement are to be recorded on a birth certificate. This is integral to the policy proposals contained in the bill, but in fact it is not actually set out in most instances in the bill. As the coalition parties understand from the briefing provided to us by the department, it is something that is intended to be effected by administrative arrangement, but it is important to have on the record what the intended administrative arrangements are because it shapes the sorts of new designations on birth certificates that the public will experience in future.

In the course of my second-reading debate remarks I set out what the opposition understands the arrangements will be from the information largely provided to us by the departmental briefing but also from other sources. I will just run through that again. I hope the Attorney-General can either confirm what I understand the position to be as correct, or alternatively just state in his own words what the position will be.

The coalition parties understand the intention is that where a child is conceived with donor sperm, including with a donor egg as well as donor sperm, the woman who bears the child will be designated as the mother on the birth certificate. If the woman has a male partner, that partner will be designated as the father. If the woman has a female partner, that partner will be designated as a parent.

In the case of a child born by surrogacy where a substitute parentage order is made, our understanding is that where a substitute parentage order is made in favour of a heterosexual couple they will be designated as 'mother' and 'father' respectively. Where the substitute parentage order is made in favour of a same-sex female couple they will be designated either as 'mother and parent' or as 'parent and parent' at the choice of the couple. Where there is a same-sex male couple declared the parents under the substitute parentage order they will be designated as either 'father and parent' or 'parent and parent' at the couple's choice. In the case of a single person the position was not clear to us from what we were told. As best as I can make out, the single person would be designated as 'mother' or 'father' depending on their sex, or else as 'parent' at that single person's choice.

As I say, that is the understanding of the position that the coalition parties have, but the birth certificates with these new designations will presumably be coming into force as a result of the bill and the public will be coming across them. It is important that what the intentions are be placed on the record. I invite the Attorney-General either to confirm that our understanding of the situation is correct or alternatively to inform the house in his own words what the intended arrangements for designations will be.

Mr HULLS (Attorney-General) — The matters that have been discussed by the honourable member are matters for implementation, and of course there will be further consultation in relation to that. I think he would agree that this is not a matter that needs to go into legislation. There are a whole range of implementation issues that obviously are to be addressed, particularly when the transfer takes place over to the Victorian Registry of Births, Deaths and Marriages.

Mr CLARK (Box Hill) — I must say I am very surprised and disappointed at that response from the Attorney-General, because, firstly, I believe this is an important aspect of the package. The public are entitled to know what the government's intentions are and not be told that this is simply an aspect that is going to be worked out later. Secondly, it contradicts what the coalition parties were told in the briefing. We were told by the departmental officers that the various designations that I referred to were to be the designations that would apply, with the exception of the situation regarding a single person, whereas at least on my understanding of what was said at that briefing, that position was unclear. In other respects, as far as we were being told, decisions had been made and were to be implemented if the legislation came into law. As I say, it surprises and concerns me that the Attorney-General is saying that these matters are now being worked out and that he is not in a position to inform the house at this stage what the intended designations will be.

If per chance that information is not to hand for the Attorney-General, I would certainly be willing to accept his undertaking that he will obtain it and make it available while the bill is between houses. However, I think it is a matter that needs to be resolved before the legislation is finally decided upon by this Parliament.

Clause agreed to; clauses 155 to 159 agreed to.

Bill agreed to without amendment.

Third reading

The DEPUTY SPEAKER — Order! The question is:

That the bill be now read a third time.

House divided on question:

Ayes, 47

Allan, Ms	Kosky, Ms
Andrews, Mr	Langdon, Mr
Barker, Ms	Languiller, Mr
Batchelor, Mr	Lim, Mr
Beattie, Ms	Lupton, Mr
Brooks, Mr	Maddigan, Mrs
Brumby, Mr	Marshall, Ms
Cameron, Mr	Morand, Ms
Carli, Mr	Munt, Ms
Crutchfield, Mr	Nardella, Mr
D'Ambrosio, Ms	Neville, Ms
Donnellan, Mr	Noonan, Mr
Duncan, Ms	Overington, Ms
Eren, Mr	Pallas, Mr
Foley, Mr	Perera, Mr
Graley, Ms	Pike, Ms
Green, Ms	Richardson, Ms (*Teller*)
Hardman, Mr	Robinson, Mr
Harkness, Dr	Scott, Mr
Helper, Mr	Stensholt, Mr
Herbert, Mr	Thomson, Ms
Holding, Mr	Trezise, Mr (*Teller*)
Howard, Mr	Wynne, Mr
Hulls, Mr	

Noes, 34

Asher, Ms	Mulder, Mr
Baillieu, Mr	Napthine, Dr
Blackwood, Mr	Northe, Mr
Burgess, Mr	O'Brien, Mr
Campbell, Ms	Powell, Mrs
Clark, Mr	Ryan, Mr
Crisp, Mr	Seitz, Mr
Delahunty, Mr	Smith, Mr K.
Dixon, Mr	Smith, Mr R.
Fyffe, Mrs	Sykes, Dr
Hodgett, Mr	Tilley, Mr (*Teller*)
Ingram, Mr	Victoria, Mrs (*Teller*)
Jasper, Mr	Wakeling, Mr
Kairouz, Ms	Walsh, Mr
Kotsiras, Mr	Weller, Mr
Merlino, Mr	Wells, Mr
Morris, Mr	Wooldridge, Ms

Question agreed to.

Read third time.

Mr HULLS (Attorney-General) (*By leave*) — When we are dealing with social reform it is always very difficult. There are a number of people I would like to thank. In relation to the Department of Justice a power of work has been done in relation to this matter. I want to thank a number of people including Sarah Nieuwenhuysen, Liz Eldridge, who was with my department, Joella Marron, Katie Howie, Caitlin Harris and a whole range of other people in the department. In the Department of Human Services an enormous amount of work has been done, particularly by Anne Brown, Erin Keleher, Louise Johnson, Olivia Goodman and Cathy Burnett.

I thank a number of people from the births, deaths and marriages registry, including Helen Trihas, Sharon Perera, Ian Bowler and Anthea Tsismetsi. The Minister for Health's department and his private office have done an enormous amount of work, and in particular I thank Maria Perera. From my private office I thank my former chief of staff, Julie Ligeti, Louise Glanville, Mary Polis and others. From the Office of the Chief Parliamentary Counsel, Gemma Varley has had to deal with an enormous number of amendments with the help of Annette O'Callaghan and Lisa Monotti. I thank them all.

I particularly thank the Deputy Speaker for a great job — some would say she has done a Herculean and heroic job. The clerks have done a great job. I thank the staff of Hansard, the security staff — particularly late at night — and all members for the manner in which this debate has been conducted. We do not mention the gallery, but I do want to acknowledge a whole range of stakeholder groups as well.

When we are dealing with social reform, and particularly conscience votes, passionate views are always held on both sides of the house, and I fully understand that. I just want to say that everyone has conducted themselves very well and appropriately. I think, as you would expect me to say, this is very good reform.

Dr NAPTHINE (South-West Coast) *(By Leave)* — On behalf of this side of the house I wish to place on record our thanks also to the Deputy Speaker, who has done a Herculean task of handling the consideration-in-detail stage. Our thanks, too, to the advisers who provided advice prior to the house sitting and during the process. I pay particular recognition and thanks to the parliamentary staff — the attendants, security and many others who have worked long hours under considerable difficulty and stress.

I particularly mention the Hansard staff, who have not only had to put up with the long hours and who work after the house has risen to complete the *Daily*

Hansard, but they also work under very difficult conditions. For those who are not aware, there is a slight problem with the sewerage system in Parliament House. The Hansard staff are acutely aware of that problem, and I pay particular thanks to them.

I acknowledge those people who have taken the time and effort to prepare amendments, some of which I have agreed with and some of which other members have agreed and disagreed with. They have contributed significantly to the debate and to the consideration-in-detail stage. I thank all the contributors.

I make one particular mention of the members who have contributed to the debate, and I do this from the position of having been with some of my colleagues through 20 years of service to this house. When there is a free or a conscience vote in a long debate there is an extra burden on individual members. If it is a party vote — and I have been involved in party votes which have involved long hours of debate — you can work an interchange or rotational system where your colleagues carry the burden of the debate and the discussion and you can get a break. But if there is an individual or conscience vote, particularly if you are passionate about the issues, you virtually have to follow every minute and every nuance of the debate so that you can contribute as you see fit and vote on the various detailed amendments appropriately. This puts an extra stress on many MPs, particularly those who have followed the debate assiduously.

We have had a couple of long and hard weeks, and I urge members to look after their own health and welfare because it has been very stressful for members. They should take extra care when they are home with their families this weekend. Members tempers might be a little bit shorter than they should be, so they should take extra care.

I acknowledge the work of the parliamentary staff and the members who have done a sterling job. These are difficult issues, but overall there has been as much a spirit of goodwill as we could expect. On this side of the house I particularly acknowledge the work of the member for Box Hill, who has carried the debate with dignity and passion and with an absolutely razor-sharp mind. Even though there may be times when we disagree with each other, his significant contribution to the thought processes in the debate is unparalleled, and I would like to acknowledge his contribution.

Ms BARKER (Oakleigh) (*By leave*) — I thank those who have just spoken for their kind words about my work. I appreciate it. Some may think it strange, but I actually enjoy what I do.

I would like to say a particular thankyou to the clerks of the Parliament; to the Clerk, Ray Purdey, and particularly to the Deputy Clerk, Liz Choat, whose responsibility it is to prepare the way in which these debates are coordinated once all the amendments are in. This is the fourth of a very considerable debate on a number of bills that we have had over a period of weeks. We all see the clerks sitting calmly at the end of the table — thank goodness at times for me as Deputy Speaker — and we just assume that everything gets done. It does; but it does not get done without a great deal of concentration and work. The work they have done over recent debates in this chamber should not go unrecognised. It has been very difficult for them to coordinate the consideration-in-detail stages. They do it always very much on time; it just happens. That should be acknowledged fully by all members of this chamber, and I thank them personally.

The SPEAKER — Order! I would also like to express my thanks to the wonderful work of the Deputy Speaker. I do not think we have ever seen a Deputy Speaker quite as capable as the member for Oakleigh. I also acknowledge the work of the clerks — Ray Purdey and Liz Choat — and a special mention to Bridget Noonan, who was here as her birthday began and was still here as it ended.

We know that the attendants have also put in huge hours this week, as have the Hansard staff, the library staff — there is always somebody from the library here — and the catering staff. Luke Jordan spent his 40th birthday here looking after us, even though it was just pizzas for supper again. The maintenance staff are always here of course, as are the security staff. This is the second sitting week in a row when we have asked for a mammoth effort from these people, and I certainly appreciate all their efforts.

ASSISTED REPRODUCTIVE TREATMENT BILL

Clerk's amendment

The SPEAKER — Order! Pursuant to standing order 81, I have received a report from the Clerk that he has made the following correction in the Assisted Reproductive Treatment Bill:

> In Clause 125(d)(ii), I have deleted 'them' and inserted 'then' so that subparagraph (ii) now reads 'as formulated, issued, prescribed or published at the time the regulations are made or at any time before then; or'.

SHERIFF 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 Sheriff Bill 2008.

In my opinion, the Sheriff 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 consolidates into one piece of legislation a number of key powers currently exercised by the sheriff. These include the power to arrest a person named in a warrant, restrain, enter premises, seize and sell property, demand payment and request name and address.

The bill also modernises the sheriff's practices in a number of areas. These include:

a new power of forced entry when executing civil warrants, subject to a number of appropriate safeguards

a power to enter premises to serve seven-day notices

the ability to receive payment from third parties in certain circumstances

the ability to request payment on enforcement orders

a power to seek address information from state and local government bodies, subject to appropriate safeguards.

Further, the bill simplifies procedures for enforcement in certain key areas, providing clarity for the sheriff's office and the community. This includes simplifying the procedures for executing multiple types of warrants at the same time, and allowing the sheriff to enforce warrants based on electronic verification.

Human rights issues

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

Section 12 — freedom of movement, and section 21 — right to liberty and security

Section 21(1) of the charter provides that every person has the right to liberty. Section 21(2) provides that a person must not be subjected to arbitrary arrest or detention, and section 21(3) provides that a person must not be deprived of his or her liberty except on grounds, and in accordance with procedures, established by law.

Section 12 of the charter provides that every person lawfully within Victoria has the right to move freely within Victoria and to enter and leave it and has the freedom to choose where to live.

Three clauses in the bill restrict a person's right to liberty, and by necessary implication, their freedom of movement.

Clause 15 provides the sheriff with the power to arrest a person named in a warrant authorising that person's arrest, or where court and enforcement legislation provides for the person's arrest. Such warrants are issued by a relevant court for a range of reasons, such as to ensure the appearance of the person before the court. This may be because of the person's failure to pay a fine, or because the person is in contempt of court.

Clause 16 provides that the sheriff may temporarily restrain a person who is hindering the enforcement of a warrant. Restraint in this context may include temporarily detaining a person. Temporary restraint ensures that the resister's liberty is restricted to the minimum degree necessary to enforce the warrant. If the power is used, only necessary force is permitted.

Clause 30 provides that, where a member of the police force requests or signals a driver of a motor vehicle to stop the vehicle, the sheriff may direct the driver of the vehicle to do certain things, such as drive to a designated spot, in order to determine whether the driver, or any person accompanying the driver, is named in any warrant.

The limits on these rights are reasonable and justifiable in a free and democratic society for the purposes of section 7(2) of the charter having regard to the following factors:

(a) the nature of the right being limited

The rights to liberty and freedom of movement are not regarded as absolute rights in international law and can be subject to reasonable limitations.

(b) the importance of the purpose of the limitation

The power of arrest under clause 15 is necessary to ensure that the person to be arrested complies with the order of the court.

The ability to temporarily restrain a person who is hindering the enforcement of a warrant under clause 16 is vital to ensure that the sheriff is able to effectively perform his or her functions and duties in a timely manner, and free from interference.

Providing directions to drivers under clause 30 allows the sheriff to quickly determine, in a safe and efficient manner, whether a person is named in any warrant.

(c) the nature and extent of the limitation

The proposed power to arrest a person under clause 15 only applies where the sheriff is executing a warrant that authorises that person's arrest. An arrest and subsequent detention would only continue for the minimum period necessary to satisfy the warrant.

Any restraint under clause 16 will only occur where a person is hindering the enforcement of a warrant. Restraint under this provision must cease as soon as the activity that the person was hindering has been completed. The sheriff receives comprehensive training in procedures for arrest and restraint, to ensure that the person is dealt with in a consistent and safe manner.

Any direction given under clause 30 is only permissible to allow the sheriff to determine whether the person is named in any warrant. Any resulting restrictions on liberty or movement will only continue for the minimum period necessary for the sheriff to determine whether there are any warrants and, if so, deal with the matter accordingly.

(d) the relationship between the limitation and its purpose

The limitations imposed are directly and rationally connected with their purpose.

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

A warrant to arrest under clause 15 is only issued by the court in circumstances where the court has attempted to ensure compliance through less restrictive means, such as the issue of a fine, or the issue of a summons to appear, and these have failed.

The power to restrain a person under clause 16 is used only as a last resort when a person is hindering the enforcement of a warrant.

The power to give directions under clause 30 only applies where a member of the police force has stopped a vehicle and the sheriff is in attendance. In order to determine whether the driver or any other person is named in any warrant, it is necessary for the sheriff to give that person certain directions. In these circumstances, any limit on the right to liberty or freedom of movement will continue for the shortest possible time.

Section 13 — privacy and reputation

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

Power to enter premises

Clauses 18–22 give the sheriff the power, when executing a relevant warrant, to enter premises to search for a person to be arrested, or to search for property to be seized, as the case may be. These clauses engage the right of a person not to have their privacy or home unlawfully or arbitrarily interfered with. The right is not limited, however, as the interference is not arbitrary and is lawful.

Clauses 18–22 specify in detail in what circumstances entry to premises is authorised. Clause 18 provides that the sheriff can only enter premises where a person to be arrested is suspected to be. Clause 19 limits entry, when searching for property, to premises occupied by the person, or where property is reasonably suspected to be. Clause 22 provides that the sheriff can only use force to enter premises under a civil warrant where a number of requirements are met. To use force under clause 22, the sheriff must:

have a reasonable belief that there is or may be personal property at the premises

request the consent of the owner or occupier to enter

only use force where consent is unreasonably withheld, or where the owner or occupier cannot be contacted after reasonable attempts have been made to make contact

only use force to enter residential premises between 9.00 a.m. and 5.00 p.m.

The power of entry in these circumstances is only granted to allow the sheriff to enter premises to search for the person to be arrested or property to be seized. Without this power of entry, the sheriff would be unable to carry into effect the will of the court. In these circumstances, the power of entry is reasonable and, therefore, not arbitrary.

Provision of information

Clauses 52–55 provide the sheriff with the power to request the name and address of a person from a public sector body or council for the purpose of exercising or performing an enforcement function or power. These clauses engage, but do not limit, the right to privacy.

The relevant clauses stipulate the circumstances in which the sheriff may request information, and the type of information that can be requested, from a public sector body or council. There is a restriction that the power can only be exercised where attempts to enforce the warrant have been made and have failed. This ensures that the power to request information will only be used where it is reasonable.

Request name and address

Clause 29, which gives the sheriff the power to request a person's name and address, engages, but does not limit, the right of a person not to have his or her privacy unlawfully or arbitrarily interfered with.

Clause 29 specifies in detail the circumstances in which the sheriff may request a person's name and address, namely where the sheriff believes on reasonable grounds that the person may be named in a warrant being enforced by the sheriff. The sheriff must inform the person of the grounds for his or her belief in relation to the person's identity, and the person is not required to give their name and address if they have a reasonable excuse for not doing so. As a result, the power is reasonable and, therefore, not arbitrary.

Give directions at road blocks

Clause 30 provides that, where a member of the police force requests or signals a driver of a motor vehicle to stop the vehicle, the sheriff may direct the driver of the vehicle to do certain things, such as produce his or her licence, or provide other information in order to determine whether the driver, or any person accompanying the driver, is named in any warrant. In providing a power to require the production of personal information, this clause engages but does not limit the right to privacy as the interference with privacy is neither unlawful nor arbitrary.

The power to give directions under clause 30 only applies where a member of the police force has stopped a vehicle and the sheriff is in attendance. Any direction given under clause 30 is only permissible to allow the sheriff to determine whether the person is named in any warrant. The person is not required to comply with a direction given under clause 30 if they have a reasonable excuse for not doing so: for example, that providing information might tend to incriminate that person. This ensures that the power to give directions will only be used where it is reasonable.

Section 20 — property rights

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

Clauses 23–24 give the sheriff the power to seize property of a person where relevant legislation or a warrant authorises that seizure, and sell any property seized to enable the payment of any outstanding warrant amounts. These clauses engage, but do not limit, the right of a person not to be deprived of his or her property.

The legislation clearly provides the sheriff with the power to seize and sell property of a person. The sheriff will only seize and sell property where he or she is acting under court and enforcement legislation or a warrant. The sheriff will only seize enough property to satisfy the outstanding amount(s) and any enforcement costs, and section 42 of the Supreme Court Act 1986 provides limitations on the type of property that the sheriff can seize. In these circumstances, clauses 23–24 do not limit the right not to be deprived of property.

Conclusion

I consider that the bill is compatible with the Charter of Human Rights and Responsibilities. Provisions of the bill engage with, but do not limit, rights conferred by sections 13 and 20 of the charter. The provisions of the bill that limit human rights under sections 21 and 12 of the charter 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 will combine under a single new act various pieces of legislation and some common law relating to the powers and obligations of the sheriff in the state of Victoria. It will provide a consolidated resource of key powers to be used by the sheriff and the sheriff's officers when applying sanctions and enforcing warrants issued by the courts. Also, the bill provides for modernising practices such as using advanced electronic data technologies to effectively target outstanding warrants. Additionally, it will provide a source of clarity and consistency to the public and those being enforced against.

Background

The office of the sheriff is one of the oldest legal institutions, spanning more than a millennium from the 8th century laws of Wessex. The strong sense of history related to the office presents a stable base for community recognition and awareness, as well as promoting effective legitimate enforcement and compliance.

The Victorian office of the sheriff maintains a relevant role by enforcing and executing criminal, in addition to civil, warrants. The sheriff is responsible for warrants for non-payment of fines, including failure to pay infringement notices for 'on-the-spot' fines registered as Infringements Court Orders, and failure to pay fines imposed by a court. In 2006–07, over 900 000 warrants were issued. Approximately 155 sheriff's officers are responsible for actioning the warrants and enforce sanctions against those who do not comply with court orders.

When executing these warrants, the sheriff and her officers' powers and obligations are currently derived from a range of Victorian acts of Parliament, numerous regulations and some common law dating back to 1604. This array of legislation can cause confusion, which can stymie the efficiency and effectiveness of the sheriff's operations, and reduce clarity for the broader community and those enforced against.

Reviews received by my department have identified the potential for a new Sheriff Act to provide greater clarity regarding the functions and powers of the sheriff and sheriff's officers. Due to the confusion over the sources of the sheriff's powers, it is important that we have a single act outlining the powers and obligations of the sheriff and sheriff's officers in Victoria. This is to reflect modern enforcement practices and provide the community with a greater understanding of the sheriff's profile.

The bill aims to improve and develop the operations of the sheriff consistent with three broad themes — consolidation, modernisation and simplification. The bill will:

consolidate existing key powers used to enforce warrants;

provide updated solutions to specific problems that have arisen when enforcing warrants to reflect community expectations; and

simplify ambiguous procedures.

Consolidation

The bill will include a consolidated set of key powers for the sheriff and, by delegation, sheriff's officers, to use when enforcing warrants. It will not detract from existing warrant powers.

Particular powers that are proposed to be consolidated are the powers to: arrest, restrain, serve documents, enter and search, demand payment, seize property, deal with seized property, request name and address, and give directions at road blocks.

Modernisation

The bill will provide the power to enter property using such force as is reasonably necessary, and this will also include civil warrants. The right to use force to enter premises is not currently authorised for civil warrants. Instead, the issue is determined by common law dating back 400 years.

In the modern context, there is strong justification for effective enforcement in the civil context. The rationale for the use of forced entry when executing civil warrants is that civil and criminal warrants are both orders of the court. The fact that one is a criminal warrant does not necessarily mean the matter is more serious than a civil matter. For instance, while a sheriff's officer is empowered to use forced entry to seize assets on a person's premises in respect of a $50 infringement penalty for littering, the sheriff's officer is currently powerless to enter and seize property to enforce a civil judgement obtained against an employer for $11 000 in unpaid wages.

Forced entry in the civil context will be subject to a number of appropriate safeguards drawn from a range of sources, including the Victorian Parliament Law Reform Committee's Report on Warrant Powers and Procedures. These safeguards include:

forced entry between the hours of 9.00 a.m. to 5.00 p.m. only for residential premises;

that consent to entry has been requested and unreasonably withheld; or

the sheriff is unable to locate the owner or occupier of the residence after making reasonable attempts to do so.

The bill will address operational areas in need of modernisation. The relevant proposals include powers for a sheriff's officer to:

enter and serve seven-day notices;

receive payment from third parties;

request payment on enforcement orders; and

enable a debtor to elect to forego the seven-day notice period, in instances of genuine consent.

Some criminal warrants require the service of a seven-day notice on a defendant prior to the commencement of execution. This allows the defendant seven days to explore their options to deal with the matter. Currently, when serving a seven-day notice, a sheriff's officer relies on the same right as any citizen to enter private property. The occupier can revoke this right verbally, or with a sign at the property denying admittance. The bill will provide for rights of entry for the sheriff to enforce court orders.

Due to the difficulties faced by the sheriff in locating some defendants, the bill also proposes to include a power for the sheriff to compel Victorian state government agencies to provide updated address information.

The provision is intended to apply to agencies such as VicRoads and the Residential Tenancies Bond Authority, and others that typically have up-to-date address information. The sheriff will only have the power to request, and not compel information from certain bodies under the Surveillance Devices Act 1999, such as Victoria Police and the Office of Police Integrity. This is to ensure that investigations being conducted by these bodies are not jeopardised by a compulsion to provide information to the sheriff.

In addition, the bill will provide that agencies are not required to provide information to the sheriff where exceptional circumstances apply. This would cover situations such as where the Department of Human Services has confidential address information regarding child protection, or where the agency reasonably suspects disclosing the relevant information is likely to endanger the person's safety.

Reasonable costs of execution

A comprehensive power for the sheriff to recover all reasonable and necessary costs of execution is required. This is because the sheriff is often required to incur costs other than prescribed fees, such as locksmith and removalist fees, and costs of conducting an auction.

Simplification

Simultaneous execution of multiple warrants (criminal and civil)

The bill will simplify a number of processes, including providing for clarity regarding the processes for the simultaneous execution of multiple warrants. This is an area which has generated confusion. The bill will provide guidance on matters dealing with the priorities and procedure in multiple warrant scenarios. These

include disbursement of proceeds and procedure for enforcement of particular warrant combinations.

Electronic verification and execution of warrants

A key change in the bill will be to allow for the execution of warrants that are identified electronically. The proposal in relation to execution based on electronic verification of warrants is to incorporate a range of safeguards for the defendant. The bill will provide sheriff's officers with the power to execute a warrant against a defendant where they are able to:

verify electronically the existence of a warrant or warrants;

provide the defendant with an appropriate form of specified warrant details, being key information in relation to the warrant;

satisfy requirements for the serving of any relevant seven-day notices; and

provide the defendant with a document summarising the powers in respect of the warrant(s) being exercised against them.

Offences

The bill will also consolidate and modernise relevant offence provisions. These offences include:

not complying with a reasonable direction of a sheriff's officer;

assaulting a sheriff's officer;

resisting the execution of a warrant;

escaping or attempting to escape lawful custody of a sheriff's officer;

attempting to retrieve property seized by a sheriff's officer; and

impersonating a sheriff's officer.

The sheriff Bill will also make consequential amendments to relevant acts (such as the Supreme Court Act 1986 and the Magistrates' Court Act 1989).

Conclusion

The office of the sheriff has had a long history. This will be the first time that the Victorian Parliament has had an extensive consolidated resource for the sheriff and her officers. The bill provides an opportunity to clarify the powers and procedures in relation to sheriff's operations. It will result in an important resource, both for those enforcing court orders and the community.

I commend the bill to the house.

Debate adjourned on motion of Dr NAPTHINE (South-West Coast).

Debate adjourned until Thursday, 23 October.

RACING AND GAMBLING LEGISLATION AMENDMENT BILL

Statement of compatibility

Mr HULLS (Minister for Racing) 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 Racing and Gambling Legislation Amendment Bill 2008.

In my opinion, the Racing and Gambling Legislation 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:

1. the Racing Act 1958, Gambling Regulation Act 2003 and Instruments Act 1958 to:

    a. allow bookmakers to carry out internet and telephone betting operations at any time from approved racecourses;

    b. permit corporations to act as bookmakers; and

    c. transfer responsibility for the registration of bookmakers to the Victorian Commission for Gambling Regulation.

Human rights issues

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

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

Section 26 provides that a 'person must not 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 the law'. The protection in section 26 of the charter means that a person who has been tried in proceedings cannot be tried again on a charge that is substantially the same as the original charge. Section 26 protects a person against what is commonly referred to as 'double jeopardy'.

Proposed section 4.5A.13(1)(d)(ii) in clause 21 provides that if a registration holder has been found guilty of a relevant

offence, this can be a ground for disciplinary action. However, this does not amount to 'double jeopardy' and there is no limitation on the right in section 26 of the charter, for the following reasons. Judgements of foreign courts have held that the cancellation, suspension, variation of a licence or registration due to a consideration of the individual's guilt cannot be interpreted as a punishment deriving from the offences for which he or she has been found guilty. Rather, the disciplinary action is for the separate purpose of proper regulation of the occupation and the protection of the public (see for example *Swain v. Department of Infrastructure* (General) [2008] VCAT 848). Accordingly, disciplinary action under the new section 4.5A.13 does not amount to punishment for the same offence, and there is no limitation on the right in section 26 of the charter.

Section 8: 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.

Proposed sections 4.5A.2 and 4.5A.3 in clause 21 provide that a person must be aged 18 years or more to apply for registration as a bookmaker or a bookmaker's key employee. This amounts to prima facie discrimination on the attribute of age. However, the discrimination is a reasonable limitation on the right for the reasons set out below.

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

(a) the nature of the right being limited

The prohibition of discrimination is one of the cornerstones of human rights instruments and this is reflected in the preamble to the charter. However, the right is not absolute and can be subject to reasonable limitations in section 7(2) of the charter.

(b) the importance of the purpose of the limitation

The purpose of the limitation is to ensure that a person who is registered as a bookmaker or bookmaker's key employee have the necessary maturity to responsibly perform the requirements of the position of bookmaker or bookmaker's key employee.

(c) the nature and extent of the limitation

The right is limited only to the extent that a person aged under 18 years of age cannot be registered as a bookmaker or a bookmaker's key employee until that person turns 18.

(d) the relationship between the limitation and its purpose

Age limits necessarily involve a degree of generalisation, without regard for the particular abilities, maturity or other qualities of individuals within that age group. In these clauses, age is being used as a proxy measure of the maturity and capacity of an individual to act responsibly, which is necessary in this situation. It is reasonable for Parliament to set an age limit reflecting its assessment of when most persons will have sufficient maturity to ensure responsible decisions are made in these particular contexts.

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

There is no less restrictive means to achieve the purpose of this provision.

Conclusion

I consider that the bill is compatible with the Charter because to the extent that some provisions do raise human rights issues:

these provisions do not limit human rights; or

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
Minister for Racing

Second reading

Mr HULLS (Minister for Racing) — I move:

That this bill be now read a second time.

The Racing and Gambling Legislation Amendment Bill has as its genesis the government strategic policy statement released in October 2006, titled *Racing in Victoria — Leading the Field*. This statement provided a strategy by which government support for the Victorian racing industry could ensure it built on its strengths, effectively managed its many challenges and maintained its leadership position nationally into the future.

A fundamental component of this strategy to support the continued growth, viability and sustainability of the Victorian racing industry was a commitment to the bookmaking sector in this state. This government commitment to the Victorian bookmaking sector has already been illustrated through the introduction of a range of reforms to ensure bookmakers maintain a valuable presence on our racetracks.

Since taking office in 1999, this government abolished the bookmakers' turnover tax and introduced a bookmakers' levy, which provides a direct return to clubs and to the bookmaking sector and has approved the extension of hours for Victoria's sports bookmakers to operate 24/7 via the internet.

In 2002, in recognition of the financial pressures associated with the sole trading model, the government amended legislation to allow individual bookmakers to form proprietary corporations (as distinct from public companies) and partnerships.

However, the introduction of a betting exchange into Australia, coupled with the evolution of internet and

telephone betting, has provided a means for interstate wagering service providers to gain a significant business presence in Victoria. The emergence of a national wagering market has contributed to a marked decline in the Victorian bookmakers' share of fixed odds betting with Northern Territory corporate bookmakers having doubled their market share in the last five years to a dominant 58 per cent of the market.

In May last year, in acknowledgement of the changed market conditions for wagering service providers, the government reconvened the Bookmaking Reforms Working Party, comprised of key racing industry stakeholders to consider identified policy proposals relevant to the future of Victorian bookmakers. These included representatives of the controlling body for each racing code, the Victorian Bookmakers Association and Tabcorp.

In its final report, the working party provided a number of recommendations that form the basis of the legislation before Parliament today. The proposals in the bill will provide a contemporary framework for the operation and regulation of Victoria's registered bookmakers. This will enable them to compete more effectively with interstate competitors and ensure the continuation of bookmakers as a presence at Victorian racecourses.

The Racing and Gambling Legislation Amendment Bill will amend the Racing Act 1958 (RA) and the Gambling Regulation Act 2003 (GRA) and has three principal components. The first of these will allow bookmakers to conduct internet and telephone betting operations at any time from approved racecourse locations. In an age of '24/7 racing' the current restrictions on Victorian bookmakers to only conduct betting at a licensed racecourse while a race meeting is in progress is antiquated and no longer appropriate. Corporate bookmakers located in other jurisdictions are not subject to the same restrictions and may accept bets via the internet or telephone at any time, putting Victorian bookmakers at a competitive disadvantage.

Some stakeholders have expressed disappointment that this proposal has been limited to approved racecourse locations rather than any premises on or off-course as the working party recommended. However, the requirement for bookmakers to only operate from racecourse locations reflects the government's commitment to preserve the historical separation of on-course bookmaking and off-course totalisator wagering. This is particularly relevant in the context of the exclusivity of the wagering licence for all off-course retail services. The restriction also allows for greater supervisory access for integrity assurance purposes.

Allowing Victorian bookmakers to conduct internet and telephone betting on a 24/7 basis only from approved racecourse locations is considered an appropriate response to improve the competitive position of Victorian bookmakers without diminishing the integrity of the racing industry.

The second component of this legislation will allow corporations to act as bookmakers. While the 2002 amendments have improved the position of Victorian bookmakers, the current limitations on corporate and partnership arrangements to bookmakers has restricted their ability to raise capital from other sources, a restriction not imposed upon corporate bookmakers operating in other jurisdictions. This has placed Victorian bookmakers at a disadvantage. Interstate wagering service providers have been able to put in place superior capital structures through access to public and private capital enabling them to carry extensive marketing and advertising campaigns, maintain protracted and aggressive betting strategies, and sustain infrastructure and staffing resources to meet associated customer demand.

The government has accepted that such an option is essential for Victorian bookmakers to be able to compete on a level playing field as part of a national wagering market.

Finally, the Racing and Gambling Legislation Amendment Bill 2008 will transfer responsibility for bookmaking registrations to the Victorian Commission for Gambling Regulation. Currently the responsibility for registration rests with the Bookmakers and Bookmakers' Clerks Registration Committee. However, the shift to allow public companies to be registered as bookmakers necessitates a registration authority that is better equipped to consider and assess the complex commercial, financial and probity issues that are associated with corporate entities. The transfer to the commission as the responsible authority for bookmaker registration is also consistent with the regulation of all other gambling activities, including its regulation of the wagering licence-holder.

The bill will not only better position Victorian bookmakers but will also reduce the administrative burden they face. Currently bookmakers are required to register, not only themselves but also all of their staff, who are currently registered as bookmakers' clerks. Under the new legislation, only those employees who will be responsible for the wagering operation in the absence of the bookmaker are required to be registered. It is anticipated that this change will remove the requirement to register approximately 600 clerks. This regulatory change will also make the Temporary

Certificate of Registration redundant. At present, an application for a temporary certificate is required every time the registered bookmaker is absent from their stand. However, with the provision of a new 'key employee' category, no temporary certificate is required saving another 300 registrations annually.

In short, this legislation is vital to ensuring the long-term viability of the bookmaking profession. Without these reforms, the market share and competitive position of Victorian bookmakers relative to interstate and overseas wagering service providers will continue to be eroded. Such a situation would adversely affect not just bookmakers but the racing industry as a whole. This legislation will ensure that Victorian bookmakers can compete and grow. It will also help to stem the current diversion of wagering turnover away from Victoria in favour of interstate corporate bookmakers and in so doing will improve the commercial position of not only Victorian bookmakers, but the broader Victorian racing industry as well.

I commend the bill to the house.

Debate adjourned on motion of Dr NAPTHINE (South-West Coast).

Debate adjourned until Thursday, 23 October.

CORONERS 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 (charter), I make this statement of compatibility with respect to the Coroners Bill 2008 (bill).

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

Overview of the bill

The bill will amend the Coroners Act 1985, establish the Coroners Court of Victoria and the Coronial Council of Victoria and provide for the state's coronial system and investigative procedure.

Human rights issues

The provisions of the bill raise a number of human rights issues.

1. Right to life

The right to life is protected by section 9 of the charter. In other jurisdictions this right has been interpreted to include an obligation on government to ensure an effective investigation into certain deaths. As the most significant investigative mechanism into reportable and reviewable deaths, the coronial system gives effect to this right. The operation of an effective investigation process raises other relevant rights. Limitations on these rights have been found to be reasonable when balancing and giving effect to this aspect of the right to life.

2. The general application of the charter to the Coroners Court

The bill amends the definition of 'court' in the charter to include the Coroners Court which is specified in the bill to be an inquisitorial court. When acting in an administrative capacity, the Coroners Court will be a public authority and will be bound by section 38 of the charter. Further, statutory provisions and discretions in the bill will need to be interpreted, where possible, compatibly with the human rights set out in the charter.

3. Reporting obligations

Part 3 of the bill includes obligations to report reportable and reviewable deaths. Except under clause 12, these obligations arise within the context of professional duties. Clause 12 applies to a person who has reasonable grounds to believe that a reportable death has not been reported. Clause 49 provides that the principal registrar must notify certain persons of specified information.

Free expression

The right to freedom of expression in section 15 of the charter has been interpreted in some jurisdictions to include a right not to impart information. To the extent that these provisions impose any restriction on free expression, they come within section 15(3) of the charter, as they are reasonably necessary for public health and/or the maintenance of public order. Accordingly these provisions are compatible with the right to freedom of expression in section 15 of the charter.

4. Powers relating to the body of the deceased person

Clause 22 of the bill provides that the coroner controls the body of the deceased person until released under clause 47. Under clauses 23 and 24 a coroner may provide a body for the performance of preliminary examinations and direct the performance of procedures for the purpose of identification. Clause 25 sets out the situations in which a coroner must direct the performance of an autopsy. The state coroner may also authorise the exhumation of a body under clause 46. Decisions in relation to the release of a body, autopsies and exhumations are subject to the appeal rights set out in part 7 of the bill.

<u>The nature of the rights being limited</u>

The exercise of these functions will sometimes conflict with or impinge the ability to adhere with or carry out religious and cultural practices and beliefs surrounding death. Consequently these provisions engage and potentially limit the right to freedom of religion and cultural rights protected by sections 14 and 19 of the charter respectively. The

freedom to have or adopt a religion or belief in worship, observance, practice or teaching and enjoy culture is also protected by the right to equality and the freedom of expression included in the charter at sections 8 and 15. The United Nations Human Rights Committee has interpreted the rights to privacy and family life broadly to include a person's relationship with their ancestors. Section 13 of the charter provides that a person has the right not to have his or her privacy, family, home or correspondence unlawfully or arbitrarily interfered with.

These provisions in the bill do not constitute an unlawful and arbitrary interference with private family life, as they occur under the authority of, and in the precise and prescribed circumstances set out in, the bill incorporating the safeguards discussed below. However, to the extent that rights are limited, I consider that the limits are reasonable and justifiable in a free and democratic society for the purposes of section 7(2) of the charter having regard to the following factors:

The importance of the purpose of the limitation

Any restriction of these rights will occur in circumstances where it is necessary to give effect to the wider public interest in effectively investigating deaths and protecting the right to life.

The nature and extent of the limitation

When exercising these functions, directions and authorisations under the bill, clause 8 of the bill, which operates in conjunction with section 38 of the charter, requires that, when these functions are exercised, regard must be had, where practicable and appropriate, to the specified needs or interests of family members, including of the different cultural beliefs and practices surrounding death.

Clause 21 of the bill ensures that the senior next of kin to the deceased person, and any other person who has advised the court that they are a person interested in the investigation of the death, is notified of the coronial process as soon as practicable.

In relation to autopsies, a direction can only be given where a coroner believes it is necessary and appropriate. The coroner is able to impose conditions on the way the procedures are to be conducted so the autopsy can be carried out in a manner that is as sympathetic to religious and cultural beliefs as is reasonably practicable and appropriate. The senior next of kin must be notified of a direction and can object to the conduct of an autopsy, and can appeal the direction and any conditions imposed on an autopsy.

Clause 45 of the bill generally requires that the senior next of kin must be notified of an intention to authorise an exhumation and of their rights both to suggest how the exhumation should be conducted and to oppose the proposed exhumation. A coroner must have regard to any suggestions made by the senior next of kin or any other person who provides written suggestions in respect of the exhumation and may impose conditions on the authorisation.

The only family member who has a right to appeal these decisions is the senior next of kin.

The relationship between the limitation and the purpose

The ability to control the body of the deceased person and perform the necessary examinations and procedures is directly and rationally related to the investigative purpose of the bill. Restricting the appeal rights to the senior next of kin is necessary to ensure the efficiency of the investigatory process. Clause 8(b) of the bill requires that regard should be had to the distress of those affected by the death, which can be exacerbated by unnecessarily protracted coronial investigations.

Less restrictive means reasonably available to achieve the purpose

I consider there are no less restrictive means reasonably available to achieve the purpose of the provisions and that the bill balances the need to recognise and accommodate religious and cultural beliefs with the importance of investigating and identifying the causes of death in a timely fashion.

Accordingly, I consider that these provisions are compatible with sections 13, 14 and 19 of the charter.

5. Powers relating to investigation

Restriction of access to place of death or fire

Clauses 37 and 38 permit a coroner or the Chief Commissioner of Police to take reasonable steps to restrict access to the place, or a place reasonably connected to where a death or fire occurred. Clause 37 also permits the Chief Commissioner of Police to restrict access to the place, or a place reasonably connected to where an incident has occurred which is reasonably expected to result in the death of a person. These provisions engage the right to privacy and limit the freedom of movement. Cultural and religious rights may also be limited.

Privacy

Although these provisions may restrict access to a person's residence, any interference is lawful, occurring under the authority of the bill. Clauses 37 and 38 provide that a notice outlining the restriction may be put up at the place. Any interference is not arbitrary because it will occur in the precise and prescribed circumstances set out in the bill for the purpose of conducting effective investigations of reportable and reviewable deaths and fires.

Religious and cultural rights and freedom of movement

I consider that the limits upon the freedom of movement and right to freedom of religion and cultural rights are reasonable and justifiable in a free and democratic society for the purposes of section 7(2) of the charter, having regard to the following factors:

The nature of the rights being limited

Under section 12 of the charter every person lawfully within Victoria has the right to move freely within the state; to enter and leave it; and the freedom to choose where to live. It extends to the right not to be forced to move to or from a particular location.

The right to freedom of religion and cultural rights have been referred to above. A restriction on access to the place of death

may interfere with various religious and cultural practices surrounding death.

The importance of the purpose of the limitation

Unrestricted access to the place of death, incident or fire is of vital importance to ensure that: the necessary examinations can occur; the integrity of the place is maintained; and evidence is uncontaminated. This power is an integral aspect of having the ability to carry out a thorough investigation into a death or fire.

The nature and extent of the limitation

In coming to the decision to restrict access to a place the factors set out in clause 8 are relevant. Further, the steps taken to restrict access must be reasonable. Therefore, the circumstances of each case, including religious and cultural rights and the freedom of movement, will be relevant to the decision and the extent to which access is reasonably restricted.

The relationship between the limitation and the purpose

Any resulting restriction on these rights is directly and rationally related to the purpose of the bill.

Less restrictive means reasonably available to achieve the purpose

I consider there are no less restrictive means reasonably available.

Accordingly, I consider that these provisions are compatible with sections 12, 14 and 19 of the charter.

Search and seizure powers

Clause 39 of the bill permits a coroner to authorise a member of the police force to search premises and seize relevant information. Clause 40 provides that a person at premises subject to a search under clause 39 must produce documents if directed. Under clause 41 a coroner or officer conducting a search may do anything reasonably necessary to investigate a fire or death including securing the premises to restrict access under clauses 37 and 38.

Privacy

To the extent that the exercise of this authority relates to private information or permits access to residences, the right to privacy is engaged. However, these powers arise in the controlled and prescribed circumstances set out in the bill and are lawful. The authorisation must specify the hours of the day and period within which the powers may be exercised and a copy must be provided to the occupier where practicable. Clause 8(b) is a relevant factor when issuing the authorisation and conducting the search. Consequently, I do not consider that these provisions can be described as arbitrary. Accordingly, these provisions are compatible with the right to privacy under the charter.

Production of information

The obligations on certain persons to assist a coroner under clauses 32 to 36 of the bill include a requirement to provide information. Apart from clauses 32 and 34, these obligations arise within the context of professional duties. These provisions apply to the person who reported the death or fire.

Clause 40 provides that a person at premises subject to a search under clause 39 must produce documents if directed. A person must also produce documents or a statement requested by the coroner under clause 42.

Free expression

To the extent that these provisions engage the right to freedom of expression which may include the right not to impart information, they come within section 15(3) of the charter because they are reasonably necessary for public health and/or the maintenance of public order. Accordingly, the bill is compatible with the right to freedom of expression in section 15 of the charter.

6. Powers relating to inquests into deaths and fires

Compelled evidence and attendance

Clause 55 provides that a coroner may: summon a person to attend the inquest as a witness; order a witness to answer questions; and order a person to produce documents or material. This provision engages the right to freedom of expression and the right not to be compelled to testify against oneself, and limits the freedom of movement.

Free expression

In relation to the freedom of expression, the obligation imposed by this provision to provide the required information and answer questions comes within the express limitation in section 15(3) of the charter described above. Accordingly, the provision is compatible with the right to freedom of expression in section 15 of the charter.

Self-incrimination

Section 25(2)(k) of the charter provides that a person charged with a criminal offence is entitled 'not to be compelled to testify against himself or herself or to confess guilt'. The right to a fair hearing in section 24(1) of the charter has also been interpreted in the United Kingdom and European Court of Human Rights to incorporate a privilege against self-incrimination. Where compulsory questioning powers are used to require a person who has been charged with an offence to answer questions, section 25(2)(k) of the charter is engaged. The right does not apply to the production of documents. However the right does not preclude the use of compulsory questioning powers for legitimate purposes in separate proceedings where a direct-use immunity is provided.

Clause 57 provides that a witness can be exempted from giving evidence (including documents) when there are reasonable grounds to believe that the provision of evidence may incriminate the witness. In instances where grounds for this exemption exist but a coroner determines that it is in the interests of justice for the witness to give the evidence, the bill provides that the evidence cannot be used directly or indirectly against the person except in respect of the falsity of the evidence. Accordingly, I am of the view that this provision is compatible with section 25(2)(k) of the charter.

Freedom of movement

To the extent that a person is required to appear at the inquest that person's freedom of movement is limited. I consider that the limits upon the freedom of movement are reasonable and justifiable in a free and democratic society for the purposes of

section 7(2) of the charter, having regard to the following factors:

The nature of the right being limited

The right to freely move within the state has been described above.

The importance of the purpose of the limitation

The limitation is important because it allows a coroner to obtain the information necessary to effectively investigate the relevant death or fire.

The nature and extent of the limitation

The limitation on the freedom to move freely is restricted only to the extent and time that the person is compelled to be physically present before the coroner to provide information. Before the coroner can compel the attendance and answering of questions by a witness, they must believe that the exercise of these powers is necessary for the inquest or to determine whether an inquest is necessary.

The relationship between the limitation and the purpose

The limitation is directly and rationally related to its purpose: to enable the coroner to acquire the information relevant to the death or fire the subject of the inquest.

Less restrictive means reasonably available to achieve the purpose

I consider there are no less restrictive means reasonably available.

Accordingly, I consider that this provision is compatible with section 12 of the charter.

7. Disclosure, or restriction on disclosure, of information

Restriction on the disclosure of information

Clause 73 provides that a coroner must prohibit the publication of any documents, material or evidence provided to the court as part of an investigation or inquest where the coroner reasonably believes that it would be likely to prejudice the fair trial of a person or be contrary to the public interest. Breach of such an order is an offence.

Free expression

In the event that an order is made regarding the publication of this information, the right to free expression is engaged which includes the freedom to seek, receive and impart information and ideas of all kinds. However, the ability to make such an order on the basis that publication would be likely to prejudice the fair trial of a person comes within section 15(3) of the charter, as it is reasonably necessary to protect the rights and reputation of other persons. Further, the scope of the public interest giving rise to an obligation to prohibit publication on that basis would be construed in a manner compatible with the rights in the charter.

Accordingly, I do not consider that clause 73 can be regarded as arbitrary and I am of the view that it is compatible with section 15 of the charter.

Disclosure of information

Clause 115 enables a coroner to release documents to various persons. Clause 73 provides for the publication of findings, comments and recommendations made following an inquest.

Privacy

To the extent that this information contains private information it engages the right to privacy and reputation. However, disclosures under the clauses are not unlawful. Under clause 115, certain information must be provided unless otherwise ordered by a coroner, to the senior next of kin and an interested person. The requirement that inquest findings, comments and recommendations must be published under clause 73 is an aspect of an effective investigation. Disclosures under these clauses are subject to discretion and subject to clause 8 of the bill and section 38 of the charter. Further, the release of all documents can be the subject of conditions. It is an offence to breach the conditions.

Free expression

In the event that conditions are imposed on the release of documents, the right to free expression, as described above, is engaged. However, the ability to impose these conditions comes within section 15(3) of the charter, as they are reasonably necessary to respect the rights and reputation of other persons, for public health and the maintenance of public order.

Accordingly, I do not consider that these clauses can be regarded as arbitrary and I am of the view that they are compatible with sections 13 and 15 of the charter.

Conclusion

I consider that the bill is compatible with the Charter of Human Rights and Responsibilities because to the extent that some provisions do raise human rights issues:

these provisions do not limit human rights; or

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.

The Coroners Bill 2008 coincides with our celebration of 20 years of the Coronial Services Centre of Victoria and its significant contribution to public health and safety during this time. The bill forms part of this government's broad coronial reform strategy with objectives to:

develop integrated governance, legislative and service delivery frameworks to support a modern and responsive coronial system;

improve communication with and services to families who interact with the coronial process;

strengthen the coroner's prevention role;

improve the delivery of coronial services across the system, including rural service delivery;

upgrade facilities at the Coronial Services Centre and in regional areas;

improve education and training across the coronial system; and

enhance and strengthen the coronial system by developing clearer death reporting and certification processes, establishing improved case management and records management systems and strengthening relationships amongst key stakeholders in the sector.

The coronial system plays an important role in Victorian society. It must endeavour to provide independent answers to those grieving families affected by the investigation of sudden, unexpected and tragic deaths by the coroner. Those deaths can often involve vulnerable members of our community, such as those who are placed in the care or custody of the state. Our coronial system must take a broad public health approach to investigation to clarify on the public record the causes and circumstances of death, to provide public hearings into those matters where it is appropriate and to draw lessons from deaths so as to minimise the risks of recurrence, where possible, in the future.

Victoria's coronial system has been regarded as a leader in its field and has previously drawn praise in international circles. The Coroners Act 1985 was recognised as an innovative piece of legislation when it was introduced and the physical co-location of coronial services at that time allowed for a close working relationship between the state coroner and the Victorian Institute of Forensic Medicine. The National Coroners Information System was also established in 1998 and developed a world-first national database of coroners' information which has facilitated the monitoring of deaths, prevention research and the development of prevention measures in relation to certain deaths. It is timely therefore to renew Victoria's place as a leader in coronial practice and modernise the jurisdiction.

The development of the bill draws extensively from the work of the Victorian Parliament Law Reform Committee, which released its final report on the Coroners Act 1985 in September 2006 with 138 recommendations for legislative and operational reform across the coronial system. The government welcomed the committee's report and established a steering committee comprising of representatives across the coronial sector to consider the committee's recommendations and their implications for different agencies. This process resulted in the government response which was tabled in Parliament in March 2007.

The government response accepted the majority of the committee's recommendations, noted that many recommendations had already been implemented and highlighted that the release of the report coincided with a period of significant change at the State Coroner's Office. Where the government response departed from the committee's recommendations, alternative and more appropriate measures were developed in consultation with key stakeholders to address the underlying issues identified by the committee. Following the release of the government response, further engagement took place with the coronial sector under the leadership of the new state coroner, Her Honour Judge Jennifer Coate, which refined the development of the bill and the final package of coronial reforms.

As a result, the bill is complemented and supported by a number of key projects, including the delivery of a training package through the Judicial College of Victoria specifically developed for coroners and the development of a coroners court bench book. The bench book will be presented online and improve the operation of regional coronial services. The coroners' training will be designed to take into account issues raised by the committee including cultural and family issues, the conduct of inquests, the implications of the bill and the development of prevention recommendations. There will also be new roles introduced at the registry of births, deaths and marriages to audit the death certification process and monitor trends in the reporting of deaths to the coroner.

The bill also coincides with a significant refurbishment project to modernise the Coronial Services Centre which is currently under way. This redevelopment is designed to suit the coroners court and the Victorian Institute of Forensic Medicine's future growth requirements, and ultimately provide improved integration and efficiency across both sites.

The bill is consistent with the government's 2006 Access to Justice Policy statement, the 2004 justice statement, the Growing Victoria Together goal to build friendly, confident and safe communities and A Fairer Victoria which outlines a commitment to improving access to justice. It also implements recommendations of the 1991 final report of the Royal Commission into

Aboriginal Deaths in Custody and of the subsequent 2005 review under the Victorian Aboriginal justice agreement mark 1.

Two key themes emerged in the Victorian Parliament Law Reform Committee's final report. Firstly, the need for the coronial system to improve services to families. Families reported to the committee that they needed to have increased access to information about the coronial process, including the need for families to be involved in the process and to be informed about their rights and key events. There was also a need for coronial law to accommodate, where practicable, spiritual, cultural and other considerations. Families required sensitive contact from staff and better information on the availability of counselling and services. The bill addresses these issues and introduces objectives which acknowledge and strengthen the position of families and accommodate cultural needs. These enshrine the most extensive principles and objectives of any coronial jurisdiction in Australia. Further, a set of family principles is currently being developed with families who have experienced the coronial system. These principles outline appropriate service standards and expectations in the coronial sector.

Secondly, there was a need to strengthen the prevention role of the coroner. Whilst the Victorian coronial system has an impressive history in the area of prevention, including recommendations regarding tractor rollover protection structures, safety barriers for swimming pools, suicide prevention in prison cell design, and mistral fans, the committee recognised that the role could be further supported. The bill addresses this issue and is supported by the establishment of the first coroner's prevention unit, which will assist the coroner in relation to the formulation of appropriate prevention recommendations as well as help monitor and evaluate the effectiveness of those recommendations.

The bill will also establish the coroners court of Victoria as a specialist inquisitorial court and create the first coronial council in Australia to provide advice to the Attorney-General regarding the operation of the coronial system.

I will now highlight significant features of the bill.

Objectives

The bill introduces objectives which give guidance in the administration and interpretation of the bill.

Those objectives acknowledge the need to avoid unnecessary duplication and expedite investigations, where appropriate. They also encourage practices which acknowledge:

that a death is distressing and may require referral for professional support, such as grief counselling;

the effect of unnecessarily lengthy or protracted investigations or procedures may exacerbate the distress of those affected by the death;

that different cultures have different beliefs and practices surrounding death that should, where appropriate, be respected;

the need for families to be informed of the particulars and the progress of the investigation;

the need to balance the public interest in protecting a living or deceased person's personal or health information with the public interest in the legitimate use of that information; and

the desirability of promoting public health and safety and the administration of justice.

The objectives also note that the coronial system should operate in a fair and efficient manner.

These objectives directly respond to those issues raised by families and embed these principles into the underlying philosophy and operations of the Victorian coronial system.

The jurisdiction of the coroner

Victoria's coronial system is responsible for investigating deaths that are 'reportable' or 'reviewable' and for investigating some fires. The boundaries of the coroner's jurisdiction are defined by public interest, which ensures that coroners are able to investigate only those deaths which require independent and public oversight. It also recognises that coronial investigations represent state intervention into a private experience of families and should be limited to appropriate cases.

The bill clarifies the types of deaths that are reportable to the coroner. For instance, there is some concern regarding which unexpected medical deaths need to be reported to the coroner. The bill clarifies that the test for unexpected medical deaths involves assessing whether the death was reasonably expected by a doctor immediately before the procedure was conducted.

The bill also expands the definition of who is a 'person who is placed in care or custody' to include people who are escaping custody or whom the police are seeking to apprehend. This is consistent with the

recommendations of the Royal Commission into Aboriginal Deaths in Custody.

Further, the bill clarifies that a 'still birth' is not within the jurisdiction of the coroner. This approach is consistent with the committee's recommendations and it reflects the current law in Victoria.

The bill also provides that the coroners will retain their existing jurisdiction to investigate non-fatal fires.

Reviewable deaths

The bill improves the reviewable death system which was introduced in 2004 to deal with multiple child deaths to a particular parent. The purpose of the reviewable death system is to ensure that children at risk of death or injury caused by a parent can be identified and protected and that families receive appropriate medical and social support.

Since 2004 it has, however, been noted that many reviewable deaths have involved children who were born in an intensive care unit and were not expected to survive. These deaths often occur in IVF pregnancies, where there are premature births involving twins or triplets, or situations where there are congenital malformations. These deaths are traumatic for the parents and are not a risk indicator for child protection concerns. Capturing these deaths was an unintended consequence of the system and causes additional grief for families. The bill addresses this situation and also clarifies that the Victorian Institute of Forensic Medicine has no ongoing responsibility to monitor or investigate families once a case has been closed.

Streamlining the coroner's investigation process

The bill creates a streamlined process for dealing with deaths which were only reportable because they were unexpected or where there was no medical certificate of cause of death. This is a discretionary process and the coroner can determine that, in a particular case, it would be appropriate to conduct a full investigation of the death. The requirement to conduct an investigation into the circumstances of deaths that were due to natural causes is a major reason for delays in the coronial system, which causes unnecessary stress for the families of the deceased. These investigations also divert resources away from investigations that need to be made.

This new process will allow the coronial system to target its resources more effectively and end a prolonged process for grieving families, where possible.

The coroner's investigation power

The bill thoroughly outlines the investigation powers of the coroner which helps to provide certainty for the operation of the coronial jurisdiction and guidance to those associated with the jurisdiction, including families. This includes a clarification that the coroner has the power to investigate whether a death referred to it is a reportable death.

Further, the bill provides that the coroner may only investigate deaths which are less than 100 years old and it will not be obligatory for the coroner to investigate deaths that occurred between 50 and 100 years before the death was reported to the coroner. This again allows the coronial system to target its resources more efficiently.

The bill for the first time comprehensively clarifies the coroners' powers with regard to the physical procedures performed on a deceased person, which are required for an effective investigation of a death. They are the preliminary examination, the identification procedure and the autopsy.

The bill defines the process of a preliminary examination, the results of which allow the coroner to perform his or her functions. It also clearly outlines for family members what is included in this procedure.

The bill outlines the process for an identification procedure, which is a more intrusive procedure, such as the taking of bone, to enable a person to be identified. An identification procedure may only be performed on the direction of the coroner.

The bill strengthens the provisions in relation to the conduct of autopsies, including for the first time that the coroner can impose conditions on the way an autopsy is to be conducted. For example, the coroner could impose a condition that only certain body cavities be explored. This can occur after the coroner has consulted with the person performing or overseeing the autopsy and can address cultural considerations raised by a family, where appropriate.

The bill also reinforces the coroners' powers relating to investigation, including a new section which permits coroners to require a person to prepare a statement within a specified time for the purposes of the investigation. This will assist the coroners in carrying out their investigations in a timely manner.

Families in the coronial process

The bill seeks to reinforce the position of families and, in addition to those guiding principles and objectives

which I have already outlined above, provides further legislative measures to assist families in relation to the coronial system.

The bill provides that the senior next of kin and other persons with a sufficient interest in the investigation of a death must be provided with certain information regarding their rights and the coronial process.

The bill creates a right for the senior next of kin to provide suggestions in respect of how an exhumation should be conducted and provides that the state coroner must have regard to those suggestions.

The bill expands the current appeal and review rights to the Supreme Court, including an appeal against a decision of a coroner that a death is not a reportable death, the findings of a coroner made in respect of a death or a fire after an investigation or an inquest as well as an order to release a body and the terms of that release. The bill also allows a person to apply to the Coroners Court for the reopening of an investigation regardless of whether an inquest has been held.

Further, the bill provides that the coroner must conduct an inquest with as little formality and technicality as the interests of justice permit and take steps to ensure that the inquest is conducted in a way which it considers will make it comprehensible to interested parties and members of the family who are present at the inquest. This is consistent with the approach adopted in other jurisdictions such as the Children's Court of Victoria.

The prevention role of the coroner

The bill highlights, for the first time, that the preventive work of the coroner is an important function of the Coroners Court. The bill contains, as one of its purposes, to reduce the number of preventable deaths and fires through the findings of investigation of deaths and fires.

In addition, the bill provides that the coroner will now be able to make recommendations to any entity rather than being restricted to ministers and public statutory authorities.

The privilege against self-incrimination

Consistent with Victoria's new approach in relation to evidence, the bill will limit the privilege against self-incrimination in circumstances where the interests of justice would be served. The witness will be provided with a certificate so that the evidence cannot be used against them in other Victorian proceedings. This will allow the coroner to more thoroughly conduct an investigation and may provide more answers for the families about what happened to their loved ones.

The establishment of a Coroners Court

The bill establishes the Coroners Court of Victoria as an inquisitorial court. This is the first Victorian court to be legislated as an inquisitorial jurisdiction. Creating an inquisitorial court will ensure that the coroners operate independently of the executive and can effectively investigate deaths without the coronial investigation becoming too adversarial.

The bill requires that the head of the Coroners Court must be a judge of the County Court, recognising the importance of the role and allowing for the status of the jurisdiction to be strengthened and enhanced.

The bill provides that the person who assigns a magistrate to be a coroner must have regard to the experience and knowledge of the magistrate in relation to coronial investigations, investigations into injury and death and the identification of preventive measures following such investigations. This will ensure that only those with the requisite skills will be assigned to be a coroner. In addition to this, the bill provides that the state coroner is responsible for directing the professional development and continuing education and training of coroners and registrars of the Coroners Court.

The bill also clearly outlines what powers cannot be delegated by a coroner to a registrar, including the power to order an autopsy.

The bill requires that the state coroner must provide an annual report to the Attorney-General for tabling in Parliament. The report must contain a review of the operations of the Coroners Court, which will provide public accountability and transparency of the jurisdiction.

To further facilitate the proper operation and administration of the coronial jurisdiction and support the creation of the Coroners Court, the bill provides the power to make rules and practice notes.

Access to documents

The government was mindful of the concerns raised in evidence before the Victorian Parliament Law Reform Committee in relation to the critical issue of access to documents in the coronial system. The bill therefore introduces a new access-to-documents regime. This regime establishes a framework which will provide

both protection and guidance regarding access to coronial documents.

The bill seeks to balance the open justice principle against considerations of individual privacy, corporate confidence and the public interest. It also takes into consideration the need for participants, including families, to be provided with information.

The bill removes the presumption of public access to closed coronial investigations which is currently permitted under section 51(2) of the Coroners Act 1985 and provides that unless otherwise directed by the coroner:

a senior next of kin must be provided with the report of the preliminary examination, the identification procedure and the autopsy;

people who have been given leave to be an interested party will be provided with the inquest brief.

The definition of inquest brief will clarify that it does not include parts of a medical file that are irrelevant to the coroner's investigation.

The coroner has an important role in preventing deaths in our community and it is important that findings which contain prevention recommendations are widely available. The bill provides that, unless otherwise ordered by the coroner, findings, comments and recommendations will be published on the internet. The publication would be in accordance with any requirements in the rules.

In all other circumstances, the bill provides that documents may only be released by a coroner:

to an interested party who has a sufficient interest in the document;

to assist a statutory body with the performance of a statutory function;

to a member of the police for law enforcement purposes;

for research that has been approved by an appropriate human research ethics committee;

to a person if the release of the document is in the public interest;

to a person specified in the court rules; or

in accordance with the bill or any other law.

The bill allows the coroner to grant access to a document subject to any conditions and it will be an offence to breach a condition which has been imposed.

This provides the necessary balance of protections as well as appropriate access for all parties.

Coronial Council

The bill will create the first Coronial Council in Australia to provide advice to the Attorney-General, of its own motion or at the Attorney-General's request, regarding the operation of the coronial system. The council will ensure that the coronial system will continue to be effective and responsive to the needs of people who interact with the coronial system in the future.

The council will consider emerging issues of importance to the Victorian coronial system, matters relating to the prevention role of the Coroners Court, the way the coronial system engages with families and respects the cultural diversity of families and any other matters referred by the Attorney-General.

The council will be required to provide an annual report and membership will include the state coroner, the director of the Victorian Institute of Forensic Medicine and the Chief Commissioner of Police. Other members will be appointed based on their experience and the requirements of the council.

Conclusions

The development of the bill has been assisted by the work of many bodies, including the Victorian Parliamentary Law Reform Committee, the State Coroner's Office, the Victorian Institute of Forensic Medicine, Victoria Police, the registry of births, deaths and marriages and the Department of Human Services. I take this opportunity to thank those participants and, in particular, the former state coroner, Mr Graeme Johnstone, the director of the Victorian Institute of Forensic Medicine, Professor Stephen Cordner, and Her Honour Judge Jennifer Coate, who have participated in this long process allowing us to once again reinvigorate Victoria's coronial system.

I commend the bill to the house.

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

Debate adjourned until Thursday, 23 October.

EDUCATION AND TRAINING REFORM FURTHER AMENDMENT BILL

Statement of compatibility

Ms PIKE (Minister for Education) tabled following statement in accordance with Charter of Human Rights and Responsibilities Act:

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

In my opinion, the Education and Training Reform Further 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 will make a number of amendments to the Education and Training Reform Act 2006, as follows:

it establishes a more streamlined process for dealing with unsatisfactory performance by government teaching employees;

it broadens and clarifies the orders that may be made by the Disciplinary Appeals Board following a successful appeal from a termination of employment decision of the secretary;

it creates an executive class of employees within the government teaching service;

it allows the Victorian Registration and Qualifications Authority to delegate certain powers and functions that relate to registered training organisations to Vocational Education and Training Australia Limited; and

clarifies that the current ministers administering the act can deal with all titles to education land, registered in various names, relevant to their portfolios.

Human rights issues

1. Right to privacy — section 13

Section 13 of the charter provides that a person has the right:

(a) not to have his or her privacy, family, home or correspondence unlawfully or arbitrarily interfered with; and,

(b) not to have his or her reputation unlawfully attacked.

The right is based upon article 17 of the International Covenant on Civil and Political Rights. The United Nations Human Rights Committee has referred to the notion of privacy as revolving around protection of 'those aspects of a person's life, or relationships with others, which one chooses to keep from the public eye, or from outside intrusion'.

Clause 31 of the bill provides that the Victorian Registration and Qualifications Authority (VRQA) may share information it has about the performance of a Registered Training Organisation (RTO) with Technical and Vocational Education and Training Australia Limited (TVET) where the VRQA delegates its functions to TVET pursuant to clause 4.2.7A of the bill. Generally, the information shared would not be personal information and accordingly would not interfere with a person's private life. However, in some situations, an RTO is an individual, and accordingly, in these circumstances, the information shared between the VRQA and TVET will pertain to a person. However, the information shared will be in relation to that individual's professional performance and not information about that individual's private life. Further, this information will only be provided to TVET to enable TVET to monitor the professional performance of that individual, as an RTO, and make appropriate decisions about the individual's registration as an RTO and the education services that the individual, as an RTO, provides. To the extent that this information relates to a person's reputation, it does not amount to an unlawful attack. This information sharing is necessary so that TVET and the VRQA can carry out their important function of assuring quality in the services provided by RTOs, and accordingly would not be arbitrary.

Accordingly, any limitation to this right is reasonable.

Conclusion

I consider that the bill is compatible with the Charter of Human Rights and Responsibilities because to the extent that clause 31 raises human rights issues those limitations are reasonable and demonstrably justified in a free and democratic society.

Hon. Bronwyn Pike, MP
Minister for Education

Second reading

Ms PIKE (Minister for Education) — I move:

That this bill be now read a second time.

The bill will make a number of amendments to the Education and Training Reform Act 2006 so as to implement government policy and to further improve its operation.

The main purposes of the bill are:

to create an executive class within the teaching service;

to establish a more streamlined process for managing the unsatisfactory performance of school based employees;

to broaden and clarify the type of orders concerning salary reimbursement that may be made by the Disciplinary Appeals Board following a successful appeal to that board against termination of employment;

to authorise the Victorian Registration and Qualifications Authority to delegate functions to

Technical and Vocational Education and Training Australia Limited in respect of registered training organisations that operate in more than one state or territory, and

to ensure that the current ministers administering the Education and Training Reform Act 2006 can deal with all government education land relevant to their portfolios.

The bill also corrects minor inaccuracies and technical errors to improve the operation of the act.

As the provisions of the bill are grouped under these main purposes, the following further details are also given in that same order.

The Victorian government believes that all Victorian children deserve the best possible start in life and that the greatest gift we can give our young people is a high quality education.

With this in mind, the Blueprint for Education and Early Childhood Development, released on 2 September 2008, sets out the government's vision for education and early childhood development for the next five years. It outlines an integrated reform agenda designed to improve performance and promote excellence across Victoria's schools and early childhood services.

The bill implements an important aspect of the blueprint by creating an executive class within the Victorian government teaching service, and will deliver on the Victorian government's commitment to legislate to allow executive contracts for school principals.

The establishment of the executive class is consistent with the government's expressed commitment to develop, attract and reward the best people. It may be obvious, but it needs to be acknowledged, that the quality of the workforce is a major factor driving the quality of education in schools. High-quality education provision can only occur when the right people are attracted, recruited and supported to perform their roles as effectively as possible. This is particularly true of leaders in schools, with effective school leadership being critical to school improvement. Within this context, executive class contracts will be used to attract high-performing principals to areas where they are needed most.

The executive class scheme in the bill is modelled partly on the provisions in the Public Administration Act 2004 dealing with 'executives' and the provisions in the Education and Training Reform Act 2006 dealing with the 'principal class'.

Consistent with those other provisions, executives will be appointed on contracts which are to be fixed-term not exceeding five years. Importantly, a member of the principal class who becomes a member of the executive class is an ongoing employee within the teaching service, and has a right of return to another position in the teaching service at the end of the contract period, or may have the contract renewed for a further period of up to five years.

The secretary of the department will determine the remuneration of a member of the executive class within a remuneration range set by ministerial order.

Consequential amendments are also being made to the State Superannuation Act 1988. This act currently provides that the salary of principals for superannuation purposes is to be assessed at a higher level than other employees. This arrangement will be continued for principal class members who join the executive class. In all other cases, salary for superannuation purposes is to be modelled on an executive under the Public Administration Act 2004.

The next main matter the bill deals with is to establish a more streamlined process for managing the unsatisfactory performance of government school-based employees, once the process has been completed at the local school level. The employees include teachers, principals and other school-based staff.

Division 10 of part 2.4 of the Education and Training Reform Act 2006 is currently used for inquiries concerning both misconduct and unsatisfactory performance.

School-based employees who engage in unsatisfactory performance are currently supported, monitored and issued with warnings about their performance by their school principal, in accordance with departmental guidelines. The act currently prescribes a procedure that includes the nomination of an 'investigator', and the conduct of an 'investigation' followed by a hearing and determination by the secretary. This is the same process for inquiries concerning misconduct.

The current requirements can cause repetition and delay, given the comprehensive process already undertaken at the local school level. Also the term 'investigator' is inappropriate in the context of unsatisfactory performance, especially for employees who have not engaged in misconduct.

The bill inserts a new division dealing specifically with unsatisfactory performance, and will provide a streamlined, fair and balanced process for managing

unsatisfactory performance, once a report has been received by the employer. The new 'unsatisfactory performance' definition in division 9A will replace the term 'negligence, inefficiency and incompetence' in division 10.

The new process will provide the secretary with a range of options upon receiving an unsatisfactory performance report. Prior to making a determination the secretary will give the employee an opportunity to make a submission about the matters in the report. The employee's submission must be made within 14 days (or any longer period permitted by the secretary), following which the secretary may then make a determination, taking into account the report and any submission from the employee. Actions may include issuing a reprimand, reducing the employee's classification or terminating the employee's employment.

Consistent with other similar procedures, the bill provides the employee concerned with the right to lodge an appeal with the Disciplinary Appeals Board.

Division 10 will continue to operate in the same way as before, except that an employee's unsatisfactory performance will now be dealt with under the new division. The reference to 'inefficiency' in division 10 will be removed and that division will deal mainly with misconduct. It is possible that some reports to the secretary might contain matters of a disciplinary nature, and the bill provides the secretary with the option of dealing with these other disciplinary matters under other current provisions of the act.

The bill will make it clear that any conduct amounting to unsatisfactory performance and dealt with under the new division cannot subsequently be dealt with under division 10. However, the secretary may take action under division 10 for conduct that is related to the conduct dealt with under the new division, provided it is not expressly stated or referred to in the report provided to the secretary.

A separate but related matter involves an amendment to the powers of the Disciplinary Appeals Board to order reimbursement of salary where it upholds an appeal to it against termination of employment. The current section 2.4.69 permits the board to order either reinstatement or some reimbursement of salary, but not both.

The bill will amend the operation of section 2.4.69 to give the board a wider power where the employee is reinstated. The board may order that the employee is to be paid an amount that it considers appropriate in the circumstances to cover the employee's loss of salary, provided that the amount is not more than the employee would have earnt had the termination not taken place.

The next matter dealt with by the bill involves changes to chapter 4 of the act. These changes will enable the Victorian Registration and Qualifications Authority to delegate some of its functions to Technical and Vocational Education and Training Australia Limited (or more commonly shortened to TVET Australia) in respect of registered training organisations that operate, or will operate, in more than one Australian state or territory, and that have their principal place of business in Victoria or conduct all or most of their operations in Victoria.

This amendment will give effect to the decision of the Ministerial Council for Vocational and Technical Education to establish the National Audit and Regulation Authority to provide for the registration and regulation of multijurisdictional registered training organisations in order to reduce the audit burden on such organisations.

Members will probably be aware that the council comprises commonwealth, state and territory ministers who are responsible for vocational education and training. The council decides national policy, and at its November 2006 meeting it agreed to establish a national registration, audit and approval function in TVET Australia Ltd, in order to reduce the audit burden on registered training organisations that operate in more than one state or territory.

The main elements of the bill which implement the council's decision involve enabling the Victorian Registration and Qualifications Authority to delegate its relevant registration functions to TVET, and enabling registered training organisations to apply to the Victorian Registration and Qualifications Authority for approval to have their registration managed by TVET, and enabling for the Victorian Registration and Qualifications Authority to issue criteria which registered training organisations must satisfy in order to get that approval from the Victorian Registration and Qualifications Authority.

The bill contains a note before clause 25 on the type of criteria that the Victorian Registration and Qualifications Authority is expected to publish. These criteria are expected to mirror those contained in a charter issued by TVET, which contain such criteria as requiring the registered training organisation to operate in more than one jurisdiction, or to show that it will be doing so within six months.

The final main matter which the bill deals with is an amendment to the provisions in chapter 5 of the act, which vest all real property acquired for the purposes of the act in the minister. The reason why changes are needed is because the titles to government land in the education portfolios have been registered in various names since the 1862 act, called "An Act for the better maintenance and establishment of common schools In Victoria". Some of these names cannot be traced to the current ministers administering the Education and Training Reform Act and do not reflect the current ministers' portfolio responsibilities.

The amendments will ensure that the current ministers administering the act can deal with all titles to government education land, registered in various names since the 1862 act, relevant to their portfolios.

The bill will also make a number of amendments to correct minor inaccuracies, statute law revisions and other changes to improve the operation of the act. The most significant of these is clause 35, which repeals section 5.4.12(3) of the act, so that work experience arrangements conducted interstate will, in the future, have to satisfy the safety and other requirements of section 5.4.3(2). Otherwise, the rest of these changes are not considered to change existing policies or procedures or remove existing rights.

The Victorian government is committed to making a difference to the lives of young people in Victoria through investment in schools and early childhood services. Within this context, it is important that the Victorian education system is constantly improving. The amendments proposed in this bill will serve to further strengthen the already significant reforms to the education sector.

I commend the bill to the house.

Debate adjourned on motion of Mr DIXON (Nepean).

Debate adjourned until Thursday, 23 October.

GAMBLING LEGISLATION AMENDMENT (RESPONSIBLE GAMBLING AND OTHER MEASURES) BILL

Statement of compatibility

Mr ROBINSON (Minister for Gaming) 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 Gambling Legislation Amendment (Responsible Gambling and Other Measures) Bill 2008.

In my opinion, the Gambling Legislation Amendment (Responsible Gambling and Other Measures) 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 objectives of the Gambling Legislation Amendment (Responsible Gambling and Other Measures) Bill 2008 are:

(a) to amend the Gambling Regulation Act 2003 to —

  (i) consolidate offences in relation to minors;

  (ii) provide for the banning of irresponsible gambling products and practices;

  (iii) reform the regulation of the conduct of bingo by or on behalf of community or charitable organisations;

  (iv) clarify the secretary's functions in relation to wagering and betting licensing and keno licensing;

  (v) make other miscellaneous amendments;

(b) to make consequential amendments to the Casino Control Act 1991 and the Racing Act 1958.

Human rights issues

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

Section 25(1): rights in criminal proceedings

Section 25(1) of the charter provides that a person charged with a criminal offence has the right to be presumed innocent until proved guilty according to law. This right requires that the prosecution has the burden of proving that the accused committed all elements of the criminal offence.

Clause 31 of the bill inserts a new part 7 into chapter 10 of the Gambling Regulation Act 2003 (GRA), and sets out new criminal offences and related provisions prohibiting gambling by persons under 18 years of age (new sections 10.7.1 to 10.7.13).

Of these, proposed sections 10.7.3 and 10.7.4 include offences relating to allowing a minor to gamble, and assisting a minor to gamble.

Proposed section 10.7.6 includes offences relating to gambling employees in respect of minors in a gaming machine area of an approved venue or casino, while proposed section 10.7.7 deals with the offences by minors of entering or remaining in those areas.

These offences are not entirely strict liability offences; defences are set out at proposed section 10.7.12.

Firstly, a 'due diligence' type defence is available to a defendant in a prosecution under section 10.7.3, 10.7.4 or 10.7.6 if:

'(a) the minor was above the age of 14 years at the time the acts constituting the offence were committed; and

(b) immediately before the acts constituting the offence were committed, there was produced to the defendant acceptable proof of age for the minor.'.

In addition, proposed sections 10.7.4(2), 10.7.4(3), 10.7.6 and 10.7.7 (in respect of minors entering or remaining in a gaming machine area of an approved venue or casino) also have an apprentice defence. The apprentice defence may be used by the defendant if:

'(a) the minor concerned was an apprentice (within the meaning of part 5.5 of the Education and Training Reform Act 2006); and

(b) the minor's entry into the gaming machine area of the approved venue or casino on the occasion in question was for the purpose only of his or her receiving training or instruction as an apprentice.'.

These offences do not limit rights in criminal proceedings, because imposing an evidentiary burden on a defendant in relation to a defence generally does not limit the presumption of innocence. Where a defendant relies on one of the defences available under proposed section 10.7.12, the prosecution is not thereby relieved of having to prove the offence: the prosecution will have the burden of disproving the matters raised beyond reasonable doubt.

Further, clause 30 of the bill inserts a new section 10.5.32(1A) into the principal act which provides that where the prosecution asserts a person's age to be evidence of that fact, it will only be evidence to the fact asserted unless the defendant denies the allegation. If the defendant simply denies the allegation, the prosecution is required to resume its duty to prove the age of the person. This is a departure from the current provision of the GRA (section 10.5.32(1)(e)) which allows the prosecution's assertion of a person's age to be evidence of that fact, and which would have operated to relieve the prosecution from proving a key element of all of the offences relating to minors. Clause 30 of the bill therefore does not limit the right to be presumed innocent because the legal burden of proving that a person was under or over a specified age rests with the prosecution if the defendant denies the assertion.

Even if the new minors provisions were to engage the right, there would be sound justification. It is reasonable, having regard to the nature of the scheme and the potential harm to children of non-compliance, that persons should be convicted unless they are able to establish on the balance of probabilities that they have taken reasonable steps to ensure compliance. Allowing persons to escape liability where they have not established that they have taken reasonable steps could potentially undermine the scheme and would be insufficient to protect the interests of children. An objective of providing this defence is to encourage a culture of preventative diligence, by incentivising the checking for proof of age in circumstances where a person's age is questionable.

Section 8: 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.

Clause 31 of the bill inserts a new part 7 into chapter 10 of the GRA, and sets out new offences and related provisions prohibiting gambling by persons under 18 years of age (new sections 10.7.1 to 10.7.13). These provisions amount to prima facie discrimination on the attribute of age. However, the discrimination is a reasonable limitation on the right, for the reasons set out below.

(a) the nature of the right being limited

The prohibition of discrimination is one of the cornerstones of human rights instruments and this is reflected in the preamble to the charter. However, the right is not absolute and can be subject to reasonable limitations in section 7 of the charter.

(b) the importance of the purpose of the limitation

The purpose of the limitation is to ensure that persons who gamble have the necessary maturity to engage in the activity. Gambling is an area of conduct that has potentially serious, detrimental societal effects. The gambling products referred to in the proposed minors offences are all designed exclusively for adult use. The new minors offences are all aimed at the prevention of harm to children and therefore serve to give effect to the best interests of the child, a right protected by section 17 of the charter.

Less-developed life skills (in terms of risk assessment, impulse control, coping with stress, or understanding the value of money or mathematical probability, for example) make young people more vulnerable to the potential harm inherent in gambling products. International research has shown that gambling in young people, like gambling in adults, is associated with a range of other risky and abusive behaviours. Some studies have established links between adult problem gamblers and gambling behaviour during adolescence.

(c) the nature and extent of the limitation

The right is limited only to the extent a person aged under 18 years of age is prohibited from gambling, or entering a gaming machine area of an approved venue or casino.

(d) the relationship between the limitation and its purpose

Age limits necessarily involve a degree of generalisation, without regard for the particular abilities, maturity or other qualities of individuals within that age group. In these clauses, age is being used as a proxy measure of the maturity and capacity of an individual to act responsibly, which is necessary in this situation. It is reasonable for Parliament to set an age limit reflecting its assessment of when most persons will have sufficient maturity to ensure responsible decisions are made in these particular contexts.

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

There is no less restrictive means reasonably available to achieve the purpose of ensuring that minors are not allowed or assisted to gamble.

Section 20: property rights

Section 20 of the charter provides that a person must not be deprived of his or her property other than in accordance with law.

The bill inserts a new part 5A into chapter 2 of the GRA, dealing with the banning of irresponsible gambling products and practices.

At clause 5 of the bill, new sections 2.5A.1 to 2.5A.14 propose a scheme whereby the minister has the capacity to issue an order banning a product or practice related to the provision of a gambling product. The ban order can only be made where the minister forms the view that the product or practice undermines either the extant objective of fostering responsible gambling, or the new objective (proposed in clause 3 of the bill) of ensuring that minors are neither encouraged to gamble, nor allowed to do so.

The proposed scheme provides the minister with the capacity to take pre-emptive action to prohibit a product or practice before it has been made available in Victoria, and no compensation will be payable by the state for any loss as a result of the ban order.

There are a number of reasons why this ban on products and practices does not limit the right not to be deprived of property otherwise than in accordance with law.

Firstly, it is unlikely that the right to a gambling product or practice can be regarded as a property right in the present context. This is due to the essentially unlawful nature of gambling: the right to a gambling product or practice arises only under the gambling legislation; it is therefore a statutory right and inherently voidable. Banning a product or practice is similar to withdrawing a licence in accordance with the provisions of law in force when the licence was issued.

Further, even if gambling products and practices can be regarded as property, then the ban is unlikely to amount to a deprivation of that property. Interference with, or restrictions on property are less likely to be construed as deprivation than the extinction of all the legal rights of the property owner. Although a ban could affect a person's ability to use or enjoy a possession or property, it is unlikely that use would be so restricted or controlled as to amount to deprivation.

Moreover, even if a ban on gambling products and practices does amount to a deprivation of property, then it is nevertheless in accordance with the law, because the bill itself will authorise the minister to take action to ban products and practices.

Importantly, the minister will only ban products and practices that undermine specified objectives set out in the GRA, and these objectives will generally be compatible with the public interest. Subjecting the power to ban products and practices to parliamentary disallowance will also prevent the power from being used arbitrarily.

The banning of products and practices does not undermine any other charter rights, but may in fact assist in upholding some charter rights; in particular the rights of children to protection.

I therefore consider that this proposed ban on products and practices does not limit the property right under section 20 of the charter.

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

Section 26 of the charter provides that a person must not 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.

The proposed ban on products and practices in the new part 5A of chapter 2 of the GRA (outlined above) would operate independently of existing prohibitions.

As such, it is theoretically possible — though unlikely — that in addition to being subject to an interim or fixed-term ban order under proposed sections 2.5A.2 or 2.5A.9, a provider of an irresponsible gambling product or practice may be liable under a separate offence (such as existing section 2.2.1(1) of the GRA, which makes it an offence to conduct a lottery other than one permitted by the act).

While breach of an in-force ban order is an offence under new section 2.5A.13, the ban order per se is not a criminal offence and does not give rise to 'punishment'; it is therefore unlikely that the double jeopardy right is relevant.

In any event, the double jeopardy right expressed in the charter does not prevent charges being laid and tried together. Should this occur, existing common-law and statutory provisions would preserve the essence of the right not to be tried or punished more than once. Specifically, section 51 of the Interpretation of Legislation Act would operate so as to prevent any double punishment, and the pleas of autrefois convict (previously convicted) and autrefois acquit (previously acquitted) would operate so as to prevent any breach of the right through the laying and trial of subsequent charges.

I therefore consider that the proposed ban on products and practices does not limit the double jeopardy right under section 26 of the charter.

Section 13: privacy

Section 13 of the charter establishes a right for an individual not to have his or her privacy, family, home or correspondence unlawfully or arbitrarily interfered with and not to have his or her reputation unlawfully attacked.

The right to privacy concerns a person's 'private sphere', which should be free from government intervention or excessive unsolicited intervention by other individuals. An interference with privacy will not be unlawful provided it is permitted by law, is certain, and is appropriately circumscribed. An interference will not be arbitrary provided that the restrictions on privacy are reasonable in the particular circumstances and are in accordance with the provisions, aims and objectives of the charter.

In the bill, there are provisions that engage the right to privacy. Proposed section 4.3.30A ensures that a licensee or an operator must notify the commission that a person is likely

to become an associate. An associate is defined in section 1.4(1) and includes relatives, executive officers and persons who hold relevant financial interests or exercise any relevant power in the gambling business. As a licensee or operator is a corporation, associates can only be persons who have consented to become associates. Interference with the associate's privacy is not unlawful nor arbitrary. The associate would be aware that the licensee or the operator needs to provide the information.

Proposed section 4.3.30B deals with the Victorian Commission for Gambling Regulation's investigation of the associates of a wagering or betting licensee or operator. The proposed section empowers the commission to investigate an associate, or a person likely to become an associate, of the licensee or operator. The commission is further empowered to investigate any person, body or association having a business association with such a person. This may involve the commission requiring such a person to consent to having a photograph, finger and palm prints taken and referred (with any supporting documents) to the police.

Interference with privacy in these circumstances is not unlawful or arbitrary. On the contrary, these investigatory powers are clear and limited, and a justifiable means for the commission to discharge its regulatory duties in relation to voluntary industry participants.

Existing section 4.3.6 provides that the commission must not recommend that a licence be granted unless satisfied that the applicant and each associate of the applicant is a 'suitable person' to be concerned in or associated with the management and operations of a wagering business and a gaming business. In particular, the commission must consider matters such as whether an associate is of good repute, having regard to character, honesty and integrity; is of sound and stable financial background; or is significantly affected in an unsatisfactory manner by an association with another person, body or association who is not of good repute. The commission's collection of fingerprints and other information allow it to investigate these matters thoroughly.

I therefore consider that the proposed powers to investigate associates and others do not limit the privacy right under section 13 of the charter.

Section 16: freedom of association

Section 16 of the charter provides that every person has the right to freedom of association with others. This right protects the right of all persons voluntarily to group together for a common goal.

Clause 10 of the bill substitutes a new section 4.3.30 and inserts new sections 4.3.30A to 4.3.30C into the GRA. The new sections deal with wagering licensee and operators' relationships with their associates. The new sections replicate the existing association provisions applicable to gaming venue operators and deliver consistency across gaming and wagering or betting.

The charter right to freedom of association is engaged because the proposed provisions impose a scheme whereby a wagering or betting licensee or operator must notify the Victorian Commission for Gambling Regulation of persons becoming associates or changes in associates and the commission is empowered to investigate associates and others and require associations to be terminated.

Specifically, proposed section 4.3.30C empowers the commission to, by notice in writing, require an associate to terminate the association with licensee or operator where the commission has determined that the associate is unsuitable to be concerned in or associated with the business of the licensee or operator.

To the extent that these provisions will restrict a licensee or operator's freedom to choose their business associates and restrict certain business associates and relatives becoming involved in that person's gambling business, the charter right to freedom of association may be limited. However, any limitation is reasonable for the reasons set out below.

(a) The nature of the right being limited

The right to free association is one benchmark of free society and often essential to the exercise of other human rights, such as freedoms of movement, expression, religion and belief. However, the right is not absolute and can be subject to reasonable limitations in section 7 of the charter.

(b) The importance of the purpose of the limitation

The purpose of the limitation is to ensure that the gambling industry is not tainted by association with persons who may call to question the honesty, legality or stability of the industry.

There is no doubt that gambling can attract corrupt and criminal involvement. Historically, social and democratic institutions have tended to be damaged when illegal gambling takes root. For this reason, it is vital to maintain public confidence in the integrity of the lawful gambling industry, and this includes maintaining absolute standards of probity and financial stability for all industry participants and those with whom they associate.

(c) The nature and extent of the limitation

The right is only limited to the extent that those industry participants who wish to enter or remain in the gambling industry need to limit their association to suitable persons.

It is important to note that the commission need not necessarily require the termination of an association. Proposed section 4.3.30C provides that where the commission determines an associate is engaging in unacceptable conduct, it may issue a written warning to the associate or require the associate to give a written undertaking regarding future conduct.

(d) The relationship between the limitation and its purpose

In this case, the limitation on the right to freedom of association is essential to ensuring the ongoing integrity and financial stability of persons involved in the industry. Empowering the commission to require termination of association means that in extreme cases, unsuitable persons can be quickly and effectively quarantined from industry involvement.

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

There is no less restrictive means reasonably available to achieve this purpose.

Section 15: freedom of expression

Section 15 of the charter sets out the right to freedom of expression. It provides that people have the right to hold opinions without interference. People also have the right to freedom of expression which includes the right to seek, receive and impart information and ideas except when lawful restrictions are reasonably necessary to respect the rights and reputation of others or for the protection of national security, public order, public health or public morality.

Clauses 34 to 39 of the bill establish an enhanced scheme for the regulation of protected information.

Protected information is information that a person acquires in the performance of functions under the GRA. Protected information is defined at section 10.1.29 as:

'(a) information with respect to the affairs of any person; or

(b) information with respect to the establishment or development of a casino.'

The act provides a list of persons who are 'regulated persons', recognised by the act as being persons who acquire protected information in the course of performing functions under the act either in their own right (eg. the minister and the commission), or when assisting the minister or the commission (eg. departmental employees).

Currently, existing provisions place limitations on the disclosure of protected information. The bill extends the current limitations and applies them to additional persons, such as the Secretary of the Department of Justice.

(a) The nature of the right being limited

The right to freedom of expression is essential to the operation of a democracy. It enables people to participate in political debate, to share information and ideas which inform that debate, and to expose errors in governance and the administration of justice.

The respect of the rights and reputations of others is naturally a lawful limitation on this freedom. In addition, it is important to note that courts have afforded less protection to the freedom of commercial expression than to either political or artistic expression. The types of information that would generally be protected by the GRA could include both personal information that would be protected by the right to privacy (such as the personal details of licensees and associates) and commercial information (such as that collected in the course of licensing applications or regulatory monitoring of operations).

(b) The importance of the purpose of the limitation

The purpose of the limitation is to protect the personally and commercially sensitive information gleaned by regulated persons. Information legitimately collected by public officials and employees could include, for example, highly sensitive information about the private financial affairs of an individual associated with a gambling licensee, or information submitted in the course of a confidential licensing application or tender process.

This limitation is important for the purposes of protecting the human right to personal privacy, as well as for maintaining commercial confidentiality in a competitive market, and for integrity, effectiveness and fairness in the awarding of gambling licences and other regulatory activities.

(c) The nature and extent of the limitation

Both existing and proposed protected information provisions in the GRA limit individuals' rights to communicate information freely.

However, the right is limited to the extent that the individuals to whom the limitation applies are restricted to those set out in the new definition of regulated person (in new section 10.1.29(1)).

(d) The relationship between the limitation and its purpose

In this case, there is a reasonable and proportionate relationship between the limitations imposed by the bill and the purpose of the limitation.

Disclosure offences and other protected information provisions that protect the privacy of individuals and commercial industry participants are essential to maintaining individual privacy freedoms and public confidence in the viability of the gambling industry, as well as the integrity of Victorian public sector officials and licence awarding processes.

Moreover, there are a range of circumstances to which the duty of confidentiality does not apply. For example, the protection does not apply to a record or disclosure made in the performance of functions under a gaming act or regulations, or permitted or required to be made by or under another provision of division 6 of chapter 10.

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

There is no less restrictive means reasonably available to achieve the purpose of the protection of personal and commercial privacy interests and the integrity of the regulation and operation of the gambling industry.

Conclusion

I consider that the bill is compatible with the Charter of Human Rights and Responsibilities because, to the extent that it limits human rights, those limits are reasonable and proportionate.

HON. TONY ROBINSON, MP
Minister for Gaming

Second reading

Mr ROBINSON (Minister for Gaming) — I move:

That this bill be now read a second time.

The objectives of this bill are:

to consolidate offences relating to minors;

to provide for the banning of irresponsible gambling products and practices;

to reform the regulation of the conduct of bingo;

to clarify the secretary's functions in relation to wagering and betting licensing and keno licensing;

to make other miscellaneous amendments.

The government is currently undertaking the most substantial overhaul of the gambling industry in Victorian history. In April, the government announced a new direction for the gaming industry with gaming venue operators being able to own and operate their own gaming machines under new licensing arrangements post 2012. There will also be new licences for wagering and keno from that time.

These changes make it imperative that the gambling legislation reflects the changing environment and provides for the highest level of consumer protection and industry probity.

This bill includes a range of regulatory and responsible gambling measures and demonstrates this government's ongoing commitment to improving the way that gambling is regulated in Victoria.

Firstly, the bill implements a commitment in Taking Action on Problem Gambling, the government's five-year strategy to combat problem gambling, to provide a power to ban irresponsible products or practices. Implementing this commitment will enhance the government's capacity to ensure that gambling is conducted in a responsible manner.

The process in the bill enables the minister to make interim ban orders in the first instance. This will ensure that immediate action can be taken to ban irresponsible gambling products or practices — that is, a product or practice that the minister considers undermines a responsible gambling objective of the Gambling Regulation Act 2003.

Fixed-term ban orders for a period of up to 10 years can also be made. The Victorian Commission for Gambling Regulation will be required to investigate and report on a product or practice once an interim ban order has been made and before a fixed-term ban order can be put in place.

The bill makes it an offence with a maximum penalty of 1000 penalty units for a person to provide a product or undertake a practice in contravention of a ban order.

Secondly, the bill makes comprehensive changes to the law in relation to gambling by minors. Most importantly, the overall package:

meets a commitment made by this government in April 2008 to increase the penalties that apply to offences relating to minors;

consolidates a raft of offence provisions; and

establishes a new objective in the act 'to ensure that minors are neither encouraged to gamble nor allowed to do so'.

The new objective demonstrates the importance this government places on ensuring that gambling is provided in a responsible manner that does not encourage participation by minors. It will create a significant additional focus for the regulation of gambling in Victoria and will help inform the ongoing development of responsible gambling measures.

The consolidation of existing provisions relating to minors has resulted in the creation of a number of uniform offences that will prohibit:

allowing a minor to gamble;

assisting a minor to gamble;

gambling by a minor;

minors entering a gaming machine area or a casino;

using false evidence of age; and

that will require the display of notices in relation to gambling by minors.

These offences consolidate, and in some cases extend, offences currently found in the Gambling Regulation Act 2003, the Racing Act 1958 and the Casino Control Act 1991.

In addition, a new offence in relation to inadequate supervision of vending machines has been created.

A maximum penalty of 120 penalty units will apply to offences committed by gambling providers and a penalty of 20 penalty units will apply where an offence is committed by an employee or agent.

The bill significantly reforms the way bingo is regulated in Victoria. This will modernise how bingo is played, support industry growth, promote responsible gambling and reduce the regulatory burden borne by declared community and charitable organisations that choose to undertake bingo for fundraising purposes.

The proposals in the bill will:

modernise the game and support industry growth by requiring the Victorian Commission for Gambling Regulation to make a standard set of rules for the playing of bingo and enabling it to approve alternative rules which will allow more than one form of bingo;

reduce the regulatory burden on industry participants by:

removing the requirement for a declared community or charitable organisation to have a minor gaming permit to conduct bingo.

deregulating bingo where no fee is charged providing it is played as a private game, not advertised or open to the public. This will, for example, facilitate the playing of bingo in nursing homes for the entertainment of residents.

ensure consumers are protected by requiring the Victorian Commission for Gambling Regulation to be notified by declared community or charitable organisations of proposed bingo activity and large prizes; and

extend the disciplinary action that can be taken against a bingo centre operator to include imposing a fine not exceeding 60 penalty units.

An important aspect of these amendments is the removal of the current requirement to have a minor gaming permit to conduct bingo. Currently, a declared community or charitable organisation is required to have a minor gaming permit which must be renewed every two years.

To offset any possible risk resulting from the removal of the minor gaming permit requirement, the bill limits the duration of a declaration as a community or charitable organisation to a period of 10 years — currently, declaration as a community or charitable organisation, once obtained, remains in force until revoked. This will have the additional benefit of enabling the Victorian Commission for Gambling Regulation to monitor more effectively organisations that are permitted to conduct a range of gambling activities for fundraising purposes.

The bill also makes a number of changes to the way the two gaming machine operators are regulated. In particular, it addresses some anomalies in the regulatory regimes that apply to them.

These amendments include:

varying the process for the taking of disciplinary action against the gaming operator under chapter 3 and the wagering operator or licensee under chapter 4 of the act;

requiring both gaming operators to ensure that all their gaming machines that are available for play are connected to its approved electronic monitoring system;

enabling disciplinary action to be taken for failure to comply with certain directions made by the Victorian Commission for Gambling Regulation or failure to have all available machines connected to its approved electronic monitoring system; and

applying the same ongoing monitoring provisions in relation to associates to both.

In addition, the bill includes a number of minor amendments that are largely technical in nature. These include a number of changes to facilitate the awarding of wagering and keno licences, clarifying the ongoing regulation of protected information that is acquired by various persons performing functions under the act, as well as amendments in relation to responsible gambling codes of conduct and self-exclusion programs, which will provide greater flexibility and consistency of approach.

I commend the bill to the house.

Debate adjourned on motion of Mr O'BRIEN (Malvern).

Debate adjourned until Thursday, 23 October.

FUNDRAISING APPEALS AND CONSUMER ACTS AMENDMENT BILL

Statement of compatibility

Mr ROBINSON (Minister for Gaming) 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 Fundraising Appeals and Consumer Acts Amendment Bill 2008.

In my opinion, the Fundraising Appeals and Consumer Acts 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 the bill

The bill amends the Fundraising Appeals Act 1998 to implement its public review. It clarifies some sections of the act; introduces increased disclosure requirements for fundraisers to increase transparency for the donating public; reduces the regulatory burden on fundraisers; and improves the administrative powers of the director.

The bill also amends the Goods Act 1958 and the Warehousemen's Liens Act 1958 to introduce in Victoria protections for suppliers and purchasers of bulk goods where the bulk store operator goes into liquidation.

Finally the bill makes a range of minor amendments to other consumer acts.

Human rights issues

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

The provisions in this bill do 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 human rights issues

HON. TONY ROBINSON, MP
MINISTER FOR CONSUMER AFFAIRS

Second reading

Mr ROBINSON (Minister for Gaming) — I move:

That this be now read a second time.

The purpose of this bill is to further enhance community and donor confidence in fundraising, and increase transparency in fundraising activities. It introduces amendments to implement the public review led by Luke Donellan, the honourable member for Narre Warren North. These amendments also form part of the government's vision for developing community organisations outlined recently by the Premier's release of the *Victorian Government's Action Plan — Strengthening Community Organisations*.

The bill also amends the Warehousemen's Liens Act 1958 and the Goods Act 1958 to protect suppliers and purchasers of commingled goods, particularly when a bulk storage operator goes into liquidation, and makes other minor amendments to other consumer acts.

Dealing first with the fundraising reforms, in Victoria, fundraising appeals are governed by the Fundraising Appeals Act 1998. The director of Consumer Affairs Victoria maintains a public register of persons or bodies who conduct fundraising appeals. The register has been in place since January 2002. As of 1 July 2008, there were 1073 fundraisers registered.

The fundraising reforms clarify some sections of the act; introduce increased disclosure requirements for fundraisers to increase transparency for the donating public; reduce the regulatory burden on fundraisers; and improve the administrative powers of the director.

In particular, the bill changes the name of the act to the Fundraising Act 1998 and clarifies that a fundraising appeal is not only a single event over a limited period of time but can also be an ongoing activity.

The bill inserts a new objects clause to clarify the objectives of the act and clarifies the requirement for commercial fundraisers to register. It includes a new power for the director of Consumer Affairs Victoria to publish guidelines to facilitate understanding of registration conditions.

The bill will remove the exemption relating to soliciting a devise or bequest of any property from the requirements of the act. Currently, this form of fundraising is not a fundraising appeal for the purposes of the act. However, in the majority of instances there does not seem to be anything especially unique about this form of fundraising to justify its exclusion from the provisions of the act.

The act already sets out a number of information disclosure requirements for fundraisers, much of which is made available to the public on the register. As a crucial part in increasing transparency, the bill introduces two new disclosure requirements for fundraisers.

First, fundraisers must disclose details of the actual total amount of proceeds that they estimate they will pass on to beneficiaries. This information can be posted on the public register. This will provide a clearer picture for potential donors of the impact of the fundraising appeal, than the current emphasis upon the proportion of total proceeds.

Second, the bill now requires fundraisers to clearly disclose the exact dollar or percentage amount of funds that will be passed on to the beneficiaries to the donor when obtaining donations as part of the supply of goods or services. This requirement particularly relates to commercial for profit entities taking part in a fundraising appeal. Many commercial for profit entities pride themselves on taking part in fundraising initiatives in this state, but this legislative mechanism

ensures that donors will always be aware of how much of the proceeds from goods or services they have purchased will be passed on to the beneficiaries.

The bill significantly reduces the regulatory burden on fundraisers by repealing the specific record keeping and labelling requirements for clothing bins. The review found that those requirements were placing fundraisers at a competitive disadvantage to commercial bin operators who are not required to disclose any information on clothing bins, as well as imposing an unreasonable compliance burden.

The bill also increases the default period of registration from 12 months to three years as part of the government's policy to reduce regulatory burdens.

Currently under the act, the director has the power to deregister fundraisers for breach of a condition. The bill will provide the director with more flexibility, by allowing the director to reduce the period of registration of a fundraiser in some circumstances where full deregistration is not appropriate. In some instances smaller fundraisers breach conditions on registration inadvertently, but otherwise do not merit deregistration. The amendment enables the director to shorten their registration to enable reconsideration of their qualification to conduct fundraising appeals, and to provide them with assistance where necessary.

Finally, the bill provides that a person conducting a fundraising appeal using direct debit deduction forms must ensure that the wording on the form is legible and clear.

This ensures that potential donors have the ability to establish what they are signing up for.

The other key reforms of this bill amend the Warehousemen's Liens Act 1958 and the Goods Act 1958 to protect suppliers and purchasers of mixed goods when the bulk storage operator goes into liquidation.

Currently, under the Warehousemen's Liens Act 1958, should a storage facility go into liquidation, ownership of any commingled goods may pass to the owner of the storage facility and the goods become available to be sold to satisfy general creditors.

Similarly, under the Goods Act 1958, ownership of any part of the mixed goods already sold but of which the purchaser has not taken delivery at the time the storage facility goes into liquidation, may pass to the owner of the storage facility and the goods become available to be sold to satisfy general creditors.

In both cases, it is not clear where ownership lies.

Potential problems with the current wording of the legislation were demonstrated in New South Wales in 2005, when Creasy Grain Enterprises went into receivership. The liquidators relied on the provisions within the then New South Wales legislation, which were similar to Victoria's current legislation, and claimed ownership of the warehoused grain. This was contested by one of the grain suppliers and the matter was later settled out of court.

The proposed legislative amendments clarify the ownership rights of both suppliers and purchasers of mixed goods in the event a bulk storage operator goes into liquidation. They are modelled upon legislative changes made in 2006 in New South Wales.

The amendments are consistent with broader Victorian government policy for strengthening regional Victoria. They provide legal certainty for grain growers and other rural producers of commingled and bulk goods concerning their title in those goods in the event of insolvency of a bulk storage operator.

The bill also amends the Conveyancers Act 2006 to make void dealings with things that are the subject of an embargo notice; the Fair Trading Act 1999 to clarify the definition of goods for the purposes of hire purchase agreements; the Liquor Control Reform Act 1998 to strengthen the power to make regulations for the operation of security cameras in high-risk licensed premises; the Trustee Companies Act 1984 to update the names of authorised trustee companies and adjust reporting dates; and the Travel Agents Act 1986 to correct a cross-reference.

I commend the bill to the house.

Debate adjourned on motion of Mr O'BRIEN (Malvern).

Debate adjourned until Thursday, 23 October.

LIQUOR CONTROL REFORM AMENDMENT BILL

Statement of compatibility

Mr ROBINSON (Minister for Consumer Affairs) 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 Liquor Control Reform Amendment Bill 2008.

In my opinion, the Liquor Control Reform 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 the bill

The bill will amend the Liquor Control Reform Act 1998 in relation to late-hour entry declarations. The bill enhances the existing provisions in relation to ongoing and temporary late-hour entry declarations. The amendments modify the declaration process and enable licensees to apply for an exemption from the application of the late-hour entry declaration. The director of liquor licensing will determine the exemption application and the refusal of the director to grant an exemption will be reviewable in the Victorian Civil and Administrative Tribunal.

Human rights issues

The provisions of the bill raise a number of human rights issues.

1. Freedom of movement — section 12

Section 12 of the charter provides that every person lawfully within Victoria has the right to move freely within Victoria and to enter and leave it and has the freedom to choose where to live.

The new section 58C as inserted by clause 5 of the bill provides that the director, by notice published in the *Government Gazette*, may make a temporary late-hour entry declaration for an area or a locality. The new section 58D as inserted by clause 5 of the bill provides that the director, by notice published in the *Government Gazette*, may make an ongoing late-hour entry declaration for an area or a locality. The new section 58B(3) as inserted by clause 5 of the bill provides that, subject to any conditions specified in a late-hour entry declaration, the licensee of licensed premises to which the declaration applies must not permit any patrons to enter premises during the hours during which the declaration applies.

As the late-hour entry declarations prevent individuals from entering private licensed premises rather than public spaces, and only restrict the time at which individuals can enter licensed premises, it is unlikely that these clauses engage section 12 of the charter. However, even if the issuing of late-hour entry declarations by the director did impose limitations upon an individual's right to move freely within Victoria, the limitation is reasonable and justifiable under section 7(2) of the charter.

The nature of the right being limited

The right to move freely within Victoria is one that can be subject to restrictions. The International Covenant on Civil and Political Rights expressly recognises that the right may be subject to restrictions that are necessary to protect public order, public health or morals or the rights and freedoms of others.

The importance of the purpose of the limitation

The purposes of the late-hour entry declarations are to reduce alcohol-related violence and disorder. They are aimed at protecting public order and the rights and freedoms of others, including the right to life in section 9, the rights in respect of property in section 20 and the right to liberty and security of the person in section 21 of the charter.

The nature and extent of the limitation

Late-hour entry declarations impose restrictions upon individuals who are patrons of licensed premises, in that, under the new section 58B(3) as inserted by clause 5 of the bill, licensees subject to late-hour entry declarations must not permit patrons to enter the premises during the hours during which the declaration applies.

Under the new sections 58C and 58D as inserted by clause 5 of the bill, the director may make a late-hour entry declaration for an area or locality. Patrons will be restricted from entering licensed premises which are subject to a late-hour entry declaration after a specified time.

The relationship between the limitation and its purpose

The late-hour entry declarations prevent patrons from entering licensed premises subject to such declarations after a specified time. Patrons are prevented from entering premises in order to lessen the risk of alcohol-related violence and disorder occurring. Therefore, any limitation imposed on the freedom of movement of individuals is directly and rationally connected with the purpose of the clauses.

Less restrictive means reasonably available to achieve the purpose

Any less restrictive means would not achieve the purposes of the provisions as effectively.

2. Property rights — section 20

Section 20 of the charter provides that a person must not be deprived of his or her property other than in accordance with law.

Under the new sections 58C and 58D as inserted by clause 5 of the bill, licensees can be subject to late-hour entry declarations. Under the new section 58B(3) as inserted by clause 5 of the bill, licensees of licensed premises to which such declarations apply must not permit any patrons to enter the premises during the hours to which the declaration applies.

As a result of not permitting patrons to enter licensed premises during the hours to which a declaration applies, licensees subject to such declarations may suffer a loss of revenue.

Section 20 of the charter would not apply to licensees which are corporations rather than natural persons. Further, as an inherently defeasible right, it is likely that, where a liquor licence is affected or divested in the manner provided for in a statutory scheme that creates or sustains it, no deprivation of property will occur. However, even if a deprivation of property did occur, the deprivation would occur in accordance with law and would not be arbitrary.

Accordingly, the new sections 58C and 58D as inserted by clause 5 of the bill are compatible with section 20 of the charter.

3. Fair hearing right — section 24

Section 24(1) of the charter provides that a person charged with a criminal offence or a party to a civil proceeding has the right to have the charge or proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing.

Section 24(1) of the charter would not apply to licensees that are corporations rather than natural persons. Further, as licensees which are subject to late-hour entry declarations are not either charged with criminal offences or parties to a civil proceeding at the time when the director makes such a declaration, section 24(1) of the charter does not apply in relation to the making of late-hour entry declarations by the director. Decisions of the director to impose late-hour entry declarations under new sections 58C and 58D as inserted by clause 5 of the bill are administrative decisions and, accordingly, the new sections 58C and 58D are compatible with section 24 of the charter.

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.

TONY ROBINSON
Minister for Consumer Affairs

Second reading

Mr ROBINSON (Minister for Consumer Affairs) — I move:

That this bill be now read a second time.

The Brumby government has said that alcohol abuse is the biggest social issue facing Victoria and decisive action is needed to restore the balance between our vibrant nightlife and dealing with alcohol-related health and community safety issues.

The Brumby government is committed to working with the community licensees, patrons, police and other emergency services, and all other levels of government to reduce alcohol related harm, violence and disorder.

The Ministerial Taskforce on Alcohol and Public Safety developed the Victorian alcohol action plan 'Restoring the Balance', which set out the Brumby government's comprehensive plan for addressing alcohol related problems in our community from 2008 right through to 2013.

The Victorian alcohol action plan commits the government to implementing a number of measures designed to address alcohol-related problems in our community. The trial 2.00 a.m. late-hour entry declaration, or 'lockout', was one of a number of measures undertaken as part of this commitment, and many of these measures are now well progressed.

New regulations that establish minimum standards for security cameras used in licensed premises have just come into effect. This will ensure that quality CCTV footage is available to assist police with investigations undertaken in or around licensed premises and will greatly increase the safety of patrons.

The Liquor Control Advisory Council has recently been asked to assist the Director of Liquor Licensing with the development of new guidelines on drinks and venue promotions and advertising. The guidelines will assist the director to exercise her power to ban promotions that encourage the irresponsible consumption of alcohol and also assist licensees to run promotions and events that attract patrons without compromising their safety.

A fee review is being conducted as a first step before we undertake a more extensive review of liquor licence categories and fees to make sure they provide appropriate controls and to ensure we get the right balance.

The increase in Victoria Police's focus on alcohol-related violence and disorder will also continue through the work of two dedicated task forces. These are Operation Razon, a statewide task force which was established to tackle liquor licensing issues, and the Safe Streets Taskforce, which was established to focus on alcohol-related violence and public order offences.

The trial 2.00 a.m. lockout ended recently on 2 September 2008. It was aimed at reducing the number of people moving between venues late at night and thereby reducing incidents of alcohol fuelled violence and disorder.

The Brumby government was disappointed that some licensees avoided responsibility for these problems by challenging the director's decision to trial a lockout in the Victorian Civil and Administrative Tribunal. As a consequence of this it has become necessary to clarify the intent of the lockout provisions to enable a proper application if required. The director, with the assistance of KPMG, is undertaking a thorough evaluation of the effectiveness of the Melbourne trial. In considering any future application of a lockout it is important to understand the outcomes of the trial but also to have a clear and effective process in place.

We know lockouts can work in some circumstances. In regional areas such as Ballarat, Bendigo and Warrnambool, significant reductions in violence have been achieved. The aim of the evaluation of the Melbourne trial is to determine the outcomes where

there is the unique situation of a very high concentration of diverse licensed premises in a small geographical area. The evaluation report will assist decision making on any future use of a lockout. I stress that there is no intention to implement a further lockout prior to completion of the evaluation of the trial. Nor is there a commitment to a lockout in the future.

However, we want to make sure that the director is able to use this tool as effectively as possible if the director decides that such measures are necessary. The intent of the 2007 amendments to the act was to allow the director to use this tool in situations of urgency, where alcohol-related violence in an area requires a speedy response. The ability of some licensees to use legal manoeuvring to avoid the lockout has highlighted a need to tighten the legislation to give effect to the intent of the 2007 amendments and to ensure that this is no longer able to occur. The lockout power must be available to the director to use effectively, should the director decide that such action is needed in the future.

Therefore, this bill will implement changes to the power of the director to make late-hour entry declarations or 'lockouts'.

The process of making a declaration has proven to be overly cumbersome and can be streamlined in a way that gives the director sufficient capacity to make a declaration whilst still giving affected licensees the right to seek a review of a declaration's application to their premises.

The bill will clarify that the director, when defining the area or locality that a declaration will apply to, can decide on the best method of formulating that definition. It is not intended that the director would, for example, use that power to declare the whole state as being subject to a declaration. Clearly, the government would expect that only those areas or localities with violence or disorder problems would be the subject of a declaration.

A declaration is intended to address violence and disorder in an area or locality not in any particular venue. This bill will clarify that a declaration cannot be challenged on the basis of the financial impact of the declaration on any particular venue or the compliance or safety record of any particular venue.

The streamlined process of making an ongoing late-hour entry declaration will require the director to publish a notice in the *Government Gazette* containing details of the declaration. An ongoing declaration will commence at the end of the 21-day period following publication of the notice. The amendments give licensees 30 days from the date of the notice to apply to the director to be exempted from the declaration. The director then has a maximum of 60 days to make a decision in relation to the application for exemption. If the licensee is not satisfied with the director's decision, they will have the right to seek review in the Victorian Civil and Administrative Tribunal.

Similarly, a temporary declaration must be advertised in the *Government Gazette* but will take effect from the date specified in the declaration itself. In making a temporary declaration, the director is required to consult with the Chief Commissioner of Police with regard to the level of alcohol related violence in the area or locality. Licensees will also be able to apply to the director for an exemption from the application of a temporary declaration. In the case of a temporary declaration, licensees will have 30 days to lodge an application for exemption and the director will have a maximum of 30 days to determine the application.

A declaration will remain in force unless or until an exemption is granted (either by the director or by the tribunal) or until it is revoked by the director. The Victorian Civil and Administrative Tribunal will no longer be able to order a stay of a declaration.

In considering an application for an exemption, the bill will require the director to be satisfied that the application of the declaration to the licensee is not reasonably likely to be an effective means of reducing or preventing the occurrence of alcohol-related violence or disorder in the relevant area or locality. In coming to that decision, the director must have regard to:

> the effective enforcement of compliance with the declaration in the area or locality if the exemption were granted;
>
> the effectiveness of the declaration in the area or locality if the exemption were granted; and
>
> whether the imposition of licence conditions, rather than the application or continued application of the declaration to the premises, would more effectively address alcohol-related violence or disorder in the relevant area or locality.

The bill will therefore strengthen the director's ability to use declarations (or lockouts) in responding to violent and antisocial behaviour associated with alcohol consumption in or around licensed premises.

The bill streamlines the process for implementing a lockout and gives licensees the opportunity to seek review in the Victorian Civil and Administrative Tribunal of any decision by the director to refuse an

exemption. Of course, a licensee will still have judicial review options available to them if they choose and the jurisdiction of the Supreme Court will remain unaffected by this bill.

I commend the bill to the house.

Debate adjourned on motion of Mr O'BRIEN (Malvern).

Debate adjourned until Thursday, 23 October.

PROSTITUTION CONTROL AND OTHER MATTERS AMENDMENT BILL

Statement of compatibility

Mr ROBINSON (Minister for Consumer Affairs) tabled following statement in accordance with Charter of Human Rights and Responsibilities Act:

In accordance with section 28 of the Charter of Human Rights and Responsibilities (the charter), I make this statement of compatibility with respect to the Prostitution Control and Other Matters Amendment Bill 2008 (the bill).

In my opinion, the Prostitution Control and Other Matters 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 will amend the Prostitution Control Act 1994 (the act) to ensure that the regulation of prostitution in Victoria meets its harm minimisation objectives.

The provisions introduced by the bill will strengthen enforcement against brothels operating without permits and licences, and strengthen the administration and enforcement of the licensing framework for prostitution service providers.

Human rights issues

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

Section 25(2) of the charter provides:

A person charged with a criminal offence is entitled … not to be compelled to testify against himself or herself or to confess guilt.

The right provides a limited right to pretrial silence, but only once the person has been charged. However, the section does not provide a general privilege against self-incrimination that the common law provides.

Section 24 of the charter provides:

A person charged with a criminal offence … has the right to have the charge … decided by a competent, independent and impartial court or tribunal after a fair and public hearing.

Based upon the jurisprudence of other jurisdictions, particularly the United Kingdom and Europe, I consider that section 24 of the charter is likely to protect the privilege against self-incrimination where a compulsory requirement to provide information to authorities elicits incriminating statements; and either those incriminating statements are used as evidence against a person in criminal proceedings[1] or the person is subjected to prosecution for failing to comply.[2]

The bill introduces a new offence of failing to notify the Business Licensing Authority (BLA) of any matter that occurs to the licensee, that is referred to in section 47(1) of the act. All matters referred to in section 47(1) are court findings (for example a conviction or finding of guilt under the Drugs, Poisons and Controlled Substances Act 1981) that result in automatic cancellation of a licence.

I have considered whether a licensee who is the subject of a court order that results in automatic cancellation of his or her licence and notifies the BLA of that fact, is potentially incriminating himself or herself by doing so. However, this is not the case, as any of the court findings referred to in section 47(1) would be matters of public record, and are taken, therefore, to be within the knowledge of the BLA already. Therefore, these rights are not engaged.

Accordingly, the bill is compatible with the charter.

Conclusion

I consider that the bill is compatible with the Charter of Human Rights and Responsibilities because none of the clauses of the bill raises human rights issues.

Hon. Tony Robinson, MP
Minister for Consumer Affairs

Second reading

Mr ROBINSON (Minister for Consumer Affairs) — I move:

That this bill be now read a second time.

This bill will amend the Prostitution Control Act 1994. The introduction of that act represented an important advance in the regulation of prostitution, to minimise the risk of harm that can arise in this industry by promoting public health and protecting sex workers from violence and exploitation.

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[1] See, eg, *Saunders v. United Kingdom* (1996) 23 EHRR 313, *R v. Hertfordshire County Council, ex p Green Environmental Industries Ltd* [2000] 2 AC 412, *IJL, GMR and AKP v. United Kingdom* [2001] Crim LR 133 (relating to the use of information compulsorily obtained in subsequent criminal proceedings).

[2] See *Heaney and McGuinness v. Ireland* [2000] ECHR 34720/97 at paras 43–46, *Funke v. France* [1993] ECHR 10828/84 at paras 39–40. See also *Shannon v. United Kingdom* [2005] ECHR 6563/03.

The Prostitution Control Act requires prostitution service providers to be licensed, and to comply with a range of harm-minimisation and best practice obligations. In addition, premises used as brothels must have a permit from the relevant local council. There is one exception to the licensing requirements, for small owner-operated businesses where a maximum of two people are working from one premises. These businesses are not required to be licensed but are still required to register with Consumer Affairs Victoria and to obtain a planning permit.

However, the agencies responsible for enforcing the act and its regulations — Consumer Affairs Victoria, local councils and Victoria Police — have found it increasingly difficult to enforce the law in relation to brothel owners and operators who fail to obtain the necessary licences and permits.

In particular, councils have been concerned in the past that the only way to prove that a brothel was operating without a permit was to retain private investigators to go into suspected illegal brothel premises and obtain sexual services. The obstacles to constructing a sound legal case without resort to this practice, which many councils and ratepayers found unacceptable, will now be cleared.

This bill amends the definition of brothel and escort agency to include premises that offer (rather than provide) sexual services. Councils will no longer have to prove that sexual services took place on premises to establish that the premises is a brothel. Rather, they will only have to prove that the services were offered.

The bill further amends the law to clarify the kinds of evidence that agencies can use to show that sexual services were on offer, when seeking an order declaring premises an illegal brothel. Much of this evidence would not require attendance on the premises (for example, evidence of people entering and leaving the premises, appointments made for prostitution services at the premises, and advertising). Other types of evidence would require attendance, but that attendance would stop far short of the need to purchase services. This includes evidence about the layout and fit-out of premises, and documentation (like books of account) containing information that is consistent with the use of premises as a brothel.

The bill also widens the range of police members who may apply for a warrant to search suspected illegal brothel premises, from members of the rank of inspector, to the rank of senior sergeant. This will enable police to take quick and efficient action against suspected illegal brothel premises. It is especially important that police are able to obtain search warrants quickly, because illegal brothel operators are quick to relocate if they become aware that enforcement action is being taken against them. The restriction on the rank of officer who could bring an application for a search warrant for suspected illegal brothel premises has made it difficult in the past for police to get warrants and gather evidence before operators shut up shop and move elsewhere. Enabling officers of the rank of senior sergeant and above to seek warrants will speed up the process so police can gain access to premises before they move on.

Besides making it easier for local councils and police to close down illegal brothels, the bill will strengthen the existing arrangements for administration and enforcement of the licensing regime by government agencies. For example, the introduction of an effective control test for licensees will ensure (as is already the case for the majority of operators) that the person who has met the requirements for obtaining a prostitution service provider licence is the person effectively controlling the business.

The bill will also make a minor technical amendment to the Second-Hand Dealers and Pawnbrokers Act 1989 to clarify police powers to require hard copy records from electronic record-keeping systems. This amendment will ensure that police can require a record which is contained in a computerised record-keeping system to be provided either electronically or in a hard copy.

I commend the bill to the house.

Debate adjourned on motion of Mr O'BRIEN (Malvern).

Debate adjourned until Thursday, 23 October.

PRIMARY INDUSTRIES LEGISLATION AMENDMENT BILL

Statement of compatibility

Mr HELPER (Minister for Agriculture) tabled following statement in accordance with Charter of Human Rights and Responsibilities Act:

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

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

Overview of the bill

The bill will amend the Agricultural and Veterinary Chemicals (Control of Use) Act 1992 (the Agvet act), the Catchment and Land Protection Act 1994 (the CaLP act), the Domestic (Feral and Nuisance) Animals Act 1994 (the DFNA act), the Fisheries Act 1995 (the Fisheries Act), the Livestock Disease Control Act 1994 (the livestock act), the Prevention of Cruelty to Animals Act 1986 (the POCTA act), the Veterinary Practice Act 1997 (the Veterinary Practice Act) and the Impounding of Livestock Act 1994.

The bill will amend the Agvet act to make changes to the definitions relating to the maximum residue limits for certain substances, to remove the requirement for aerial sprayers to hold approved insurance policies, to insert offences for selling contaminated produce and for breaching authority conditions. The bill will amend the CaLP act to expand and clarify enforcement powers under that act. The bill will amend the DFNA act to amend provisions relating to dog attacks and to amend the requirements relating to domestic animal management plans. The bill will amend the Fisheries Act 1995 to replace consultative arrangements, improve the administration of the act and provide for more effective management and protection of fish and protected aquatic biota. The bill will amend the livestock act to increase penalties for various offences, to amend and clarify provisions relating to disease control, to insert strict liability offences relating to the control of exotic diseases, to remove the requirement for chicken hatcheries to be licensed, to provide for additional offences that may be subject to infringement notices, to increase the maximum penalty for offences prescribed under the regulations and to make other miscellaneous amendments relating to enforcement. The bill will amend the POCTA act to clarify the powers of specialist inspectors and make minor amendments to that act. The bill will amend the Veterinary Practice Act to allow veterinary practitioners who hold a right to carry on or engage in veterinary practice in another state or a territory to practise as a veterinary practitioner in Victoria without the need for separate registration in Victoria by deeming them to be registered in Victoria. The bill also makes a statute law revision amendment to the Impounding of Livestock Act 1994.

Human rights issues

The provisions of the bill raise a number of human rights issues.

1. Section 12: freedom of movement

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

Clauses 83, 84, 85, 86 and 87 of the bill provide strict liability offences for non-compliance with livestock disease control measures. These measures restrict the movement of livestock and livestock products into and out of declared infected places, restricted areas, control areas as well as the importation of livestock and livestock products into Victoria. To the extent that the measures may restrict an individual's ability to move freely within Victoria, the right may be limited.

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

(i) the nature of the right being limited

Section 12: the right to freedom of movement

The right to freedom of movement is an important right in international law. It includes the right to move freely within Victoria, including freedom from physical barriers and procedural impediments.

(ii) the importance of the purpose of the limitation

The purposes of the limitations are of critical importance to the control of livestock diseases within Victoria and the prevention of livestock diseases from entering Victoria.

(iii) the nature and extent of the limitation

In order to comply with the livestock disease control measures in the bill, a person's ability to move freely into and out of areas declared to be infected places, restricted areas or control areas or into Victoria, may be limited. The restrictions on movement imposed by disease control measures are usually not total. In most cases, movement is allowed where certain conditions are satisfied or with a permit issued by an inspector. Any limitations on movement will remain in place for as long as is necessary for disease control purposes.

(iv) the relationship between the limitation and its purpose

There is a rational and proportionate relationship between the limitations on the right to freedom of movement and to the important purpose of controlling livestock diseases.

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

There are no less restrictive means available that would reasonably achieve the purpose of the limitations.

(vi) any other relevant factors

The long-term profitability and competitiveness of livestock industries depends on maintaining high standards of animal health to ensure the provision of high-quality food and fibre products, greater employment and increased income.

The outbreak of a disease can have devastating economic effects on farm income and Victoria's domestic and export markets. A disease outbreak also carries a substantial social impact that extends to farming families and their communities.

Animal health is essentially a matter of ensuring the absence of disease. This is partly achieved through good farming practices and partly through disease surveillance and control. Achieving the highest possible compliance with disease control measures is essential if the measures are to be effective. The amendments to introduce new strict liability offences promote that objective.

2. Section 13: privacy and reputation

Section 13 establishes the right for an individual not to have his or her privacy, family home or correspondence unlawfully

or arbitrarily interfered with and the right not to have his or her reputation unlawfully attacked.

An interference with privacy will not be unlawful provided it is permitted by law, is certain, and is appropriately circumscribed. An interference will not be arbitrary provided that the restrictions on privacy are reasonable in the particular circumstances and are in accordance with the provisions, aims and objectives of the charter.

In the bill, the following provisions engage the right to privacy:

Clause 6 of the bill repeals section 54A of the Agvet act. Section 54A provides an authorised officer with a power of entry to any premises at any time, with the consent of the occupier where the officer believes on reasonable grounds that the occupier is contravening or has contravened the act, regulations or an order under the act. Section 54A is not relied upon as the requirement for authorised officers to obtain the consent of the occupier simply gives the occupier the opportunity to refuse consent and then remove or destroy evidence of contravention. In practice, if an authorised officer believes on reasonable grounds that there is on premises evidence that a person has contravened the act or the regulations or an order under the act, he or she will seek the chief administrator's approval to apply to a magistrate for the issue of a search warrant. Accordingly, the repeal of section 54A does not interfere with the right to privacy.

Clause 12 of the bill amends section 81 of the CaLP act to extend the circumstances in which an authorised officer may enter and search land with notice. The circumstances are where the authorised officer believes on reasonable grounds that regionally prohibited weeds, regionally controlled weeds or established pest animals occur or are likely to occur in the vicinity of the land. In these circumstances the occupier must be given at least seven days written notice of entry and has the right to refuse entry. Also section 81 specifically provides that the power to enter with notice does not apply to a dwelling. The right to privacy is not limited because the interference with privacy is not arbitrary or unlawful, as it is circumscribed. There is a notice requirement and the entry is for an important land management purpose.

Clauses 11 and 12 of the bill amend the entry powers in sections 80 and 81 of the CaLP act to provide that an authorised officer who enters land may take photographs, including videorecordings, of a thing or things of a particular kind. However, in each case the officer must inform the occupier that the occupier may refuse to give consent to the taking of photographs. As no photographs may be taken if the occupier refuses to give consent, there is no interference with the right to privacy.

Clause 13 of the bill amends the entry power in section 82 of the CaLP act to provide that an authorised officer who enters land may take photographs, including videorecordings, of a thing or things of a particular kind. However, such photographs may only be taken if the officer believes that it is necessary for the purposes of section 82(1) or (2). There is, therefore, no arbitrary or unlawful interference with the right to privacy as the power to take photographs is circumscribed and is reasonable in the circumstances.

Clause 116 of the bill enables the Veterinary Practitioners' Registration Board (the board) to provide veterinary registration authorities in other states and territories with access to information from the register of veterinary practitioners maintained by the board.

Veterinary registration authorities in other states and territories will have access to the information on the register concerning veterinary practitioners registered in Victoria. This clause does not limit the right to privacy. The authorities' access to information on this register is neither unlawful nor arbitrary as it is permitted by law, is certain, and is appropriately circumscribed. It is important for authorities to have easy access to information relating to practising veterinarians to protect consumers of veterinary services. Access to information from the register is restricted to veterinary registration authorities only.

Clause 117 of the bill is a consequential amendment to section 19 of the Veterinary Practice Act. Section 19 requires a veterinary practitioner granted registration under part 2 of the Veterinary Practice Act to notify the board if the practitioner changes his or her address. Clause 117 clarifies that the requirement to notify the board of a change of address continues to apply only to a veterinary practitioner whose name appears on the register and does not extend to a veterinary practitioner who is deemed to be registered in Victoria by operation of new section 3A.

Provision of personal information to a government authority will engage the right to privacy. However, clause 117 does not limit the right to privacy because the board requires a current name and address for all practitioners listed on the register in order to be able to contact them in matters of national animal emergencies, to promulgate information relevant to registration and veterinary practice, including disciplinary matters, and for the animal-owning public to be able to properly locate the practitioner of their choice.

Clause 119(2) of the bill requires the board to advise the veterinary registration authority in each state or territory of any finding of unprofessional conduct by a registered veterinarian and the nature of any sanction applied. This provision will enable authorities to easily access this information about any Australian veterinary practitioner at any time. Clause 119 extends an existing notice obligation under the act in relation to more serious determinations under section 45 of the Veterinary Practice Act (such as suspension or cancellation of registration as a veterinary practitioner). Clause 119(3) provides that the veterinary registration authority in each state and territory must be notified as soon as practicable of all determinations of unprofessional conduct, not just the more serious determinations of unprofessional conduct already required to be notified under section 52(1) of the Veterinary Practice Act. With regard to the more serious determinations listed under section 52(1), the board must give notice in the *Government Gazette*; to the veterinary registration authorities in all other states and territories and in New Zealand; if the veterinary practitioner is an employee, to his or her employer; and to an overseas authority if the board has received a request for information about that practitioner.

The interference with privacy under clause 119 of the bill is certain and well-circumscribed, and is neither unlawful nor arbitrary. With regard to the less serious determinations, notification is only provided to the veterinary registration authorities in other states and territories. This information only relates to veterinarians' performance in a professional capacity. The restricted notification to authorities allows for better regulation of Australia's veterinary practitioners.

With regard to the more serious determinations under section 45 of the Veterinary Practice Act, it is reasonable to require that notification is given by publication in the *Government Gazette*; to the veterinary registration authorities in all other states or territories and in New Zealand; if the veterinary practitioner is an employee, to his or her employer; and to an overseas authority if the board has received a request for information about that practitioner. This is because where a practitioner's practice has been restricted, the practitioner's employer and clients are entitled to know how that may affect the services provided by the practitioner and, where the right to practise is withdrawn, the practitioner will be prohibited from providing any veterinary services to an employer or to clients. The practitioner will also no longer be entitled to act on the privileges accorded by registration with respect to animal welfare, certification for export, drugs and poisons and other legislation affecting veterinary practice. Employers, clients, drug companies and government authorities are entitled to know about those matters.

3. Section 15: freedom of expression

Section 15 establishes a right for an individual to have freedom of expression, which includes the freedom to seek, receive and impart information and ideas of all kinds. However, there are special responsibilities attached to this right and the right may be subject to lawful restrictions reasonably necessary to respect the rights and reputations of others or the protection of public order.

Clause 15 of the bill amends the offence for obstructing an authorised officer under section 84 of the CaLP act and clause 103 of the bill amends the offence for obstructing an inspector under section 137 of the livestock act. In each case the amendment criminalises insulting, threatening or abusive language directed at the authorised officer or inspector. The right to freedom of expression includes the right to impart information and ideas and extends to protecting offensive speech. The amendments restrict the right to freedom of expression but the restrictions on speech are for the purposes of public order and the protection of the rights of others and are, therefore, lawful restrictions under section 15(3) of the charter.

4. Section 19(2)(d): distinct cultural rights of Aboriginal persons

Section 19(2)(d) provides that Aboriginal persons hold distinct cultural rights and must not be denied the right to maintain their distinctive spiritual, material and economic relationship to the land, waters and other resources with which they have a connection under traditional laws and customs.

Clause 50(5) of the bill extends the coverage of indictable offences of taking, possessing or trafficking a commercial quantity of a priority species to include the Murray cod. This potentially affects Aboriginal traditional owners who fish for the Murray cod based on traditional laws and customs, and accordingly is a limitation on the rights of Aboriginal persons under section 19(2).

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

(i) the nature of the right being limited

This right is designed to protect the distinctive relationship between Aboriginal persons and traditional lands, waters and other resources.

(ii) the importance of the purpose of the limitations

The purpose of including the coverage of offences to Murray cod is to protect Murray cod from overfishing and to ensure the sustainability of this resource.

(iii) the nature and extent of the limitation

The amendments in the bill will restrict Aboriginal persons from taking, possessing and trafficking a commercial quantity of Murray cod.

(iv) the relationship between the limitation and its purpose

The limitation is directly related to the purpose of protecting Murray cod from overfishing.

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

Aboriginal persons will only be prevented from taking Murray cod in 'commercial quantities' without a permit. It is necessary to restrict commercial quantities of the Murray cod from being fished in order to adequately protect the species. Aboriginal persons will not be prevented from taking a commercial quantity of Murray cod for cultural or other purposes where they hold a general permit under section 49 of the Fisheries Act. The secretary can, under section 49(h), authorise Aboriginal persons to take or possess fish (in areas where recreational fishing is authorised under this act) for a specified indigenous cultural ceremony or event.

The limitation is reasonably justified under section 7(2) of the charter. Accordingly, I consider that the bill is compatible with section 25(1) of the charter.

5. Section 20: property rights

Section 20 establishes a right for an individual not to be deprived of his or her property other than in accordance with law. The right ensures that the institution of property is recognised and acknowledges that the state of Victoria is a market economy that depends on the institution of private property. The right in section 20 of the charter only prohibits a deprivation of property that is carried out other than in accordance with law. This requires that the powers which authorise the deprivation of property are conferred by legislation or common law, are confined and structured rather than arbitrary or unclear, and are accessible to the public and formulated precisely.

Clauses 83, 84, 85, 86 and 87 of the bill provide strict liability offences for non-compliance with livestock disease control measures. These measures restrict the movement of livestock and livestock products into and out of declared infected places, restricted areas, control areas as well as the importation of livestock and livestock products into Victoria. These offences may operate to restrict how a person may use their property or interfere with a person's ability to derive a profit from their property. However, there is no limitation on the right to property in section 20 of the charter because there is no permanent deprivation of a person's property. Also, the interference is in accordance with law as it is for an important

public purpose and will occur pursuant to circumscribed powers conferred by legislation.

Clause 19 of the bill inserts replacement section 29 into the DFNA act. Section 29 provides a range of offences in relation to dog attacks. Section 29(12) enables the court to order that a dog be destroyed by an authorised officer of a council if a person, whether or not the owner, has been found guilty of an offence under new section 29. If a dog is ordered to be destroyed, the owner of the dog is deprived of his or her property. However, the ability of the court to order the destruction of a dog is necessary for the safety of the public and animals. Since a dog may only be destroyed by an authorised officer on the order of the court, clause 19 is in accordance with the law and does not limit the right to property.

Clause 22 of the bill extends the current powers of an authorised officer under section 81 of the DFNA act to permit them to seize a dog if a person has been found guilty of an offence under section 29 of the DFNA act or the authorised officer reasonably suspects that a person has committed an offence under section 29 with respect to the dog. Under the current law, an officer cannot seize a dog unless the person found guilty or suspected by an officer of an offence under section 29 is the owner of the dog. If a dog is seized by an authorised officer, the owner of the dog is deprived of his or her property. However, the deprivation of property is in accordance with the law as the seizure will only occur pursuant to the particular powers conferred by the legislation. Further, the deprivation of property will only be temporary if it is later found that an offence has not been committed. The ability to seize a dog is necessary for the safety of the public and animals. As the proposal is in accordance with the law, the right is not limited.

Clause 23 of the bill allows the council to destroy a dog which has been seized under part 7A of the DFNA act at any time after it has been seized if a person, other than the owner, has been found guilty of an offence under section 29 of the act in respect of the dog. A council can already destroy a dog if the owner of the dog has been convicted of an offence under section 29 in respect of the dog. If a dog is destroyed, the owner of the dog is deprived of his or her property. However, the ability to destroy a dog is necessary for the safety of the public and animals. As this clause is in accordance with the law it does not limit the property right.

Currently, the secretary may only cancel or suspend a non-transferable licence under section 58 of the Fisheries Act. The bill will amend the Fisheries Act to provide for the cancellation or suspension of a fishery licence, including transferable licences, by the secretary at any time.

Further, clauses 61 and 62 of the bill will amend the Fisheries Act to provide that the secretary can cancel, suspend or refuse to renew a licence or permit under the act even if a court has not cancelled or suspended a licence under section 128 of the act.

Section 60 of the Fisheries Act provides that the cancellation of a transferable licence by a court is stayed and that the licence is instead deemed to have been suspended. This enables the licence-holder to sell the licence. Clause 64 of the bill amends section 60 so that it extends to transferable licences cancelled or suspended by the secretary.

Rights created under legislation, such as a licence, may be property and thus covered by section 20 of the charter. It is questionable as to whether cancelling, suspending or refusing to renew a licence amounts to a deprivation of property. Where a licence-holder did not have a reasonable and legitimate expectation as to the lasting nature of the licence, no property right would arise. However, even if a deprivation was found to have occurred, the cancellation and suspension of a licence, or the refusal to renew a licence, will occur in accordance with law. Further, the cancellation and suspension will also not be arbitrary, given that licence-holders have the opportunity to show cause to the secretary as to why a licence should not be cancelled or suspended, which provides licence-holders with an opportunity to be heard. Additionally, under section 137 of the Fisheries Act, decisions by the secretary to cancel or suspend a licence are reviewable decisions, as are decisions refusing to renew a licence. Under section 136(4) a person who is aggrieved by a reviewable decision within the meaning of section 137 may within one month after receiving notice of the decision appeal to the Licensing Appeals Tribunal against the decision. Consequently, any deprivation of property will occur in accordance with law and will not be arbitrary.

Accordingly, clauses 61 and 62 are compatible with section 20 of the charter.

Clause 66 of the bill amends section 106 of the Fisheries Act so that, in relation to any thing subject to a retention notice under section 108A of the act, a court finding any offence in respect of which the seizure of the thing was made proven, may order the forfeiture of the thing or order that it be returned to the defendant or its owner (as the case requires).

While this clause does potentially enable a defendant to be deprived of property (being the forfeiture of the thing seized), the deprivation will occur in accordance with the law. Further, as the deprivation will occur in a predictable manner and will be reasonable in the circumstances, given that the property most likely came into a defendant's possession as a result of the commission of an offence proven by a court, the deprivation will also not be arbitrary.

Therefore, clause 66 is also compatible with the charter.

6. Section 25(1): right to be presumed innocent

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

Clause 55 of the bill amends section 40(2) of the Fisheries Act to substitute 'receiver's' (where twice occurring) for 'receiver'. Section 40(1) of the Fisheries Act creates an offence of receiving or selling fish of a priority species unless authorised to do so under the act. Section 40(2) provides that a person may do any of the things referred to in subsection (1) if he or she is acting on behalf of a holder of a licence who is authorised to do that thing and is authorised by that fish receiver's licence to do that thing, and is not prohibited by the act from so acting. Section 40 places a legal onus on an accused to prove the elements in section 40(2) in order to defend a charge under section 40(1).

As clause 55 does not substantially amend section 40, clause 55 does not engage the right to be presumed innocent.

Clause 59 of the bill amends section 53 of the Fisheries Act to ensure consistency throughout the provision by inserting 'or

permit' and 'or a permit' after the word licence. Section 53(1) of the Fisheries Act provides that the holder of a fishery licence or permit must comply with any condition to which the licence or permit is subject. Failing to comply with section 53(1) will result in the commission of an offence with a punishment of 100 penalty units or 6 months imprisonment or both (where the offence involves a priority species or a breach of a designated licence condition); or 5 penalty units (where the offence is committed by the holder of a recreational licence); or, in any other case, 50 penalty units.

As a result of clause 59, section 53(2) will deem that a holder of a fishery permit failed to comply with a condition of that permit where a person who acts on behalf of the permit-holder fails to comply with any condition of the permit. Section 53(3) provides that subsection (2) will not apply if the permit-holder can prove that he or she had a written agreement with the person that the person would comply with the conditions of the permit; that he or she did everything reasonably practicable to ensure the person would comply with the condition and that he or she did not aid, abet, counsel or procure the person to fail to comply with the condition. Section 53 of the Fisheries Act places a legal onus on an accused to prove the elements in section 53(3) in order to defend a charge under section 53(1).

As the amendments to section 53 by clause 59 will only clarify that sections 52(2) and (3) apply to permit holders as well as licence-holders (since section 53(1) already applied to both licence and permit holders), clause 59 also does not engage the right to be presumed innocent.

Clause 65 of the bill amends section 68A(2)(b) of the Fisheries Act to substitute 'sold' for 'consigned for sale'. Section 68A(2) of the Fisheries Act will provide that a person must not possess fish that are less than the minimum size or more than the maximum size if the fish were (a) taken by the use of commercial fishing equipment or (b) (as a result of clause 65) the fish have been sold or are possessed for sale. Section 68A(4C) provides that it is a defence to a charge under section 68A(2)(b) if the person charged can prove that the fish were taken in accordance with the act. Section 68A of the Fisheries Act places a legal onus on an accused to prove the fish were taken in accordance with the act in order to defend a charge under section 68A(2)(b).

As clause 65 does not substantially amend section 40, clause 65 does not engage the right to be presumed innocent.

Clause 68 of the bill amends section 116 of the Fisheries Act to insert after 'taken' (where twice occurring) 'or otherwise dealt with', and to insert a definition of 'otherwise dealt with'. Section 116 of the Fisheries Act provides that a person must not possess or sell any fish taken in contravention of this act or a law of the commonwealth or of another state or a territory that corresponds to this act. The penalty for failing to comply with section 116(1) is 100 penalty units or imprisonment for six months or both.

Section 116(2) provides that it is a defence in proceedings for an offence against subsection (1) if the person charged proves that at the time of the alleged offence the person did not know, and could not reasonably be expected to have known, that the fish had been taken in contravention of the act.

Clause 68 will extend the scope of section 116. Section 116 of the Fisheries Act creates a reverse onus, as the holder of a fisheries licence will be guilty of an offence under section 116(1) unless he or she can prove the fish were taken in accordance with the act. Section 116 of the Fisheries Act places a legal onus on an accused to prove that the fish were taken in accordance with the act in order to defend a charge under section 116(1).

By placing a burden of proof on the accused, section 116 limits the right to be presumed innocent in section 25(1) of the charter.

However, I consider that 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:

(i) the nature of the right being limited

The right to be presumed innocent is an important right that has long been recognised well before the enactment of the charter. However, the courts have held that it may be subject to limits particularly where the offence is of a regulatory nature.

(ii) the importance of the purpose of the limitations

Section 116 of the Fisheries Act encourages compliance with the act. The purpose of the Fisheries Act is to provide a modern legislative framework for the regulation, management and conservation of Victorian fisheries including aquatic habitats. The objective of imposing a legal burden in relation to the above offence is to ensure the effectiveness of the regulatory scheme which protects important environmental resources.

The purpose of the defence in section 116 is to enable an accused to escape liability where the accused is able to establish particular factors.

(iii) the nature and extent of the limitation

The burden of proof is imposed in respect of an affirmative defence only, and does not apply to essential elements of the offences. Further, before the defence could apply, the prosecution would have to establish that the accused has failed to comply with section 116.

The facts which an accused would need to prove in order to avail himself or herself of the defence are peculiarly in the knowledge of the accused and would be difficult for the prosecution to prove.

(iv) the relationship between the limitation and its purpose

The imposition of a burden of proof on the accused is directly related to the purpose of ensuring compliance with the important regulatory scheme created by the Fisheries Act 1995.

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

Removing the defence altogether would not infringe the right to be presumed innocent. However, this would not achieve the purpose of enabling the accused to escape liability in appropriate circumstances. Although an evidential onus would be less restrictive upon the right to be presumed innocent, it would not be as effective in achieving the purpose

of ensuring the effectiveness of the regulatory scheme created by the Fisheries Act.

Enabling an accused merely to point to or adduce sufficient evidence to raise the defence would undermine the effectiveness of the offences.

As stated, the defence relates to matters that are principally within the knowledge and/or control of the accused. It would be difficult and onerous for the Crown to investigate and prove the relevant matters beyond reasonable doubt. I consider the imposition of a legal burden on an accused to prove the defence is appropriate to ensure that all reasonable steps are taken to comply with the regulatory scheme imposed by the Fisheries Act, and represents an appropriate balance of all interests.

The limitation is reasonably justified under section 7(2) of the charter. Accordingly, I consider that the bill is compatible with section 25(1) of the charter.

7. Section 26: right to not be punished more than once

Section 26 provides that a person must not 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.

This right only applies in respect of criminal offences and not civil trials that may result in a form of civil liability.

Clauses 61(4) and 62(5) of the bill amend sections 57 and 58 of the Fisheries Act to provide that the secretary may cancel, suspend or refuse to renew a licence because of the commission of an offence of a type referred to in section 128(1) by the holder of the licence despite a court deciding not to suspend or cancel the licence under that section on convicting or finding the person guilty of that offence. Thus, a person may be convicted of an offence and punished accordingly by a court, and the secretary may then subsequently cancel, suspend or refuse to renew his or her licence. This amendment raises the issue of double jeopardy in relation to whether a person is being punished twice for the same offence.

The purpose of the secretary in cancelling, suspending or refusing to renew a person's licence in these circumstances would be to protect the sustainability of a resource by preventing an unsuitable operator from continuing to hold a licence rather than to punish the licence-holder for a second time. Accordingly, as the cancellation, suspension or refusal to renew a licence would be of a regulatory nature and would not be aimed at punishing the licence-holder, this amendment is compatible with the charter. Further, even if the cancellation, suspension or refusal to renew a licence did amount to a sanction, courts in other jurisdictions have consistently held that the right not to be punished more than once does not preclude the imposition of both criminal and civil sanctions for the same conduct.

Conclusion

I consider that the bill is compatible with the Charter of Human Rights and Responsibilities because to the extent that some provisions do raise human rights issues:

- these provisions do not limit human rights; or
- to the extent that some provisions may limit human rights, those limitations are reasonable and demonstrably justified in a free and democratic society.

Joe Helper, MP,
Minister for Agriculture

Second reading

Mr HELPER (Minister for Agriculture) — I move:

That this bill be now read a second time.

The Primary Industries Legislation Amendment Bill 2008 makes miscellaneous amendments to the Agricultural and Veterinary Chemicals (Control of Use) Act 1992, the Catchment and Land Protection Act 1994, the Domestic (Feral and Nuisance) Animals Act 1994, the Fisheries Act 1995, the Livestock Disease Control Act 1994, the Prevention of Cruelty to Animals Act 1986 and the Veterinary Practice Act 1997.

The bill amends the Agricultural and Veterinary Chemicals (Control of Use) Act 1992 to —

- revise the definition of 'maximum residue limit' and 'contaminated' by reference to the maximum residue limits specified by the Australian Pesticides and Veterinary Medicines Authority;
- remove the requirement for agricultural aircraft operators to have an approved insurance policy; and
- create new offences for non-compliance with an authority and for a producer who sells contaminated produce.

Amendments to the Catchment and Land Protection Act 1994 will improve investigative and enforcement provisions and in particular will ensure that an authorised officer may on reasonable grounds enter and search land in order to determine whether the duties of a landowner are being complied with, in relation to regionally controlled weeds, regionally prohibited weeds and established pest animals.

Amendments to the Domestic (Feral and Nuisance) Animals Act 1994 will —

- widen the class of persons who may be responsible for dog attack offences to include both the owner and a person in apparent control of the dog;
- provide for seizure and destruction of dogs where a person other than the owner is convicted of a dog attack offence; and

provide for councils to prepare domestic animal management plans every four years instead of every three.

The bill also amends the Fisheries Act 1995 to make a number of improvements to the management and operation of that act.

The Brumby Labor government has a strong record of engaging a wide range of stakeholders when making decisions about the use and sustainable management of Victoria's fisheries resources. This has been accomplished by working closely with the broad range of fisheries stakeholders and their representative bodies.

To ensure that fisheries consultative arrangements continue to best serve the interests of stakeholders and adequately inform fisheries management decisions, the government undertook a comprehensive review of the current consultative arrangements, particularly focusing on establishing principles for effective engagement. The review was undertaken in consultation with key fisheries stakeholders, and was timely given that the current legislated arrangements have been in place since 1995.

In general, the review found that the current arrangements are inflexible, inefficient and do not always provide for appropriate accountability to constituents of those supplying the advice.

To allow for new and more effective consultative arrangements to be developed, the current legislative amendments will clear away the existing highly prescribed and rigid engagement structures. This will allow the flexibility for fit-for-purpose consultative arrangements to be developed and put in place.

The legislation before the house retains the Labor government's commitment to effectively engage and consult with fisheries stakeholders, and introduces key principles to guide such engagement. New arrangements will centre on ensuring that all stakeholders have the ability to input into considerations by government about fisheries resources, and that scientific and other expert advice is made available to inform fisheries management decisions. This meets modern regulatory practices.

The Fisheries Co-management Council and the Fisheries Revenue Allocation Committee are the two principal statutory bodies that have been the focus of much of the review process. The members of these bodies have served well despite the limitations of the statutory arrangements. As we move forward with a new inclusive, strategic and accountable approach, these bodies will be wound up. This will occur at the end of this year. New consultative processes, the detail of which will be consolidated with fisheries stakeholders over the coming months, will be established. New arrangements will be evaluated over time to ensure their effectiveness, with a full review to occur after three years.

Through administrative means, a representative-based body will be established immediately to oversee the implementation of fit-for-purpose engagement and consultation with fisheries stakeholders.

In addition to these improvements to consultative arrangements, the bill will make Australia's iconic freshwater fish, the Murray cod, a priority species.

These impressive fish can reach weights in excess of 100 kilograms, and were once the mainstay of commercial fishing within the Murray–Darling Basin. In recognition of their vulnerable status, commercial fishing of Murray cod has ceased many years ago. Recent analysis by the Department of Primary Industries indicates a marked increase in illegal trade of the species, which, in turn, is threatening its sustainability.

Listing Murray cod as a priority species and defining a commercial quantity will trigger indictable offence provisions which will assist in deterring illegal activity involving Murray cod before it becomes entrenched. The introduction of similar penalties for abalone offences has been effective in addressing illegal abalone harvesting.

Additionally, the bill will strengthen the sustainable management of our fisheries resources by addressing a number of procedural issues relating to commercial licensing and enforcement. The period for which the secretary may issue a fishery access licence will be extended to provide flexibility to change licensing periods for up to five years, in line with the needs of industry. Power will also be provided for the secretary to cancel or suspend licences at any time, thus ensuring that inappropriate persons are unable to continue operating until the licence expires or requires renewal.

By extending the period of the licence, the licence-holder will be provided greater security over and value in their asset.

Currently, a transferable licence cannot be suspended or cancelled; it can only be not renewed. Therefore, the holder of a transferable licence that engages in serious misconduct can effectively continue to operate in a fishery until the expiry of the licence. The amendments will result in similar criteria being applied for

suspension or cancellation of a licence as are now applied at renewal.

Currently, 14 Victorian rock lobster licence-holders have specific authority to land their catch at Port MacDonnell, South Australia. The reason for this is that the nearest Victorian port to their operations is about 40 nautical miles by boat from where they catch the rock lobster, whereas Port MacDonnell is only about 13 nautical miles by boat from the catch location.

While both the Victorian and South Australian fisheries acts allow for extra-territorial application, there is no express power in the Victorian act that enables the enforceability of a licence condition on Victorian fishers landing in South Australia.

While the bill addresses offences occurring at Port MacDonnell, it will also potentially apply to an offence against the Fisheries Act 1995 occurring in another state. However, this will only apply where there is a substantial link with Victoria such as where the activity is occurring under a Victorian licence or where the fish were taken in Victorian waters.

The amendments will allow South Australian fisheries officers to have the same enforcement powers as authorised Victorian officers in relation to Victorian licence-holders. Thus, both Victorian and South Australian authorised officers, including where a person is both, will have the same enforcement powers in relation to Victorian fisheries access licence-holders.

The bill also includes a number of housekeeping amendments to the Fisheries Act 1995, including removing land crustaceans from falling within the definition of 'fish'; allowing processors to possess priority species where they are entitled to do so; and improving grammatical consistency within the act.

The bill also amends the Livestock Disease Control Act 1994 to amend offences regarding exotic disease control to further enhance the ability of the Department of Primary Industries to rapidly respond to future disease outbreaks and threats.

In addition to other minor amendments to the Livestock Disease Control Act 1994, the bill will amend that act to strengthen and clarify inspectors' powers and increase the options for enforcement of disease control measures by creating new strict liability offences carrying lower penalties than the existing offences. In addition the bill repeals the requirements for chicken hatcheries to be licensed and for testing of chickens for Pullorum disease and suspends the requirement for the licensing of premises for the collection of semen and the approval of sires.

The bill also amends the Veterinary Practice Act 1997 further to the agreement reached by the Primary Industries Ministerial Council that a model be adopted for the National Recognition of Veterinary Registration, which is consistent with national competition policy.

Currently, veterinarians must register with the veterinary board in each state and territory in which they wish to practise, a process which is unnecessarily costly and cumbersome, and does not appropriately reflect the realities of modern day veterinary practice or the breadth of work undertaken.

The following are examples of types of veterinary employment requiring multijurisdiction registration: private veterinary practices located near borders; practices with arrangements with interstate facilities; companies with interstate branches; racetrack and feed lot veterinarians; veterinary consultants; national enterprises (including veterinary pathology enterprises); locum practices; and commonwealth government staff, particularly those with the Australian Quarantine Inspection Service.

Each state and territory has agreed to modify their respective legislation to allow veterinarians registered in their jurisdiction of residence to conduct veterinary practice over the whole of Australia. This is termed 'deemed' registration, which gives veterinarians the right to practice in all states and territories.

All veterinary boards will have access to the registration information of veterinary boards in other states and territories. Existing procedures will remain in place for the boards to monitor and investigate professional conduct and notification of findings of misconduct that will be provided to all boards.

The model has received support from the Australian Veterinary Boards Council Inc, which represents all boards, and the Australian Veterinary Association which represents a large portion of the veterinary profession. The model considered by the Primary Industries Ministerial Council underwent development with extensive public consultation. The Review of Rural Veterinary Services (the Frawley review) recommended the removal of statutory barriers to veterinary practice consolidation and efficiency, including the requirement for separate registration in each jurisdiction.

This bill reduces the regulatory burden on veterinary practitioners, increases the scope for Victorians to engage an enhanced array of veterinary services and recognises veterinary practice as it exists in the 21st century.

I commend the bill to the house.

Debate adjourned on motion of Mr KOTSIRAS (Bulleen).

Debate adjourned until Thursday, 23 October.

WATER (COMMONWEALTH POWERS) BILL

Statement of compatibility

Mr HOLDING (Minister for Water) 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 Water (Commonwealth Powers) Bill 2008.

In my opinion, the Water (Commonwealth Powers) 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 refers powers to the commonwealth in order to give effect to the agreement on Murray–Darling Basin reform entered into at COAG on 3 July 2008. The bill will enable the commonwealth to implement commitments under that agreement by enacting legislation to:

introduce a new governance regime for Murray–Darling Basin water management;

extend coverage of the commonwealth/Australian Competition and Consumer Commission (ACCC) water market and water charge rules; and

allow the basin plan to address critical human water needs.

Human rights issues

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

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

Section 20 may be relevant to this bill in so far as it refers powers to the commonwealth to make water market and water charge rules that apply to all entities within the basin and their transactions (instead of just those currently within the scope of the commonwealth's constitutional powers). This could result in future restrictions on bodies that charge regulated water charges and on irrigation infrastructure operators in terms of their ability to charge for access to irrigation networks or services and to restrict the trading of certain irrigation rights held against the operator.

However, any future imposition of restrictions as a result of the commonwealth making water market or water charge rules would be in accordance with law (the Commonwealth Water Act 2007) and not arbitrary. It is therefore considered that the bill does not limit section 20 of the charter.

Conclusion

I consider that the bill is compatible with the Charter of Human Rights and Responsibilities because it does not limit any rights protected under the charter.

TIM HOLDING, MP
Minister for Water

Second reading

Mr HOLDING (Minister for Water) — I move:

That this bill be now read a second time.

The purpose of this bill is to give effect to the agreement on Murray–Darling Basin reform signed by Murray–Darling Basin first ministers on 3 July 2008. This agreement is known as the reform intergovernment agreement, or reform IGA.

Through the reform IGA, basin governments committed to:

a new governance regime to manage water across the Murray–Darling Basin;

allowing the proposed basin plan to address planning for critical human water needs in accordance with the basin governments' intentions as expressed in the reform IG;

extending the commonwealth Australian Competition and Consumer Commission water market and water charge rules to cover all water service providers and transactions.

Murray–Darling Basin governance

The basin is currently managed according to the 1992 Murray-Darling Basin agreement between the commonwealth, New South Wales, Victoria, South Australia, Queensland and the Australian Capital Territory.

The agreement is a cooperative arrangement to manage the basin's shared water and other natural resources through a ministerial council and commission.

However, it was timely for all parties to rethink the governance arrangements in the 1992 agreement, and consider alternative models to manage a future in which water availability is expected to decline through drought and climate change.

The reform IGA outlines a new management regime.

The new regime creates a new, independent, skills-based Murray-Darling Basin Authority, a new ministerial council and a new basin officials committee, and reallocates the current functions and powers of the Murray-Darling Basin Ministerial Council and commission between these new entities.

A key principle in the reform IGA guides the reallocation of these functions and powers: that while the authority would be required to give effect to ministerial council and basin officials committee decisions, it would have more autonomy in exercising its day-to-day technical and operational functions.

Importantly, the authority is obligated not to exercise any of its new powers and functions in a way that could affect state water-sharing arrangements without agreement from either the ministerial council or the basin officials committee.

These new arrangements will allow the authority to undertake the day-to-day running of the Murray River system in an efficient manner, while still ensuring that state water-sharing arrangements remain protected and unchanged.

Critical human water needs

Critical human needs are the highest priority for communities dependent on water in the Murray–Darling Basin. Basin governments have recognised this by agreeing to a three-tiered arrangement to manage future water scarcity.

Under tier one, normal water sharing in accordance with the new Murray-Darling Basin agreement applies.

Tier two sharing arrangements will begin when there is uncertainty that enough water will be available to cover the evaporation and seepage losses incurred when delivering critical human needs water throughout the system. The water required to cover these losses is termed conveyance water.

Under this tier, providing sufficient conveyance water will be a priority.

Tier three will begin when water availability is extremely low, perhaps unprecedented. Under this tier, the ministerial council will decide how water is to be shared on an ongoing basis in response to the conditions at the time.

Importantly, under all arrangements, states remain responsible for meeting their own critical human water needs requirements.

The basin plan will specify the conditions under which each tier will commence and cease. The basin plan will also describe planning arrangements to make sure sufficient conveyance water is provided for under tier two.

Any arrangements specified in the basin plan will not affect state water-sharing arrangements unless the ministerial council or basin officials committee agrees.

Australian Competition and Consumer Commission

Recognising that a uniform approach to regulation is sensible, the Australian Competition and Consumer Commission's role in setting water market and charge rules will be expanded.

The new arrangements mean that the water market rules set by the commonwealth will now cover all relevant bodies within the basin, not just those within the scope of the commonwealth's constitutional powers.

The water charge rules will also now cover all bodies within the basin that charge regulated water charges and therefore a more comprehensive array of transactions.

However, both metropolitan and rural urban water users will remain unaffected by these changes.

Victorian Water (Commonwealth Powers) Bill 2008

To give effect to these arrangements, basin governments have approved a new Murray-Darling Basin agreement to replace the 1992 agreement and have also agreed to a limited, text-based referral of powers to the commonwealth.

In accordance with this commitment, the Victorian Water (Commonwealth Powers) Bill 2008:

> refers certain specified matters relating to the Murray–Darling Basin to the commonwealth Parliament for the purposes of section 51(37) of the commonwealth constitution; and
>
> makes necessary consequential amendments to the Victorian Murray-Darling Basin Act 1993 and other acts.

The new arrangements bring together the commonwealth's basin plan and Murray-Darling Basin

Authority with the Murray-Darling Basin agreement and states' water management frameworks.

I now turn to the bill.

The bill refers specified matters to the commonwealth so that it can amend the commonwealth Water Act 2007. These matters include:

attaching the new Murray-Darling Basin agreement as a schedule;

expanding the functions and powers of the Murray-Darling Basin Authority and the basin community committee to include those set out in the new Murray-Darling Basin agreement;

inserting a new part into the commonwealth Water Act that requires the basin plan to deal with providing conveyance water and critical human water needs in accordance with the intent of the reform IGA;

replacing part 4 of the commonwealth Water Act to extend the reach of the water charge and water market rules within the basin to cover, respectively, all bodies that charge regulated water charges and all irrigation infrastructure operators;

inserting a new part 4A into the commonwealth Water Act to allow a referring state to choose to apply the water charge and water market rules in its jurisdiction beyond its portion of the Murray–Darling Basin;

providing for the staff, assets (other than those related to Murray River operations and Living Murray initiative) and liabilities of the Murray-Darling Basin Commission to be transferred to the authority in accordance with the reform IGA. Transitional matters are also provided for.

In accordance with normal protocol, the version of referred text agreed between the parties to cover these matters is formally tabled in only one state Parliament. I can inform the house that this text was tabled in the South Australian Parliament on 23 September 2008 by the Honourable Karlene Maywald, MP, Minister for the River Murray. For the information of members, a full copy of this referred text, which is referenced in this bill, is available from the parliamentary library.

Along with these specified referred matters, the bill also refers a limited subject matter amendment power to the commonwealth. In relation to this amendment power, Minister Garrett in his second-reading speech of 25 September 2008 presenting the commonwealth Water Amendment Bill 2008 to the House of Representatives noted that the commonwealth government has committed to securing the agreement of the basin states before proposing any amendments to the commonwealth Water Act based on these referred subject matters.

He further noted that in recognition of the cooperative underpinnings of the limited referral of power by the basin states, any amendments proposed by the commonwealth government would be consistent with the principles of the July 2008 reform IGA. The Victorian government welcomes this commitment.

Basin governments have come a long way from the flawed takeover proposed by the previous commonwealth government on Australia Day in 2007, proving cooperation offers the best way forward.

I commend the bill to the house.

Debate adjourned on motion of Dr SYKES (Benalla).

Debate adjourned until Thursday, 23 October.

The ACTING SPEAKER (Mr Nardella) — Order! I advise members that the Water (Commonwealth Powers) Bill 2008 makes reference to tabled text — namely, the text of the proposed commonwealth act as tabled in the House of Assembly of South Australia on 23 September 2008. Members are able to obtain a copy of the proposed act from the Assembly procedure office.

ASBESTOS DISEASES COMPENSATION BILL

Statement of compatibility

Mr HOLDING (Minister for Finance, WorkCover and the Transport Accident Commission) tabled following statement in accordance with Charter of Human Rights and Responsibilities Act:

In accordance with section 28 of the Charter of Human Rights and Responsibilities (the charter), I make this statement of compatibility with respect to the Asbestos Diseases Compensation 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 will allow for the awarding of provisional damages. This will enable a person to make an initial claim for an

asbestos-related condition and a subsequent claim if they develop a further asbestos-related condition. This bill will ensure that the Victorian position is consistent with most other states and territories and that there is interjurisdictional equity in the treatment of asbestos claimants.

The bill will insert a new section 135BB into the Accident Compensation Act 1985 (AC act) so that a worker who has an asbestos-related condition can have their serious injury application as well as their claim for damages heard at the one time. This provision will also allow a worker with an asbestos-related condition who is at imminent risk of death to have their hearing brought on quickly. The bill also provides that the serious injury threshold is satisfied if a person's death results from the asbestos-related condition that is the subject of the proceedings.

The bill will also amend part III of the Wrongs Act 1958 to ensure that where a person has died from a dust-related condition, general damages recovered by a deceased's estate are not taken into account in assessing damages to be paid to the deceased's dependants in their own claims under part III of the Wrongs Act.

Human rights issues

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

The human rights relevant to the bill are discussed below.

Section 8: recognition and equality before the law

Section 8(3) of the charter provides that every person is equal before the law and is entitled to the equal protection of the law without discrimination and has the right to equal and effective protection against discrimination. Discrimination in relation to a person, means discrimination within the meaning of the Equal Opportunity Act 1995, on the basis of an attribute set out in section 6 of that act. A number of the provisions of the bill draw distinctions between different types of injuries or disabilities. Whether these distinctions have the potential to amount to discrimination depends upon whether the distinctions are drawn between persons who can properly be regarded as in the 'same or similar circumstances'.

It is questionable whether persons who suffer from non-asbestos-related diseases are not in the same or similar circumstances as those who suffer from asbestos-related diseases, so as to amount to discrimination.

Further, section 8(4) provides that measures taken for the purpose of assisting or advancing persons or groups of persons who are disadvantaged because of prior discrimination, do not themselves constitute discrimination.

People making claims for asbestos-related conditions might be disadvantaged as a result of the 'once-and-for-all' approach to awarding damages. It can take many years for a person exposed to asbestos to know the full extent of their injuries and the initial award of damages may not provide adequate compensation for a fatal condition. The existing limitation periods may also disproportionately affect a person suffering from an asbestos-related condition. As the bill addresses that disadvantage, it could be regarded as a special measure within section 8(4) of the charter and therefore there is no limitation of the right under section 8 of the charter.

In any event, to the extent there may be a limitation on the right to equality, such limitation is reasonable and justifiable for the reasons set out below.

Clause 3: definition of an asbestos-related condition

Clause 3 of the bill defines an asbestos-related condition as asbestosis, asbestos-induced carcinoma, asbestos-related pleural diseases or mesothelioma. The definition will not include pleural plaques, psychiatric impairments or non-asbestos-related conditions. The definition will engage the right not to be subject to discrimination on the basis of impairment.

Pleural plaques

The exclusion of pleural plaques from the definition of an asbestos-related condition in clause 3 is based on medical advice that pleural plaques alone do not constitute a compensable injury. Rather, it is a marker of prior asbestos exposure. This has been accepted by the House of Lords in *Johnston v NEI International Combustion and Others* [2007] UKHL 39. In light of the current law and medical evidence, there is no limit on the equality right and there is no prima facie discrimination, as a person with pleural plaques does not have a compensable injury and is not in the same or similar circumstances as a person with an asbestos-related condition covered by the bill.

Non-asbestos-related claims

The definition of an asbestos-related condition will also mean that persons with non-asbestos-related injuries are not covered by provisional damages. This exclusion does not amount to prima facie discrimination. Persons who suffer from disabilities other than those listed in clause 3 are not in the same or similar circumstances as persons with an asbestos-related condition, so as to amount to discrimination. In particular, the latency periods and consequences of asbestos-related diseases are sufficiently different so that individuals suffering from them cannot be compared fairly to those suffering from other diseases.

Psychiatric impairments

The exclusion of psychiatric impairments from the definition of an asbestos-related condition in clause 3 means that:

> a person who suffers from a psychiatric impairment would not be able to obtain provisional damages for that impairment and would not be able to make a subsequent claim for an asbestos-related condition; and
>
> a person who has asbestosis and develops a subsequent psychiatric impairment would not be able to make a claim for the subsequent condition.

It is questionable whether persons with psychiatric impairments are in the same or similar circumstances to those who suffer from an asbestos-related disease and go on to develop mesothelioma or another serious disease many years after their exposure to asbestos. However, if and to the extent it constitutes prima facie discrimination on the basis of impairment, the limitation is justified under section 7 of the charter for the reasons set out in section 2 of this statement.

Clause 9: actions by workers with asbestos-related conditions

Clause 9 of the bill provides for the insertion of a new 135BB into the AC act. Section 135BB will allow a worker with an asbestos-related condition to have their serious injury application as well as their claim for damages heard at the one time. This provision will also allow a worker with an asbestos-related condition who is at imminent risk of death to have their hearing brought on quickly. The serious injury threshold will also be satisfied if a person's death results from an asbestos-related condition that is the subject of the proceedings.

These provisions will not be extended to other injuries and to the extent that some of those persons may be said to be in the same or similar circumstances, the provisions may limit the right to equality because the provisions constitute prima facie discrimination on the basis of the attribute of impairment. However, the limitation is justified under section 7 of the charter for the reasons set out in section 2 of this statement.

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

Limitations on section 8: clauses 3 and 9 of the bill

(a) the nature of the right being limited

The prohibition of discrimination is one of the cornerstones of the human rights instruments and is reflected in the preamble to the charter. The right to equality is not absolute and can be subject to the reasonable limitations in section 7 of the charter.

(b) the importance of the purpose of the limitation

The purpose of the limitation regarding the definition of an asbestos-related condition is to redress the disadvantage experienced by a significant number of persons who suffer from conditions that are directly caused by asbestos exposure.

The purpose of the limitation regarding section 135BB of the AC act is to produce greater consistency in the processes and procedures governing asbestos-related claims. The amendments also recognise the fact that the requirement to establish entitlements under existing thresholds and ceilings can be a time-consuming process that could unfairly affect workers with asbestos-related conditions.

Further reasons for the limitations contained in clauses 3 and 9 of the bill are that other injuries do not have the latency periods or the uncertainty of a subsequent and potentially fatal disease developing in the future.

(c) the nature and extent of the limitation

The bill limits the right to equality only to the extent that a person who does not meet the definition of an asbestos-related condition is not entitled to provisional damages.

The insertion of section 135BB into the AC act limits the right to equality only to the extent that the section will not apply to a person who does not have an asbestos-related condition or meet the terminal illness requirement. Persons with latent diseases in the same or similar circumstances as asbestos-related diseases would still be entitled to common-law damages or statutory compensation in the same way as all other impairments.

(d) the relationship between the limitation and its purpose

There is a direct relationship between the limitation and the purpose of addressing the disadvantage suffered by persons who have asbestos-related conditions.

There is a direct relationship between the limitation and the purpose of ensuring that the amendments to the AC act only apply to people with asbestos-related conditions, which may be fatal and have considerable latency periods. The purpose of the limitation is to ensure that there is equality between workers with different asbestos-related conditions.

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

In relation to the definition of an asbestos-related condition, there are no less restrictive means reasonably available to achieve the purpose of providing provisional damages for people exposed to asbestos. Provisional damages are being provided to people with asbestos-related conditions due to the long latency periods combined with the potentially fatal nature of the conditions arising from asbestos exposure. While it is theoretically possible to set up a scheme that inquires into the individual circumstances of each case, to determine whether provisional damages are necessary to address any disadvantage, such a scheme would be costly to administer and result in considerable uncertainty for employers, insurers and other businesses, which would ultimately translate to increased insurance premiums with flow-on effects for all Victorians.

By restricting the provisional damages in the manner proposed, the economic impact is also more readily identifiable, quantifiable and limited for asbestos-related conditions. Given the fact that the use of asbestos has been banned, claims are limited in number.

Any person with injuries or latent diseases, in the same or similar circumstances as a person with an asbestos-related condition, will continue to be entitled to compensation in the same way as all other impairments.

In relation to the insertion of a new section 135BB into the AC act, there are no less restrictive means reasonably available to achieve the purpose of providing a simplified, consistent and more expedient process for people with asbestos-related conditions. The amendments will also provide that the serious injury threshold is satisfied if a person's death results from the asbestos-related condition that is the subject of the proceedings. A section is being inserted as existing provisions under the AC act may unfairly affect workers with asbestos-related conditions. It is not considered appropriate to extend these provisions to other conditions that do not have as long a latency period combined with a potentially fatal condition. The proposed amendments are also being made to streamline the processes and procedures for making asbestos-related claims under all three pieces of legislation covering asbestos exposure.

(f) any other relevant factors

Similar provisions allowing for the awarding of provisional damages exist in the South Australian Dust Diseases Act 2005. The definition of an asbestos-related condition in the Victorian bill almost mirrors the definition of a dust disease in the South Australian legislation. The only difference is the inclusion in the South Australian legislation of a disease or

pathological condition resulting from exposure to asbestos dust.

(g) conclusion

Accordingly, the definition of an asbestos-related condition and the amendments to the AC act are reasonable and justifiable limitations under section 7 of the charter.

Conclusion

I consider that the bill is compatible with the charter because to the extent that some amendments do raise such issues, these amendments do not limit human rights or amount to reasonable limits upon human rights.

TIM HOLDING, MP
Minister for Finance, WorkCover
and the Transport Accident Commission

Second reading

Mr HOLDING (Minister for Finance, WorkCover and the Transport Accident Commission) — I move:

That this bill be now read a second time.

The Asbestos Diseases Compensation Bill 2008 is a stand-alone piece of legislation that:

provides provisional damages for people suffering from asbestos-related conditions;

amends the Accident Compensation Act 1985 to provide expedient processes and procedures for workers with asbestos-related conditions; and

amends the Wrongs Act 1958 to ensure that where a person has died from a dust-related condition, no account is taken of the benefit a dependant received from general damages paid to the deceased's estate in a subsequent dependant's claim.

In May this year, the government announced that it would introduce legislation allowing Victorians suffering from asbestos-related conditions, to obtain damages on a provisional basis. This means that a person can make an initial claim for an asbestos-related condition and a subsequent claim if they develop a further asbestos-related condition. The government's commitment to introduce provisional damages is being met today with the introduction of this bill.

There is no known cure for asbestos-related carcinomas or mesothelioma and people who suffer from these conditions have no recourse to surgical or medical intervention. What is frightening is that there is no safe exposure level and asbestos disease sufferers may not experience any signs or symptoms for many years. In some cases, it is 20 to 40 years until symptoms are evident and people who suffer from malignant diseases, such as mesothelioma or lung cancer, invariably die within 12 months of diagnosis.

The nature of asbestos-related conditions means that the traditional awarding of damages is inappropriate. Under common law, the principle of finality means that damages are assessed on a once-and-for-all basis. Once a cause of action is finalised, a further claim cannot be made if the injury worsens or a subsequent injury occurs.

Until now, Victorians with asbestos-related conditions have faced a difficult legal choice. They could either make a claim at an early stage of the disease and be prevented from receiving compensation if a fatal injury later developed or wait and risk the possibility of not being compensated for the original injury.

Victoria and Tasmania are the only states where provisional damages, or an administrative equivalent, are not available for asbestos-related conditions. This bill will bring Victoria in line with other states and provide greater equality and fairness in the treatment and compensation of asbestos-related claims.

During his lifetime, Bernie Banton and his wife Karen fought unceasingly to bring about justice for asbestos sufferers. Bernie's well-publicised mesothelioma case has increased community awareness and understanding of asbestos-related conditions. Bernie's story not only demonstrates the terrible suffering people experience as a result of asbestos-related conditions but also the importance of introducing provisional damages here in Victoria. Without provisional damages, Bernie would not have been able to receive compensation for his mesothelioma claim. These amendments will be of significant benefit to all workers exposed to asbestos, who like Bernie Banton were simply doing their jobs and they will also greatly benefit other members of the Victorian community who suffer from asbestos-related conditions.

Provisional damages

Currently, the Workers Compensation Act 1958, the Accident Compensation Act 1985 and the Wrongs Act 1958 govern asbestos-related claims. The existing legislation governing asbestos exposure will continue to apply after the passage of this bill.

This bill allows damages for asbestos-related conditions to be settled on a provisional basis. This means that a person can be awarded damages for an asbestos-related condition on the assumption that they will not develop another condition. A further award of damages can then be sought, if a person develops a subsequent condition from asbestos exposure. For example, if a person

suffering from asbestosis is awarded damages, they can seek further damages if they develop mesothelioma.

The bill will provide that a court may award provisional damages, which means that the plaintiff has the option of either obtaining provisional damages or settling their claim on a once-and-for-all basis.

Provisional damages will only be available for people who have asbestos-related conditions. These conditions are defined as asbestosis, asbestos-induced carcinoma, asbestos-related pleural diseases or mesothelioma. Pleural plaques have not been included within the definition of an asbestos-related condition, as the generally accepted medical position is that without evidence of a further asbestos-related condition, it does not constitute an injury.

Whilst provisional damages will only be available for the defined conditions, statutory and common-law rights will still exist for all other physical and psychiatric injuries.

Only one subsequent claim can be made for an asbestos-related condition. This means that if a person makes an initial claim, they can only make one more claim for any other condition.

The bill provides that a court may have regard to an initial award of damages for an asbestos-related condition, when assessing the amount of damages to be awarded in a subsequent claim for an asbestos-related condition.

The court or a registrar must also have regard to the legal costs incurred in an initial claim when assessing the amount to be awarded in a subsequent claim for an asbestos-related condition. This means that the court or a registrar should consider any work undertaken in the initial proceeding to identify defendants, the circumstances of the exposure, liability and causation issues and any other relevant factors. This provision will prevent the potential for the duplication of legal costs. If necessary, issues from the initial claim can be reconsidered and re-examined without a duplication of costs occurring.

Accident Compensation Act 1985 amendments

The bill contains beneficial amendments that will be made to the Accident Compensation Act 1985. A new section 135BB will be inserted into the Accident Compensation Act 1985 so that a worker who has an asbestos-related condition can have their serious injury application as well as their claim for damages heard at the one time. The serious injury test under this section will still need to be established but this will only have to occur before settlement or as part of a common-law judgement.

Section 135BB will also allow a worker with an asbestos-related condition who is at imminent risk of death to have their hearing brought on quickly, as is currently provided for terminally ill workers under section 135BA. It is envisaged that workers who are dying from an asbestos-related condition will use the new provision in section 135BB. This is because, unlike section 135BA, the new section also makes further provision for this group of worker, by providing that the serious injury threshold is deemed to be satisfied if the worker dies from the asbestos-related condition before the serious injury issue is resolved. This will allow damages to then be recovered by the deceased worker's estate and is a good outcome for families of workers who have died from an asbestos-related condition before their common-law claim could be resolved.

Wrongs Act amendments

I now turn to the Wrongs Act amendments.

Generally, if a person seeking damages for pain and suffering dies before their claim is resolved, these damages cannot be recovered by the deceased's estate. However, in 2000 the government amended the Administration and Probate Act 1958 to alter this position in relation to people suffering from dust-related conditions such as asbestosis or mesothelioma. This legislation passed with bipartisan support.

The amendments ensure that a person with a dust-related condition, who commences a claim for damages and dies before that claim is finalised, can recover damages for their pain and suffering, their bodily and mental harm and for the curtailment of their expectation of life. A person's claim for these damages survives the person's death for the benefit of his or her estate.

The changes were made to recognise that liability for dust-related conditions, such as asbestosis or mesothelioma, often involves complex litigation. In many cases, there is a high risk that a person may die before their action is finalised.

If the person who brings an action dies, his or her dependants are also entitled to damages, in their own right, for their economic loss. A dependant's damages will usually include amounts for the loss of the deceased's expected earnings. This claim is made under part III of the Wrongs Act.

In the case of Strikwerda, the New South Wales Court of Appeal reduced the amount of damages awarded to the widow of a man who died from mesothelioma by the amount of general damages she was entitled to recover as the sole beneficiary of his estate.

This means that a widow who is the sole beneficiary of her husband's estate could have her damages for the loss of her husband's earning capacity reduced by the amount she inherits from his estate for his pain and suffering.

It is undesirable to take into account damages for pain and suffering awarded to a person with a dust-related condition in order to reduce the compensation paid to their dependants. This unfair deduction is inconsistent with the beneficial intention of the 2000 amendments. This bill addresses this anomaly by amending part III of the Wrongs Act.

Conclusion

In summary, the amendments will provide provisional damages for asbestos-related conditions; insert a new section 135BB into the Accident Compensation Act 1985 and ensure that where a person has died from a dust-related condition, the benefit a dependant receives from the deceased's estate, which was awarded for the deceased's pain and suffering, is not taken into account in a subsequent dependant's claim.

People who have asbestos-related conditions, particularly mesothelioma and asbestos-induced carcinoma, suffer from invidious and fatal diseases. This bill will ensure that people going about their daily business or those exposed to asbestos by simply doing their job can obtain damages on a provisional basis. It will also ensure that the Victorian position regarding the treatment of asbestos-related claims is consistent with most other states and territories and that just and fair compensation is available for people suffering from asbestos-related conditions.

I commend the bill to the house.

Debate adjourned on motion of Mr KOTSIRAS (Bulleen).

Debate adjourned until Thursday, 23 October.

Remaining business postponed on motion of Mr WYNNE (Minister for Housing).

ADJOURNMENT

The ACTING SPEAKER (Mr Nardella) — Order! The question is:

> That the house do now adjourn.

Rail: Nunawading level crossing

Mr MULDER (Polwarth) — I wish to raise for the attention of the Minister for Public Transport the urgent need for the state government to commit to and fund a paltry $7 million which, along with the federal government's commitment of $80 million, would see the notoriously dangerous and heavily trafficked Springvale Road, Nunawading, level crossing abolished. There are about 70 000 vehicles a day travelling over this level crossing. On weekdays there are 204 scheduled suburban trains; on Saturdays, 102; and on Sundays, 79. This means more than 1200 trains a week.

The Victorian Level Crossing Steering Committee has previously pleaded for the crossing to be grade separated, to no avail thus far. On 24 September 2008, in the House of Representatives, the federal member for Deakin, Mike Symon, stated:

> The Rudd Labor government is committed to improving one of the most congested intersections in Australia.

The member was referring to the intersection of Springvale and Whitehorse roads 100 metres north of the railway level crossing. He then stated:

> The recommended option in the report —

the Maunsell report presented to the City of Whitehorse —

> involves a grade separation of the railway crossing by lowering the rail tracks below Springvale Road …

The member went on to state:

> … it will be up to the Victorian state government to develop a business case for approval to commence the works.

For two years in a row the Royal Automobile Club of Victoria has said that this level crossing is the no. 1 redspot in Victoria for traffic delays and congestion. It is obvious that previous claims by Labor that once EastLink opened, congestion on Springvale Road would be cut have proven to be an exaggeration. ConnectEast has stated that the first month of EastLink's tolling resulted in a 28 per cent shortfall in the number of vehicles using it compared with the company's forecasts.

The Minister for Public Transport will be aware that her Australian level crossings assessment model — ALCAM — survey ranked the Springvale Road, Nunawading, level crossing as the most dangerous in Victoria. To stand at the level crossing, as I have, and observe the frustration of motorists with queues of traffic banking up because of 204 train movements per weekday is to see fuel and time wasted on a very large scale. Some motorists dice with their lives and drive around the boom barriers.

This would not be occurring if the Premier had followed the lead of the Liberal Party, which, prior to the November 2006 election, committed to five major level crossings in Melbourne being grade separated, including Springvale Road, Blackburn Road, Blackburn, and three others. I call upon the minister to expedite funding of $7 million for this urgent project. The government should get the works under way and get this dangerous level crossing grade separated!

Heatherton Christian College: funding

Ms MUNT (Mordialloc) — The matter I wish to raise tonight is for the attention of the Minister for Education. The specific action I seek is for her to fund a portion of the total cost of an upgrade at Heatherton Christian College. The college is located in Heatherton in my electorate. I understand there is a state needs-based capital assistance program which allocates, I think at the moment, $30 million over four years to assist non-government schools that have capital needs.

It has come to my attention that Heatherton Christian College would like to construct four general learning areas, change rooms, a sports store and covered walkways to improve student engagement and wellbeing. I fully support the capital works proposed by Heatherton Christian College.

I visited the school a short time ago to help with the opening of its new home economics centre. I have been in contact with the school for a number of years and have watched its numbers grow. I have seen the work the parents, the school community, the teachers, the principal and the pastor have put in to grow Heatherton Christian College into the thriving school it is today.

I am also aware that the school recently gained planning permission for a further expansion, after a lot of work with council, me and the Minister for Planning to get that permission in place. This would be a very good time to continue the growth of Heatherton Christian College and enhance the excellent service and education it currently provides to its students by matching the standard of its facilities to the standard of education it is providing.

Australian Competition and Consumer Commission: FuelWatch inquiry

Mr JASPER (Murray Valley) — I raise a matter for the attention of the Premier, and in his absence the Minister for Housing at the table. I seek his assistance in relation to the retail fuel industry in the state of Victoria. I ask that he consider taking action on the FuelWatch scheme being examined by the Australian Competition and Consumer Commission and the federal government. I believe it is a huge issue for the state of Victoria and needs to be looked at on the basis of the effect it would have on retailers in the state of Victoria.

The fuel industry is certainly a volatile industry. Often there are huge discrepancies as far as the pricing is concerned, but it is a vital industry because we have an absolute need for fuel in the state of Victoria, and indeed across Australia. This is because we have huge distances and, importantly, because there is a lack of support for public transport in country areas. Country people are the most adversely affected by this particular issue.

There are a large number of players in the industry. That means you get a lot of concern as to how it operates. I think it needs to be put into perspective. Twenty years ago there were 20 000 fuel retailers across Australia. We are down to under 4000 now. I have spoken on this issue on many occasions in the Parliament, but I believe it is critical that there is action from the state government to examine the industry in the state of Victoria and ask what we do with it and how we protect it from changes that may be introduced, particularly by the federal government.

There is no doubt that action has been taken. I recall a former Premier, Lindsay Thompson, who took on the issues in the 1980s. He was not able to assist in getting stability within the industry. It is a volatile industry in which to try to get uniformity and stability. At this stage it is an industry where we find that the Australian Competition and Consumer Commission is undertaking an investigation into the FuelWatch scheme which is supported by the federal government. I believe the state government must have a look at the industry in Victoria and at the problems that will be created if the scheme is introduced, particularly for the independent retailers.

In Victoria we find that the Coles and Safeway organisations have well over 60 per cent of the fuel retailing in the state. If this scheme is put in place many

people, including the Victorian Automobile Chamber of Commerce and other independent operators, believe it will lead to a further diminution of the independent operators in the state, particularly in country areas where it is more difficult to be competitive and operate effectively and profitability. I ask the Premier to look at this issue as it relates to the state of Victoria and consider putting some sort of submission to the federal government and to the Australian Competition and Consumer Commission to get action in this area.

Consumer affairs: share scams

Mr SCOTT (Preston) — I raise a matter for the attention of the Minister for Consumer Affairs. The action I seek is that Consumer Affairs Victoria investigate the activities of well-known share scammer and bottom-feeder, David Tweed, and warn consumers who have been victims of his scams about what action they can take. I am sure members are aware of Mr Tweed's activities. He is notorious for providing direct-mail campaigns, often to elderly owners of shares, and offering to purchase those shares at well below their face value. He is a very resourceful scammer who changes his activities on the basis of regulations being changed. His recent scams involve offering what appears to be an above-weight price for shares but in fact he would be making instalment payments over 20 years and using the time value of money to ensure the victims are ripped off. He is a despicable individual who describes himself as a person who did not do morals at school, and I think that describes him aptly. He has been a scourge of vulnerable people for many years, and I ask the Minister for Consumer Affairs to take urgent action to ensure fewer Victorians fall victim to his notorious and shameful scams.

Rosebud: aquatic centre

Mr DIXON (Nepean) — I raise a matter with the Minister for Environment and Climate Change in the other place through the Minister for Local Government. It is in regard to the proposed southern peninsula aquatic centre at Rosebud. I ask the minister to give in-principle support to coastal consent for the centre, which hopefully will be constructed on the Rosebud foreshore. The site has open lawns and car park. It is basically a site which has been interfered with by humans for many years and many activities have taken place there, so it is not actually a natural piece of the environment.

It is the best site for this aquatic centre because it is the right size; about 10 000 square metres is needed. It is highly visible because it is on Point Nepean Road which has tens of thousands of traffic movements a day along it. It is right on a public transport route; the 788 bus goes right past the site. It is also a most attractive site. It is on the beachfront right next to the main shopping centre, and it has great connection to the community. The Mornington Peninsula Shire Council is proposing this centre. It has looked at and assessed 10 sites and this is by far the best: it ticks all of the boxes. I know it is the community's belief that this is the best place for the centre.

The Victorian coastal strategy, which has an impact on the site, states that for these sorts of constructions on foreshore and Crown land there should be a net gain in the quality and quantity of the public land along the way through land swaps, donations and purchases. This part of the coastal plan can be achieved on the site because the removal of other buildings along the foreshore and other readjustments there would remove about 13 000 square metres of man-made structures. The proposed development would be 7500 square metres so there would be a net gain of 5600 square metres.

The proposed facility will include an indoor pool, a water play facility, a hydrotherapy pool, which is very important, a gym, a cafe, a spa and a wellness centre, which is going to be great for the senior population on the Mornington Peninsula. It will be great for families, it will be great for jobs and very good for tourism. There used to be a pool on the site which has been covered up, so there is a precedent there. Pelican Park Recreation Centre, which is the Hastings equivalent, is built on the foreshore.

All members of the community really want this facility. We really need it. It will bring immense short-term and long-term benefits, both economic and social, to the Mornington Peninsula. I ask the minister if he could give some in-principle support to coastal consent for the southern peninsula aquatic centre on the Rosebud foreshore.

Environment: Brooklyn industrial emissions

Mr NOONAN (Williamstown) — I wish to raise a matter for the Attorney-General, and the action I seek is that he asks the Department of Justice to meet with the Environment Protection Authority (EPA) to review the current penalty arrangements under the Environment Protection Act that specifically act as deterrents for industrial odour polluters. By way of background, residents adjoining the Brooklyn industrial precinct in the western suburbs of Melbourne have been living with odours in the air for many, many years. Residents have justifiably had enough and now demand change. It

is clear that these odours originate from a range of sources in the Brooklyn area, which include an oil processor, a landfill, an organic recycler, two abattoirs and a range of other businesses. Many of these businesses are subject to a licence agreement with the EPA. These agreements place restrictions on discharging odours to the air beyond the boundaries of their individual premises.

In response to this ongoing problem a working group has been established, consisting of community groups such as the On the Nose group and the Brooklyn residents action group, together with representatives from local councils and local business operators. The group has also enjoyed the regular involvement of the EPA. I should also make it clear that local Labor members of Parliament, including the member for Footscray, and an upper house member for Western Metropolitan Region, Martin Pakula, and I have all participated in a number of fruitful discussions with both the community groups and the EPA about this issue. In fact Mr Pakula raised this matter on the adjournment in the other place on 10 June for the attention of the Minister for Environment.

The EPA has been very proactive on this issue. It has recently conducted a range of unscheduled inspections in the area and collected some useful data about the problem. It has also devoted additional internal resources to ensure a more rapid response to community complaints. Recently, the EPA conducted a well-attended community workshop, and it is now working through a process to strengthen its communication with local residents. I should also make it absolutely clear that a number of businesses in the area are actively engaging with the community and taking steps to change their practices around odour emissions, or introducing new technology to achieve the same result. They are to be commended for their genuine response. But as Martin Pakula stated in his adjournment matter on 10 June:

> One of the concerns raised by On the Nose though is that even when the EPA can identify the source of the odour and fine the offending company, the level of fine is insufficient to act either as a deterrent or incentive to invest in odour-minimising technology.

This is the area where the community would benefit from the Attorney-General's actions. No-one wants to close down industry in the west. On the contrary, we value the impact of industry on our local economy. But for those who display little regard for their neighbours I think it is important that we review whether the penalties in this area are sufficient.

Frankston Hospital: funding

Mr MORRIS (Mornington) — The issue I raise this evening is for the Minister for Health and specifically it relates to Frankston Hospital. The action I seek is that the minister ensure sufficient additional resources are made available to Peninsula Health to allow Frankston Hospital to significantly improve its performance in the six service areas where it failed to meet the government's own targets. Frankston Hospital is totally underresourced to meet the challenges it faces. I have said before in this house, and certainly in other places, that I think the peninsula is very fortunate to have the staff and the management it has at Frankston. It is widely acknowledged in the community that they do a fantastic job, and certainly in the period covered by the most recent figures I had direct experience with a close family member, and I can certainly agree with the general perception.

It is only through the efforts of the management and staff that despite the pressure they are under they fully achieve their targets in the critical areas of category 1, triage in the emergency department and the elective surgery area. But you cannot cover all areas, and that is obvious from the most recent *Your Hospitals* figures. The number of patients waiting on trolleys in the emergency department for more than 8 hours increased by more than one-third in the past year. The number of urgent patients who were seen within 30 minutes has declined from 65 per cent to 56 per cent — and you need to put that into perspective and realise that it is against a government target of 75 per cent. Nearly 500 more patients have waited more than 4 hours in the emergency department before being able to be treated than in the previous 12 months.

In the area of elective surgery there has been a 67 per cent increase in patients on the waiting list over the year. The number of patients admitted for elective surgery has actually declined. We often hear claims about how the system has improved under the present government, but let us put those claims in perspective. In relation to category 2 elective surgery, in September 1999 the hospital had a total of 881 people waiting, 233 of them for over 90 days. In June this year there were 1489 people in the same category waiting, 757 of them for over 90 days. On this government's watch the number of people on the waiting list in category 2 has almost doubled and the number who have had to wait for over 90 days has more than tripled. To suggest that the report card for Frankston Hospital shows real improvement is just plain wrong. I urge the minister to act so that next year's report matches the rhetoric.

Small business: Epping

Ms GREEN (Yan Yean) — I wish to raise a matter for the attention of the Minister for Small Business. The action I seek is for him to meet with local innovative small business operators in my electorate, particularly in the Epping employment zone. This area provides many jobs to locals in diverse sectors, from health to transport and logistics, aquaculture and food, including excellent cheeses. Many of these businesses are export-orientated, taking advantage of their proximity to Melbourne Airport, the inland port at Somerton and the Hume Freeway.

The excellent report by the Outer Suburban/Interface Services Development Committee into economic development in the outer suburbs, which was tabled in the Parliament this week, gave me as a member the opportunity to compare how my local businesses are performing with those in other outer suburbs. The businesses in my area will benefit from meeting directly with the minister to get a greater understanding of what further opportunities exist for them from government programs. It would also be of benefit to the minister to learn how well businesses in Epping contribute to Victoria's economic growth and export performance.

Templestowe Road, Bulleen: upgrade

Mr KOTSIRAS (Bulleen) — I wish to raise a matter for the attention of the Minister for Roads and Ports. The action I seek from the minister is to provide funding to fully upgrade Templestowe Road between Thompsons Road and Bridge Street. I raised this matter this morning as a members statement, but I feel very strongly about the matter and I want the minister to respond to my request and not simply ignore the safety concerns of residents of the city of Manningham.

According to the Templestowe Road reference panel Templestowe Road is ranked as the no. 1 priority of the four-highest ranked road projects of Manningham's arterial road strategy for 2008. Unfortunately the minister has ignored my constant requests to provide the funds to upgrade Templestowe Road. He is happy with the perks of office but he refuses to take seriously the safety and wellbeing of local residents.

I tested the claim of people not being able to cross the road, because a number of residents have said to me that they have to get into their cars to drive across the road to the park and then hop into their cars again and drive back to their homes. This is unbelievable. I managed to cross the road, but it took me up to 10 minutes in the peak morning and evening periods. It took 10 minutes to cross the road. We are expecting our local residents to get into their cars simply to cross the road to get to the other side.

I ask the minister to at least come to Templestowe Road to have a look for himself and to attempt to cross the road. He perhaps should not come in his white car but on foot to see how long it takes him. You can imagine what happens with children. There is a local primary school nearby, and the students also have to cross the road. There are seniors who have to cross the road — and if it took me 10 minutes, you can imagine how long it would take them. I think it is unacceptable, and it is about time this government actually did something.

We have experienced eight dark years of inaction from this government. The government has done nothing for the eastern suburbs apart from looking after its own seats and marginal seats which it hopes to keep in 2010. Let me ask the government whether someone will need to be hurt before this government will decide to act? It is putting money before the wellbeing and safety of residents, which I find appalling. It is about time this government did something for the residents of Bulleen and something for the local residents in Manningham. I have raised this issue many times, and I expect action soon — before the 2010 election.

Housing: government initiatives

Mr FOLEY (Albert Park) — I was going to raise with the Minister for Sport, Recreation and Youth Affairs that he investigate the outrageous third-ball dismissal of Matthew Hayden in India, but I will not. Instead I will raise a matter for the attention of the Minister for Housing. In keeping with the Victorian government's commitment to work with the commonwealth on tackling the blight of homelessness, I specifically ask the minister to ensure the government will deliver on the joint state-commonwealth initiative arising from the commonwealth's A Place to Call Home policy. In doing so I note the opportunity this presents for the Brumby government to continue to build its commitment to social justice in general and housing justice in particular.

I am aware of the proud record of achievement that this government has in this area, but I recognise the enormous challenges faced by Victoria's homeless and those at risk of homelessness. Since the election of the Rudd Labor government the Prime Minister has reiterated his commitment to deal with the national disgrace of there being over 105 000 people homeless every night. We know that simply providing a roof over someone's head is far from enough. This has been recognised both in the Rudd government's green paper

on homelessness and in the Victorian government's response to the green paper.

This is reflected in the work of groups that exist in my electorate of Albert Park, such as the Port Phillip Housing Association, St Kilda Community Housing Ltd and the South Port Community Housing Group, all of which are groups supported by this government. These groups deliver long-term housing assistance to people who would otherwise be forced out of their own community through the escalation of rents and housing affordability. The issue is dealt with every night by groups in my electorate such as Hanover, Scared Heart Mission, the Salvation Army, the Good Shepherd Sisters, the Bob Maguire Foundation, HomeGround, South Port Uniting Church and many more. I urge the minister to take the action I request.

Responses

Mr ROBINSON (Minister for Consumer Affairs) — I commend the member for Preston for once again raising a very serious consumer issue. I am pleased that he is looking out for the best interests of the people in his electorate. He has raised the issue of David Tweed, the notorious individual and share parasite. We all know about David Tweed and his activities. David Tweed and his various companies systematically target less-sophisticated investors in this state and elsewhere with misleading and deceptive offers. Typically he and his companies target shareholders who are not very sophisticated — they may have come into shares via a demutualised company or something along those lines — and are taken in by his offers.

Mr Tweed uses a number of companies — National Exchange, National Share Purchasing Corporation, Direct Share Purchasing Corporation, Australian Share Purchasing Corporation, Australian Capital Alliance, Rebate Financial Services and Melbourne Exchange, just to name a few — and his success in being able to skate sometimes around the law and sometimes outside the law but often so close to the edge of the law has been such that his activities have spawned other companies such as Hassle Free Share Sales. More and more Victorians are finding that they are the recipients of these unsolicited offers. It is my concern, and I think the member for Preston and other members would feel the same way, that at a time of sharp share value decline in Australia new opportunities arise for scoundrels of this type. He is likely to put out offers which on the surface look quite good but which in fact represent very poor value. In this sense David Tweed has form.

I am pleased to advise the member for Preston and other members that on at least two occasions agencies have been able to take effective action against him. One of these was the Australian Securities and Investments Commission. Some years ago ASIC was able to intervene and ping him with a misleading and deceptive conduct charge in relation to offers he made for people who held OneSteel shares. The value of those shares at the time was $1.93 and the shareholders received an offer for $2. As an unsophisticated investor you might have looked at that offer and thought, 'That is not bad — $1.93 on the market and this is worth $2'. Of course buried away in the fine print was the advice that this was payable over 15 years, which made a mockery of what the offer was all about and represented an opportunity to rip these people off blind. On that occasion ASIC was able to ping him with that charge and those consumers were looked after.

Separately Consumer Affairs Victoria had some success in 2007 on behalf of 10 older Victorians who had been taken in by a similar claim. Only after signing the offer did they realise how stingy that offer was, and they sought to extract themselves from those arrangements. David Tweed, in his nefarious way, inevitably sought to ruthlessly pressure them into honouring their contracts, saying that it was all in the fine print, which is his modus operandi. He sought to take action against them and to enforce that contract to the letter of the law. Consumer Affairs Victoria succeeded in forcing a withdrawal of his proceedings at the Victorian Civil and Administrative Tribunal, and in that instance those 10 shareholders were able to retain their shares and not be subject to that ruthless pressure from Mr Tweed.

Consumer Affairs Victoria is more than willing to assist Victorians who find themselves in a situation like those 10 Victorians did, where they receive an offer which they think is unfair or realise afterwards that they have been taken in by something that is less than it appeared to be at the first instance. I cannot guarantee in every circumstance, given the way in which this individual's mind works, that Consumer Affairs Victoria will be able to succeed in defying him and his evil intentions — that is, to fleece them of their hard-earned funds.

However, I encourage the member for Preston and all members of the house to warn their constituents that if they receive an offer seeking to purchase their shares from a David Tweed company — from the companies I have mentioned or a company like Hassle Free Shares — they should look at the letterhead, and if it is gold embossed and looks too good to believe, it probably is too good to believe and they should treat

offers like that with the contempt they deserve and place them in the bin. They should certainly seek further advice if they are even half interested in selling their shares. At all times Victorians who find themselves in that situation can ring Consumer Affairs Victoria on 1300 558 181. We certainly encourage people to ring Consumer Affairs Victoria if they have any queries about this sort of behaviour in the marketplace, and they will join the half a million or more Victorians who each year ring Consumer Affairs Victoria for valuable assistance.

I thank the member for Preston for raising this issue and urge all members to assist their constituents to be on the lookout for the nefarious activities of David Tweed.

Mr WYNNE (Minister for Housing) — I thank the member for Albert Park for raising with me the important matter of homelessness in Victoria. As we all know, it is only through a combination of partnerships between different levels of government and the community and the business sector that we can tackle homelessness in a comprehensive way.

The member for Albert Park has been a great advocate for many years. He started his professional life as an advocate on behalf of public housing tenants in his part of the world. He knows, as I do, that we have a unique opportunity to join in partnership with the new federal government and its continued interest and commitment to solving the problem of homelessness. Earlier this week he and I were together on an excellent example of that when we were with the federal Minister for Housing, the Honourable Tanya Plibersek, to launch three excellent and groundbreaking projects in his electorate. These are in partnership between federal, state and local government through the Port Phillip Housing Association.

The first of those projects, Barkly Street, will deliver a partnership of 35 units at a cost of $8.37 million; Enfield Street in St Kilda, where we had the launch, with a total project cost of $8.1 million will deliver another 35 units; and Ormond Road, Prahran, will deliver 19 units at a cost of $5.43 million. That is a total of 89 units of housing for low-income and homeless people at a cost of just below $22 million.

More generally we took the opportunity at that launch to also acknowledge the federal government's new initiative A Place to Call Home and the Victorian funding allocation from that initiative of $29.5 million, which will deliver 118 units of housing across the state. The federal government will be providing $29.54 million and the Victorian government will contribute $25.47 million over the next five years. After that period the government will also provide a further $18.8 million at the end of the federal government's investment period to ensure continuing support for these important initiatives.

We think this is a really important partnership with the federal government and one that we very much value because we know that to assist people who are homeless you have to do more than just provide a house. As I have raised in this house previously, we are going to be piloting a very important initiative in Elizabeth Street in the city. It is a common ground project for Melbourne and Victoria where we will be providing units of housing, again using some of the federal government's contribution from A Place to Call Home initiative to provide a supported accommodation model. It will be a new and innovative model for Victoria under which we will be providing services that wrap around the most vulnerable clients in our community. In that particular facility you will see psychiatric services, more broadly mental health services and drug and alcohol services. Job and training opportunity services will also be made available at that common ground facility.

Those are all facilities that will assist people to maintain their tenancy and indeed get better and move on to lead very productive lives. The project will be very much a part of our position going forward. As all sides of the house know, Victoria leads the way in terms of the provision of homeless services across Australia. We are indeed proud not only of the intellectual horsepower that has always been a part of the Victorian social policy area, particularly in homelessness, but more generally the provision of homeless services in Victoria through the Australian Institute of Health and Welfare that very recently independently acknowledged that Victoria leads the way of all the states in Australia.

That is not to say there is not more to be done, and we know that. Homeless services are at the forefront of our social justice perspectives. There are good times ahead. We have a federal government which is interested and committed to solving the problem of homelessness and which is very interested in housing initiatives. The state government already has its credentials well and truly on the table and in partnership with local government we will be doing terrific work going forward. The work that we launched, with my colleague from Albert Park, is a hallmark of how we intend to go forward.

The member for Polwarth raised a matter for the Minister for Public Transport in relation to level crossing grade separation at Springvale Road. I will draw that to the attention of the minister.

The member for Mordialloc raised a matter for the Minister for Education in relation to an upgrade proposal at Heatherton Christian College, and I will make sure she is aware of that.

The member for Murray Valley raised a matter for the Premier in relation to the FuelWatch scheme and implications for independent retailers, particularly in country Victoria. I will make sure the Premier is made aware of that.

The member for Nepean raised a matter for the Minister for Environment and Climate Change in relation to the southern peninsula aquatic centre at Rosebud and his advocacy for the construction of that project.

The member for Williamstown raised a matter for the attention of the Attorney-General in relation to the Environment Protection Authority and the question of odours and emissions from industrial sites within his electorate. I will make sure the Attorney-General is made aware of that.

The member for Mornington raised a matter for the Minister for Health in relation to further funding support for the Frankston Hospital to improve services. I will make sure the minister is aware of that.

The member for Yan Yean raised a matter for the Minister for Small Business in relation to meeting with the innovative Epping employment zone business groups. I will make sure the minister is aware of that request.

Finally, the member for Bulleen raised a matter for the Minister for Roads and Ports seeking financial support for the upgrade of Templestowe Road, Bulleen.

The ACTING SPEAKER (Mr Nardella) — Order! The house stands adjourned.

House adjourned 8.27 p.m. until Wednesday, 15 October at Churchill.