PARLIAMENT OF VICTORIA

PARLIAMENTARY DEBATES (HANSARD)

LEGISLATIVE COUNCIL

FIFTY-SIXTH PARLIAMENT

FIRST SESSION

Tuesday, 24 November 2009

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

Select Committee on Train Services — Mr Atkinson, Mr Barber, Mr Drum, Ms Huppert, Mr Leane, Mr O'Donohue and Mr Viney.

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

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

Joint committees

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

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

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

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

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

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

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

Heads of parliamentary departments

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

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

Parliamentary Services — Secretary: Dr S. O'Kane

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FIFTY-SIXTH PARLIAMENT — FIRST SESSION

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Darveniza, Ms Kaye Mary	Northern Victoria	ALP
Davis, Mr David McLean	Southern Metropolitan	LP
Davis, Mr Philip Rivers	Eastern Victoria	LP
Drum, Mr Damian Kevin	Northern Victoria	Nats
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Leane, Mr Shaun Leo	Eastern Metropolitan	ALP
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Petrovich, Mrs Donna-Lee	Northern Victoria	LP
Peulich, Mrs Inga	South Eastern Metropolitan	LP
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Rich-Phillips, Mr Gordon Kenneth	South Eastern Metropolitan	LP
Scheffer, Mr Johan Emiel	Eastern Victoria	ALP
Smith, Hon. Robert Frederick	South Eastern Metropolitan	ALP
Somyurek, Mr Adem	South Eastern Metropolitan	ALP
Tee, Mr Brian Lennox	Eastern Metropolitan	ALP
Theophanous, Hon. Theo Charles	Northern Metropolitan	ALP
Thornley, Mr Evan William[2]	Southern Metropolitan	ALP
Tierney, Ms Gayle Anne	Western Victoria	ALP
Viney, Mr Matthew Shaw	Eastern Victoria	ALP
Vogels, Mr John Adrian	Western Victoria	LP

[1] Appointed 3 February 2009

[2] Resigned 9 January 2009

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Tuesday, 24 November 2009

The PRESIDENT (Hon. R. F. Smith) took the chair at 2.03 p.m. and read the prayer.

ROYAL ASSENT

Messages read advising royal assent to:

17 November

Education and Training Reform Amendment (School Age) Act
Gambling Regulation Amendment (Racing Club Venue Operator Licences) Act
Local Government Amendment (Offences and Other Matters) Act
Local Government (Brimbank City Council) Act
Planning Legislation Amendment Act
Victorian Renewable Energy Amendment Act

24 November

Criminal Procedure Amendment (Consequential and Transitional Provisions) Act
Statute Law Amendment (Evidence Consequential Provisions) Act.

QUESTIONS WITHOUT NOTICE

Manufacturing: government initiatives

Mr DALLA-RIVA (Eastern Metropolitan) — My question without notice is for the Minister for Industry and Trade. I refer the minister to the recent submission by TXM Pty Ltd of Fitzroy North to the inquiry into manufacturing in Victoria. I note its written concerns about the devastating impact that hardline unions have had on its industry and, in particular, its comment that:

> Companies take a very large risk with their capital when they decide to set up or expand a manufacturing plant. Unfortunately due to the action of a few hardline unions, the risk of industrial disruption, poor productivity and excessive wage claims in the construction and operations phase are a major disincentive to investment. These issues continue to be a factor across a wide range of sectors including automotive assembly and component manufacture, chemicals, food processing, printing, aerospace and defence. Major new investments in particular have been dogged by this type of problem, and I am aware of major companies who will avoid investing in Victoria primarily for this reason —

and I ask: as the responsible minister, what is he going to do about the claims by TXM Pty Ltd that major companies are avoiding investing in Victoria primarily due to union thuggery?

Hon. M. P. PAKULA (Minister for Industry and Trade) — I thank the shadow Minister for the Bits Left Over After Industry for his question. He seems to have an obsession with this issue. It is an obsession which avoids and ignores evidence. It has been pretty clear — —

Mr D. Davis interjected.

Hon. M. P. PAKULA — Mr Davis, I will come to the question. One of the benefits of having a parliamentary inquiry into manufacturing is that companies from around the state, no matter who they are and no matter what their views are, are entitled to make a submission and express their views. It does not mean their view is right; it does not mean their experience is everyone's experience, but they are entitled to express their view.

But the evidence in terms of new investment in manufacturing is overwhelming. As I have said in this place in the past, I did not hear Mr Dalla-Riva ask me about Mission Foods and its new investment in a manufacturing facility in Victoria or the Donny Boy Fresh Food Company's investment in a new manufacturing facility or the decision, for instance, by Toyota to invest in the new hybrid Camry or the decision by Ford to continue its investment in the engine plant in Geelong or countless and numerous other investments that I can make reference to.

In regard to manufacturing strategy more generally, what this government has is a plan it is implementing. It is a plan demonstrated through the manufacturing statement and a plan demonstrated through the Victorian industry participation plan (VIPP). I mentioned in this place just last week the benefits that are going to accrue from the VIPP to companies tendering for the tram manufacturing contract. The government has a plan it is implementing through the re-establishment of the Victorian Industry Manufacturing Council, which met again last week, and the attitude of employers and employees in this state to the way that council is running and to the government's intervention in industry policy is overwhelmingly positive.

But most importantly the opposition fails to learn the lessons of history; it fails to actually examine the evidence and act on it. Last week we saw in the other place the new shadow minister for manufacturing, who is also the shadow Minister for Industrial Relations, engage in an extraordinary polemic about IR (industrial relations) — whether it was about his view of the removal of the unfair dismissal exemption for small business — —

Mr P. Davis — On a point of order, President, I ask you to remind the minister that his obligation is to answer the question asked by a shadow minister in this house and not to make a commentary on events in the other house.

The PRESIDENT — Order! In response to the point of order raised by Mr Davis, Mr Dalla-Riva asked what I consider to be quite a broad-ranging question which will take the minister some more time to answer if he so chooses. But I do not think he is off the mark at the moment; I think his answer to me is consistent with the question asked and within the guidelines, and therefore I rule that there is no point of order.

Hon. M. P. PAKULA — The point I am making is that Mr Dalla-Riva's question was about the industrial relations environment in this state, and the proof of the pudding of the industrial relations environment in this state is in the eating. Despite the fact that the opposition, both at a state level and at a federal level, has demonstrated its desire to crawl back to WorkChoices — whether it be through the comments of the federal Leader of the Opposition, Mr Turnbull, about AWAs (Australian workplace agreements) or whether it be through Mr Smith's comments about unfair dismissal laws or indeed good faith bargaining, they are showing their slow crawl back to WorkChoices — does anybody in this place genuinely believe the level of cooperation that we saw between employers and employees and between employers and unions to hold jobs during the worst global financial crisis in 80 years would have existed under the environment of WorkChoices? Absolutely not.

What we have is a new method and a new era of cooperative negotiations and good faith bargaining between employers and employees which encourages them to cooperate in the best interests of both employers and employees. And what we saw was the business community and the union movement delivering to this state in spades. Jobs were held — shifts were sometimes knocked off, hours were sometimes reduced, but in most circumstances redundancies were avoided — and investment continues in the sorts of companies I have referred to.

What Mr Dalla-Riva's question demonstrates is not only a failure to learn the political lessons of 2006 and 2007 but also a failure to read the lessons of our recent history in the way that jobs were maintained during the global financial crisis as a result of the cooperative relationship encouraged by state and federal Labor between employers, employees and the unions.

Supplementary question

Mr DALLA-RIVA (Eastern Metropolitan) — I thank the Premier's third choice for an industry minister. Given the very serious nature of these allegations, is the minister doing anything to overcome this outrageous union behaviour which is so badly damaging Victoria's industry?

Hon. M. P. PAKULA (Minister for Industry and Trade) — President, that was not a supplementary question; that was just reading out aloud, because Mr Dalla-Riva clearly took no note of the answer.

Of course in this state, as in any other state and in countries around the world, from time to time there are flare-ups between employers and unions. That happens. But overwhelmingly the relationships that are being encouraged by Labor governments at state and federal levels are cooperative relationships: ones that benefit both employers and employees; ones that encourage harmony, goodwill and flexibility; and ones that are being carried out in spades in workforces across this state. The level of investment we have seen from companies in the food industry, from companies in the automotive industry and from companies in the construction industry is testament to that.

Economy: global financial crisis

Mr TEE (Eastern Metropolitan) — My question is to the Treasurer, Mr Lenders. Can the Treasurer inform the house about any recent employment data and what these figures tell us about the Brumby Labor government's ability to spare Victorians from the worst effects of the global financial crisis?

Mr LENDERS (Treasurer) — I thank Mr Tee for his interest in our economy, his knowledge of the interrelationship between Victoria, the country and the world, and his positive question about where we go forward in this area.

When the budget was brought down in May there was a lot of discussion as to whether our economic forecasts were too robust or too pessimistic. I think it very interesting, following my colleague Mr Pakula's response to the question from Mr Dalla-Riva on how individual companies and workers have responded to the global financial crisis, that Victoria is today in a position where its employment data is stronger than that of any other part of Australia. That is not to say that there is not a lot more to be done, and it is not to say that the global financial crisis has run the full course of the chill winds it blows through our country, but we have now seen — and I am not one to talk much of

economic figures on a monthly basis, because they bounce around — for six months in a row strong employment growth in Victoria compared to the rest of the country. In fact in some of those months Victoria's net growth in employment has exceeded that of the rest of the country. There has been a contraction in the rest of the country and a growth in Victoria.

Mr Tee interjected.

Mr LENDERS — Indeed, Mr Tee. In that period of time we have seen, as Mr Pakula said, that a number of companies have restructured their workforces. Some of this has been a very difficult time, with less hours worked. On average Australians are working 2.5 per cent fewer hours in their workplace than they were a year ago. What we have seen in Victoria is a flexible economy and a government that is prepared to work with industry and workforces to maintain employment; a government that will focus not just on manufacturing and traditional sectors but also on growing service sectors like the financial services industry, the education of international students and information and communications technologies. We are seeing our workforce grow in this state — and not just in Melbourne.

In the last six months we have also seen employment growth across regional Victoria. In the annual change since the last quarter there have been a net 4000 extra jobs created in regional Victoria, while over the same period of time there has been a contraction of 21 000 jobs across the whole of Australia. We will continue to work shoulder to shoulder with industry, shoulder to shoulder with local government, shoulder to shoulder with the federal government and shoulder to shoulder with our communities and the workforce to increase opportunities in Victoria for employment growth. For a Labor government the single most important economic opportunity is for our citizens to get good, well-paying jobs into the future. That underpins what a Labor government is about.

I am delighted to say to Mr Tee that while there is a lot more to be done — the global financial crisis is not yet over — this state is better positioned than others to withstand the chill winds, and that is because people in our community are determined to do that and our government is with them shoulder to shoulder. We will talk up our state and we will talk up opportunities and not trash the show, as the opposition will do at every possible opportunity. We want to make this state an even better place to live, to work and to raise a family.

Australian Synchrotron: operation

Mrs KRONBERG (Eastern Metropolitan) — My question is to the Minister for Innovation, and I ask: can the minister advise how many new jobs have been created since the synchrotron came into operation and how much revenue the synchrotron has injected into the Victorian economy?

Mr JENNINGS (Minister for Innovation) — I thank Mrs Kronberg for her ongoing interest in the synchrotron. In fact that interest has been shared by one of our newspapers in recent times. After ignoring the issue for a number of years now, for the last three Sundays in a row *Sunday Age* commentators seem to have thought that it warrants front page news coverage. As I have reported to the house previously, the importance of the synchrotron has been as a centrepiece of our scientific capability in terms of bringing scientific research and development — and indeed scientists from all over Australia, the Asia-Pacific region and around the world — to Victoria.

In fact I have commented previously to the chamber that throughout the course of this year more than 1000 scientists have gone through the facility and used the beam lines of the synchrotron to undertake world-leading research in a variety of areas, including biomedicine, agriculture, the chemical industry and pharmaceuticals. A range of scientific endeavour has been underpinned by the availability of the synchrotron.

Of course job creation occurs in a variety of ways. Hundreds of construction jobs were involved in the establishment of the facility. In terms of the projects that have been worked on within the synchrotron, as I have indicated, more than 1000 scientists have come through the facility to undertake their work.

The production of the research and how it is commercialised and put into clinical practice or the development of new goods and services will have a cumulative effect, and over time we will see huge economic activity derived from the cumulative effort of the synchrotron's work. It is a centrepiece of the cluster in the south-eastern metropolitan suburbs that brings together Monash University, the CSIRO and a number of other important research facilities. It brings industry together. Just recently I joined the City of Knox and other councils at a great event down at the Caribbean estate, which houses a number of industries in the south-eastern region. They all see the value of this facility — the clustering of their research activities and the collaborations that come out of that — and they see great economic potential not only for that region but for Victoria.

As I have indicated to the chamber in this answer, we are very confident about the contribution the synchrotron plays now and will play in the future, about job growth in the south-east and in Melbourne and Victoria, and we are very confident that this facility will continue to play an important role in the economic development of this state.

Supplementary question

Mrs KRONBERG (Eastern Metropolitan) — I thank the minister for his response, even though it was a little bit of a nebulous answer. The former Premier promised 700 jobs and that $65 million would be injected into the economy every year as a direct result of the synchrotron project. Does the minister agree with this assessment, or has the Victorian public once again been misled by this incompetent government?

Mr JENNINGS (Minister for Innovation) — I thank Mrs Kronberg for her original question. I do not thank her for the supplementary question in the form in which it was constructed, because I do not accept the premise that this is an incompetent government. I think it is a government that has demonstrated to the people of Victoria for the last 10 years that it is very determined to see economic growth in our state. We have been able to maintain a very sound financial footing with the budget, we have been able to drive new investments in medicine and through the health sector, through education and through regional development, unlike any other administration in Victorian history, so I do not accept the way Mrs Kronberg views the government. I think she is out of bounds in that regard.

In terms of talking down the synchrotron, I appreciate her interest. I appreciate scrutiny in this regard, but it is important to understand that huge benefits have already been derived to the Victorian economy and community from its development and the economic activity that will spin off it now and into the future.

Mr D. Davis — And the former Premier's estimates? And promises?

Mr JENNINGS — Mr Davis is pretty keen to get in on this question, President. He is quite happy to join those who doubt the value of our science, doubt the value of our capability and underestimate not only our scientific capability but our connection with industry and new economic activity in Victoria. It has been a common myopic failure of the opposition for the last decade. It would be a tragedy if the opposition continued to talk down the Victorian economy, the economic capability of Victoria and our scientific and industrial capability and in fact lost sight of the great potential in Victoria.

If it focused on the main game and on the future, the opposition's standing may be enhanced, just as the reputation and enhanced position of the synchrotron will be maintained and the commitment of our government to the synchrotron and to science and its connection with industry will be maintained regardless of how many questions we are asked in the chamber.

Desalination plant: contracts

Mr VINEY (Eastern Victoria) — My question is to the Minister for Industry and Trade. Can the minister advise the house of how the desalination plant project is delivering local content to support Victorian manufacturing?

Hon. M. P. PAKULA (Minister for Industry and Trade) — I thank Mr Viney for his question. Just last week I was out at Tottenham, and I was delighted to announce yet another win for Victorian manufacturing and another step forward for the Victorian desalination project, because AquaSure and its construction contractor, Thiess Degrémont, have awarded the Victorian-based company Olex Cables the $43 million contract to manufacture and supply the power cables for the desalination project.

Anybody who is familiar with Olex Cables would know it has a large manufacturing facility in Tottenham and a very large manufacturing facility in Lilydale. It is a global leader in cable technology with more than 60 years of experience. The company has state-of-the-art facilities. Those state-of-the-art facilities incorporate a recent $20 million investment by that company. The company employs 770 Australians at its facilities around the country, the vast bulk of them in Victoria and 375 of them at Tottenham. This major contract will require more than 200 kilometres of high-voltage, alternating-current cable to be produced. It will be produced at the company's Tottenham factory, and it will ensure a secure and reliable power supply for the desalination plant.

What is most impressive about this is that Olex was awarded the contract in the face of strong local and international competition — competition from as far afield as South Korea. This decision by Thiess Degrémont and AquaSure is a vote of confidence in Olex Cables and a vote of confidence in Victoria's manufacturing capabilities.

As members know, in recognition of community preferences the cables will be laid underground with the

water pipeline and will provide further benefits to the community with the inclusion of broadband cable. More importantly, this is a project that will provide water and economic security for Victorians. It is expected to generate a $1 billion boost for this state during the construction phase — —

Mr Lenders interjected.

Hon. M. P. PAKULA — A billion dollars, Treasurer. It will create 4750 full-time-equivalent jobs, and a significant number of those will be both local and regional jobs. Construction is under way, with work on the pipeline and power supply expected to start in the new year.

It is a project which is utilising local manufacturing capability wherever it can. The contract awarded to Olex comes on top of Tyco Water, Melbourne, being awarded the $150 million pipe manufacturing contract in September, which created 50 new jobs and secured 50 jobs at Somerton. A further 900 jobs were secured at BlueScope Steel in Hastings, from where most of the steel will be supplied. They are just three examples of the many Victorian companies that have been awarded contracts for this major project.

Unlike those opposite, the Brumby Labor government has a plan for creating and securing jobs for Victorians — —

Mr D. Davis interjected.

Hon. M. P. PAKULA — Through major infrastructure projects, Mr Davis, like the desalination plant in Wonthaggi. We will continue to implement our plan for manufacturing, delivering jobs, delivering employment security and ensuring that Victoria remains the best place to live, the best place to work and the best place to invest.

Questions interrupted.

DISTINGUISHED VISITORS

The PRESIDENT — I wish to draw to the attention of members of the chamber that we have a visiting delegation from China with us this afternoon. The delegation is from the Wuxi Municipal People's Congress, Jiangsu Province, which is our sister province. They are led by Ms Yang Huiju, who is the vice-president of the Standing Committee of the Wuxi Municipal People's Congress. Welcome.

QUESTIONS WITHOUT NOTICE

Questions resumed.

Desalination plant: industrial agreement

Mr DALLA-RIVA (Eastern Metropolitan) — My question without notice is to the Minister for Industrial Relations. Will the minister confirm that a backdoor sweetheart deal has been made with the rogue CFMEU (Construction, Forestry, Mining and Energy Union) and the AMWU (Australian Metal Workers Union) as the only unions to be on the Victorian desalination plant and that their extraordinary allowances will be paid for by Victorian taxpayers?

Hon. M. P. PAKULA (Minister for Industrial Relations) — As has been put on the record by both me and other ministers and members of this government previously, with regard to the industrial arrangements for the desalination plant, that is a matter — as Mr Dalla-Riva indicated inaudibly when he raised a question on this matter previously — between the successful tenderers and whichever relevant union they seek to negotiate with. Frankly, I am not aware of the progress of those discussions. I have no doubt that Thiess Degrémont and AquaSure are engaged in negotiations with a union or unions, and that is, as it has always been, a matter for them.

Supplementary question

Mr DALLA-RIVA (Eastern Metropolitan) — Given that I actually have that contract here, why is it government policy to allow a $40 per day special top-up allowance to be paid to union members who live within walking distance of the desalination plant, and is such a deal not out of step with conditions enjoyed by ordinary working Victorians?

Hon. M. P. PAKULA (Minister for Industrial Relations) — Mr Dalla-Riva has a habit of always failing to listen to the answer to the original question when he asks a supplementary. He made reference to government policy. As he well knows, the government does not set down the terms and conditions for projects. That is a matter to be negotiated between the successful tenderers and whichever unions they have decided to negotiate with. If the tenderers have entered into industrial arrangements with the AMWU, the CFMEU or any other union, it is a matter for them as to what terms and conditions they apply. As is normal with these projects or indeed other projects, those terms and conditions generally take the form of the terms and conditions which generally apply in the relevant industry.

If Mr Dalla-Riva has in his hand a copy of an enterprise agreement — I certainly am not aware of any agreement having been certified by Fair Work Australia — as I indicated, if that is the arrangement that Thiess Degrémont and AquaSure have entered into with certain unions, it is a matter for the contractor.

Retail sector: Melbourne strategy

Ms MIKAKOS (Northern Metropolitan) — My question is to the Minister for Industry and Trade, the Honourable Martin Pakula. Can the minister provide the house with an update on Melbourne's retail strategy? It is a matter I am very interested in!

Hon. M. P. PAKULA (Minister for Industry and Trade) — I thank Ms Mikakos for her question. Last week I had the pleasure of launching the year 3 report card and mid-term review of the Melbourne retail strategy 2006–12, which is being conducted in cooperation with the City of Melbourne. I was joined by the Right Honourable the Lord Mayor of Melbourne, Cr Robert Doyle, as well as the chair of the Enterprise Melbourne Advisory Board, Susan Renouf.

Mr Jennings — Did they send any cheerios?

Hon. M. P. PAKULA — They did, Minister; they sent some cheerios to the government for being a proactive partner and made reference to some other matters as well!

The Victorian retail sector makes a significant contribution to the strength of the state's economy. It is a sector which employs over 270 000 people and generates turnover of $54 billion per annum. As we are doing in many other industries, we are leading the nation in retail. The latest Australian Bureau of Statistics figures show that Victoria was the only state to record positive retail growth over the September quarter — up 0.2 per cent compared with a national decrease of 0.4 per cent. Similarly our yearly retail growth to September was 7.5 per cent compared to a national average of 6 per cent.

The City of Melbourne is a key part of our retail success. Guided by this joint Victorian government-City of Melbourne strategy, the central business district is further consolidating its international reputation as the retail capital of Australia. The year 3 report card shows that Melbourne continues to be an investment destination of choice for international retailers. As an example, on Collins Street we see the new flagship Prada store, and the Grand Hyatt retail frontage now features Louis Vuitton, Bulgari and Emporio Armani. As I have indicated many times, Costco, the eighth-largest retailer in the world, has just invested $60 million to locate its first Australian warehouse at Waterfront City.

As globalisation continues to bring the world to our doorstep it is becoming increasingly important for Melbourne to maintain a unique identity and to play to its strengths. It is also significant that iconic local retailers like David Jones and Myer are refreshing, updating and increasing their Melbourne presence. But Melbourne is doing more than that. It is further differentiating itself from other international retail cities by encouraging smaller and independent retailers that enhance the retail mix. In conjunction with the City of Melbourne, under Cr Doyle's leadership, we are strengthening the capital city experience. That experience is central to our tourism effort, it is central to our branding and it is why we continue to support initiatives like the L'Oreal Melbourne Fashion Festival.

The mid-term review, which is incorporated into the year 3 report card, sets out a range of actions that Melbourne can undertake to further capitalise on our achievements and to further capitalise on our assets, and they include encouraging retail as an experience rather than just a functional pursuit, integrating technology into the retail offering of the city and certainly leveraging the relationship between retail and other cultural pursuits. There are a range of creative and interesting ideas that are set out in the report: they go to ways to keep invigorating the city's retail sector, and they are as diverse as marketing Collins Street as the country's leading destination, creating dedicated fashion laneways — I think we have already seen with Flinders Lane a large step in that direction — and, importantly I think, revitalising Elizabeth Street.

It is fantastic to see a lot of creative and lateral thinking in the report. The Brumby Labor government is committed to supporting the ongoing growth and development of the city's retail sector into the future. I am confident that the continued implementation of the Melbourne retail strategy, guided by the recommendations of the mid-term review, will ensure a bright future for Melbourne as this country's retail capital.

Desalination plant: industrial agreement

Mr DALLA-RIVA (Eastern Metropolitan) — My question is again to the Minister for Industrial Relations. It relates to the backdoor sweetheart deal with the Construction, Forestry, Mining and Energy Union and the Australian Manufacturing Workers Union, those being the only unions allowed on the Victorian desalination plant project. I note the

minister's previous response and his total denial of any involvement in this. Does the minister's government support the significant union benefits such as the automatic six-monthly compounding indexation rate increase of 2.5 per cent on every allowance, irrespective of productivity gains and without any guarantee by the unions that the project will be completed on time?

Hon. M. P. PAKULA (Minister for Industrial Relations) — I thank Mr Dalla-Riva for his question, yet again. It is a neat trick, is it not, President, to refer selectively to items in a document that he has before him? It is not an unusual facet of any enterprise agreement for it to contain wage increases. That might be what he is referring to; I am not sure.

As I have indicated, unlike Mr Dalla-Riva I have had no involvement in the negotiation of that agreement. That agreement is one that apparently, if Mr Dalla-Riva indeed has a copy of the final agreement, has been negotiated between the relevant unions and the contractor, and government policy does not come into it. This is a matter between the successful tenderer and those unions it seeks and chooses to negotiate with.

Supplementary question

Mr DALLA-RIVA (Eastern Metropolitan) — I thank the minister. Again the impact is to the end user — the consumer, the Victorian taxpayer. Another example is a living away from home allowance of $100 per day or $700 per week. Are those types of allowances and cost blow-outs going to be borne by Victorian taxpayers as a result of the minister's non-involvement in this agreement?

Hon. M. P. PAKULA (Minister for Industrial Relations) — Mr Dalla-Riva talks about my non-involvement in the agreement. Some months ago he was in this place proclaiming loudly his concern that there might be improper involvement by me or my office in the negotiation of an enterprise agreement for the desalination plant. He now seems to be suggesting that I ought to be involved in negotiating the agreement myself. I do not know how many times I have to say it before it sinks in with Mr Dalla-Riva — —

Mr Dalla-Riva interjected.

Hon. M. P. PAKULA — Mr Dalla-Riva says I should be. Mr Dalla-Riva is proposing in this place that the Minister for Industrial Relations ought to be sitting down and involving himself in the negotiation of an enterprise agreement between the contractor for the desalination plant and its employees. Is that what you are suggesting, Mr Dalla-Riva? Is that what you are suggesting?

The PRESIDENT — Order! The minister, through the Chair.

Mr D. Davis interjected.

Hon. M. P. PAKULA — Let me remind members, when Mr Davis talks about water rates and costs, the cost to Victorian consumers had we followed the opposition's approach would be that Victoria would have run out of water. Victoria would have run out of water because the opposition does not support desalination, it does not support the north–south pipeline, it does not support — —

Honourable members interjecting.

The PRESIDENT — Order! I am sure Hansard is struggling, as I am, to understand or hear the answer.

Hon. M. P. PAKULA — The opposition has not supported the water augmentation measures that this government has put in place, so when the desalination project is online and supplying water, when the north–south pipeline is online and supplying water to Melbourne in the way that other pipes have supplied regional centres around this state, Victorians will be able to thank this government for having the far-sightedness to invest in these projects when the opposition would have sat on its hands and done nothing.

Planning: regional and rural Victoria

Mr SCHEFFER (Eastern Victoria) — My question is to the Minister for Planning. Can the minister update the house on his most recent actions to support investment and create jobs in regional Victoria?

Hon. J. M. MADDEN (Minister for Planning) — I welcome Mr Scheffer's interest in these matters because I know they are relevant specifically to his region. We are taking action as a government; the Brumby Labor government is taking action to support investment in this state and particularly to secure Victorian jobs. We understand that the number of people living in regional Victoria is expected to grow by 477 000 over the next 20 years. It is vital that we plan and prepare for jobs for these settlement patterns, for these individuals and these communities, and that we provide services and local amenities to support these new communities.

As members would be aware, earlier in the year the Premier announced that we would, with departmental advice, identify projects needed to deliver economic and employment benefits and we would fast-track those projects. I said that I would be prepared to take

appropriate action where necessary to fast-track these sorts of projects on a case-by-case basis, provided they comply with the state government's planning framework.

With this in mind I have called in two proceedings from VCAT (the Victorian Civil and Administrative Tribunal) relating to two supermarket developments in Thompson Avenue, Cowes. It is particularly important here, because what we have happening at the same time as these applications is a structure plan for Cowes that is subject to the current amendment to the Bass Coast planning scheme. An independent panel was appointed to consider the submissions to that amendment for that structure plan, but I have determined that there is strategic merit in considering the development proposals for the supermarkets and the amendment submissions in relation to these sites at the same time. That assists in many ways. It assists in resolving many of these issues simultaneously, and this will not only prevent duplication of the process but also will assist in the timing outcomes for these projects.

As well as that, these called-in applications will be referred to an advisory committee comprising the same members as the independent panel for the amendment. The advisory committee will hear all relevant matters and report to me before any determination is made. The proponents estimate that the proposed developments have the potential together to generate somewhere in the order of 293 direct jobs during the construction phase, with a further 203 jobs once the construction is completed and trading begins.

As my ministerial colleague Mr Pakula mentioned, the retail industry is one of Victoria's most important industry sectors in terms of contribution to employment and economic activity. It represents 12 per cent of all jobs in the state and is second only to manufacturing. In addition to providing job opportunities and wages it also generates significant economic indirect effects as a result of employment and income multipliers. For example, if these developments proceed as proposed and are resolved as quickly as possible, they will result in something of the order of $33.6 million investment in regional Victoria. Again we reaffirm our credentials when it comes to the level of investment in Victoria to make sure that we continue to deliver jobs. Appropriate action is being taken during the global financial crisis to make sure that regional communities, as well as the rest of Victoria, are endorsed as the best places to live, work and raise a family.

Planning: fire zone regulations

Mr BARBER (Northern Metropolitan) — My question is to the Minister for Planning and relates to matters in the second interim report of the bushfires royal commission. I would like to turn the minister's attention to paragraph 53, which states:

> The commonwealth observed that 'there is a divergence of views' about the need to address ember protection at lower BALs —

that is, bushfire attack levels —

> and the state considered that there is 'a difference of opinion between certain experts'.

This led the commission to request progress report updates from Standards Australia. What I would like to know from the minister, given that I have questioned him on this matter previously and given that there is a large amount of building activity going on under this standard, is: what action has the minister taken over this time — given that his government is all about taking action — to attempt to form a government view on this aspect of the building standard?

Hon. J. M. MADDEN (Minister for Planning) — I welcome Mr Barber's interest in these matters. First of all the government wholeheartedly supports the recommendations that have come from the bushfires royal commission's report today. Certainly we support all seven of those recommendations.

I note with interest Mr Barber's comments in relation to recommendation 6 made by the royal commission. To try to bring these together without going into quite a lengthy dissertation, basically the recommendations relate to the standards in relation to unmanaged grassland and vegetation, and as well as that the likes of the use of sarking — sometimes known as Sisalation — in the building industry. That is being used as a mechanism to assist with ember protection when it comes to ember attack from grassland-type fires.

First of all there are a number of things that are currently occurring. I think the most significant has been the allowance and the clarification of what is often known as the 10/30 rule, to allow people to clear trees within 10 metres and undergrowth within 30 metres. That is a particularly important matter, because if we can assist people in clearing some of the fuel load around their dwellings, we would hope that that would reduce the prospect of ember attack in some of the grassland-type scenarios.

The other issue which is particularly important, which I note Mr Barber has an interest in, is the use of sarking

as potentially a secondary form of defence. I know from my visits to Callignee not long after the bushfire that the house of one of the families we visited was not initially destroyed by the fire, but some of the embers that lodged in the timber in the roof space suddenly exploded as a fire after they gained a foothold in that roof space. Whilst I do not pretend to be an expert in this area, I believe sarking can very much assist in reducing ember attack by providing some resistance to embers entering a house through the roof or particularly through the subfloor. In recent years sarking such as Sisalation has been used as a subfloor practice. This has not occurred a lot in this country, but as I said, it has been used more often in recent years. That can also provide some defence.

I note Mr Barber's interest in these matters. I am very keen to ensure that Standards Australia gives greater clarification around these areas. The ministerial council on building and construction that I sit on is chaired by the federal Minister for Innovation, Industry, Science and Research, Kim Carr. I understand he is also the minister who has carriage of Standards Australia as well. If the matter has not already been communicated to him directly, I am happy to continue to liaise with his office to make sure that it takes up this advice from the royal commission and sees that Standards Australia comes up with clarification around these matters as soon as possible.

Supplementary question

Mr BARBER (Northern Metropolitan) — I am glad the minister supports the recommendations of the royal commission, but in this case the first recommendation of the royal commission is to wait and see until March 2010. The specific issue I am seeking an answer on is: has the government, through its representation on the body the minister just outlined, formed a particular view as to how the standard should be written? The reason for the urgency in this matter is that people are rebuilding houses including some in low bushfire attack level areas, which is the issue for this recommendation, with the doubt having been raised by Mr Lennard at the royal commission that the standard is actually weaker than the previous standard. My supplementary question is: has the government formed a particular view and communicated that to Standards Australia in line with its responsibilities?

Hon. J. M. MADDEN (Minister for Planning) — As I have mentioned, we have not formed a specific view in relation to these matters, predominantly because the way in which Standards Australia operates is that there are different governance mechanisms undertaken by Standards Australia and broad consultation among the experts — CSIRO and association groups — to form a specific view or at least try to bring them together in a way which allows for a standard to be proposed. What is particularly important, whether it is in terms of new dwellings or existing dwellings, is the issue of the fuel load around dwellings and the prospect, particularly in grassland areas, of ember attack, whether it is via the ceiling or via the subfloor. That is an issue that all homeowners, especially those residing in houses in these sorts of areas, need to be very mindful of.

In terms of the preparations, it has been indicated to the Victorian community that people need to bear in mind that the subfloor and the ceiling space are as much at risk from fire and ember attack as the construction materials themselves.

So whilst we will not be forming an advocated position, what we will be doing in relation to which option is better and which is not as good is to reinforce to those who have dwellings that they need to prepare well and to reduce the fuel load around their dwellings. Also, if they have subfloor areas or if they have ceiling spaces that could potentially pose a risk, they need to undertake measures by which they can mitigate that risk.

The reason why sarking is an issue that is relevant is that the sarking itself can form a barrier. The issue is not so much sarking but forming a barrier to stop entry of embers into dwellings. What we would advocate strongly, and we will continue to assist the community in understanding the importance of this, is that they have secondary barriers to ensure that ember attack through these areas of the house can be reduced to an absolute minimum.

If embers settle into the structure, it presents a fire risk — as I said, those in Callignee that I met were not able to access the ceiling space in their homes to put that fire out — so it is important for people to have secondary measures. There are measures that people can put in place, and I would expect them to do so as part of their fire preparation. As we have often said and we continue to say, the best way to reduce risk in terms of any fire front is for residents to evacuate from their land and from their dwelling well in advance of the fire front entering their regional location.

Bushfires: preparedness

Ms DARVENIZA (Northern Victoria) — My question is to the Minister for Environment and Climate Change, and I ask: can the minister update the house on how the Brumby Labor government is taking further

action to increase our firefighting capabilities to protect Victorian communities this bushfire season?

Mr JENNINGS (Minister for Environment and Climate Change) — I thank Ms Darveniza for her question. I will be quick; I think question time has nearly finished.

Elvis is here.

An honourable member interjected.

Mr JENNINGS — No. Beyond Elvis being here I point out that Elvis is in fact the most famous of the Erickson Aircranes that are available to support our firefighting effort. S64F is the model, and it is the largest helicopter available to our aircraft fleet during the course of summer. It is the one that draws the most attention to itself, and indeed there was eager anticipation at the end of the third week of November in the popular press — or sometimes the not-so-popular press — about whether Elvis was in the country. Indeed it arrived late last week and is now being operationalised.

Elvis joins a significant air fleet that is available to Victorian fire agencies to support our firefighting effort. Close to 200 aircraft will be able to be on call to assist in our efforts over summer; 34 aircraft have been contracted over the entire summer period, which includes large Aircranes such as Elvis. Elsie is another aircrane. The Sikorsky S-61 helicopters have a very large capability; they can pick up large volumes of not only water but also retardant and place them strategically onto the fire line and, very importantly, put retardant in the landscape to inhibit the spread of wildfires across Victoria. The Erickson Aircranes can pick up 9000 litres within 45 seconds and then very quickly and strategically place that very accurately on a fire line, which is an important capability.

Nobody in the Victorian community should be confused: these aircraft provide support rather than the dousing of fires. Most of the hard work involved in putting out fires is undertaken by our firefighters on the ground, and most of the hard work such as bulldozer work, fire line back-burning work and the dousing of fires is actually undertaken by the people this state relies on — the people of the Country Fire Authority, the Department of Sustainability and Environment and other support agencies — to provide that effort on the ground.

This summer we will see for the first time the trialling of a very large air tanker. It will be available to us from the end of this year onwards to trial the effectiveness of a very large aircraft, which has a capacity of something of the order of 40 000 to 60 000 litres to do strategic bombing of fuel retardant in the landscape to prevent the spread of fires. We will be assessing the value of that.

This is an element of the program that we are embarking upon with national agencies and with the agreement of the commonwealth government. We thank the commonwealth for its support not only for that trial but also for sharing some of the cost structures that relate to the very large aircraft which will be joining our fleet over summer and which will be available to our fire agencies from this time onwards.

QUESTIONS ON NOTICE

Answers

Mr LENDERS (Treasurer) — I have answers to the following questions on notice: 2127, 2131, 2308, 2337–40, 2979, 3019, 3058, 3098, 3129, 8024–29, 8051–58, 8062, 8072, 8076, 8086, 8715, 8967–78, 9280, 9402–21, 9431, 9445, 9449, 9503, 9515, 9516, 9558, 9562, 9568, 9571–73, 9575, 9590–93, 9613, 9616–20, 9635, 9646, 9655, 9659, 9668, 9798, 9799, 9802, 10 047, 10 050, 10 052, 10 055, 10 058, 10 092.

The PRESIDENT — Ms Colleen Hartland has written to me seeking my ruling in relation to the answer to question on notice 9658. The answer refers Ms Hartland to a document on the Department of Transport website. However, the answer does not provide the name of the document as requested by the question, nor does the answer state where it can be found on the website. I am therefore of the opinion that the question has not been answered, and I direct that the question be reinstated to the notice paper.

PETITION

Following petition presented to house:

Water: Thomson River supply

To the Legislative Council of Victoria:

The petition of certain citizens of the state of Victoria draws to the attention of the Legislative Council their total opposition to the Labor government's decision to take a further 10 billion litres of water from the Thomson River to top up Melbourne's water supplies, with the knowledge that this action will have a disastrous impact on the health of the Thomson River and the Gippsland Lakes, and particularly when the government has made no meaningful effort to utilise the 300 billion litres of wastewater each year going out to sea and the 250 billion litres of stormwater falling on Melbourne's roofs, roads and footpaths.

> The petitioners therefore request that the government abandon its plan to take a further 10 billion litres of water from the Thomson River.

By Mr HALL (Eastern Victoria) (61 signatures).

Laid on table.

OUTER SUBURBAN/INTERFACE SERVICES AND DEVELOPMENT COMMITTEE

Impact of state government decision to change urban growth boundary

Mr ELASMAR (Northern Metropolitan) presented report, including appendices, extracts from proceedings and minority report, together with transcripts of evidence.

Laid on table.

Ordered that report be printed.

Mr ELASMAR (Northern Metropolitan) — I move:

> That the Council take note of the report.

I would like to say a few words about the report. The Outer Suburban/Interface Services and Development Committee report into the state government's decision to expand the urban growth boundary recommends safeguards be put in place when extending Melbourne's urban growth boundary. The committee conducted this inquiry quickly and effectively over a two-month period to address the concerns of the community on the proposed urban growth boundary expansion.

The report strongly reflects what people said in submissions and at public hearings held on 20 and 22 October. The committee received a total of 104 submissions. At the two full days of public hearings the committee heard evidence from 41 people representing 23 groups. The report has five key recommendations, which are supported by the committee's non-government members. Those recommendations are: to establish a mechanism to refund the growth areas infrastructure contribution (GAIC) where it is subsequently found that land is unable to be developed; to develop a fair and transparent method for the process of waiving or reducing interest charged on the GAIC; to improve the way in which the Growth Areas Authority communicates with the public; to call for action by local government to allow ratepayers whose land is brought into the urban growth boundary to pay rates appropriate to their current use of the land; and the immediate establishment of a hardship relief board.

Finally, I sincerely thank all the people who made submissions and appeared at the public hearings, as well as the committee members and committee staff, Sean Coley, Keir Delaney and Natalie Mai-Holmes.

Mr GUY (Northern Metropolitan) — I rise to make a few comments on the report of the Outer Suburban/Interface Services and Development Committee in relation to the expansion of the urban growth boundary and the growth areas infrastructure contribution (GAIC). Firstly, I place on record our appreciation for the work conducted by members of the committee secretariat, who did an excellent job. Following a number of hearings the secretariat managed to produce a report which, in its body is concise and reflective of the submissions that were taken by the committee. However, I advise members that the Liberal members of the committee — Mr David Hodgett, the member for Kilsyth in the Assembly, Mr Ken Smith, the member for Bass in the Assembly, and I — have issued a minority report of those hearings. We have done so for a range of reasons.

This is one of the biggest issues facing Melbourne today. It is critical to the future of our city, not just now but well into the future. The committee took evidence on the future of our city in the urban areas, the growth areas and the management of those growth areas.

Indicatively, the Minister for Planning is again not in the chamber to hear the debate on this report. It is typical of this minister that when this committee sought a range of feedback from community groups one of the overwhelming bits of information we received was that despite groups putting in a range of submissions to the government, these submissions were not being listened to. This minister is still not listening to the community's views on the growth areas infrastructure contribution issue. He is not in the chamber to hear the debate on this report. He was overseas last week, which was the one week the GAIC bill was being discussed and negotiated behind the scenes — —

Mr Viney interjected.

Mr GUY — Mr Viney, he could go away for six months and no-one would notice, and we sure as hell would not care. But in the one week when the biggest issue in his portfolio was being discussed and negotiated the minister was missing in action, kicking footies in Phoenix, Arizona. Where was his parliamentary secretary? She was overseas as well. In the one week the government had to answer questions

on the growth areas infrastructure charge, it was missing in action.

We issued a minority report on this committee inquiry because principally we are concerned that the growth areas infrastructure contribution is being mismanaged by the government. That was presented as evidence to the committee; that is what we on this side of the house heard. We were concerned about the high level of stress and uncertainty that the GAIC proposal has placed upon land-holders and industry groups throughout Victoria. We have put that as one of our findings in this report. Minority finding no. 1 is:

> The committee notes with concern the high level of stress and uncertainty regarding the state government's GAIC announcement.

Why would we not say that? Why would the Labor members oppose that finding? They were the only members of the committee to oppose that. Today the planning minister referred to the Taxed Out group as an ill-informed, misleading group. It is like when he rolled up to the Taxed Out meeting and said he would zone them out of the urban growth boundary if they did not want to be in there. Who is misleading people? It is the planning minister. Taxed Out made a presentation to the committee. Who prepared a minority report? It was the Liberal members, because it is no wonder people are concerned with the GAIC issue.

There have been four or five different proposals on this issue in the last 10 months. There were so many different proposals that the onus was placed on the vendor. The government did another backflip and said, 'It is off wills, it is possibly on wills, it is off divorces or maybe it is on divorces; we are not sure'. The development industry threw its hands up in the air for 10 months. No-one knows what is going on, least of all the government. Then right in the middle of the committee taking evidence the government did yet another backflip and said, 'Oh well, we are going to try to spin it so that the 15-page document becomes a 97-page document' and the planning industry had to get its head around that.

Minority finding no. 2 notes the short time frame being given for feedback and comments by industry and land-holders on the major changes that were released in October 2009. That is an important finding in the minority report that was submitted. We put in that finding simply because the government in its fifth proposal on the GAIC released in October 2009 said that the period for submissions would close on 2 November, which was the day before Melbourne Cup Day.

Lo and behold, a draft bill was issued eight days later on 10 November. The government said regarding the submission phase, 'We will take your submissions for two weeks'. The committee found this, and that is why there is a minority report. The government said, 'You have until 2 November to hand in some submissions on our draft proposal', but do members reckon a single thing changed in eight days, which included Melbourne Cup Day and a weekend? The government had five days to read hundreds of submissions which involved hundreds of manpower hours put in by industry groups, developers, concerned residents and community groups. They had all put time and effort in. That was washed aside because eight days later — which was really five business days — the government had a proposal in motion. That was a proposal to bring in the GAIC and bring in this bill without consultation. It was a sham from the start. That is what the minority report found.

We had two recommendations — firstly, that the government change the timing of the GAIC to the time of development approval. That is very important. Those who seek to develop land at the time of development must pay an infrastructure contribution. No-one disagrees with that. We never took evidence from people who fundamentally did not accept there was going to be some requirement for them to pay for infrastructure.

Tony De Domenico from the Urban Development Institute of Australia said 'Taxes suck' and the UDIA acknowledges that, but he also acknowledged that there is going to be the necessity for a GAIC. The opposition acknowledged that; the Greens, to their credit, acknowledged that; Taxed Out acknowledged that; every developer group who came and talked to us acknowledged that; everyone acknowledged that. The only group that has not listened or acknowledged that has been the state government. It has been in office for 10 years and its ability to consult has gone way out the window — that is for sure.

Recommendation 2 of the minority report, which was the last recommendation we made, states in part:

> … the … government further examine the impact of their current GAIC proposals —

on —

> stalling current development proposals —

in Victoria —

> costing jobs in the development and construction sectors;
>
> … in outer urban areas;

> a reduction in recurrent revenues …
>
> the loss of Victorian investment —

and that will occur — not 'may' or 'possibly' — if the government's current model is brought in. We heard that evidence from a range of industry groups. We see that on a single letter signed by executives of the Australian Property Institute, the Housing Industry Association, the Master Builders Association, the Property Council of Australia and the UDIA. For the first time these groups have united and come forward and told the government that the minority recommendation is right and that the GAIC as introduced and as presented in the exposure draft will result in:

> a decline in levels of development in the growth areas of Melbourne;
>
> a dramatic reduction in the amount of land available for new housing development;
>
> rising prices with dire effects on housing affordability … and …
>
> severe consequences for Victoria's current competitiveness and housing advantage over other states.

They are not my words and not the words of the opposition, although we agree; they are the words of the five peak development bodies in this state saying to the government, 'Your GAIC is wrong. Your proposal is up the creek and it is about time, after 10 years, you actually listen to people when you call for submissions and for consultation rather than treating it as a sham', which is what has been done by this government and this out-of-touch and out-of-the-country minister for the last couple of months.

The minority report is one that the members for Bass, Mr Smith, and Kilsyth, Mr Hodgett, from the other place and I felt was necessary, despite the excellent work of the secretariat of this committee and some tremendous presentations given to us by concerned people. I want to again place on record my thanks to the committee secretariat for its work and again say to the government that it has to listen on the GAIC, otherwise every single person who has made submissions to it may as well give up now, submit nothing to the government and acknowledge that in November 2010 it will be time for it to go.

Ms HARTLAND (Western Metropolitan) — I intend to speak only briefly on this. It is very unfortunate that other members of the committee were not told that this report was being tabled today. Just as a courtesy we should have known that.

I want to start by thanking the staff for the amazing job they did. They did it under a great deal of pressure while running two references; they did an extraordinary job, as usual. I have some grave concerns about the way this inquiry was conducted, and the behaviour of members in the other place, the member for Yan Yean, Ms Danielle Green, and the member for Melton, Mr Don Nardella, in terms of their questioning and savaging of witnesses, especially Julianne Bell. I will talk more about that on Thursday when I have had time to go through my notes. When people take the time to submit to a committee they should be treated with respect and some dignity, even when they are not agreed with. It is not like what happens in the house; behaviour between politicians is different. When community members come to a committee as witnesses and people rip them apart, it is appalling.

Another thing that should be looked at is that we had excellent submissions from people like the Merri Creek Management Committee, the Green Wedge Coalition and Protectors of Public Lands. One of the things that came up again and again from the conservation groups especially is that surveys around the grasslands have simply not been done. Only one survey has been done, whereas there is a need for two surveys so that the seasonal variations in the grasslands are understood. The government has not done some of that basic work in terms of where the grasslands are and what the impact of pushing out the growth boundary is going to be.

Another issue is that because time was very limited we were not able to really look at the economic impact of pushing out the boundary, the fact that houses will cost a great deal more outside the boundary and the fact that people will end up with petrol debt, as they already do in some of those outlying suburbs. These are the things the government has not addressed. It has not looked at how it can create dwellings within the urban growth boundary.

The other issue is that a number of people made submissions around the issue of the tax and how that was going to affect them. I have to say that those submissions were quite extraordinary. Many were from small land-holders who are going to be put at real financial risk. This is their superannuation, it is the money they were going to spend on moving into hostels or supported accommodation, and many of those people will now not be able to do that. We heard evidence from people in Casey who have been inside the growth boundary since 2005. The value of their properties has not gone up the tenfold they were told it would go up by. If they were to sell now, many of those people would not make any money on their properties.

Many of them would actually go away with debt. Is that the way to treat people?

What is being done about the large developers? Are the large developers being told, 'You have to contribute'? No. They contribute when a house is finished, when it is about to be sold and when they are about to make their profit. That is when they pay the tax. There seem to be differences between what happens with the small landowner and the very large developer.

I am going to leave it there but on Thursday I will make a further statement on this. In future members who have worked on committees should at least be told that a report is being presented.

Motion agreed to.

SCRUTINY OF ACTS AND REGULATIONS COMMITTEE

Equal Opportunity Act

Mr EIDEH (Western Metropolitan) presented final report, including appendices, extracts from proceedings and minority report, together with transcripts of evidence.

Laid on table.

Ordered that report be printed.

Mr EIDEH (Western Metropolitan) — I move:

That the Council take note of the report.

I would like to speak on the inquiry into the exceptions and exemptions to the Equal Opportunity Act 1995. I believe this is one of the most important acts to come before us. As members will know, in 2006 Victoria became the first state in Australia to introduce a Charter of Human Rights and Responsibilities, helping to ensure that future governments continue to value the rights of all Victorians.

As a member of the Scrutiny of Acts and Regulations Committee of the Parliament, I have spent considerable time looking at the act and the reforms that have been initiated by Labor in government. The act provides that direct and indirect discrimination is unlawful if the discrimination is on the basis of one of the attributes provided in section 6 of the act, including age, religious belief or activity, sex, race, sexual orientation, political belief, impairment and marital status.

In parts 3 and 4 of the act provision is made for exceptions and exemptions to permit discrimination on the basis of one or more of those attributes. Exceptions and exemptions in the act include such matters as single-sex clubs — for example, men's clubs and women-only gymnasiums; religious institutions; religious organisations; schools for particular groups; sporting competitions; and employment exceptions such as genuine occupational qualification, requirement to make reasonable adjustments for impaired employees and small businesses.

I am proud to be a member of a government that values human rights so highly and which strives to ensure that all Victorians are treated with fairness, with justice and with decency. I am further proud to be able to say that over its years in government Labor members have placed human rights at the very top of their agenda, and this has been witnessed in legislation, policies and actions which prove our commitment to be true and sincere.

The committee looked at this particular act extensively. We consulted broadly, we listened sincerely and we read volumes of other material — reports, submissions and advice — from the broadest possible range of sources. Thus our recommendations, as noted within the committee's final report, are a true indication of what we sincerely believe regarding exceptions to the Equal Opportunity Act 1995.

However, that stated, all within this house know only too well that every act of Parliament can be reviewed and amended in the light of changing circumstances and new considerations that may arise in the future. To paraphrase a famous American jurist, Benjamin Cardozo, laws must be made such that they are not fixed in time but can be changed as the world changes. That is why one of the committee's recommendations is to set up a review of the act and its exceptions and exemptions at least every 10 years. Of course we could review them more often but 10 years will be the maximum to ensure that this key piece of legislation does not fall behind the community and its needs.

The previous review of exceptions was 14 years ago. What amazed me with our review was that we received some 1700 submissions. That is amazing, and it proves the absolute and unswerving commitment of the Brumby Labor government to open and representative government and to listening to the community in a way that has never before formed part of the landscape of government in this state. I have no doubt that if we had let the inquiry continue, then the number of submissions could well have been even greater, because the people of Victoria are very interested in their rights — and so they should be. Moreover, this government welcomes that interest and invites it to

continue. It is, as that great American President Abraham Lincoln once stated, a 'government of the people, by the people, for the people'.

The aim of this report is to allow the Brumby Labor government to better serve the interests of the people of Victoria through the protection of their rights and to ensure that the government is always up to date in this key area. Therefore I wish to express my gratitude to the inquiry consultant, Associate Professor Beth Gaze, for her remarkable contribution in preparing comprehensive legal and background advice for the committee's consideration, and to Simon Dinsbergs for his considerable and timely support in the production of this paper.

I also wish to offer my sincere regards to each and every member of the committee and thank them for their hard work and commitment, particularly the chairman, Mr Carlo Carli, the member for Brunswick in the other place. I also express my thanks to the staff, who serve the committee with total professionalism, and to the volumes of people who made submissions to us so that we could arrive at a report worthy of the people of Victoria.

Mr O'DONOHUE (Eastern Victoria) — I also wish to make a contribution to the debate on the tabling of this report. As the previous speaker said, the report follows a great deal of work from members of the committee, and indeed from the members of the secretariat and the external consultant, and I thank them for their efforts in assisting us and for all the work they have done to help the committee to report, as it is doing today.

I want to start by making some comments about the process. The coalition members of the committee have been concerned about the process through which this reference was received, about the artificial deadline the committee was given for its report and about the Attorney-General's pre-emption of the committee's recommendation, which did not respect the parliamentary system — a system for which we ought to be grateful.

If I could go back to those issues: the Attorney-General requested that Mr Gardner conduct a review into the Equal Opportunity Act, which has become known as the Gardner review; he then commissioned the Department of Justice to review the exemptions and exceptions. After submissions to that review had been taken, the Governor in Council referred this matter to the Scrutiny of Acts and Regulations Committee. Why it was referred to us while the review commenced by the department continued has never been made clear, despite repeated requests for clarification.

The Governor in Council referred the matter to the Scrutiny of Acts and Regulations Committee on 18 December last year with an artificial deadline to report by 30 April 2009. With the January break and the work required to consult and prepare such a report, that was a completely unrealistic deadline. To try to meet the deadline the committee tabled an options paper in May and conducted public hearings thereafter. The committee was inundated with submissions from the community. I note that the majority of these submissions related to sections 75 and 76 — the sections dealing with religious freedom — and the overwhelming majority sought the retention of those sections as they currently stand. The submissions were probably in response to the options paper, which the coalition members did not sign up to; instead we submitted a minority report. In their options paper the government members canvassed and put forward a range of radical positions — which I am pleased to say they have ultimately retreated from.

Then, on 27 September — the Sunday after the grand final — the Attorney-General announced that the government would be making various changes to the exemptions and exceptions to the Equal Opportunity Act. It is very disappointing that the Attorney-General, and indeed the government, should have decided to pre-empt the findings of the committee. The government has not respected the process that it gave the committee. That calls into question the significant cost incurred by the committee, with the retention of an external consultant and the time taken by the committee secretariat, not to mention the submissions and the time taken by members of the public and other organisations in good faith, anticipating that the committee's response would be considered before the government made any recommendations. That is the whole point of the parliamentary committee system — that the committees should be given the opportunity to report and that their recommendations should be considered by the government. It is regrettable that the government decided to subvert the process.

I now want to talk about the inherent contradictions in some of the recommendations in the report. The report recommends that a number of exemptions be retained without amendment. Perhaps the one most pertinent to members is section 18, which states:

> An employer may discriminate on the basis of political belief or activity in the offering of employment to another person as a ministerial adviser, member of staff of a political party, member of the electorate staff of any person or any similar employment.

The committee has recommended the retention of a number of other current exemptions without amendment, such as section 38, allowing educational institutions to limit admissions to particular groups; section 41, allowing age-based admission schemes and age quotas; and section 81, allowing age-based concessions. So the committee has recognised the need for what I would describe as absolute defences or complete exemptions from the act.

On the other hand, the majority of members of the committee have recommended the balancing of rights pursuant to section 7(2) of the Charter of Human Rights and Responsibilities Act wherein a test for competing rights is undertaken. The retention of absolute exemptions and the balancing of rights are contradictory propositions, and that is something which the report does not address adequately. It leaves open concerns about how section 2 may be analysed and interpreted with regard to exemptions under the act.

To pick up the previous speaker's comments about the recommendation regarding a review of the exemptions after a 10-year period, it concerns me when a Parliament or a committee recommends that a future Parliament should review something by a set date because we should be very careful about fettering the powers of the 57th, 58th or 59th Parliament of Victoria. We are all elected to this Parliament to change the law as is deemed appropriate at a time and place, and it is open to another Parliament — and we should leave it open to another Parliament — to do the same at a time and place of its choosing.

A number of the recommendations made by the committee have the support of all political parties represented on the committee — and that reflects a number of things such as the change in jurisdictional responsibility from the state to the commonwealth in some areas and the change in community attitudes to some issues — but I am concerned when we recommend changes or reviews by a set date without a clear understanding or analysis of why. There may be circumstances that lead to the need for another review in five years time or it may not be necessary for another two decades, but that is something for a future Parliament and potentially a future committee to look into.

The two issues that have gained the most media coverage and public attention with regard to this review have been the religious exemptions contained in sections 75 and 76, and the exemptions relating to private clubs in section 78 of the Equal Opportunity Act. I am pleased to note that the committee came to a consensus about how these exemptions should be treated, and recommended in substance that there be no change to the current arrangements. We have recommended some changes to wording and the way these exemptions are approached but in essence the committee has recommended there be no substantive change to these significant exemptions.

As I noted previously, this is a significant change from some of the options government members canvassed in their options paper. I note that with regard to the exemptions relating to private clubs in section 78 this puts the government members of the committee at complete odds with the Attorney-General and Deputy Premier. Clearly that is an issue for government members to resolve internally, but there is a clear division between the views publicly expressed by the Attorney-General on this matter and those of the government members of the committee who all agreed on the recommendation with regard to section 78.

The coalition members of the committee have submitted a minority report. We felt that was necessary with regard to a number of the issues already mentioned but I want to go into a couple of the others in more detail. Coalition members are very concerned about unemployment in Victoria, particularly with regard to young people. Whilst it is pleasing that the unemployment rate has not increased to the levels that were predicted by some, what we have seen during this downturn is youth unemployment rise significantly. We therefore do not agree with the position of the government members that the small business and youth wages exemption should be repealed and we see no reason in substance for the family business exemption to be repealed. I note that the position of the government members with regard to youth wages puts them at odds with the Deputy Prime Minister, Julia Gillard, who has said that people do support a youth wages regime and that it should be retained. I look forward to hearing from subsequent government speakers about this issue.

The retention of youth wages is a key reason for small business and others employing young people. As we heard from the Victorian Automobile Chamber of Commerce, young people often come to employment with a low degree of skill and limited life experience, and to put them in the marketplace for jobs with people who have 20 or 30 years of experience in the job market or 20 or 30 years of general life experience which, as a general proposition, equips one better for employment, is putting young people at a complete disadvantage. We reject wholeheartedly the position taken by the majority on the committee — the government members — with regard to these issues. We believe the exemption to allow youth wages is a

significant driver of employment for young people, and that is what we on this side of the chamber are focused on.

In terms of the retention of the exemptions for behaviour in employment and schools, the current exemptions for employment in schools relate to dress, appearance and behaviour. The government members have recommended the removal of the 'behaviour' exemption. The coalition members have recommended the retention of these exemptions without change. We have done so because we believe that employers and schools should have the right to set standards that they deem appropriate for the people in their employment or in their schools. We note the challenges to authority that both employers and schools are currently facing, and to erode their ability to deal with these challenges in a reasonable way would be a retrograde step, so we do not accept those recommendations.

The committee has made some other general recommendations which on their face are attractive. The recommendations around the notion of reasonable adjustments involve a number of exemptions. It is on its face something which the coalition members support, but we have concerns that a general notion such as this will empower the Victorian Civil and Administrative Tribunal and place the decision making on these sorts of issues into the hands of an unelected tribunal. Therefore we believe further work is required before any such general notion is adopted.

Speaking of VCAT, the president of that organisation, Justice Bell, is conducting a review of the tribunal:

> The Victorian Civil and Administrative Tribunal is to be overhauled as waiting times for hearings blow out and its president confronts serious issues with its operation.

There is clearly an issue around resourcing at VCAT and there is clearly an issue around the time taken between the commencement of proceedings and their conclusion. To shift a significant responsibility to VCAT — whether it be because of the interpretation of general notions, as I described earlier, or whether it be because of the balancing test in section 7(2) of the charter that is recommended — would considerably increase the workload of VCAT. We cannot look at these sorts of issues in isolation without considering the broader ramifications for what is already an overworked tribunal that struggles to deal with its workload with the resources it has.

In conclusion, issues of equality for women and others are issues on which we on this side of the house have, in my opinion, a proud history. Indeed the act we are currently reviewing is an act that was drafted by the Kennett government and was brought into legislation by the then Attorney-General, Jan Wade. As I mentioned at the tabling of the options paper, the coalition has a proud record of promoting equality and the rights of women. However, balancing those rights is difficult. The thing that has struck me about this review is its affirmation of the 1995 act as drafted by the then coalition government.

I will finish by quoting the then chairperson of the Victorian Equal Opportunity and Human Rights Commission, Mr Michael Gorton, who said in evidence to the committee, with reference to the 1995 act:

> The act itself has worked very well. It has certainly enabled Victoria to have a very good environment in which discrimination issues can be raised and addressed.

With those words, I commend the report to the house.

Ms PULFORD (Western Victoria) — I too am pleased to rise and make some comments on the report of the Scrutiny of Acts and Regulations Committee on the exceptions and exemptions in the Equal Opportunity Act, the committee's final report on this subject, which is the culmination of the best part of a year's work for a number of us.

SARC was requested by the Governor in Council to inquire into, consider and report to Parliament on whether any amendments should be made to the exceptions and exemptions in the Equal Opportunity Act. Our initial terms of reference were published almost a year ago, on 18 December. The initial request, as Mr O'Donohue has indicated, was that we report by 30 April. This ambitious timetable was something committee members discussed. After communication back and forth between the committee and the Attorney-General the committee determined that it would provide an options paper close to that time frame and would continue its work in more detail than that provided for by that initial deadline.

As members may recall, the options paper was tabled in May. In response to Mr O'Donohue's comments about the options paper containing a number of 'radical' positions, it is important to note that the committee determined that in every respect an option for each recommendation in that document was for no change. It was an options paper in every sense — that is, it canvassed the full range of possible responses to the matters we considered.

During the year a great deal of work was undertaken by committee members. We have been ably assisted in our work by our consultant, Associate Professor Beth Gaze, and committee staff, Victoria Kalapac, Simon

Dinsbergs and Andrew Homer. I thank them for their assistance in what has been a significant undertaking.

Prior to the committee's inquiry, Julian Gardner undertook a review of the Equal Opportunity Act for the Department of Justice in 2007–08. Exceptions and exemptions were excluded from that review, and the department undertook a review into the exceptions and exemptions in the act and consulted widely. It received around 500 submissions, and all non-confidential submissions were provided to SARC to assist in its consideration of these issues. The department also provided the committee with a background paper.

It is important to reflect on the purposes of the Equal Opportunity Act. In its life this piece of legislation has been frequently amended. It is an area of the law that has been responsive to changes in society over the decades. The objectives of the act are to promote the recognition and acceptance of everyone's right to equality of opportunity and to eliminate, as far as possible, discrimination against people. Prohibited discrimination is clearly defined as direct or indirect discrimination — that is, less favourable treatment — or the imposition of a condition that cannot be met by a person with one of a set of attributes.

The attributes are listed in the act, and they include: age, breastfeeding, gender identity, impairment, industrial activity, employment activity, lawful sexual activity, marital status, parental status or status as a carer, physical features, political belief or activity, pregnancy, race, religious belief or activity, sex, sexual orientation or personal association with a person — including a relative — who is identified by reference to any of the attributes. That is the purpose of the act: to protect people with those attributes from less favourable treatment.

Ms Pennicuik interjected.

Ms PULFORD — I think Ms Pennicuik has a sense of where I am going. There are an extraordinary number of exceptions. The discussions and deliberations with our committee over the best part of this year have been about an incredibly wide range of subjects.

Since the options paper was tabled the committee has received over 1500 submissions, and we held public hearings in early August. A great many issues have been considered at length. Members have received emails and letters directly from constituents and others across the state. It is important to note that in the final report there are 59 recommendations, and there are seven matters on which we agreed to disagree and on which a division was recorded. In the vast number of areas there was furious agreement; in a great many other areas there was agreement — perhaps a little less furious, but there was general agreement about the way to go — and then there were a few areas where there was furious disagreement.

In every respect the committee has had to balance competing rights. This has really been our task, and it has not been a simple one. We have sought to provide a degree of harmonisation with other states where the committee has considered that that is possible or desirable. We have also sought to ensure a degree of consistency with commonwealth legislation, in particular the Sex Discrimination Act, the Age Discrimination Act, the Disability Discrimination Act and the Race Discrimination Act, all of which apply in Victoria. They are all important instruments that intersect a great many of these areas of discussion.

The other consideration was the role of the Victorian Charter of Human and Responsibilities and how we can use the charter to assist us as we seek to balance competing rights. The charter is something Scrutiny of Acts and Regulations Committee members are familiar with. Part of the committee's brief is to consider the legislation presented to the Parliament and its compatibility with the charter. It is a most useful tool for Victoria, and this has been an important dialogue. Our guiding principles were consistency with the charter, providing clear guidance to the community where we have been able to do so, and reconciling conflicts. We were able to reconcile conflicts in some areas, but in others we were less able to come to a consensus.

Mr O'Donohue talked about section 7(2) of the charter, which deals with balancing different considerations. The committee rejected the idea that all exceptions should be repealed and replaced with a section 7(2) test. We felt that there was a greater role for exceptions and exemptions than leaving it strictly to a test about when human rights can be limited. The section 7(2) test is about understanding the nature of the right, the importance of the purpose of the limitation, the nature and extent of the limitation, the relationship between the limitation and its purpose and a consideration of any less restrictive means to achieving the same end.

As I have indicated, the areas of activity that are exempt or excepted are incredibly wide ranging.

Ms Pennicuik interjected.

Ms PULFORD — Ms Pennicuik is no doubt interested in this issue. The exceptions are organised

into eight divisions in the legislation. Division 1 deals with employment; division 2 deals with employment-related areas; division 3 deals with education; division 4, goods and services; division 5, accommodation; division 6, clubs; division 7, sport; and division 8, local government.

There are a couple of recommendations that, importantly, overlay several or all of these areas. Recommendation 5 authorises discrimination in relation to employment on specific attributes where a person cannot perform the inherent requirements of the job. Recommendation 10 provides for a general obligation to make reasonable adjustments. This is balanced in our recommendation by consideration of whether the cost or disruption is proportionate and whether the reasonable adjustment would enable the person to perform the inherent requirement. We are not recommending that reasonable adjustments be made willy-nilly but that they be made in a practical sense for people who can benefit from them in the context of employment or in the provision of a service, be it in education, the purchasing of other goods and services or in the provision of accommodation.

I advise Ms Pennicuik that there are 37 exceptions in that part of the act. It covers an amazing range of things. There are the ones we might all guess would be there, and then there are, as Mr O'Donohue indicated, some that stick out a little, like political employment, standards of dress, credit provision and insurance — I was surprised to learn about disposal of assets through a will. There are a remarkable number of exceptions and exemptions. Whilst the media interest and a great deal of our correspondence has been limited to a couple of important areas, there are a great many other areas that have — perhaps unfairly — missed out on their moment in the spotlight.

I will respond briefly to Mr O'Donohue's comment about political employment being a funny one that sticks out. It is my personal view that the inherent requirements test would provide the same degree of satisfaction for offices of members of Parliament. In this respect there is overlap. Some things stand alone and others are captured by those two general recommendations about inherent requirements and the general obligation to make reasonable adjustments. I for one would have thought that the inherent requirement for working for a member of Parliament would be to have a similar political persuasion, but perhaps others differ on that.

I will comment briefly on the questions that have been aired and debated in the public domain. Recommendation 51 relates to section 78 of the act. This recommendation is in relation to private clubs. What the committee is recommending in this respect is that discrimination be permitted on the basis of attributes necessary for the purposes of the club. This recommendation, if accepted by the government, would enable clubs to accept but not exclude on the basis of an attribute — so it is a positive discrimination rather than a negative one — and would also not permit clubs to discriminate in employment.

Sections 75 to 77 of the act relate to religious bodies and schools, and are, by a long shot, the areas in which we received the greatest number of submissions and correspondence, as individual members as well as a committee. Recommendations 47 to 50 deal with these matters, and what we are recommending is that those organisations should no longer be allowed to discriminate on the basis of race, impairment, physical features or age.

Ms Pennicuik interjected.

Ms PULFORD — I will come back to that, Ms Pennicuik. The current legal framework provides a lawful defence to discrimination against anyone with any of the attributes I identified earlier.

Recommendation 50 relates to an individual's right to discriminate, and provides for a limitation requiring an objective test about conforming with the religious doctrine of the individual. Again we are recommending a narrowing of the current situation, this time in respect of the unfettered right of an individual to discriminate against another on the basis of their religion.

Given the range and breadth of issues that we considered, it was a modest number of areas on which committee members agreed to disagree. There is recommendation 9, which relates to the existing exemption for small businesses that offers a lawful defence to discrimination in the offering of employment. It is important to note that this is a very narrow exception and one that sits slightly uncomfortably with the obligations of small businesses under the four commonwealth antidiscrimination laws that apply in Victoria.

It was the view of government members of the committee that 30 years was a long enough period of transition and that the offering of employment ought to be the same for organisations of all sizes. The current provision is widely misinterpreted, and whilst we had a submission from the Victorian Automobile Chamber of Commerce opposing any change in this area, by contrast the Victorian Employers Chamber of

Commerce and Industry expressed no objection to this section being repealed.

There was also a point of disagreement on recommendation 11 regarding partnerships. Being mindful of the recommendations about reasonable adjustments and inherent requirements that sit alongside recommendation 11, it was the view of a majority of members of the committee that in entering into a partnership, as with entering into a marriage partnership, it is a matter for individuals to choose whom they like. Constantly reminding ourselves that the purpose of this law is, to eliminate discrimination, where possible, in considering the exceptions to that rule we thought that an antidiscrimination exception for partnership arrangements was not suited to the legislation.

Recommendations 12 and 23 — again, an area in which there was some disagreement amongst members — are the recommendations that relate to standards of dress and behaviour. I completely agree with Mr O'Donohue when he says that employers and schools need to have the capacity to regulate behaviour and the right to regulate behaviour is something they need to retain. There was no disagreement among members about dress; the point of difference was about behaviour, and it was the view of the government members on the committee that to relate behaviour to an attribute was drawing a pretty long bow, so we disagreed on that point. I am yet to be convinced that there is any set of behaviours specifically relating to an attribute protected by this legislation which would give rise to behaviours in an employment or education setting that could not be regulated in the way that all other conduct is regulated — through industrial relations arrangements and through the practices that regulate behaviour and conduct in our schools.

Recommendation 13, headed 'Care of children', is similar, and this was a difficult matter for the committee's consideration, because unsurprisingly we were in furious agreement about the importance of providing the best possible protections for our children, but our task was to consider exceptions to discrimination based on attributes. I fail to see that any of the attributes automatically give rise to a risk to children, particularly given the extensive regulatory framework that exists in the care of children, in child care, kindergarten and schools. My personal view on this is that there is no attribute protected by the act that automatically creates a risk to children, and it is casting an aspersion on people with some or any of those attributes to suggest that there is a nexus.

In relation to recommendation 15 concerning youth wages, Mr O'Donohue mentioned that Deputy Prime Minister Julia Gillard has spoken in favour of keeping a regime for youth wages. The government members on the committee believe there are a great many mechanisms that exist already to provide for different wages and conditions settings and different training wages. There has been enormous change since this legislation first came to the Victorian Parliament in the way that young people are employed and whilst there is a place for flexibility around training wages to enable young people, based on their skills, qualifications and experience, to enter the workforce, I do not believe discrimination law is the place for this to be regulated.

If the commonwealth government, in its carriage of industrial relations matters, has a view about that, it sits in the commonwealth legislation with all the other industrial relations matters. That someone is 18 or 19 or 20 ought not be a basis for age discrimination. It is not appropriate in this day and age. We have a greatly changed training skills, higher education and training environment that our young people experience at the time they are entering the workforce, and this legislation is at odds with the modern experience.

The final point of difference is recommendation 34, which is about welfare measures in accommodation. This relates to a positive discrimination to provide for accommodation to meet the welfare needs of persons of a particular sex, age, race or religion. The recommendation is simply to change the words 'established wholly or mainly' for the welfare of those persons to 'established wholly' for the welfare of those persons. It is a modest change, providing that special accommodation services operate for people for whom the benefit was intended.

In relation to recommendation 42, I was a little surprised to learn that this legislation, the Equal Opportunity Act, is subservient to just about everything else you can imagine, including, obviously, commonwealth legislation. The legislation currently provides that a person may discriminate if the discrimination is necessary to comply with, or is authorised by, a provision of an act other than this act or an enactment other than an enactment of this act. The committee has made some recommendations to government about the types of measures that might ultimately make this legislation a little more robust and more important in the legislative hierarchy.

There were a couple of areas in which we thought more work needed to be undertaken and there were some areas which we thought were too large for our brief and

required particular consideration. These relate to competitive sport, pensions, how legislation deals with transgender and intersex people and also how the legislation might or might not impact on volunteer organisations. We recommend that a little more work be done in those areas.

Recommendation 56 also relates to the process by which exemptions are granted. Currently exemptions can only be granted for three years. I am a member of a Fernwood gym — an organisation that benefits from one of those exemptions. For the person who owns the Fernwood franchise in Ballarat, who has just arranged a massive renovation of that facility, a little more certainty than a three-year exemption would be of benefit in instances where a longer term need can be clearly identified. We have made some recommendations about that, ensuring that those processes are transparent, that an alternative case is able to be put, that a public record is kept about those issues and that in appropriate and justified circumstances three years might become five. The recommendation is that in some instances those exemptions could be renewable; today I have spoken mostly about the exceptions, but there are numerous exemptions as well.

Mr O'Donohue has suggested that the government has pre-empted the work of the committee. The government outlined its position in subject areas which caused the greatest public interest and which received the largest number of submissions and the most media attention. By doing so the government established a position around these issues in response to the very high level of interest shown by the community. The government's position relates to religious bodies and schools and provides that they will no longer be able to discriminate on grounds of race, impairment, age, physical features, industrial or employment activity, carer status, political belief or activity, pregnancy or breastfeeding. However, religious groups will continue to be able to discriminate on the grounds of religious belief or activity, sex or sexual orientation, lawful sexual activity, marital status, parental status and gender identity — importantly — if the action conforms with the religion's doctrine.

When he made those comments publicly the Attorney-General indicated that the government had considered SARC's options paper, which was tabled in the Parliament earlier in the year, and also the public hearings. I certainly hope that the government is further assisted in the great range of issues that we have considered during the course of the year by the work that we have done.

Our Equal Opportunity Act, which seeks to eliminate discrimination, is subordinate to all other legislation and provides a great many legal defences to discrimination. Our job was to consider the areas where we have all failed to eliminate discrimination and where there is an acceptance that we are not even trying to eliminate discrimination. Through this process we have tried to limit the range of lawful excuses to discriminate in Victoria. We have sought to harmonise laws where that has been appropriate, and we have sought to make recommendations that, if accepted by the government, would be compatible with the state's charter of human rights and responsibilities.

The report contains 59 recommendations, including 7 on which dissent was recorded. Therefore I can say that the report makes 52 recommendations which members can at least live with. I have no doubt that the degree of support will vary between members, some areas being happily embraced by everyone, and we did have a good many productive discussions. I certainly hope that in the new year the government will be able to bring to the Parliament a bill, as the Attorney-General has flagged, to reduce the scope for lawful discrimination in Victoria. The issues that have arisen have been difficult and contentious.

I would like to again thank Associate Professor Beth Gaze and the committee staff. I urge members to consider the recommendations in the report; to have a look at the work that has been done and to consider it in a proper context, as an enormous range of issues that affect a great many people in Victoria have been discussed and I urge them to ultimately support laws that will reduce discrimination in Victoria when they come to the house next year; and in doing so promote a fairer Victoria.

Mrs PEULICH (South Eastern Metropolitan) — I also wish to make some comments on the Scrutiny of Acts and Regulations Committee's report on exceptions and exemptions to the Equal Opportunity Act 1995 which was tabled in the Parliament earlier today. As a signatory to the minority report let me say that I am glad that Ms Pulford has moved from her initial claim that the 52 recommendations on which there was no dissent represented some sort of furious agreement. I found being a member of the committee a source of great anguish as the committee focused on mechanisms to constrain freedom, liberty and rights rather than to promote them. To have a gaggle of politicians considering how we can do this I find enormously ironic, painful and a source of anguish, particularly when I consider that freedom, liberty and rights are the reasons for wars being fought and regimes being toppled.

I was born under a communist regime where no such freedoms were enjoyed by citizens, including, for example, freedom of religion. I was baptised in secret at the age of seven years because if it had been known that I was being baptised there would have been all sorts of discrimination against my parents, who were believers.

As I said, I found the whole committee process to be a cause of anguish. I thoroughly believe in equal opportunity — indeed it is the reason I joined the Liberal Party, even before I knew what the party was about. I do not believe in regulation to bring about equality of outcome. This issue represents the essential tension between the political parties and the different perspectives they have on the issues of freedom, liberty and rights and how they should be framed.

I cite in particular the provision that government members retained in the exemptions or exceptions, which provides that an employer has the right to discriminate on the basis of political belief or activity in the offering of employment to another person such as a ministerial adviser or member of a government minister's staff. I think that is testimony to the point I am trying to make — that is, that opposing ideologies mean that very rarely can you actually achieve furious agreement on these crucial issues.

I agree with Ms Pulford's concluding remarks that perhaps many of those recommendations were positions that members could live with. I certainly found myself in that position. Obviously the seven key matters which are the subject of the minority report are the ones on which we differ the most.

I would like to thank the staff of the committee.

It was a protracted year, and I question the Attorney-General's and the government's motives in reviewing the exceptions and exemptions to the Equal Opportunity Act. I certainly do not concur with the objective of the process. I found the process flawed, and I believe the regime that is being advocated will be tested in the course of time. I also have no doubt that we will be making many such comparisons over the next decade if the object is harmonisation.

Some 500 submissions were made to the initial review of the act conducted by the Department of Justice, which is known as the Gardner review. That work represents a huge number of hours and a commitment from various community organisations and individuals who overwhelmingly opposed the removal of exemptions and exceptions to the act. In fact strong evidence was given to the committee that the exemptions and exceptions to the act make it a balanced act which does not require any but the most minor of changes. That was the view of the Victorian Human Rights and Equal Opportunity Commission, which is quoted as stating in the very last sentence of the minority report on page 130:

> The act itself has worked very well. It has certainly enabled Victoria to have a very good environment in which discrimination issues can be raised and addressed.

My difficulty with the whole framework of the act is that, because of the way it has been constructed, in asserting an individual's rights to freedom of religion and freedom of association one is automatically portrayed as a discriminator. If any society wants to be harmonious and genuinely pluralist, it cannot go down a track where people who legitimately assert their rights — rights for which people have lost their lives or have been prepared to lose their lives — are therefore portrayed as discriminators if they are intrinsically motivated to assert those rights. I find that problematic.

Let me say I was moved no end when I saw the Berlin Wall come down; the anniversary of that event was being celebrated two weeks ago. I was moved also by the recent comment made by an East German who escaped and saw his two younger brothers escape as well. He said that those who have freedom take it for granted and those who do not are prepared to die for it. That is the perspective that I come from, and that is certainly the perspective of very many people in Australia who have emigrated from regimes where people do not enjoy freedom.

The motive was quite clear: the Attorney-General and the government wanted to remove the exemptions and exceptions. I believe it was a most insidious attack on those basic freedoms — freedom of religion and freedom of association, amongst others. Labor governments seem to have the opinion that human rights are somehow bestowed upon people by the state. This is contrary to the belief of the United Nations, which states that human rights are intrinsic and are not bestowed on parents or guardians by the United Nations or by the state. This is where we inherently disagree.

These reviews were simply the Attorney-General frolicking to see how much he could get away with. Fortunately it was not very much at all, particularly when this reference was given to the Scrutiny of Acts and Regulations Committee and the options paper was circulated. I was very pleased to see a very strong reaction from the community, including 1500 submissions that overwhelmingly opposed the proposed removal of exemptions and exceptions.

I tabled a petition with nearly 10 000 signatures calling on this chamber to protect the educational freedom of independent and faith-based schools. Clearly there was a plan to remove or restrict the freedom of faith-based schools to operate in accordance with their faith and principles. It was a call to protect any attempt to remove or restrict the right of schools to employ staff who uphold the school's values and not to go down the track of giving the Victorian Equal Opportunity and Human Rights Commission the power to launch investigations of systemic discrimination, whether or not it had received a complaint.

I believe these things ought to be complaints driven rather than self-referenced — although with the recent legislative changes pertaining to the equal opportunity commission I believe the commissioner has that power anyway. The petition notes that exemptions would facilitate the Victorian Equal Opportunity and Human Rights Commission's entry to schools, small businesses and churches to conduct searches and seize documents and other materials as part of those investigations, and it wanted to protect the rights of sporting and recreational clubs to have a single-sex membership base.

All of those things were targets for the Attorney-General, who I firmly believe, as I have mentioned before, is a socialist at heart. There we are, in terms of different ideologies and perspectives, in furious disagreement about essentially what human rights are about. I would like to thank all of those 1500 submitters and all of those who put their name to a petition for their efforts, which represent thousands of hours of time, commitment and meetings in various organisations right around the state. To some degree their efforts were vindicated, although I believe we must be vigilant at all times.

Ms Pulford said that the whole object of this exercise was somehow to harmonise with the other states to ensure consistency with commonwealth legislation and to harmonise with the Victorian Charter of Human Rights and Responsibilities. That in itself is a problem, because harmonisation for the sake of harmonisation does not necessarily generate better outcomes, especially when there is such a concern in the community about the flawed nature of the Victorian charter, which fails to include conventions which protect the rights of children and other United Nations conventions that protect the rights of children and the rights of parents to raise children according to their religious belief.

I would just like to quickly remind people of article 3 of the Convention on the Rights of the Child, which states:

> The best interests of children must be the primary concern in making decisions that may affect them. All adults should do what is best for children …

It is interesting that this particular convention has been excluded by the Victorian Labor government in its charter and therefore the best interests of children are never a consideration. For that reason it is a flawed document. To harmonise legislation with a flawed document seems to be an act of lunacy.

Obviously the charter is intended to be more of a political tool to drive a political outcome than as a genuine protection of human rights, freedoms and civil liberties. Further, I have received correspondence calling on members of Parliament to commit to including in the charter article 18(4) of the United Nations covenant, which declares that states signing the covenant:

> … undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

If these United Nations conventions were fully reflected in the charter, we could then perhaps have a legitimate process of harmonising the Equal Opportunity Act with a full and wholesome charter. It is not full and wholesome; it is full of holes, like Swiss cheese, and is more of a political document than anything else.

Following such an overwhelming response from the community we had the Attorney-General and the government — probably under pressure from the marginal seat MPs who have been on the receiving end of very significant and vigorous campaigning by community organisations that felt legitimately threatened by this — backing off significantly on their plan to strip the exemptions protecting religious freedoms and freedom of association.

I am still not comfortable with the regime that has been proposed under which the actions of organisations will be examined as core and non-core functions with their mission statements being used as a measuring stick against which their activities will be judged, and under which when there are breaches there will be complaints which will be investigated and ultimately the Victorian Civil and Administrative Tribunal (VCAT) will make determinations on religious principle about what is a core or non-core function of an organisation. These organisations may be as broad as churches, educational institutions or those delivering various charitable or community services to the community. I have a grave problem with a tribunal making decisions on matters of religion.

Restricting the right of religious-based welfare agencies, youth organisations, hospitals and religious schools to employ people of their own faith basically means that they would be forced to employ people who actively oppose their beliefs. That does not represent real freedom. A Victorian's right to associate, whether they are in a single-sex sporting club, social club or community club, was also under threat, and I am relieved to see that the government has backed away from those plans. But again the test will be in years to come.

The outcome is a victory and common sense has prevailed, although as I said the real test will be in the detail. The recognition that religious organisations provide vital services to the community in a range of areas including education, health care and the care of the marginalised means that they should be able to function without compromising their beliefs. I believe the proposed changes are not entirely satisfactory, hence the minority report, although they do represent a backdown on what was originally proposed. I am also concerned about rumours that a draft equality act exists in the hallowed halls of the Department of Justice ready and awaiting introduction should the government win another mandate in 2010.

These freedoms are protected for now, until the next piece of legislation and until the next review. The government seems to take a salami approach to this, dishing out to Victorians the number of slices of salami that it feels the community will tolerate at a particular time until it has dished out the entire stick of salami, causing regular indigestion in the process.

I encourage all those submitters to be very vigilant and to ensure that when they cast their vote in 2010 they do so for those candidates who have stood up for freedom of religion and association and to create a hierarchy of freedoms. To have certain individuals who subscribe to a particular political ideology creating a hierarchy of freedoms is not freedom in itself. It is impossible to form a judgement for another person about the relative importance of particular freedoms. That is why all of the protected freedoms sit comfortably in that act currently, and in those areas there was little need for reform or change.

In this respect the Equal Opportunity Act review of the committee proposes a regime that reverses the onus of proof. Where there are breaches, people and organisations will need to justify themselves and show that they are not in breach and did not discriminate. If they are judged to be in breach, they will be portrayed as discriminators. In a multicultural society this government is choosing to take very difficult directions.

The Attorney-General's statement makes clear that religious bodies will have to prove their case. In relation to employment he said:

> … the religious nature of the organisation or school will need to be taken into account in determining whether a particular position needs to be filled by someone who adheres to that religion's beliefs.

That is a very serious problem for many of those who made submissions and who gave evidence to the committee.

The chair of the Victorian Equal Opportunity and Human Rights Commission, Dr Helen Szoke, gave a very lukewarm endorsement to the government's decision. In *News Weekly* of 17 October Dr Szoke is reported as having said that they were making some progress 'to ensuring fairness and equality for all Victorians', clearly indicating that she has a more aggressive agenda. However, the article went on to say:

> … she was pleased the government had toughened the law to ensure religious bodies had to demonstrate how employing someone of a particular religion is an 'inherent requirement' of the job.

In the same article a leading education consultant, Kevin Donnelly, is reported as saying:

> Faith-based schools are not secular schools and, while they are an important part of the broader Victorian educational community, such schools have a unique mission to fulfil in terms of their religious teachings and principles.

In a genuinely pluralist, free and democratic society those schools ought to be able to function with the least interference from the government of the day.
Mr Donnelly went on to say:

> The reason parents send their children to faith-based schools is because such schools provide an education and environment informed and guided by their religion.

It is very difficult for third parties, especially a tribunal such as VCAT, to make judgements in such areas, and I caution against the setting of this new precedent in that area.

I am also pleased to see that the government has backed away from removing the freedom of association that currently exists as an exemption to the act. Many clubs do not necessarily confer a benefit on their members whose members choose to associate with like-minded individuals of a particular gender and should be free to do so. That is what a free society is. It is not a society of objects all made in the same image; it is a society made up of objects of a multitude of different shapes and types that ought to be able to exist in relative freedom

within a framework of laws that allows the greatest extent of liberty possible.

The Charter of Human Rights and Responsibilities Act refers to human right in section 7(2):

> (2) A human right may be subject under law only to such reasonable limits as can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom, and taking into account all relevant factors including —
>
> …
>
> (e) any less restrictive means reasonably available to achieve the purpose that the limitation seeks to achieve.

The term 'inherent requirement of the job' will force religious institutions to make artificial distinctions between what the original options paper terms 'core' and 'non-core' activities and will further restrict the freedoms that have been responsibly exercised by religious bodies in the past.

In closing, let me say I found the process tortuous. I am pleased to be party to a minority report that stands by those very important principles of freedom of association and freedom of religion. The Attorney-General should be condemned for attempting in the most sinister way, to attack and destroy those freedoms. I thank all those people who gave this important cause their support. I was very pleased to be able to support and defend our shared commitment to these freedoms.

Motion agreed to.

Alert Digest No. 14

Mr EIDEH (Western Metropolitan) presented *Alert Digest* No. 14, including appendices.

Laid on table.

Ordered to be printed.

2009 VICTORIAN BUSHFIRES ROYAL COMMISSION

Interim report 2

The Clerk, pursuant to section 4(2)(b) of the Bushfires Royal Commission (Report) Act 2009, presented report.

PAPERS

Laid on table by Clerk:

Auditor-General — Report on the Annual Financial Report of the State of Victoria 2008–09, November 2009.

Crown Land (Reserves) Act 1978 —

Minister's Order of 6 November 2009 giving approval to the granting of a licence at Torquay and Jan Juc Foreshore Reserve.

Minister's Order of 12 November 2009 giving approval to the granting of a lease at Scotchmans Creek Linear Reserve.

Melbourne Central City Studios Pty Ltd —

Minister's report of failure to submit 2008–09 report to the Minister within the prescribed period and the reasons therefor.

Report, 2008–09.

Planning and Environment Act 1987 — Notices of Approval of the following amendments to planning schemes:

Ballarat Planning Scheme — Amendment C95.

Baw Baw Planning Scheme — Amendment C42.

Boroondara Planning Scheme — Amendment C103.

Cardinia Planning Scheme — Amendment C125.

Colac Otway Planning Scheme — Amendment C59.

Corangamite Planning Scheme — Amendment C26.

Glenelg Planning Scheme — Amendment C47.

Greater Geelong Planning Scheme — Amendments C93, C141 and C191.

Kingston Planning Scheme — Amendment C81.

Manningham Planning Scheme — Amendment C84.

Maroondah Planning Scheme — Amendment C60.

Melbourne Planning Scheme — Amendment C154.

Moonee Valley Planning Scheme — Amendment C93.

Moorabool Planning Scheme — Amendment C49.

Mornington Peninsula Planning Scheme — Amendment C132.

Port Phillip Planning Scheme — Amendment C74.

West Wimmera Planning Scheme — Amendment C18.

Whittlesea Planning Scheme — Amendment C116.

Wodonga Planning Scheme — Amendment C56.

Yarra Planning Scheme — Amendment C118.

Project Development and Construction Management Act 1994 —

Nomination order, application order and a statement of reasons for making a nomination order, 10 November 2009 (three papers).

Nomination order, application order and a statement of reasons for making a nomination order, 17 November 2009 (three papers).

Special Investigations Monitor — Report 2008–09, pursuant to section 39 of the Crimes (Controlled Operations) Act 2004, section 131T of the Fisheries Act 1995 and section 74P of the Wildlife Act 1975.

Statutory Rules under the following Acts of Parliament:

Alpine Resorts (Management) Act 1997 — No. 136.

Births, Deaths and Marriages Registration Act 1996 — No. 133.

Building Act 1993 — No. 139.

Corrections Act 1986 — No. 135.

Gambling Regulation Act 2003 — No. 141.

Liquor Control Reform Act 1998 — No. 134.

Road Safety Act 1986 — Nos. 137, 138 and 140.

Subordinate Legislation Act 1994 — Ministers' exemption certificates under section 9(6) in respect of Statutory Rule Nos. 130, 135, 137, 138, 139 and 141.

Queen Victoria Women's Centre Trust — Report, 2008–09.

Victorian Industry Participation Policy — Report, 2008–09.

BUSINESS OF THE HOUSE

General business

Mr D. DAVIS (Southern Metropolitan) — By leave, I move:

That precedence be given to the following general business on Wednesday, 25 November 2009:

(1) the notice of motion given this day by Mr Barber relating to the production of certain documents concerning Yarra Park;

(2) the notice of motion given this day by Mr D. Davis relating to the production of certain hospital financial and audit committee documents;

(3) the notice of motion given this day by Mr D. Davis relating to the production of certain documents relating to the mandatory reporting of children in need of protection at Mooroopna Secondary College;

(4) the notice of motion given this day by Mr Barber relating to the Northern Victoria Irrigation Renewal Project;

(5) the notice of motion given this day by Mr Drum relating to a reference to the Rural and Regional Committee;

(6) the notice of motion given this day by Mr Atkinson relating to Box Hill Hospital; and

(7) notice of motion no. 10, standing in the name of Ms Pennicuik, relating to political donations.

Motion agreed to.

MEMBERS STATEMENTS

Children First Foundation: conjoined twins

Ms LOVELL (Northern Victoria) — Over the past week our news has been full of reports of the miraculous operation to separate conjoined twins, Trishna and Krishna, which was performed by skilled surgeons at Victoria's Royal Children's Hospital.

The efforts of the surgical team led by neurosurgeons Wirginia Maixner and Alison Wray, plastic surgeons Andrew Greensmith and Tony Holmes, anaesthetists Ian McKenzie and Andrew Davidson, and all staff involved, including the operating theatre nursing staff, have made us all very proud of the skills of surgical teams in this state. Our hearts rejoiced at the news that the twins had been successfully separated in a 32-hour operation that can only be described as a miracle.

The work of the Children First Foundation in bringing the twins to Australia and giving them the opportunity to undergo this miraculous operation, and in particular of Moira Kelly, who has cared for the girls for the past two years, should be commended, as should the efforts of Daniella Noble, the young Australian woman who found the twins in a Bangladeshi orphanage in 2007.

All Victorians pray that these two beautiful little girls will make a full recovery and live long, happy and fulfilling lives.

Austin Hospital: angiography suite

Mr ELASMAR (Northern Metropolitan) — Last Tuesday I attended the official opening by the Minister for Health, Daniel Andrews, of the Austin Hospital's new $4.2 million angiography suite. Around 20 people, including VIPs, executive staff, board members, radiology department staff, Department of Health representatives, architects and media representatives, together with my parliamentary colleagues from the Legislative Assembly, the member for Yan Yean, Danielle Green, and the member for Ivanhoe, Craig Langdon, were given a tour of the suite. The new suite produces state-of-the-art digital X-ray images of

arteries and veins, enabling a more accurate diagnosis and better and quicker treatment and care for patients with vascular diseases.

The Brumby Labor government continues to upgrade hospital equipment by providing state-of-the-art technology to improve the quality of health of all Victorians who suffer from vascular diseases, and that is another initiative I am very proud to support.

Anne Coall

Mr ELASMAR — On another matter, at a recent information session with Whittlesea councillors I was informed that one of the council employees, Ms Anne Coall, the council's senior citizens community development officer, has won a prestigious award, the Enduring Individual Contribution award, which recognises her dedicated work with older people in the local community. I congratulate Anne for her dedication and commitment to the senior citizens in the Whittlesea community.

Racing: Dunkeld Cup

Mr KOCH (Western Victoria) — The Dunkeld Cup, which was held on Saturday, 14 November, is the largest non-TAB race meeting in western Victoria, if not in all of Victoria. Always a popular day for country racegoers, the Dunkeld Cup again lived up to its reputation as a great day of racing.

More than 10 500 patrons from all over Victoria weaved their way to Dunkeld in very hot conditions to watch the sport of kings in one of the biggest social events on the local calendar. Racegoers were well behaved, and they enjoyed a great party atmosphere under the spectacular Mount Abrupt while watching the 1800-metre Dunkeld Cup. Hurricane Charley, trained at the champion Stawell stables of Terry and Karina O'Sullivan and ridden convincingly by Carolyn Mason, won in magnificent style. What a great record the O'Sullivan stable has at Dunkeld.

The fashions on the field attracted many entrants again this year, and it was disappointing that only one winner could be selected in each category. Congratulations to Lauren Alexander Shrieve on winning the female open section; Karl Schneck, the men's section; Hayley McNeil, the teenagers section; and Anastasia Schneck, the junior category.

The success of this year's Dunkeld Cup meeting highlights the continuing and impressive contribution country racing makes to Victoria's great Spring Racing Carnival. Congratulations to president Jedd Robertson, racing committee manager Karen Van Kempen, the committee and the many volunteers who again made this such a successful event.

Planning: growth areas infrastructure contribution

Mr BARBER (Northern Metropolitan) — Just a couple of hours ago an important rally was held on the steps of Parliament. It was called by Taxed Out and supported by the Green Wedges Coalition, Planning Backlash and the Protectors of Public Lands (Victoria). They urged members of Parliament to vote no on the Planning and Environment Amendment (Growth Areas Infrastructure Contribution) Bill and to stop the green wedge land grab by voting no to planning scheme amendment VC55.

I am hopeful we will not be pushed into that position and that there will be some opportunities for the government to have further discussions about these two important proposals. I believe further amendments are needed to both, and I am putting forward the suggestion that we need an open and transparent process in which such discussions can occur and in which the government would be willing, in a spirit of compromise, to have some reasoned discussion about its proposals with people on this side of the chamber and on behalf of those many members of a diverse community who attended the rally today.

Manningham Community Health Services

Mr TEE (Eastern Metropolitan) — I welcome the health services provided in Manningham by this government. I am particularly supportive of Manningham Community Health Services, which is a health centre conveniently located on the very busy Doncaster Road. In fact the health centre is located right next to the electorate office of a local member of Parliament, the member for Doncaster in the other place, Mary Wooldridge. Unfortunately Ms Wooldridge does not appear to have noticed that she has a health centre right next door. In fact Ms Wooldridge claims on her website that 'health and community centres are often hard to access because they are located in Box Hill and Ringwood rather than in our own local community'.

It must be very difficult for Ms Wooldridge to refer local families to local health centres when she does not even realise what is happening on her own doorstep. I urge Ms Wooldridge when she next visits her electorate office to introduce herself to her neighbours. I urge her to do so for her own benefit and for the benefit of local families and so that she can stop misleading her electorate.

State Emergency Service: Melton unit

Mr VOGELS (Western Victoria) — Several months ago I raised the issue of the Brumby government's neglect of the Melton State Emergency Service unit. The Melton SES faces eviction in 12 months time from its present location in a council building. This government is refusing to provide a new home for the unit, leaving the service in jeopardy. Without new premises Melton SES will disintegrate, leaving the communities of Melton and Caroline Springs very vulnerable during emergencies and without the expertise of highly trained volunteers.

The Minister for Police and Emergency Services refuses to take responsibility under his ministerial portfolio to provide a home for the service, instead deeming Melton Shire Council liable. I must say I find the minister's attitude absurd given that our State Emergency Service bodies are statutory authorities of the Victorian government. It is not the role of councils to provide and buy land to build new headquarters for government statutory authorities.

The unit's very experienced controller, David Warren, has resigned due to the inaction of this government in securing the unit's future. Mr Warren has been unit controller for 10 years, an SES volunteer for 17 years and was one of the gallant volunteers who assisted after the Black Saturday fires. He is a young man who has so much more to give to his community. However, his services have now been lost, which is a sad indictment of the Brumby government.

An urgent state government commitment is necessary to secure new headquarters for Melton SES before December 2010. The people of the Melton electorate may well be right in their belief that Labor is abandoning their needs and their right to basic services. Because the Brumby government knows Melton is a safely held Labor electorate there is no need to buy votes there.

Electricity: Kaniva infrastructure

Ms PULFORD (Western Victoria) — On 22 October it was my pleasure to visit the premises of Rocky Lamattina, a carrot farmer operating in Kaniva, with the West Wimmera Shire Council Mayor, Bruce Meyer, councillors and staff to announce Brumby government funding in the order of $280 000 to Rocky Lamattina and Sons Pty Ltd under the regional electrical access program. This is a $1.6 million project to significantly upgrade electrical infrastructure in Kaniva. Rocky Lamattina and Sons contributed $540 179 and Powercor $612 033 to upgrade 16 kilometres of powerline.

This project is a fine example of how the Brumby Labor government is working with regional Victorian communities to attract and strengthen businesses in Victoria. The project will enable one of Australia's largest carrot producers to increase capacity by 30 per cent, to diversify production and to enter new markets.

I congratulate Rocky Lamattina and Sons on the great work it is doing and its fantastic entrepreneurial spirit. This is a great example of what the government is doing through the Regional Infrastructure Development Fund to assist companies to invest and create quality jobs for regional Victorian communities.

Rail: Seymour station

Mrs PETROVICH (Northern Victoria) — Today I want to take members on a journey to Seymour railway station. It is the *Fawlty Towers* of the north. Imagine setting out on a day's journey and arriving at new platform 3 but finding no ticket office on platform 3 because the budget ran out.

Once you have parked your car in the only car park, you have to walk down a ramp into the underpass, up a ramp to the ticket office, back down the ramp to the underpass and then back up the steps to the new platform. I am exhausted just thinking about it, as were the staff at the ticket box on the car park side. It was too hot inside the ticket box, so instead of just fixing the problem with air conditioning as they should have done, they shut it down.

It is even more frightening if you need assistance at Seymour railway station, because they have provided golf buggies for those who need them, but unfortunately one hit the new myki pole and pushed it over. Some might say this is where myki belongs, but that is not for me to say.

But the real problem is getting the buggies when you need them. The only way you can get a buggy from the car park is to call the staff on your mobile; the problem with that is that there is no phone number anywhere to be seen, and of course not everyone has a mobile phone. And unfortunately the buggies are not available for use on new platform no 3 because the V/Line staff are not allowed to take the buggies onto land that is not owned by the railway and the land between the underpass and the platform is Crown land controlled by the council.

Signage at this confusing dog's breakfast is non-existent, and the disabled access track has gone from 20 metres to three-quarters of a kilometre.

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

Children First Foundation: conjoined twins

Mr LEANE (Eastern Metropolitan) — As members of Parliament we are all privileged to come across people who do good things in society, although we find that sometimes these people are lucky to get even a mention in a local paper. However, I commend the mainstream media for its coverage of what I think is an example of humanity at its best in recent times, and it concerns the operation on conjoined twins Trishna and Krishna, the orphans from Bangladesh.

I also commend the people who made it possible to bring them to Melbourne for that treatment and of course the medical experts at the Royal Children's Hospital who performed the operation and are now giving the twins the care they need. It was fantastic to hear only recently that both twins had left intensive care for the first time. I commend Moira Kelly and the Children First Foundation for organising for the twins to come from the orphanage in Bangladesh to get this treatment, which has given these girls what I am sure we all hope will be a very bright future.

Israel: missile attacks

Mrs KRONBERG (Eastern Metropolitan) — I rise to salute the courage and resolve of the remaining 20 000 people who live in the Israeli town of Sderot. Last Wednesday morning this Parliament's fact-finding group arrived by bus in Sderot to a welcome from our host. It went like this: 'See the bus shelter on the other side of the road and the other one opposite? They are the bomb shelters as well. When the warning "red alert" in Hebrew comes over the loudspeakers all over the town, you have 15 seconds to get to the shelter. If you cannot get to a shelter, lie down in a depression or against a solid building.'

We arrived in Sderot about 3½ hours after the latest Qassam missile was fired from the Gaza Strip at 6.00 a.m. and immediately empathised with a community which has for years now lived in constant fear of injury or death. Eight thousand missiles have been fired on this township, and the relentless nature of the attacks seeps into every aspect of life in Sderot. We saw newly built bomb shelters in most gardens and bombproofing of schools, kindergartens and community buildings and synagogues. The most disturbing of all were the two extremely large yellow-painted and reinforced concrete caterpillars that offer shelter for little children in the community's playground.

We all saw a massive and chilling display of spent Qassam missiles held at the police station. People drive with their radios switched off, with their windows wound down and without wearing a seat belt because they are perpetually on alert for the warning and have only 15 seconds to find shelter.

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

Breast cancer: fundraising events

Ms MIKAKOS (Northern Metropolitan) — On 22 October I had the pleasure of attending two fundraising events in support of breast cancer research — the City of Darebin pink ribbon breakfast and the City of Whittlesea pink ribbon afternoon tea.

October is regarded as breast cancer month, and it is an extremely important message for all women to understand that regular mammograms are imperative for the early detection of breast cancer. BreastScreen Victoria provides free mammograms for all women aged 50 to 69.

I am pleased to say that the City of Whittlesea afternoon tea attracted a great turnout of over 200 women and some men, and raised approximately $2400. With more than 13 600 women and 105 men diagnosed with breast cancer each year in Australia, more than 2800 will die from the disease in a single year. These funds will be of great benefit to the ongoing research undertaken by the National Breast Cancer Foundation to find a cure.

I would sincerely like to thank all the staff at both councils for organising these events along with the volunteers and attendees. I would particularly like to acknowledge the enthusiasm of the two mayors when I approached them about this idea — Cr Mary Lalios at the City of Whittlesea and Cr Diana Asmar at the City of Darebin. I believe these two events were very successful in helping to raise vital funds for and awareness of breast cancer.

Israel: study tour

Mrs COOTE (Southern Metropolitan) — I would like to commend AIJAC — the Australia/Israel and Jewish Affairs Council — for helping to arrange a study tour which was conducted last week with a number of colleagues from this place and one from the

other place. Together with Bruce Atkinson, Jennifer Huppert, Jan Kronberg, Peter Kavanagh, Jenny Mikakos, Theo Theophanous, Bernie Finn and Christine Fyffe, the member for Evelyn in the other place, we visited Israel for a week.

My personal experience certainly made me realise how lucky we are to live in a country such as Australia and to be able to work in peace and harmony. It was so tangible to see just how difficult and complex the circumstances are in the Israeli situation.

I also put on record my admiration for the members of the Jewish community — their tenacity, their courage, their innovation and indeed their cooperation with the Palestinian authorities, which we generally do not see. For example, the doctors at the Save a Child's Heart foundation are doing a miraculous job with young children, many of whom come from the Palestinian authority and are given a new lease on life by having their hearts repaired by some excellent and talented doctors.

It was also very pleasing to see Mr and Mrs Gandel and Jeannie Pratt among the Australians who have done a huge amount for Israel. It was pleasing to see Australians who are so committed. The trip was a life-changing experience.

Lebanese community: independence celebration

Mr EIDEH (Western Metropolitan) — It was with great pleasure that I attended and spoke on behalf of our Premier, the Honourable John Brumby, at the 66th anniversary of the independence of Lebanon on Saturday, 21 November. The event celebrated 66 years since the people of Lebanon finally gained independence in 1943 as well as the strong relationship between Australia and Lebanon which exists today.

It was an honour to be in the presence of Mr Henri Castoun, Consul-General of Lebanon in Victoria; the Honourable Steve Bracks, former Premier of Victoria; as well as Mr Matthew Guy, a member for Northern Metropolitan Region, representing Mr Ted Baillieu, the Leader of the Opposition.

The celebration was hosted by the World Lebanese Cultural Union, which has worked hard for over 40 years to promote mutual respect and understanding between cultural groups.

The Lebanese community is one of the largest ethnic communities in Australia. The first Lebanese immigrants brought trade and commerce with them and over many years have made notable contributions to Australia. Today the Lebanese community has become an important part of Victoria's multicultural society.

I am very pleased to say that the Victorian government's commitment to improve understanding among our culturally diverse communities has built trust and harmony. I take this opportunity to commend Mr Sayed Hatem, president of the World Lebanese Cultural Union in Victoria, as well as Mr Siradore Al Asmar, president of the World Lebanese Cultural Union Geographical Region Council for Australia and New Zealand, for hosting the event.

Dingley bypass: future

Mrs PEULICH (South Eastern Metropolitan) — Members of this chamber would be aware of my commitment to having the Dingley bypass constructed and finished to honour a series of promises made by this government at successive elections. It was dangled as an electoral carrot to the lower house electorates of Mordialloc, Carrum and Bentleigh by the state Labor party ahead of the 1999 and the 2002 state elections.

The member for Mordialloc also sent out a letter by direct mail with photographs enclosed of her wearing a crash helmet and yellow vest — which is Labor spin, signifying work — to residents in Dingley, outlining the Brumby government's plans to build the Dingley bypass. The fact that no funding and no plans exist for stage 1 and stage 4 of the bypass shows how misleading the letter is. The fact that the member was more than happy to allow one lane of Centre Dandenong Road — which is state Labor's amended preferred route for the bypass — to be turned into a full-time bus lane shows how out of touch she is with the Mordialloc community and the disastrous effect Labor neglect has had on Dingley Village.

Both the Dingley bypass and the Mornington Peninsula Freeway extension remain unfulfilled promises. Worse still, recently the member trotted out another broken promise — that is, for a Southland railway station. This is a project that Labor promised but a feasibility study dismissed; now the member for Mordialloc is reincarnating it as a future election promise.

Sea Lake and District Health Service: future

Mr D. DAVIS (Southern Metropolitan) — Today I rise to note the embarrassing backdown of the Minister for Health regarding the funding of the Sea Lake hospital. Whilst the backdown is very welcome, there are real questions about why it took Minister Andrews the best part of two years to come to it.

It is a victory for people power and for the Sea Lake community, which pushed for it. People were prepared to stand up to Minister Andrews and John Brumby, the Premier. They were prepared to fight hard at a local level and come to Melbourne if necessary to shame Minister Andrews into this embarrassing backdown. The minister could have done this a lot more sensibly a year or more ago. Members of the community have been talking to the department and seeking to establish some sensible communications with the minister. He should not be allowed to get away with the duckshoving that he tried to indulge in — attempting to blame the federal government when he needed to take responsibility, work with the community, find a solution and put in sufficient money. All of this is outrageous.

The Minister for Health has not covered himself in glory in this case. The people of Sea Lake should be happy that he has backflipped, but they should hold him and Mr Brumby to account.

Planning: growth areas infrastructure contribution

Mr GUY (Northern Metropolitan) — Today is GAIC — growth areas infrastructure contribution — day. I am glad the Minister for Planning is in the chamber — —

The ACTING PRESIDENT (**Mr Finn**) — Order! I am informed that we have exceeded the time allocated for members statements today. If Mr Guy would be kind enough to hold his horses until tomorrow morning, we will be able to resume with his pearls of wisdom at that point in time.

CONSTITUTION (APPOINTMENTS) BILL

Second reading

Debate resumed from 12 November; motion of Hon. M. P. PAKULA (Minister for Industry and Trade).

Mr O'DONOHUE (Eastern Victoria) — I am pleased to rise and lead the debate for the opposition with regard to the Constitution (Appointments) Bill 2009. Bills such as this make one reflect on how lucky Australia was to have an orderly transition from being a colony to being an independent nation. Unlike countries such as the United States of America and others that had to fight for their independence, Australia — and indeed Victoria — had a very orderly and progressive devolution of power from the United Kingdom. That devolution of power has progressed with acts such as the United Kingdom's Colonial Laws Validity Act 1865, the Commonwealth of Australia Act 1900 and the Statute of Westminster Act 1931, and most recently with the commonwealth Australia Act 1986.

Indeed it is the passage of the Australia Act that has caused this bill to come before us today. The act clarifies the powers of the Queen or sovereign vis-a-vis the Governor-General, state governors and the respective parliaments around Australia and the United Kingdom. Relevant to this is section 109 of the Australian constitution. Pursuant to that section an act of federal Parliament overrides any contradictory Victorian legislation, including the Constitution Act 1975.

With that in mind, as it currently stands there is an inconsistency regarding who has the authority to appoint a Lieutenant-Governor or an administrator. Section 6A of the Victorian constitution, as it currently stands, requires a Lieutenant-Governor or an administrator to be appointed by the Queen. However, the Australia Act states that:

> … all powers and functions of Her Majesty in respect of a State are exercisable only by the Governor of the State —

rather than by the Queen. This raises the issue of whether the actions of the Lieutenant-Governor and/or administrator have been valid in the time between the passing of the Australia Act and the appointment of the current Lieutenant-Governor, Chief Justice Marilyn Warren, by the Governor rather than by the Queen on 7 April 2006.

There is conflicting legal argument about this. I note in particular the detailed and extensive analysis of the legal issues provided by the New South Wales shadow Attorney-General, Mr Greg Smith, SC, in the New South Wales Parliament. I also refer to the comments made by the South Australian shadow Attorney-General in that state's Parliament on 17 November. She referred to this issue being raised in academic discussion as early as the early 1990s.

This is not necessarily a new issue, and it has been contained to a limited number of people. As I said, there is academic debate about whether the appointment of Chief Justice Warren by the Governor and the actions of lieutenant-governors and administrators since 1986 were valid. This is more than just an academic question. In the absence of the Governor the Lieutenant-Governor presides over the executive council, which provides the royal assent for legislation and also makes appointments and orders. I am informed that this could affect approximately 2700 bills that have passed through Parliament.

The purpose, therefore, of the bill is threefold. It is to amend the Victorian constitution to resolve any inconsistency between it and the Australia Act with regard to the appointment of the Lieutenant-Governor, to validate retrospectively the appointment of Victorian lieutenant-governors between 1986 and 2006 and to validate the retrospective actions of those lieutenant-governors. The bill is reasonably straightforward. Clause 1 sets out the purpose, clause 2 states the commencement date and clause 3 contains the definitions. The most important of those definitions is the definition of 'relevant action', which is:

> … an act or omission of an administrative or legislative nature, including the exercise, or purported exercise, of prerogative powers, done or omitted, or purportedly done or omitted, at a relevant time by a Lieutenant-Governor or an Administrator during the administration, or purported administration, of the government of the State by that person, or whether acting as the Governor's deputy or otherwise …

That is an expansive definition, covering acts and/or omissions. Clause 4 provides that the act will bind the Crown, clause 5 deals with the effect of relevant actions, clause 6 provides that the act will not give rise to liability against the state — I will have more to say about that a bit later — and clause 7 actually amends the constitution. It is a straightforward bill that is before us but its ramifications are potentially broad.

The coalition supports the passage of this bill. We note that it requires a special majority and therefore the support of coalition parties for it to pass. The bill was rushed into the other place during the last sitting week with little notice. We were asked to, in effect, trust that the government was acting in good faith and that other jurisdictions were acting contemporaneously with us. I mentioned previously the debates that have occurred in the South Australian and New South Wales parliaments. I understand Tasmania is enacting similar legislation. The issue does not arise in Queensland because of the absence of lieutenant-governors there. Western Australia has also decided that the issue does not affect it.

The opposition was concerned to ensure that validity of this 56th Parliament was not called into question. We have the power to pass this bill before us and retrospectively validate the actions taken by lieutenant-governors between 1986 and 2006. Suffice it to say, the shadow Attorney-General and member for Kew in the other place, Mr McIntosh, has been provided this morning with a list of relevant bills that impact on the constitution and which were given assent by the Lieutenant-Governor. The opposition was satisfied on review of those bills that the validity of this Parliament to pass this legislation is not called into question.

I want to mention a few other issues in passing. The need for the Parliament to make these changes to the constitution calls into question the entrenchment provisions which were put into the Victorian constitution by the previous Parliament. Whilst superficially the idea of requiring a referendum for changes to be made to the constitution is attractive, a distinction must be made between the Victorian constitution and the Australian constitution which underwent extensive debate and was put to the people in various forms and arrived at after extensive public deliberation.

The High Court of Australia interpretation is that the Australian constitution is a document that stands the test of time, which is not to mean that it will not be changed in the future. The Victorian constitution is a different document. It has not gone through the same process that the Australian constitution has. The Parliament would have been faced with a real problem if a referendum had been required for this issue to be addressed. The intervening period between the discovery of the issue and the calling of the referendum could have led to litigation and all sorts of other unintended consequences. It is a lesson for the Parliament. It validates the position of the Liberal Party with regard to some of the constitutional changes that have been made in recent times.

The government said in the briefings given to us it has taken a number of years from the discovery of this problem in around 2006 to the bill coming before Parliament because of the attempts to have different jurisdictions and state legislatures around Australia pass similar bills contemporaneously, as I mentioned before. What the government has not mentioned in debate or in briefings is what the Attorney-General of New South Wales, the Honourable John Hatzistergos, said in a second-reading speech on 11 November. He said:

> For some years now, the New South Wales government has been discussing with other states the possibility of approaching the commonwealth government with a proposal to amend the Australia Act to remove all uncertainty.
>
> Although most states have also endorsed that approach, unanimous agreement has not been achieved.
>
> Pending any possible clarifying amendments being made to the Australia Act, it is prudent to enact this bill to remove the immediate legal uncertainty.

That coming from the New South Wales Parliament is illuminating. I congratulate the New South Wales government for putting it on the table and in effect

summarising the processes which the different jurisdictions have undertaken with the primary purpose of amending the Australia Act. It is something which was not disclosed to us and something which was not mentioned in the minister's second-reading speech. There is clearly more to this process than simply arranging a mutually convenient time for the different states to pass similar bills, which we are now doing.

The other thing I want to make reference to is the statement of compatibility signed by the Treasurer, Minister Lenders. He says on page 1 that there are no human rights engaged by the bill. I refer to the *Alert Digest* by the Scrutiny of Acts and Regulations Committee tabled earlier today. It disagrees with the minister. The report says:

> This retrospective operation of clause 5 may engage the charter's rights against 'unlawful' interferences or actions and, in the case of previously ineffectual criminal laws, the charter's rights against retrospective criminalisation or increases in penalty.

The *Alert Digest* goes on to quote clause 6(1) of the Constitution (Appointments) Bill, which provides that:

> The State is not liable to any action, liability, claim or demand arising from the enactment, commencement or operation of this Act.

In the comments that follow, the report says:

> The committee is concerned that this clause may bar a person affected by the bill from seeking a declaration of inconsistent interpretation under the charter.

It goes on to say:

> The committee will write to the Premier seeking further information as to the effect of clause 6(1) on the availability of declarations of inconsistent interpretation. Pending the Premier's response, the committee draws attention to clauses 5 and 6(1).

Here we have yet another example of inconsistency between the statement of compatibility and the findings of the Scrutiny of Acts and Regulations Committee, and I will await the Premier's response with interest.

It is worth noting that because the government rushed this bill into the other place during the last sitting week without notice and without taking the opposition or indeed the Greens or the Democratic Labor Party into its confidence about this matter, today is the first opportunity that the Parliament has had to hear from the Scrutiny of Acts and Regulations Committee, after the bill has passed through the other place, and that is indeed regrettable. With those comments I indicate that the opposition will support the bill.

Ms PENNICUIK (Southern Metropolitan) — The Greens will also be supporting the Constitution (Appointments) Bill 2009. I listened with interest to what Mr O'Donohue was saying, and he raised some very interesting and valid points. However, I feel that we are in a position where we have no choice but to support this bill, because the regime that exists in the Victorian constitution for the appointment of Lieutenant-Governors and administrators is inconsistent with the Australia Act 1986. We all know that where there is an inconsistency between a commonwealth law and a state law the commonwealth law will prevail, and that is the practical situation we find ourselves in.

It would be impossible to stand here and not say that this situation is amazing. From 1986, when the Australia Act was passed removing the role of the Queen in the appointment of lieutenant-governors or administrators and conferring that role on the Governor until 2006, 20 years later, nobody noticed that there was inconsistency between the commonwealth law and the state laws. If it were not such a serious matter it would be funny. It has taken three years since that anomaly was discovered for us to find ourselves here in the same position as the parliaments of South Australia, New South Wales and Tasmania, which have had to pass similar bills.

I thank the government and the department for their briefing on this bill. I asked the question, 'How many bills does this affect?', and the answer was that around 2700 bills are affected in terms of having been passed by the Parliament and assented to by the Governor in Council between 1986 and 2006. The administrator or Lieutenant-Governor may have been in charge of the state for some 896 days in that period. Many appointments and regulations have also been affected.

I understand what Mr O'Donohue was talking about in terms of the retrospectivity of clause 5, but I while I would usually comment on that — and I will in fact be making comments about the retrospectivity of another bill that is before the house this week — I think in this case the retrospectivity is basically the purpose of the bill, so it is a little bit difficult to oppose it. The purpose of the bill is to make sure that acts of Parliament, regulations or appointments that have been made in that 20-year period will have the same validity and the same force and effect for all purposes as if they had been assented to with the Lieutenant-Governor or administrator having been appointed in the proper way. The bill makes it clear that it will not affect any action, liability, claim or demand arising from the enactment or commencement of legislation in any other regard and will apply only in regard to the appointment made under the bill.

Mr O'Donohue made a good point when he talked about entrenchment provisions and the difference between the Australian constitution and the Victorian constitution, which I have talked about in particular in respect of the Dispute Resolution Committee in the last few weeks. That was a provision inserted into the constitution without a referendum and it seems it cannot be removed from the constitution unless there is a referendum. Mr O'Donohue made a good point that if this required a referendum we could be in trouble. How the Victorian constitution does and should work for the benefit of the Victorian people is an ongoing conversation and philosophical and academic exercise. With those comments I indicate that the Greens will support the Constitution (Appointments) Bill.

Ms PULFORD (Western Victoria) — The Constitution (Appointments) Bill does quite a remarkable thing in a simple way. The bill seeks to remedy an inconsistency, as referred to by previous speakers, between commonwealth and state legislation as it affects the authority of the Lieutenant-Governor in Victoria to perform functions that are traditionally performed by the Governor. I was interested to hear the comment from Ms Pennicuik during her contribution that during the period in question, some 20 years from 1986 to 2006, one Lieutenant-Governor was in charge for 896 days — almost 3 years out of the 20 — and also that some thousands of pieces of legislation could have their validity questioned without the action that we are taking today. This is essential work we are doing, and the government is grateful for the support for, and assistance with, the speedy passage of this legislation through both houses.

Every fibre of my republican body is urging me to get into the whole question of why all the legislation we debate in this place is signed off by a representative of Her Majesty the Queen of Australia, but perhaps that is a discussion for another day — a discussion to be led by our federal counterparts at some point in the future.

This bill amends the constitution. It provides validity to the many thousands of acts of this Parliament that have been passed over a 20-year period and also provides validity to the other acts of previous Lieutenant-Governors with respect to regulations and making appointments.

That commonwealth legislation overrides Victorian legislation at the point of any inconsistency is something we frequently discuss in this place. As in so many of those things, from time to time there is intersection with our counterparts in the commonwealth Parliament, but in this instance it is a most serious matter, and I urge members to provide speedy passage and strong support for this legislation on this occasion.

Mr RICH-PHILLIPS (South Eastern Metropolitan) — I rise to speak briefly on the Constitution (Appointments) Bill before the house. As the coalition's lead speaker, Mr O'Donohue, has said, the purpose of this bill is essentially to put beyond doubt actions carried out by Lieutenant-Governors and administrators during the period 1986 to 2006 in view of the fact that some doubt has arisen as to the validity of their appointments by Her Majesty the Queen following the passage of the Australia Act in 1986.

As Mr O'Donohue said, the coalition parties were alerted to this legislation by the government in the last sitting week. We were told that it was urgent, that the government was keen for the rapid passage of this bill to correct this potential deficiency in our constitutional arrangements. The purpose of this bill is not to validate the appointment of those lieutenant-governors who were affected but rather to validate the actions that they are purported to have undertaken in such a way as to recognise them as if they had been undertaken by the Governor.

When this legislation was brought to the house and put before the coalition parties we were told that it was important that the legislation be passed expeditiously. It was the view of the government that it had to be done in the one sitting week. We have now seen that that was not the case. The legislation has laid over for a period of two weeks, which brings into question the original urgency with which it was brought to this place. The government has indicated that it has been aware of this potential deficiency since 2006. As explained by Mr O'Donohue, there was a lengthy period of apparent negotiation and discussion with the other states before this legislation was finally brought to this place in 2009.

However, it is interesting to note, that the debate on this matter in the South Australian parliament suggests that this potential deficiency was in fact known as early as 2003. The late Justice Bradley Selway, who was a previous solicitor-general of South Australia, first published a paper on this potential deficiency in 2003, just prior to his appointment to the federal court. Apparently the matter has been known by the South Australian government since 2003, and it seems inconceivable that the Victorian and other state governments would not have known about it until 2006.

There is some doubt over what the coalition parties have been told is the history of this legislation. There is also doubt over what information could be provided with respect to what acts and instruments have been

affected by ratification by lieutenant-governors. We have been told that the period affected is 1986, with the passage of the Australia Act, through to 2006, when the Honourable Marilyn Warren, Chief Justice of Victoria, assumed the role as the current Lieutenant-Governor, and that any acts passed during that 20-year period are in doubt or potentially in doubt. We have also been told that the volume of legislation and other ratifications by the lieutenant-governors or administrators during that period is so significant that the government could not provide details of it. It was only with great reluctance on the part of the government that we finally received today a list of constitutionally related pieces of legislation that may be affected by virtue of their having been assented to by an administrator or lieutenant-governor.

Having looked at the recent history of appointments of lieutenant-governors in Victoria, I think it is worth noting that between 1975 and 1995 the Lieutenant-Governor in Victoria was the Honourable Sir John Young, who was also the Chief Justice of Victoria between 1974 and 1991. Given that his appointment as Lieutenant-Governor was made in 1975, before the commencement of the Australia Act, it seems that the validity of his appointment is not in doubt, and the fact that that continued to 1995 would suggest that the window of doubt in reality only starts at the expiration of Sir John Young's term as Lieutenant-Governor through to Marilyn Warren's appointment in 2006. Rather than a 20-year period of doubt, we appear to be looking at an 11-year period where acts and actions by a lieutenant-governor or administrator may be in doubt. Given that much of the period between 1995 and 2006 is covered by electronically searchable databases with respect to legislation and *Victoria Government Gazette,* I must say I have some difficulty believing that the government has not been able to provide far more detail of what actions of lieutenant-governors or administrators are in doubt for the period 1995 to 2006.

Another matter I wish to touch on briefly is the question of entrenching matters in the constitution. We are very fortunate that the particular provision we are seeking to amend today is not one of those that was entrenched by this government in 2006, because no more thought went into those entrenchment provisions in 2003 than a grab in a press release. As Mr O'Donohue pointed out in his contribution, the Victorian constitution is very different to the commonwealth constitution. The commonwealth constitution, which rightly can only be changed through referendum, is a principles-based document. By contrast the Victorian constitution is very much an operational document. It descends to a far greater depth than the mere principles of government and extends lower down into operational and structural matters surrounding the Victorian democracy — Parliament, the courts and government — even as far down as to the term of the appointment of the Auditor-General. The Victorian constitution is much more of an operational document than the federal constitution, and therefore the danger of entrenching provisions, as we did in 2003, is far more significant.

As I have said, we are very fortunate that the provision we are seeking to change today is not one of those that was entrenched in those 2003 changes. Yet again we are having to pass correcting legislation, which highlights the folly of this government in seeking to entrench a wad of provisions in the constitution in 2003. With those few words let me say that the coalition will support this legislation.

Mr SOMYUREK (South Eastern Metropolitan) — I rise to speak in support of the Constitution (Appointments) Bill. This is a purely technical bill to resolve the conflicting positions between state and federal legislation with respect to the appointment of the Lieutenant-Governor of the state of Victoria. In doing so it places beyond doubt the legality of appointments of successive lieutenant-governors. It also places beyond doubt any legal challenge to any actions of lieutenant-governors, such as the absence of the Governor presiding at the meeting of the executive council and giving royal assent to an act of the Victorian Parliament.

The Lieutenant-Governor is in effect the deputy Governor who, during the absence of the Governor or where the office of Governor is vacant, acts in the place of the Governor. Historically the office of Lieutenant-Governor goes back to the days of the colonies, when Victoria was a subcolony of New South Wales. At that stage Victoria was administered by a Lieutenant-Governor.

Section 6A of the Victorian Constitution Act 1975 provides:

> Lieutenant-Governor and Administrator
>
> (1) There shall be —
>
> (a) a Lieutenant-Governor of the State; and
>
> (b) an Administrator of the State.
>
> (2) The appointment of a person as Lieutenant-Governor shall be during Her Majesty's pleasure by Commission under Her Majesty's Sign Manual and the Public Seal of the State.

In a nutshell, the Victorian legislation requires the monarch — that is, the Queen — to appoint the

Lieutenant-Governor of Victoria. However, this is in conflict with section 7 of the relevant commonwealth act, being the Australia Act 1986, which states under the heading 'Powers and functions of Her Majesty and Governors in respect of States':

> (1) Her Majesty's representative in each State shall be the Governor.
>
> (2) Subject to subsections (3) and (4) below, all powers and functions of Her Majesty in respect of a State are exercisable only by the Governor of the State.
>
> (3) Subsection (2) above does not apply in relation to the power to appoint, and the power to terminate the appointment of, the Governor of a State.

The commonwealth legislation provides that the only power the monarch can exercise in respect of an Australian state is the appointment of a Governor, and the Australia Act expressly states that the Lieutenant-Governor is therefore appointed by the Governor on advice. As I said earlier, this commonwealth legislation is in conflict with the Victoria's Constitution Act. In reality I do not believe there is a problem with the current Victorian practice of the Governor appointing the Lieutenant-Governor. This practice is consistent with the commonwealth legislation, and in the case of any conflict the commonwealth legislation would override the state's act. This issue would only be of academic interest to constitutional lawyers and scholars. Nevertheless, this bill is sensible and a prudent course of action as it heads off any potential expensive and time-consuming challenge to an act of the Victorian Parliament which may have had royal assent affixed to it by the Lieutenant-Governor.

Clause 6 of the bill precludes any legal liability or challenge. As the bill preserves what was understood to be the status quo, I do not believe any person will be unfairly disadvantaged as a result of this bill.

I also do not think that monarchists will be too distressed that this bill takes away from the Queen the power to appoint the Lieutenant-Governor. However, as I have made clear throughout my contribution, this bill is only a technical fix and reaffirms current practice, and therefore I commend it to the house.

Motion agreed to.

Read second time.

Third reading

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

> That the bill be now read a third time.

In doing so I thank members of the chamber for their contributions to the debate.

The PRESIDENT — Order! I am of the opinion that the third reading of this bill requires to be passed by a special majority. I ask the Clerk to ring the bells.

Bells rung.

Members having assembled in chamber:

The PRESIDENT — Order! In order that I may determine whether the required majority has been obtained, I ask those members who are in favour of the question to stand where they are.

Required number of members having risen:

Motion agreed to by special majority.

Read third time.

DEAKIN UNIVERSITY BILL, LA TROBE UNIVERSITY BILL, MONASH UNIVERSITY BILL and UNIVERSITY OF MELBOURNE BILL

Second reading

Debate resumed from 15 October; motions of Hon. J. M. MADDEN (Minister for Planning).

Mr HALL (Eastern Victoria) — I am pleased to have the opportunity this evening to speak on the four university bills listed on the notice paper, and I see the sense in debating them cognately. I want to say from the outset that the coalition will be supporting these four pieces of legislation. In my contribution I intend to first make some general comments about higher education. Then I need to talk about the structure of the bills as a whole, because essentially these four bills follow the same form. Then I want to make some particular comments about each of the four bills and the universities of which they are the subject.

The first comment I want to make in respect of a general view on higher education in Victoria is that I believe we have a very good higher education system here in this state. It is a higher education sector of which we as Victorians should be proud. The sector is dominated by our eight Victorian-based public universities. Melbourne University, Monash University, La Trobe University and Deakin University are the four that are the subject of the bills before us tonight. I understand the other four — RMIT, Swinburne, Victoria University and Ballarat University — are the subjects of legislation soon to be before the Victorian

Parliament. We should also not ignore the very valuable contribution made to the higher education sector by the Australian Catholic University, which has a substantial presence here in Victoria, the Melbourne College of Divinity and a number of private providers of higher education in this state.

At any one time we have around 250 000 students attending Victorian universities. The contribution the education sector in general makes to the Victorian economy is very significant. An article in the *Age* newspaper today suggests the education industry in Victoria is worth something like $5.4 billion to the Victorian economy. In terms of overseas education, education is Victoria's biggest export income earner, earning this state somewhere around $4.5 billion per year. We are most fortunate in Victoria to have a very fine network of higher education providers.

I must say that I share the view of higher education expressed very eloquently by the minister on page 4 of the second-reading speech for the University of Melbourne Bill. The minister said:

> In framing this legislation before the house today, the government was mindful that, so far as is consistent with the nature of the university as a public entity, the university itself must be unfettered in attending to its mission, governance and administration. And as much as a university contributes to the economic wellbeing of the community through skills formation and research, its mission is also very much a civilising one that looks beyond the merely material to the development of mind and person, to the enhancement of culture and to nurturing understanding and social cohesion.

I think that was a very eloquently expressed sentiment and one that I would strongly support. While we frequently talk about the economic contribution that universities and higher education make to this state, we should not ignore the intrinsic, the academic and the personal growth that university encourages. I agree with those sentiments expressed by the minister.

The last part of that statement spoke about social cohesion, which reminded me to speak very briefly about social equity, because equity and participation in higher education are extremely important issues. I think it is an extremely important challenge for both governments and providers of higher education in Australia. I note the federal government has given universities in Australia a directive to try to reduce the inequities that exist in terms of participation in higher education. I support the efforts to do that.

It is only recently that the Victorian parliamentary Education and Training Committee reported to the Parliament on differences in the participation rates in higher education. That report has found, as have other reports, that where you live and what socioeconomic class your family belongs impact on your ability to go to university and obtain a higher education degree. That report spoke, as have many others, about the financial barriers to participation in higher education. Some of the recent moves by the federal government have not assisted one little bit in that regard. Changes to the youth allowance criteria are the subject of deliberation by the federal Parliament right at this very moment. So they should be, because that is a critical issue. Instead of improving opportunity and equity to participate in higher education, those changes are detrimental to doing so and are an important challenge for the Australian and state governments and also for the providers of higher education across the nation. I make those general comments preceding my more particular comments about the bill that we have before the house this evening.

I make what some may regard as a petty point, but it is a point that I needed to make, in respect of the order in which these bills are listed on the notice paper. It is interesting that they are in the order of the Deakin University, La Trobe University, Monash University and the University of Melbourne bills. But the second-reading speech for the University of Melbourne Bill given by the Minister for Skills and Workforce Participation in the Assembly states:

> I am moving the second reading now of the University of Melbourne Bill 2009 and following I will be moving the second readings of similar bills in relation to Monash University, La Trobe University and Deakin University.
>
> I am moving the second readings of each of the universities in the order of their date of establishment, which is in no way meant to indicate an order of precedence.

They are in the wrong order here: both the order in which the bills are listed and the order in which they were introduced into this house are contrary to what the minister said when she delivered her second-reading speech in the Assembly. Therein lies one of the concerns that we often express on this side of the house, and that is that with the incorporation of second-reading speeches little regard is given to their content. The order for the tabling and incorporation of the second-reading speeches is contrary to the order in which they were introduced in the Assembly. It does not make sense and is probably something the government has been tardy about. It should have paid more attention to the detail in the way in which these bills were presented to the house. I make that little point, because for a person who reads the second-reading speeches there is no logical sequence to the words of the second-reading speech and therefore

the order in which these bills have been brought before the Parliament this evening.

I will go on to make some comments about the format or the model of the legislation that has been used. What we are seeing here is a re-enactment of each of the acts which constitute Victoria's four universities in this group of four and then ultimately a further four. There is a lot of commonality between the four pieces of legislation that we have before us tonight. In the briefing I was given on these four bills the legislation was described as template legislation. I was told that, apart from the preamble and the necessary transitional provisions, the bills were identical. Indeed that was the case when these four bills were introduced into the Parliament in the other place.

No sooner had they been introduced than the government moved some amendments to the La Trobe University Bill. I must say that caused some consternation amongst the ranks of the Liberal Party and The Nationals, because we were at a loss to understand why the La Trobe University Bill was being amended when it was our understanding at the time we received the briefings that the composition of each of the university councils would be the same. Why then was the La Trobe University Bill being amended and not, for example, the Monash University Bill or the Deakin University Bill, which universities also had substantial campuses outside the metropolitan area?

Quite rightly, coalition members in the Assembly posed the question: why La Trobe and not the others? The government has come back to me and said it was purely an oversight in terms of the briefing provided to me and a bureaucratic slip-up in introducing the bill in its then unintended form. It is a bit hard to believe that was the case, because if there was a substantial difference intended in the La Trobe University Bill, for example, I would have thought it would stand out quite clearly that the legislation was almost identical apart from the one substantial difference, being the composition of the university council.

Further, I think this minister would have been diligent enough to read the legislation that was taken before the cabinet and ultimately introduced into the Parliament. I know the minister is a diligent minister; I am sure she would have done that. That the minister would not have picked up that there was a difference from what she claims to have understood was in the La Trobe University Bill is pretty hard to believe, especially when La Trobe has a substantial regional campus in the minister's own electorate. Moreover, when I contacted La Trobe, it said it had neither requested that the bill be amended nor was it aware that it was going to be amended.

With respect to this issue of why the La Trobe bill and not the others was amended, I cannot believe it was simply an oversight or a slip-up in its introduction. You might say that I am cynical about this, but my view is that the government probably intended to do as it said it would do when it briefed me, and that is to bring about uniform legislation for each of the eight universities. I think it was probably an afterthought and the government feared there may be some backlash against it in respect of changes in the current provisions of the act and decided at the last minute that perhaps some changes should be made and those provisions which currently exist in the acts should be re-enacted.

They are my views about what happened in respect of the government's own amendments to the La Trobe University Bill when it was introduced in the Assembly. I think my views were further reinforced by that comment in the minister's second-reading speech, where the minister said in this chamber:

> … the university itself must be unfettered in attending to its mission, governance and administration.

Clearly those words intended that there would be no restrictions in terms of the composition of the governance body of the university.

I want to move on from this issue. I understand and have accepted what is happening now that I have knowledge that there will be three other university bills with similar provisions to carry through what I classify as being some of those regional representation requirements on university council memberships. I understand that Swinburne University of Technology, Victoria University and the University of Ballarat as well as La Trobe University will carry through some of those existing regional representation requirements in the university acts. The other four universities — Royal Melbourne Institute of Technology, Monash and Deakin universities and the University of Melbourne — that currently do not have any regional representation requirements on membership of their university councils will continue not to have them.

Given the fact that I accept the government is simply re-enacting those provisions which currently exist in those eight acts and that there has not been any call from Monash or Deakin universities, or from the University of Melbourne for that matter, for any amendments to their acts, and also given that there is seemingly no outcry from regional areas to have mandated representation, the coalition will not pursue

amendments to that effect and will not be seeking to amend any of the bills that are before us this evening.

Let me mention briefly some of the structures of the legislation for each of these four university bills. I am just moving through these very quickly. The objects of the universities are now somewhat broader than they were in the previous acts and better reflect the activities of universities today. Those activities have changed over a period of time. When some of these acts were first enacted and the universities established, the focus, the direction, the change and the activities that universities were involved in were different from those of today and so there are changes to the objects of each university act which better reflect their current activities.

The councils will remain the governing bodies of universities. The councils' duties will include the appointment of senior officers such as the chancellor, the deputy chancellor and the vice-chancellor. The composition of councils is changing somewhat. Currently it is mandatory to have 21 members of a university council. Under the changes made by these bills that number may now vary between 14 and 21. There is a mix of appointed, coopted and elected members on each university council.

The structure and role of the academic boards and faculties will now be determined by the council itself rather than being prescribed in the act. The vice-chancellor is now deemed to be the chief executive officer of the university and will also carry the title of president for the purposes of international recognition. I notice that many of the vice-chancellors are already using that title in some of their correspondence.

Universities as they are now will be empowered to make their own statutes. They will also retain powers relating to property acquisition and disposal and finance and commercial activities. There are some restrictions on that. Under certain conditions the approval of the minister will be required, but essentially they will be able to undertake that activity themselves. The university will be required to develop, have approved and then publish guidelines relating to its intended commercial activities — that is, essentially its business plan. That is a necessary and welcome provision. Importantly, the Auditor-General will continue with the audit functions and universities will continue to be required to report annually to the Parliament of Victoria.

They are some of the structural matters which I wanted to identify in each of these bills. Many of them are not dissimilar to current provisions. Some of them are, but the bills themselves are probably more streamlined. Having made those general remarks about the composition of the bills, I now turn to some particular measures about each of the universities in question.

The minister said something in the second-reading speech that is different from what actually happened. These bills were supposed to be introduced in the order in which the universities were founded. The first university which was founded was of course the University of Melbourne. It was established in 1853. Teaching commenced there in 1855 and has been going ever since. It took a while for women to be admitted to university courses — that happened in 1881. In 1883 the first female graduated. The university has certainly grown since 1855. The University of Melbourne now has about 44 000 students and 3300 academic staff. In total there are about 6400 staff by the time you include general staff with the academic staff. Of those 44 000 students who attend the University of Melbourne, about 25 per cent are from overseas. Most of us would acknowledge that the University of Melbourne has been consistently ranked highly amongst the world's leading universities in both academic and research activities.

The University of Melbourne has campuses at Parkville, Burnley, Creswick, Dookie, Shepparton and Werribee. It traditionally offered programs in the areas of architecture, building, planning, arts, economics and commerce, education, engineering, land and food resources, law, medicine, dentistry, health sciences, music, science and veterinary science. In recent times there has been a significant change in the academic structure at Melbourne University. I am sure many members have heard of the Melbourne model, which is essentially designed to give students a broader undergraduate offering before specialisation, which occurs after the undergraduate degree has been completed. An article in the *Age* of 6 November regarding Melbourne University says:

> It has slashed its undergraduate course offerings from 65 in 2007 to just 17 next year, a fraction of the number offered by some other universities, and five fewer than it offered last year.
>
> Next year it will not offer dental science, optometry, physiotherapy, veterinary science or music theatre at the undergraduate level.

Essentially the philosophy behind the Melbourne model is that students would benefit by a broader general education at an undergraduate level before specialising at the postgraduate level. I think there is some sound logic behind that model. It is important that people have

broad knowledge and a broad education. Specialisation at an early time can sometimes lead to a narrow focus, and therefore sometimes a broader education is beneficial. At the same time I acknowledge that in some areas of speciality that model may not always fit those areas. Most members would be aware of concern being expressed by those in the arts area, particularly regarding the faculty of the VCA and music in terms of former Victorian College of the Arts students moving to that model and perhaps the model not providing them with sufficient opportunity to learn the practical components of the arts which they previously studied at the VCA (Victorian College of the Arts). I can understand their concern. I think the university needs to take account of those concerns and recognise that the Melbourne model might not be perfect or the right thing for every faculty.

That being said, I think it is worth putting on the record that the VCA was a very fine stand-alone institute for many years. It was only because of changes imposed on it by the federal government that as a higher education provider it was forced to seek a partner and become bigger to receive funding. Very reluctantly the VCA formed an affiliation with Melbourne University for a period of time. That affiliation grew in various stages until recently the VCA was absorbed as a part of the faculty of the VCA and music at Melbourne University. I think there are still some issues for the university to work through in respect of that development.

Finally, in respect of Melbourne University I want to comment about a group called the Committee of Convocation at the university. Division 3 of the Melbourne University Act is headed 'Convocation and its committee'. The convocation is made up of the graduates of the university. Currently the Committee of Convocation claims that in the order of 220 000 — I presume that is the number who are alive — graduates of the university now form the convocation.

The Melbourne University Act of 1958 sets out a whole range of provisions about convocation and sets out a process by which the Committee of Convocation is established, how it runs its affairs and what it does. The committee used to have up to 10 positions on the university council, so I suppose they were a representative sector in their own right as the graduates of the university. The graduates therefore had a set number of places on the university council. Under section 21(d) of the current Melbourne University Act their powers include:

> may submit for consideration of the council such suggestions as it thinks fit with respect to the affairs and concerns of the University; and the council shall take all such suggestions into consideration and report to convocation its determinations thereon …

As explained to me by members of the Committee of Convocation at Melbourne University, they were almost like an advisory board of graduates of the university who expressed views and opinions to the university council, and the council was required in some way to respond to them. Having such an advisory-type group is not a bad idea. It was the wish of the Committee of Convocation that the new Melbourne University Act incorporate similar sorts of provisions. In its submission it clearly said that it does not have to have everything that is in the existing act; it does not have to have the procedural matters which could be included as a statute of the university rather than as part of the act, but it still sought that power to have input and the ability to comment on council decisions.

The government was not keen to include those provisions because Melbourne University was the only Victorian university to have such provisions in its act. There are universities overseas — for example, Harvard and some of the English universities — which have similar sorts of structures in their acts, but Melbourne University was the only Victorian one. Given that the government is designing template legislation to bring about uniform legislation and the coalition has received feedback that the government would not entertain an amendment to include acknowledgement of a Committee of Convocation in the act, reluctantly the coalition has been forced to the position where it will not persevere with it. But I would seek some feedback from Melbourne University on how in future it may consider the views expressed by graduates of the university.

The next bill I want to move to is the Monash University Bill. I will try to be quicker as I go through these last three. I have to declare a vested interest in this: I am a graduate of Monash University from back in the heady days of the 1970s. It was a great experience for a young country boy to be down there with Albert Langer and the group in those days in the 1970s.

Mrs Peulich — Did you live in the halls of residence?

Mr HALL — No, I did not live in the halls of residence.

Mrs Coote — Did you march in the street?

Mr HALL — No. Perhaps we will talk about some of those activities off record rather than on record.

Nevertheless, for a young country boy it was a good experience to attend Monash University. That was in the early days of Monash, because Monash was only established in 1958, so at that time it was a relatively small university.

I want to also mention that a new vice-chancellor has recently been appointed to the university — Professor Ed Byrne. He follows on from some terrific people who have served the university well, including former vice-chancellors Professor Richard Larkins and Professor Mal Logan, to recall a couple of those who have served that university well over a long period of time.

Monash University has grown since its formation in 1958. It now has campuses at Clayton, Caulfield, the Peninsula, Churchill in Gippsland, Parkville, where it absorbed the Victorian College of Pharmacy, and Berwick, a campus which is growing all the time. It also has overseas campuses in Malaysia and South Africa. Monash now has in the order of — if my memory is correct — almost 57 000 students in total, about 37 000 of those being domestic and almost 20 000 being international students. It is a significant university in size. The university also has over 7000 full-time staff across its campuses.

I also want to mention that Monash University has demonstrated a strong commitment to its regional campuses. Recently its vision included a commitment to expand some of the programs it runs from its Gippsland and Berwick campuses. Recently when visiting the Gippsland campus at Churchill I was most impressed with the medical school that is being established there. Now we are training GPs in country regions. I know La Trobe University is doing that in Bendigo as well.

Mr Drum interjected.

Mr HALL — I beg your pardon. Deakin University is doing it; La Trobe is doing pharmacy.

Mr Drum interjected.

Mr HALL — La Trobe is doing pharmacy in Bendigo, and Deakin also has a medical school training doctors at Geelong. I think it is terrific that some of these universities are actively demonstrating their commitment to regional areas.

I will quickly mention La Trobe University. It was established in 1967 with 552 students. It has now grown significantly. It has more than 26 000 students across campuses in Melbourne at Bundoora and the CBD, and at Albury-Wodonga, Beechworth, Bendigo, Mildura and Shepparton. Its dentistry school in particular at Bundoora is growing all the time. Its physiotherapy school at Bendigo, as I mentioned, is also thriving, and there has been an increased application for enrolments there. La Trobe University is one of the network of fine universities serving Victoria and one of which we can be proud.

Finally, I want to mention Deakin University, which is dealt with by the fourth of the university bills we are looking at. It was established in 1974 and officially opened at the Waurn Ponds campus in Geelong in 1977. It came about from the merger of the Gordon Institute of Technology and the State College of Victoria. Deakin University has demonstrated its commitment to regional areas. It has absorbed teaching institutions in Melbourne and has also picked up a major campus in Warrnambool, with the Warrnambool Institute of Advanced Education having become part of Deakin University. It is also demonstrating its commitment to regional areas, with a second campus being opened in Geelong and, as I said, a new medical school being opened in Geelong.

It is important that these universities — the first four established universities in Victoria — continue to demonstrate their commitment to providing programs based not only in metropolitan areas but also in non-metropolitan areas. As I said in my opening remarks, one of the real challenges universities have today is the issue of social equity and providing opportunities for those less able to access university education is important.

The coalition will be supporting these four pieces of legislation. We acknowledge the fine work that our Victorian universities do in terms of providing opportunities for young people and our communities. We wish them every success and give our commitment to continue to work with those universities to make them even better places for people, both Australians and overseas students, to pursue their studies.

Sitting suspended 6.31 p.m. until 8.05 p.m.

Ms HARTLAND (Western Metropolitan) — I will speak only very briefly to these bills; Mr Hall did such an extraordinary job explaining all the intricacies that I do not need to go back over them. The Greens will be supporting these bills.

The one comment I would like to make is that when we were initially reading the bills we thought we should attempt to move an amendment to the effect that we should go back to the days of free education.

Unfortunately for constitutional reasons we could not do that. But I think it is worth this house remembering that education became free in this country under the Whitlam Labor government. In the town I lived in, Morwell, this was the first opportunity many people had to go to university. However, since that time free education has been whittled away, and we are now at a stage where often university is simply unaffordable for many low and middle-income earners.

With those few remarks I indicate that the Greens will support these bills.

Ms TIERNEY (Western Victoria) — I rise in support of these bills, which we are debating cognately this evening and which on this occasion cover four universities in this state. Those are Deakin University, La Trobe University, Monash University and the University of Melbourne. The four main objectives of the bills before us tonight are to modernise the foundation legislation of Victoria's universities to conform with contemporary standards and expectations, to introduce greater flexibility in governance and administration, to standardise powers and provisions across each of the university acts and to remove redundant and obsolete provisions.

Before I go on to the technical elements I want to take this opportunity to focus primarily on Deakin University, which comprises four campuses, three of which are in the electorate of Western Victoria Region. Since the university's establishment in 1974 and the official opening of Deakin's first campus in Waurn Ponds, Geelong, in 1977, Deakin has grown to include campuses on the Geelong waterfront, in Warrnambool and of course in Burwood.

Deakin is entrenched in Warrnambool and the south-west. It is engrained in the make-up of Geelong, and it plays a pivotal leadership role in the local Geelong community. It provides yet another world-class tertiary facility here in Melbourne, along with the other universities included in the debate before us this evening.

Deakin is recognised as Australia's fastest growing research institution and has facilities such as the Geelong Technology Precinct in Waurn Ponds, which was opened by the former Premier, the Honourable Steve Bracks, in late 2004. It boasts a rapidly increasing pool of international staff and students who are attracted by the successes of Deakin University and the excellent facilities and infrastructure. This university has well and truly become a fundamental part of western Victoria. Its commitment and dedication to the needs of western Victoria have been demonstrated as it has delivered some of the most valuable and important projects and facilities that our region has seen.

On 1 May 2008 it was a pleasure to witness the Prime Minister of Australia, Kevin Rudd, formally open Deakin University's medical school, which was Victoria's first new medical school for more than 40 years and the first regional medical school in this state's history. The medical school is designed to address rural and regional medical workforce issues, with the course providing strong links with rural and regional Australia. In 2010 and 2011 students will be learning in general practice around western Victoria in towns including Stawell, Horsham, Hamilton, Daylesford, Colac, Camperdown and Ararat as well as being in the major regional hospitals such as South West Healthcare in Warrnambool, the Geelong Hospital and the Ballarat hospital.

With the ideal location of the Warrnambool campus for specialist studies in marine biology and aquaculture, Deakin provides a great facility not only for the south-west but also for the state of Victoria in terms of research in this field and provides much-needed support for the aquaculture industry.

Deakin University, together with the full support of federal and state Labor governments, has grown to be one of Australia's best universities, all the while remaining exceedingly focused on providing educational opportunities of the highest possible quality for the widest possible demographic of people.

Deakin has always taken a very innovative approach to education, and it has done this in a very direct, technological way. It has integrated online teaching and learning into its course curriculum — its units and its courses. What is now known as Deakin Studies Online, or DSO, provides students with a valuable tool to access information and easy access to lecturers, tutors and other students to assist in their studies from anywhere in the world. This is particularly useful for students living a substantial distance from one of the campuses; for instance, in any part of rural Victoria or overseas. But it is the attitude that Deakin has always had. It is 'What can Deakin do for its students and the communities in which it resides?', but also 'How can Deakin do it in the best possible way?'. As I have mentioned, it has done it in terms of flexible delivery of off-campus teaching, including the Koori education program which has intensive study blocks and off-campus community-based delivery.

Deakin also has the Vera White Disability Resource Centre which provides access to support resources and representation for students with disabilities. We have also seen the recent introduction of tri-semester learning where students can complete their degrees in significantly shorter periods of time, and of course that will assist particularly mature-age students and students from overseas who are undertaking studies.

I have described at some length some of the activities at Deakin but not just because it has three campuses in western Victoria. Moreover, Deakin University is a great example of how universities have shifted and changed. When we think about universities of 30 years ago when I was on campus, when we think about the universities that were around 40 years ago with the experience Mr Hall kindly talked about, when we think about universities of 100 years ago or 156 years ago when the University of Melbourne was first established, all of what has been presented tonight reflects how universities have changed in every sense of the word. That is why we have these bills before us tonight — because they will allow Deakin University, as well as the Melbourne, La Trobe and Monash universities, to continue their successful practices in providing the valuable contribution they do to this state as well as nationally and internationally.

The bills will achieve a greater flexibility in governance and administration and standardise powers across each of the university acts and will raise the foundation legislation for Victoria's universities to modern standards and expectations.

At present all of this state's university acts are based on the original University Act 1853, which was written when the University of Melbourne was established. Of course there have been many amendments to the act, but this is an opportunity to thoroughly scrutinise it and ensure we have a proper fit. This is an opportunity to complete the modernisation of Victoria's legislation in education and training, which began in 2006 with the Education and Training Reform Act 2006.

The constituencies of our universities differ. Thus each university provides its services in unique ways, and this legislation encourages that diversity. These bills, when they become legislation, will give each university the flexibility to determine what is best for it in terms of the number of university council members — somewhere between 14 and 21 — whilst also providing guidelines governing the regulatory activities of universities.

The bills remove the prescriptive detail from the legislation about operating matters, leaving these types of issues for individual universities to determine in the best interests of the university and its staff and students. Our higher education institutions will be able to move in a more agile way, which will make them more able to respond quickly to the growing challenges which confront them, whether they be domestic or international.

The commitment to the remaking of each of Victoria's university acts was made by the Brumby Labor government in its statement of government intentions, and I am pleased to speak in support of these bills. I commend the bills to the house.

Mrs PEULICH (South Eastern Metropolitan) — I intend to speak very briefly on the University of Melbourne Bill, the Monash University Bill, the La Trobe University Bill and the Deakin University Bill. In so doing I would like to echo how important the higher education sector is to Victoria and to Australia and focus on the figures that were provided by Mr Peter Hall. Over 250 000 students a year attend Victorian universities, it is a sector worth between $5 billion and $6 billion, and it earns in excess of $4.5 billion per annum. For those reasons it is important to ensure that indeed we are providing the very best education we can, not only to our domestic students but also to our international students.

Whilst this legislation is part of a national approach to achieving a greater degree of consistency across Australian universities, in Victoria university governance legislation is a state responsibility. Clearly this is a reflection of the Labor Party's main drive — that is, the centralisation of power. Whilst that has some benefits in terms of comparability, governance measures, transparency of operation and the ability to lift our international reputation, there is also the potential for a loss of the diversity that has been a strong hallmark of the higher education sector in Victoria and Australia.

The vast bulk of government funding for universities comes from the federal government, and many of the arrangements, programs and oversight activities relating to universities are largely driven by the federal government, yet the universities are creatures of the state government — the states rightly and importantly have some controlling interest in universities because all the universities were established by states.

It is interesting that we did not have a broader community debate about centralisation and the drive to achieve consistency across Australian universities. However, we know the Labor Party is obsessed with

the centralisation of power, and this is just a reflection of how it operates.

This is template legislation. It prescribes, for example, the role of councils, new titles, various statutes and the role of the Auditor-General in providing continued oversight of our universities, which I think is really important. I think that is all reasonably positive. I note Mr Hall's comments about the second-reading speech, the legislation and the inconsistency regarding the order in which universities are listed, although that is clearly a minor matter.

We are well served by the four universities that are dealt with by this legislation and the four that will be dealt with by similar template legislation — these are in the public sector. However, there are another two universities in Victoria — the Australian Catholic University and the Melbourne College of Divinity — which are not included for their own specific reasons.

I do not think I need to declare a conflict of interest, although I am a Monash University alumnus and I also attended Deakin University. I have attended two of the four universities that are the subject of this legislation. I attended Deakin University when it was the good old Burwood Teachers College, and two campuses of Monash University — the Caulfield Institute of Technology before it was absorbed by Monash University, and subsequently Monash University itself, where I did my masters.

There are good reasons for Australian and Victorian universities enjoying a good reputation, but there is always room and a need to move forward and improve what we do. Melbourne University is a highly reputable university, being our oldest and most internationally renowned university. Its reputation is not only for academic achievements but also for research. Its many campuses include Burnley campus; Parkville campus; Bio21 Institute; the Victorian College of the Arts, as it used to be; Creswick campus; Shepparton campus; Dookie campus; Hawthorn campus; and Werribee campus. It is certainly very wide spread. Its focus on innovation, particularly in biosciences and medicine, is important to Australia's future. We see the benefits of that in Australia and internationally. However, let us hope we can harness much more of that knowledge and technology and see it developed for commercial applications here rather than seeing it go offshore.

Melbourne University now operates under what is being called the Melbourne model, whereby it offers a generalist degree as the founding degree, much like in the United States of America. At this stage no other Australian university is taking that approach. I note that there has been a significant decline in enrolments at Melbourne University, and that the university has been very proactive in trying to remedy that. I believe there has been a very substantial decline. I note that in the weekend newspapers there was an insert promoting some of the good things that Melbourne University does.

I guess there is always the issue of expedience. People undertake a sort of cost-benefit analysis of how many years they can commit to education before they start earning. Cost factors are important. Making sure that education remains affordable and accessible is very important for students across the state, including in rural and regional Victoria. In particular, education decisions are affected by the availability of accommodation. There is a great shortage of accommodation not only for rural and regional students but also for international students. Many of them are housed in inappropriate and poorly regulated rooming houses. This is causing lots of angst. In many instances this accommodation is significantly overpriced. It is of great importance that universities are able to offer more accommodation, in particular for rural, regional and international students.

I am not sure how this legislation will enable universities to further specialise or carve out their own niche. However, I hope the overall improvements in governance, reporting and transparency will mean that all the factors in education are taken into consideration and given the sort of attention that is required.

Monash University is the second-oldest Victorian university by a long way. Its main campus is in my electorate. It commenced operation in the 1960s. There has been a proliferation of universities, with more and more people going to university and taking degree courses.

This legislation does not deal with TAFE education, but plays an important role. On previous occasions I have expressed my concern about the decline in the affordability of TAFE education, especially for those returning to study in order to requalify and meet the flexible needs of the market. Under the TAFE reforms if you change streams into a different diploma, you have to become a full fee-paying student and take out a type of higher education contribution scheme loan. That is most regrettable. TAFE has always been a very affordable type of education, complementing what our universities offer.

Unfortunately it is expensive to attend university. It is much easier for younger people who are still dependants at home, but much more difficult for older people to return. However, the increasing availability of mid-term summer and winter courses means that people are able to expedite the time over which their studies are completed, but it does not reduce the cost significantly.

La Trobe University's strength is that it has a strong regional presence. That is much needed, and you can see this especially in Bendigo. It is great for the city of Bendigo. It provides educational opportunities for the people of Bendigo and those in other parts of regional Victoria who travel to Bendigo. It cuts across the needs in terms of accommodation and additional income support, which I was talking about earlier, if they are able to study where they live or close to where they live. That strong regional presence is to be encouraged. It is a niche for La Trobe University, and commendably so.

The people of Monash University in Gippsland and those at Deakin University in Geelong and Warrnambool will be disappointed that this provision does not necessarily apply to them. The Deakin University Act 1974 has a reference in its preamble to its presence in Geelong and Warrnambool and to serving the people of western Victoria. All of these things are important for an egalitarian society that prides itself on being aspirational, providing opportunities for people to become whatever they want to be and pursue whatever they wish to do and providing the labour force that the 21st century economy requires.

The make-up of new councils will probably improve their functioning. I do not have too many difficulties with having a template structure or legislation, provided it does not cut across the opportunity for universities to specialise, provide a diverse range of activities, studies and courses and find their own niche. That has been a strength of the sector, and I certainly hope that continues.

With those few words, in closing I would like to refer to one final matter — that is, youth allowances. All of this is fantastic, but if our students cannot afford to take advantage of the opportunities that are available to them the mission and goals will not be achieved. The restrictions on youth allowance will affect students going to Deakin, Monash, La Trobe and Melbourne universities, especially those students coming from regional Victoria. The changes to youth allowance eligibility will make a real difference. Even though there have been some amendments, the commonwealth government's changes to youth allowance eligibility will have a significant impact, especially on the access of country students to these universities. Even the all-party committee of this Parliament, which is chaired by the government — the Parliamentary Secretary for Education — said that the changes introduced by the Deputy Prime Minister, who is also the federal Minister for Education, are not fair and will count against some students' access to universities.

Victoria's response to these changes has been quiet. That is a disgrace: it is letting down the side; it is letting down our rural and regional people and young people. I do not believe youth policy has been a strength of this government. It cuts across a lot of portfolio areas. For example, we have seen from the Crawford report its failings in terms of the delivery of physical and sporting education in schools, the misspending of vast amounts of money, the changes to technical and further education and the bungled 2 o'clock lockout. There has been a whole myriad of issues that reflect poorly on this government's policies that affect our young people. The fact that the government has been quiet on this important issue of the youth allowance is disgraceful.

Mr Hall — So much for equity!

Mrs PEULICH — So much for equity and so much for, supposedly, being a party about social justice and representing young people. I hope all is not lost, and that we may yet see further changes to make access to these four universities for our regional students better than the federal government has obviously planned for.

In conclusion, the coalition is supporting these four pieces of legislation. We support the amendments, but the government should have consulted more extensively between the houses to take into account whether the universities want regional representation on their new councils. It is a shame that consultation has not been more effective and that the debate has not been more extensive, but I wish the legislation well. I look forward to the opportunity for this important sector to be even stronger than it has been in the past.

DEAKIN UNIVERSITY BILL

Second reading

Motion agreed to.

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

Third reading

Motion agreed to.

Read third time.

LA TROBE UNIVERSITY BILL

Second reading

Motion agreed to.

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

Third reading

Motion agreed to.

Read third time.

MONASH UNIVERSITY BILL

Second reading

Motion agreed to.

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

Third reading

Motion agreed to.

Read third time.

UNIVERSITY OF MELBOURNE BILL

Second reading

Motion agreed to.

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

Third reading

Motion agreed to.

Read third time.

Mrs Peulich — Acting President, I would just like to draw your attention to the state of the house.

Quorum formed.

SENTENCING AMENDMENT BILL

Second reading

Debate resumed from 15 October; motion of Hon. J. M. MADDEN (Minister for Planning).

Mr RICH-PHILLIPS (South Eastern Metropolitan) — I am pleased to rise to make some brief remarks on the Sentencing Amendment Bill 2009 that is before the chamber this afternoon. The purpose of this bill is to require that the motivation of hatred or prejudice against a group of people be considered when a court is passing sentence. The mechanics of the bill are actually quite straightforward: it inserts a new paragraph into section 5(2) of the Sentencing Act 1991 — new section 5(2)(daaa). This will add to the sentencing guidelines the factor of whether the offence was motivated wholly or partly by hatred for or prejudice against a group of people with common characteristics with which the victim was associated or with which the offender believed the victim was associated.

The purpose of the bill is to give the court a new matter to consider when passing sentence. The coalition has adopted a position of supporting this legislation. We note that this amendment to the Sentencing Act has arisen due to a range of fairly recent criminal activities believed to be targeted at particular groups. Most recently highlighted, of course, was violence against members of the Indian community, Indian students, which received considerable prominence in the media both here in Australia and in India. I understand it had a significant impact on the market for education, which is one of Victoria's largest exports, and to have that market damaged by what appears to be violence directed against Indian students is not a good thing for the Victorian economy or for the Victorian community.

There have been a range of similar violent actions against various groups in the community, and as a consequence we have seen this legislation brought before the house today. A range of issues have been raised with respect to this legislation. The coalition parties have consulted widely on the legislation and have adopted a position of support.

One of the issues raised by the SARC (Scrutiny of Acts and Regulations Committee) report on this legislation was its coverage under the Charter of Human Rights and Responsibilities. The bill provides that this element which currently a court can take into account when passing sentence will, after the passage of this legislation, be one of the elements that a court must take into consideration when passing sentence. This means

that if there are any matters before the court at the time this legislation is passed, this sentencing guideline comes into effect when sentence is passed.

The Scrutiny of Acts and Regulations Committee commented on the effective retrospective application of this sentencing guideline on the basis that the Charter of Human Rights and Responsibilities lays out that a person facing a criminal charge should not be dealt with by legislation that comes into effect after the criminal act took place. Essentially SARC has flagged this as an issue — the fact that a different sentencing guideline could apply to a matter that is before a court once this act is assented to. While the offence may have been committed prior to this legislation being introduced, if the matter is still before the court once this legislation takes effect, this element of the sentencing guidelines will be in place when sentence is passed.

I raise this issue for one reason. The government has indicated that this is not an issue with respect to this legislation because it is the government's view that this new section that is being inserted into the Sentencing Act today merely codifies what is an existing practice of the court — that is, to take this matter into consideration when passing sentence. That is the government's defence of this matter, and that is why it does not believe the concern raised by SARC has validity. However, if you are to accept that the government's position is correct — that this legislation is merely codifying an existing sentencing framework, for want of a better term — then you must also accept that in terms of addressing targeted violence against particular groups this legislation will be ineffective. The government simply cannot have it both ways, saying that this is merely codifying an existing provision and also saying that it is a new provision that will help address the issue of violence being targeted at particular groups in the community.

To that extent we have some concerns with what SARC has raised and the government's response, because there is an inherent conflict between those two positions: on the one hand the bill is codifying an existing practice, and on the other hand it is introducing a new provision that will act as a deterrent to those who are motivated to commit violence directed against particular groups. I note that the way in which the legislation has been structured gives the court considerable latitude as to its application; we believe that this is appropriate.

I have seen a Sentencing Advisory Council proposal that groups who are the target of violence directed towards them could be identified specifically. Fortunately the legislation we are dealing with today does not do that. It does not seek to identify particular groups that may be the victims of violence or offence motivated by hatred or prejudice. It allows the court to determine whether any particular offence was motivated by hatred or prejudice against a group of people to which the victim may belong. That latitude remains with the court, which is certainly a preferable model to having a list of vulnerable groups identified that a court would consider before passing sentence.

The fact that that flexibility is retained by the court to identify whether the victim is a member of a particular group or identifies with a particular group and whether that identification or membership was a factor in the offence is the appropriate way for this mechanism to operate. I also note that it remains with the court to determine to what extent, if any, an offence was motivated by an association of the victim with a particular group, so if a court determines that it had zero impact on the offence then it would be expected the court would not take that into account.

The insertion of this provision in section 5(2) of the Sentencing Act preserves judicial independence when it comes to determining whether hatred or prejudice against a particular group was a motivating factor in an offence, and the coalition believes that is an appropriate way in which this legislation should operate. However, as I said earlier, we are concerned at the inherent conflict between the government's position that this is merely codifying an existing common-law power of the courts, while at the same time saying it is a new provision that will help address violence or offences against targeted groups.

Clearly, notwithstanding the passage of this legislation we will continue to have the longstanding backlogs in our court system that I have spoken about on previous occasions. The failure of the government and the Attorney-General to address the backlog in our courts, particularly at the appeal level, ensures that we continue to have long delays in the administration of justice in Victoria. This bill is a token effort to address a particular concern in the community, because until those fundamental issues and those backlogs in the legal system are addressed we will continue to have the denial and the delay of justice here in Victoria. Notwithstanding that, this bill is a simple means of codifying sentencing around hatred or prejudice-motivated offences, and the coalition will support it.

Ms PENNICUIK (Southern Metropolitan) — The Greens, like everybody else in the community, are appalled and concerned when crimes are perpetrated against persons because they may belong to or be

associated with a particular group. The Sentencing Amendment Bill 2009 before the house is a simple bill of only five clauses and it inserts a new section into section 5(2) of the Sentencing Act 1991 which requires the court to have regard to whether an offence was motivated either wholly or partly by hatred for or prejudice against a group of people with common characteristics with which the victim was associated or with which the offender believed the victim was associated.

This provision to be inserted into the Sentencing Act does not seek to direct the court in any way except to take that into account when sentencing for any crime, particularly a crime of violence. After much consultation and discussion with community groups, the Greens have decided on balance not to oppose the bill. It could be argued on the one hand that the insertion of the additional sentencing factor into the Sentencing Act, which is the purpose of this bill, is not necessary as it is already covered in section 5(2) of that act and by precedent.

Section 5(2) of the Sentencing Act was covered in a cursory way by the Attorney-General in his second-reading speech. The Attorney-General mentioned only three parts of section 5(2), but currently under the act a court must have regard to a large number of things, including 'the maximum penalty prescribed for the offence'; 'current sentencing practices', which is interesting; and 'the nature and gravity of the offence', which one would think would capture what this bill is trying to capture; as well as 'the offender's culpability and degree of responsibility for the offence' — again, it would capture partly what this is trying to capture. There is also 'the impact of the offence on any victim of the offence'; 'the personal circumstances of any victim of the offence'; 'any injury, loss or damage resulting … from the offence'; 'whether the offender pleaded guilty to the offence and, if so, the stage in the proceedings at which the offender did so'; 'the offender's previous character'; and in section 5(2)(g), 'the presence of any aggravating or mitigating factor concerning the offender or of any other relevant circumstances'. It could be argued that this provision is not needed because it is covered already in the Sentencing Act.

The Sentencing Advisory Council's report also mentions that the Attorney-General asked the council to provide advice on how to go about putting this provision into the Sentencing Act. On page 4 of the report the council comments that:

> B3 Numerous aggravating and mitigating factors have been identified at common law. In relation to racial motivation, the Victorian Court of Appeal has held that an offence can be aggravated because it was motivated by the offender's hatred or prejudice towards the victim. For example, in *R v. Palmer* … the offender was convicted of unlawful and dangerous act manslaughter after he and others killed a Samoan man in a racially motivated attack. Prior to assaulting him causing his death, the offenders had racially abused the victim and some Samoan people who were with him. The offender, who was 18 years old at the time of the offence, was sentenced to six years imprisonment with a non-parole period of four years. In dismissing his appeal against sentence, Justice Callaway pointed to factors that aggravated the offence or pointed to its seriousness, including that:
>
>> racial violence, of which this was an example, is a serious threat to the maintenance of a safe and decent society. It matters not from which ethnic group it proceeds. Like armed robbery and drug trafficking, it will often call for condign punishment.

There is an argument that what this bill is trying to achieve can be achieved under the current provisions of the Sentencing Act and current common-law precedents.

I am somewhat disappointed with the Attorney-General's second-reading speech. I mentioned earlier that he went to only some parts of the current Sentencing Act. The speech starts out by saying that the rationale for this amendment is to respond to increasing reports of offences that may be racially motivated but it does not go into any detail as to whether this is actually the case. Certainly there have been some recent offences against international students, particularly Indian students, that have received a lot of press coverage, but evidence that increasing numbers of racially motivated attacks have been occurring in Victoria across the board has not been put forward.

In his speech the Attorney-General implied that he had referred this matter to the Sentencing Advisory Council and asked for the council's advice on the merits of this provision. It was fairly disingenuous for him to say that, because he did not do that. In its report the council states clearly on page 1:

> A2 The council has not been asked to advise on the merit of amending the Victorian act but rather the form of such an amendment. The council has confined its advice to this question.
>
> A3 The Attorney-General asked the council to provide its advice by 3 July 2009. Although this time frame has not enabled the council to consult the community on the issues raised, the council has carefully considered the issues raised by this reference. In formulating its advice, the council has also had regard to the Victorian Charter of Human Rights and Responsibilities.

I am not sure how many members have looked through the Sentencing Advisory Council's report to the Attorney-General. As I mentioned, paragraph B3 of the report states that there already was a common-law precedent for courts to take this type of motivation for a crime into consideration when sentencing. However, the Sentencing Advisory Council looked at jurisdictions with similar provisions in their sentencing acts, in particular those of New South Wales, the Northern Territory and New Zealand, which used wording fairly similar to that which is proposed in this bill, although the Northern Territory's wording is broader than that of the New South Wales or New Zealand acts, and the Sentencing Advisory Council supports the broader approach, which is reflected in the wording of the provision in the current bill.

Page 3 of the report notes:

> A14 Section 21A of the 1999 NSW act provides that, in determining the appropriate sentence for an offence, the court must take into account the aggravating factors listed in the section if they are relevant and known to the court. The list of aggravating factors in section 21A(2) includes that:
>
> > the offence was motivated by hatred for or prejudice against a group of people to which the offender believed the victim belonged (such as people of a particular religion, racial or ethnic origin, language, sexual orientation or age, or having a particular disability).

New Zealand provides separate lists of aggravating and mitigating factors in the relevant legislation. Page 6 of the council's report notes:

> B12 New Zealand, like New South Wales, provides separate lists of aggravating and mitigating factors in the relevant legislation. Section 9(1) of the Sentencing Act 2002 (NZ) provides that in sentencing an offender the court must take into account the aggravating factors set out in that section to the extent that they are applicable in the case. The aggravating factors listed include:
>
> > that the offender committed the offence partly or wholly because of hostility towards a group of persons who have an enduring common characteristic such as race, colour, nationality, religion, gender identity, sexual orientation, age, or disability; and
> >
> > (i) the hostility is because of the common characteristic; and
> >
> > (ii) the offender believed that the victim has that characteristic.

On the same page the council's report also notes:

> B13 The Northern Territory provision is closer in structure to section 5(2) of the Victorian act —

and that section 5(2) of that act —

> sets out the sentencing factors to which a court must have regard in sentencing an offender. Like the Victorian provision, section 5(2) of the NT act includes as a sentencing factor 'the presence of any aggravating or mitigating factor concerning the offender'.

The Sentencing Advisory Council's report also explains that similar provisions can be found in legislation in the United Kingdom, Canada, France, Germany, Italy, Austria, Belgium, Finland, Portugal, Spain, Sweden and Switzerland. There are many precedents around the world for these types of provisions.

Page 7 of the council's report notes:

> B17 The introduction of hate or prejudice-based motivation as an aggravating factor in sentencing legislation was recommended by the New York and Washington D.C. based international human rights organisation Human Rights First in its 2008 report on hate crimes in Europe and North America.

And in particular recommendation 2 provides:

> Recognising the particular harm caused by violent hate crimes, governments should enact laws that establish specific offences or provide enhanced penalties for violent crimes committed because of the victim's race, religion, ethnicity, sexual orientation, gender, gender identity, mental and physical disabilities, or other similar status.

The council's report goes on to recommend the most appropriate way to amend the Victorian act. Basically the council's recommendation is to add an additional sentencing factor such as we have before us in the bill.

Page 8 of the report notes:

> B20 The Victorian act does not currently separate sentencing factors into those that are aggravating and those that are mitigating —

as do other acts —

> but rather leaves it to the court to determine what factors are relevant in a particular case and how they should be treated. Whether a sentencing factor will be treated as aggravating or mitigating depends on the circumstances of a particular case.

This provision does not depart from that, which is a good thing about the provision, because while providing that the sentencing court must take this into consideration, it does not go any further and leaves the court wide discretion in how it deals with such a matter.

The Sentencing Advisory Council's report also goes to the issue of onus and standard of proof. Page 9 of the report notes:

> C1 A threshold issue that will shape the articulation of the sentencing factor is the question of who will have the onus of proving that an offender was motivated by hatred or prejudice and the standard of proof that is required.

That is an important consideration. It is all very well to say that we need to take this into consideration, but a sentencing court then needs to be convinced that there was that motivation.

It goes on to say in paragraph C2:

> The law governing aggravating and mitigating factors in sentencing in Victoria is set out in *R v. Storey* … A specially convened full bench of the Victorian Court of Appeal held that aggravating factors (factors adverse to the offender) must be established by the prosecution beyond reasonable doubt. Where aggravating factors are not established beyond reasonable doubt the sentencing judge must determine an outcome on the basis that those aggravating factors are not present.

Paragraph C3 states:

> Whether a particular fact is mitigating or aggravating ultimately depends on the use to be made of that fact by the sentencing judge:
>
>> The test is not what tag can or should be applied to any particular fact but what use the judge proposes to make of the fact in relation to the offender. If it is a use adverse to the interests of the offender then proof beyond reasonable doubt is required; if it is a use in favour of the offender then proof on the balance of probabilities will suffice.

Further paragraph C4 states:

> It may be harder to prove beyond reasonable doubt that the primary motivation for an offence was hatred and prejudice even though there is ample evidence to establish that hatred and prejudice formed part of the offender's motivation …

The Sentencing Advisory Council went on to say in paragraph E4:

> The council takes the view that courts are best placed to identify and develop the groups to which the aggravating factors should apply on a case-by-case basis. For this reason, the legislation —

it advised and which we have before us —

> should not contain a list of groups (whether exhaustive or inclusive) but leave it to the courts to develop the law on a case-by-case basis. This is the approach that has been taken in the Northern Territory provision.

Paragraph F1 states:

> The Northern Territory provision simply provides that it is an aggravating factor where 'the offence was motivated by hate against a group of people' …

Paragraph F2 states:

> In contrast, the New South Wales and New Zealand provisions are limited to situations where the offender believes that the victim belongs to the group of people. An issue with this wording is that it might exclude cases that should properly be classed as crimes motivated by hatred or prejudice.

Paragraph F3 states:

> There are a number of situations in which the victim of an offence may not 'belong' to the group that is hated or the subject of prejudice, but the offence can still be properly classified as one that is motivated by hatred or prejudice.

The report continues in paragraph F9:

> The council does not see that there is any distinction between offences based on the offender's mistaken belief about the victim's identity and is of the opinion that the aggravating factor should apply equally in these cases.

The Sentencing Advisory Council also states in paragraph F8:

> For example, in *R v. Palmer* … the offender was convicted of unlawful and dangerous act manslaughter after … killed a Samoan man in a racially motivated attack. The court found that the offence was motivated by the offender's hatred of Maori people and that he had mistakenly believed that the victim was Maori.

The council's view is that the new statutory aggravating factor should apply in the following types of cases: where the victim belongs to or shares the personal characteristics of a particular group; where the victim is not a member of the particular group but came to the rescue of someone of the particular group who was being assaulted, verbally abused or harassed and was consequently offended against; where the victim is an advocate for a group; where the victim is related to or is a friend of a member of a group; and where the offender believes the victim is associated with the group. These particular associations have been picked up in the explanatory memorandum to the bill.

As I mentioned at the start of my contribution, after much discussion and consultation we are prepared to support the inclusion of this aggravating factor in the Sentencing Act. Obviously we are concerned, as is everybody in the community, about what are called 'hate crimes', which are primarily a product of an offender's negative prejudice towards a characteristic that the victim possesses, such as race, sexuality, religion or any other identifiable characteristic over which the victim has little control.

I took the opportunity to meet with Menachem Vorchheimer, who members may remember was the victim of a physical assault in October 2006 by some

sporting persons who were being driven in a bus by an off-duty senior constable. I do not intend to relate the circumstances of that case now, as I think most members would be familiar with it. Suffice it to say that Mr Vorchheimer has gone on to campaign, particularly with Victoria Police, for better outcomes for victims of crimes such as that which was perpetrated against him because of his race.

Mr Vorchheimer has gone on to work with the police. In 2008 there was an apology by the Chief Commissioner of Police, Simon Overland, for the incident and the actions of the senior constable who was off duty at the time. The police acknowledged that the constable, even though he was off duty, should have intervened in what was happening. Also the chief commissioner said that he proposed to institute — and he has I believe done so — a new instruction for all members of the police force to emphasise to them their obligation to uphold and enforce the right of all people in Victoria not to be subjected to unlawful discrimination on grounds such as race, religion, sexual preference or gender and to act promptly and effectively on legitimate complaints made to them about such discrimination.

A complaint that has come to our notice from groups like the Flemington and Kensington Legal Centre and the Federation of Community Legal Centres is that Victoria Police still has a long way to go in dealing with this type of crime around Victoria. While we are supporting the insertion of this factor into the Sentencing Act, we should not be under any illusion that somehow this is going to be a magic bullet which will magically deter this type of harassment or assault of people based on prejudice or hatred of the particular attributes those people may have.

Mr Vorchheimer made it clear to me that he will continue to work with the police to make sure that they are effectively trained in particular areas where perhaps there are more of these types of incidents reported than in others. He is still of the view that there is a long way to go in that regard. Certainly the community legal centres I have spoken to about this bill also believe that. One of the reasons Mr Vorchheimer and some senior counsel I have spoken to about the bill are supporting it is that they believe the insertion of this aggravating factor into the Sentencing Act will focus the minds of police on better investigating the motivating factors behind violent crime, so when they are presenting a brief to the court, if prejudice or hatred was a motivating factor, that will have been better investigated by the police.

From Mr Vorchheimer's perspective and that of many of those who are in minority groups in the community, by agreeing to the insertion of this aggravating factor into the Sentencing Act we are sending a message that this type of crime against a person based on prejudice and/or hatred is not acceptable and will be viewed as a more serious offence than an identical crime not based on hatred and/or prejudice, and I support that view. The sending of that message will go some way towards ensuring the security of people so that they feel they can be secure in their identity and are safe to go about their daily business without being harassed.

The contrary position to that is that if these types of crimes are tolerated, then the effect on those communities is that they do not feel secure in their identity or in going about their daily business and they can feel they are at threat of harassment and/or violence. While I said before that I have not been presented with any hard evidence that there is a growing occurrence of this in the community, there is certainly an occurrence of it in the community — whether it is increasing or not I am not sure, and I have not seen any evidence of it. The fact that it is there is bad enough, and we as a community should be doing all we can to prevent it.

The other thing to say about this is that whether the police will take more time to investigate the motivations for certain crimes and whether in their daily policing activities there will be enough attention paid to outreach and to prevention is unknown. We should be doing that more throughout society, and there is a view that that is not the case.

At a hearing of the Public Accounts and Estimates Committee I asked the Chief Commissioner of Police a question about the violence against students that was starting to become a problem at that time. I was disappointed when the chief commissioner spoke about liaison with the Indian students in terms of those students making themselves less of a target, that they should not be showing their iPods and not making displays of wealth, which seemed to me to be a bit of a blame the victim type of attitude. I know he has made similar remarks publicly. That is not where we should be heading. We should be heading towards anybody being able to be themselves in the community and not be told that their behaviour is likely to result in harassment or violence against them.

Mr Rich-Phillips spoke about some concerns that were raised by the Scrutiny of Acts and Regulations Committee regarding clause 4 which would mean that this bill would apply to any offences currently in progress at the time the bill is given royal assent.

Basically this is a retrospective provision in the bill. It is the case under the charter and by convention that there should be no retrospective provisions in a bill unless it will lead to a sentence being a lesser sentence and not potentially a greater sentence.

I would like the bill to be committed very briefly so that I can ask the minister a question particularly about clause 4. Otherwise, having made those rather lengthy remarks, I indicate that the Greens will not oppose this bill.

Mr TEE (Eastern Metropolitan) — Victoria's great strength and the secret to its success is very much the diversity of the community within which we live. That diversity enriches our community, it enriches our economy, our workforce, our cultural life and our humanity. But if everyone is to participate in that economy and in that community to their fullest extent, then the community must be safe, strong and productive.

The reality is that people experience discrimination and disadvantage based on their racial, cultural, ethnic or religious backgrounds. In part these amendments are a response to those concerns. In part they are a response to increasing reports of offences, particularly in relation to Indian students but also in response to longstanding concerns raised by other groups, including the Jewish community.

In response to those concerns the Attorney-General asked the Sentencing Advisory Council for urgent advice on the best way to respond so the Sentencing Act could be amended to reflect the factor of hate or prejudice against groups and for that to be taken into account when sentencing offenders for their crimes. That report was released in July 2009. The council recommended that an explicit sentencing factor be included in the Sentencing Act that the courts would be required to consider when sentencing an offender. This bill responds to and implements that recommendation. It amends section 5(2) of the Sentencing Act by explicitly providing that hatred of or prejudice against people who share a common characteristic is a separate sentencing factor.

The amendment bill is broad in that its provisions extend to members of a particular group or where a victim is associated with a group. For example, someone who comes to the rescue of someone from a particular group during an offence or indeed an advocate of a group or a friend or family member of a group member would all be covered by these provisions. There is also a broad definition of 'victim'. For example, in relation to property offences it could well cover things like graffiti expressing hatred of or prejudice against a particular group.

This new amendment bill codifies the existing requirement, and in doing so it makes it crystal clear that hate crime has no place in Victoria. The reason that is important is that we are only now beginning to understand the real and tangible effects of discrimination. In a recent report the impacts of discrimination were identified as including the increased risk of anxiety and depression; there has also been an association between discrimination and diabetes, obesity and cardiovascular disease.

In essence discrimination really limits a person's capacity to participate in a community or economy. As well as the economic cost there is a social cost. Economic and social progress are inextricably linked, and that is the importance of this legislation. It is about ensuring that individuals, regardless of their background and race, can make a contribution fully in an economic sense, in a cultural sense and in a social sense. It is about ensuring that members of the community, regardless of their background and race, are able to fully participate to the best of their ability in their communities. I urge members of the house to support the bill.

Ms HUPPERT (Southern Metropolitan) — I am pleased to rise to make a contribution in support of the Sentencing Amendment Bill 2009. As Mr Tee has described, the purpose of this bill is to amend section 5(2) of the Sentencing Act to include an additional factor to be taken into account by judges when sentencing offenders — that is, whether the offence was wholly or partly motivated by hatred of or prejudice against a group of people with common characteristics with which the victim was associated or with which the offender believed the victim was associated.

As Mr Tee has mentioned, Victoria is one of the most culturally diverse and harmonious societies in the world. We have a proud history of welcoming immigrants from a variety of backgrounds, races, languages and faith groups including my own family, who sought a safe refuge in Victoria. We also have an impressive record of protecting the rights of disadvantaged groups within our state. This is reflected in legislation which protects the rights of various groups within the community — for example, the Equal Opportunity Act, the Racial and Religious Tolerance Act and the Disability Act.

The Sentencing Amendment Bill continues the Labor government's commitment to the principles of inclusion and tolerance as reflected in the existing

legislation. As previous speakers have noted, this bill arises from a referral made by the Attorney-General to the Sentencing Advisory Council, asking for advice on how to advise how the Sentencing Act could be amended to ensure that hatred and prejudice, as motivating factors, are taken into account when sentencing. This came after a number of disturbing events involving a minority of offenders who appeared to have committed assaults and other offences based on hatred and prejudice. Members would have seen a number of examples of this in the media recently. There have been a number of murders. There is the example of the murder of a Sudanese student, Liep Gony, and also the assault of a disabled man, Richard Plotkin. It would appear from the respective trials that they were targeted — in the case of Mr Gony, it was because of his race; in the case of Mr Plotkin, it was because of his disability.

As Ms Pennicuik mentioned, there is also the well-publicised case of Menachem Vorchheimer who was attacked on a Sabbath afternoon by members of a football club returning from Caulfield Racecourse in 2006. Mr Vorchheimer has been active in campaigning for a change of the law which will affect all hate crimes. I commend him for his efforts.

It is hard to say whether there has been a general increase in crimes motivated by prejudice, as most of these crimes are not reported with that in mind. The B'nai B'rith Anti-Defamation Commission records identity-motivated crimes against members of the Jewish community. The figures it has quoted are quite astounding. In the year to September 1999 72 crimes were reported, and in the year to September 2007, 171 crimes were reported. Whether this is to some extent due to an increase in reporting, it is still quite a remarkable increase in the number of crimes committed against one particular segment of our community — the Jewish community. This does not reflect crimes that may be committed against other particular groups within the community. We are all familiar with offences against people of Indian background in our community.

The sorts of crimes included in the anti-defamation commission's figures are crimes such as that committed against Mr Vorchheimer, but they also include crimes against property, such as the graffiti attacks that were reported earlier this year where on a house in Ivanhoe, white power slogans and swastikas were daubed on that house. They also include instances of schoolchildren being subjected to 'Heil Hitler' signs and Hitler imitations. These attacks and assaults are not acceptable in our community. The purpose of this legislation is to make that absolutely clear.

In its report the Sentencing Advisory Council quoted a Canadian report about the impact of hate crimes on the individual. It states that hate crimes, as we have all seen, have a terrible impact on the individual who is victimised and that, in addition to psychological and emotional harm, they can have repercussions for the identity and feelings of self-worth of those victims. But they also have a similar effect on the target group as a whole. Certainly members of the Indian community have said they are scared to go out after dark in the evenings and that it really affects their feelings of wellbeing. I know that in my own community, the Jewish community, a lot of people are concerned about the fact that their children, who are walking the streets on the Sabbath — suburban streets in suburbs such as Caulfield and East St Kilda — with clothing that visibly identifies them as Jewish, are subject to racial slurs and physical attacks. I have heard this in stories told to me by my own children, which is not something we like to hear.

An assault on one particular vulnerable group also has an impact on other vulnerable groups and on the community as a whole. We really want to guard against that in our society, because we are very proud of the inclusiveness and tolerance that has been shown to date. Having regard to all of this I would strongly argue that members should vote in favour of this bill.

Curiously, I received some correspondence on this bill from constituents arguing that it would be a limit on freedom of speech, but clearly this is not the case. The bill does not create any new offence but merely states that if a crime has been committed, be it a crime against the person or a crime against property, the fact that that crime was motivated wholly or partly by hatred or prejudice is to be taken into account by a judge.

This is important legislation. It sends a message to the community that this type of prejudice and hatred will not be tolerated. But it is part of a wider variety of measures undertaken by this government that aim to protect the harmonious society we live in. This legislation works alongside other policies, such as that of encouraging the activities of the Victorian Multicultural Commission, which works to provide funding and to provide support in other ways to groups which are active in interfaith and intercultural activities, thereby breaking down the barriers that exist between communities.

There are also ongoing consultations between the government and both individuals and groups within the community. There are ongoing consultations with victims of race-based crimes, such as Mr Vorchheimer, and groups with a particular concern about hatred-based

crimes, such as the Jewish Community Council of Victoria and the Federation of Indian Students of Australia, to see whether or not any other legislative changes are required in order to send a further message to the community that this type of activity will not be tolerated.

This is very important legislation, and I urge you all to vote in favour of it.

Ms MIKAKOS (Northern Metropolitan) — I am pleased to rise to speak in support of this important legislation, which seeks to amend the Sentencing Act to provide specifically that in sentencing an offender a court must have regard to whether the offender was motivated by hatred for or prejudice against a group of people with common characteristics with which the victim was associated or with which the offender believed the victim was associated.

We are all aware of the circumstances in which this bill has come before the house. Unfortunately in recent times there have been many reports of attacks against people in our community, most recently against students of Indian background. Chief Commissioner of Police Simon Overland said that during the period 2007–08, 1447 people of Indian origin were victims of crimes against the person, an increase from 1082 the previous year.

Ms Huppert has referred to a number of anti-Semitic incidents over a long period of time against members of the Jewish community. I recall very well that following the September 2001 terrorist attacks there were a number of incidents, particularly in my electorate, against members of our Islamic community. At that time I and other members of Parliament visited local mosques to reassure members of the Islamic community that their concerns were being listened to by government and that we as a community were appalled at the incidents occurring around that time. It is important that as parliamentarians we take a leadership role when it comes to these issues and are outspoken in condemning any acts of racially motivated violence, so I have no hesitation in strongly supporting the bill before the house.

The legislation has been influenced by the 2009 report of the Sentencing Advisory Council entitled *Sentencing for Offences Motivated by Hatred or Prejudice*. Other speakers have already spoken about this report, so I will not do so other than to refer to appendix 1, which talks about an international approach that has been taken. In 2008 a survey on hate crimes in Europe and North America was undertaken by an organisation called Human Rights First. It developed a 10-point plan for governments to strengthen their response to hate crimes. I quickly want to touch on those 10 points. They are: one, acknowledge and condemn violent hate crimes whenever they occur; two, enact laws that expressly address hate crimes — which is what we are doing here; three, strengthen enforcement and prosecute offenders; four, provide adequate instructions and resources to law enforcement bodies; five, undertake parliamentary, interagency or other special inquiries into the problem of hate crimes; six, monitor and report on hate crimes; seven, create and strengthen antidiscrimination bodies; eight, reach out to community groups; nine, speak out against official intolerance and bigotry; and ten, encourage international cooperation on hate crimes.

I would argue that this government's approach has included many aspects of this 10-point plan. We are not saying that on its own this legislation will solve this problem. We need to work with communities, particularly those who feel vulnerable in this area, and we need to send a strong message to the community that this kind of behaviour is completely abhorrent and should not be tolerated. I believe this legislation seeks to do that.

In its report the Sentencing Advisory Council noted that the harm caused by hate crime is 'serious, significant and far-reaching', impacting on the individual victim, the target group, other vulnerable groups and the community as a whole. It is clear therefore that the violence associated with racism not only injures those who are attacked and who suffer the physical violence directly but also often seeks to terrorise other members of particular groups in the community and destroy their capacity to interact effectively as citizens.

I note that in a recent article in the *Age* of 19 November there was a reference to a report that was prepared by the Foundation for Young Australians. The report was on research into racial vilification in Australian schools. It did not go into the issue of violence but looked at the issue of racism within our school community. It talked about how 80 per cent of secondary students from non-Anglo backgrounds and 55 per cent of students from Anglo backgrounds said they had experienced racial vilification.

The article went on to talk about how students felt angry and depressed, experienced headaches and muscle tension and did not want to go to school. This is quite alarming. It is clear that racial vilification itself is of concern to young people in our community. We need to address this issue more widely in our schools and in our community to ensure that it does not escalate to the point of racial violence. Clearly it has quite a significant

impact on the physical and emotional wellbeing of victims and others who are members of a targeted group in our community.

I want to reiterate the comments that have already been made about the strengths of our multicultural community. I am very proud of the fact that I represent an electorate in which approximately one-third of the constituents were born overseas; it is a community of enormous cultural diversity, which is reflected amongst my constituents. I know this is also the case across our state, with over 40 per cent of Victorians having been born overseas or having at least one parent who was born in another country. Our cultural diversity is our great strength, and I think it is something we need to protect.

We need to send a clear message to all members of our community that our cultural diversity is something we welcome and celebrate, and we should encourage all groups in our community to live together in harmony and equality. Any crime motivated by hatred or prejudice should not be tolerated by members of our community. I believe the amendments proposed in this bill promote recognition of the abhorrence of hate crime and the punishment appropriate to it.

Just last week, together with other members of this house, I visited Yad Vashem, the Holocaust Museum in Jerusalem, Israel. It provided the starkest possible example of why hate crime should not be tolerated in any society. I commend the bill to the house.

Mr DALLA-RIVA (Eastern Metropolitan) — I am also very pleased to make a brief contribution to the debate on the Sentencing Amendment Bill 2009. I appreciate the contributions of Ms Mikakos and the previous speakers, in particular Mr Rich-Phillips on this side of the chamber. The opposition supports this amendment to the Sentencing Act. It falls out, as has been correctly indicated, from the Sentencing Advisory Council's advice of July 2009 entitled *Sentencing for Offences Motivated by Hatred or Prejudice*. In scope, this advice to the Attorney-General relates to issues where an offence is motivated by hatred for or prejudice against a particular group.

I think it is fair to say that unfortunately there are, have been and will continue to be examples of crimes where particular groups have been singled out. We only need to look at recent weekend events, reports of which were on the news tonight, to see that. I understand the police are still investigating this matter and no charges have been brought as they are still undertaking that investigation. Crowd controllers at a facility in Melbourne were assaulted by people identified as being of Asian descent. A machete was used and it inflicted a significant amount of injury on an individual who is still in a coma in intensive care. I hope this will be one of those situations where the law will apply and the legislation proposed today, which has the opposition's support, will be fully applied to those offenders, who clearly had a motivation to act against a particular group of people.

We need to recognise that there are those in the community who engage in violent physical attacks on other groups of individuals in our society based on race, religion, ethnicity, disability or sexual orientation. The legislation should not merely be aimed at the issue of who the victim is, albeit that they may be from a particular group. It also relates to the fact that the offenders making the attack may be from a particular group. The previous Chief Commissioner of Police never admitted that there are gangs in operation in this state. The facts are — and the police will say this privately, behind the scenes — that there are gangs operating and a gang of one particular ethnic group will attack a gang of another particular ethnic group. I hope the process begun by this legislation will not only identify the group to which the victims belong but will also identify the group to which the perpetrators of the offence belong.

We need to be realistic about the fact that the Sentencing Act, as it will be changed, will take into account the facts that a court must have regard to in sentencing an offender. I hope the courts understand that some of these offenders are racially, religiously or ethnically motivated to attack another group. I hope the law, as it will be in the future under this proposed amendment, once it has been through the parliamentary process, will provide for the appropriate mechanisms to ensure that groups are protected as a result of what we are debating tonight.

The bill will pass through this chamber. It is supported, it will be finalised and we will see the outcome. I hope the outcome will be appropriate in terms of the increased penalties and the assessment undertaken by the sentencing judge following a guilty plea or a finding of guilt. I think the courts will therefore invoke this sentencing amendment and make the appropriate decision.

Turning to a couple of issues I have with the bill, I point out that everyone is equal before the law. The lady up on the ceiling of this chamber who holds the scales represents the idea that everyone should be treated equally. I have a view that the Sentencing Act should treat everyone equally, irrespective of what the offence is. But we also need to understand that we are in a

multicultural environment and unfortunately, whether we like it or not, some groups from other parts of the world bring with them that hatred of other groups. I know some of my colleagues have just been to Israel and have observed firsthand the hatred that is apparent there. Unfortunately that hatred comes across to Australia and is applied when people commit some of these offences. It is important that we recognise that fact, without taking away the importance of equality under law. It is important that we understand that we are a multicultural society and that, as we become more global and the world becomes smaller, legislative changes will need to be made to reflect these changes.

I do not know how the law will work in areas involving rival bikie gangs. Do we have an offence motivated by hatred or prejudice towards any particular group such as offences based on membership of a rival bikie gang? It is probably not so prevalent here, but it is certainly an issue in South Australia. Should we have an offence based on membership of a rival bikie gang, on who the victim works for, on which football team they support, or on the fact that they have a past criminal conviction? The courts will need to be careful in interpreting some of those group connections. We have seen individuals attacked at Australian Football League matches because of their love of a particular football team.

The member for Box Hill in the other place has sought consultation from a range of individuals. Essentially we will be supporting the bill, but we believe the group connections factor is one of several factors that need to be taken into account by the court in determining the sentence to be imposed for the offence.

While the bill may be seen by some groups to have a feelgood approach, the bottom line is that the government is still wavering in its real approach to dealing with violence and crime in our streets. The opposition is dealing with the issue. We have put forward a policy to deal with crime on the transport system and we are focused especially on ensuring that people travelling home on trains after 6.00 p.m., right through to the very last train, will be ensured of some protection by law enforcement.

In contrast the Labor government is putting in place little games — two-day blitzes and so on — but that does not resolve the violence that occurs every night. As I indicated initially, recently there was a violent attack involving a machete. Although the violence continues, this government puts its head in the sand and ignores it. I do not know whether the legislation will have a real impact into the future. It will in terms of the sentencing provisions and in relation to particular groups feeling that they have some capacity to be dealt with in the sentencing regime, but the real issue is that there is no legislative change, no plan, no outcome from the government other than the spin that we have continued to hear for 10 long years. Therefore, while opposition members support the bill, the underlying issues about violence, the lack of commitment by the government to the Victoria Police, to resourcing and to providing full and proper answers is the real test for the government. As we head into the election next year, the community will judge the policies we have against the lame, ongoing lazy government.

Mr SOMYUREK (South Eastern Metropolitan) — I welcome the opportunity to support the bill. We come together in a society to receive benefits, and in return we have obligations. One of our most basic obligations is to act peacefully and respect our fellow human beings. No matter what its underlying social cause may be, an act of violence motivated by hatred or prejudice against an individual is an attack on the fabric of society.

Previously Victoria enacted landmark legislation — the Racial and Religious Tolerance Act. While that act does provide for criminal offences with fines and penal sanctions, in practice complaints have been dealt with by the Victorian Equal Opportunity and Human Rights Commission on a conciliation basis. To vilify somebody because of their religion or the colour of their skin is sick and disgusting and in this state it is illegal. When such hatred is delivered in the form of violence, then it is truly horrific.

The victims of hate offences are, by definition, usually among the most vulnerable. They are usually in a minority, may have limited language skills and knowledge of who they can turn to, and sadly, in the case of some victims, are our guests in this country. Because of their vulnerability, the effect on such victims can be enormous. Even if media reporting overstates the number of assaults that are hate crimes, it is clear to me that some are genuinely race hate crimes.

These crimes may be committed just for kicks or, for example, because Indian students or taxidrivers are seen as soft targets. The Attorney-General requested that the Sentencing Advisory Council examine how the Sentencing Act 1991 could be amended to take into account race hate as an aggravating factor in sentencing. In July this year the council, in its report entitled *Sentencing for Offences Motivated by Hatred or Prejudice* reported at paragraph A16:

> Having reviewed a variety of approaches as well as the available literature and evidence, the council recommends that a new sentencing factor should be added to section 5(2) of the Victorian act to the effect that in sentencing an offender

> a court must have regard to whether the offence was motivated (wholly or partially) by hatred for or prejudice against a group of people with common characteristics with which the victim was associated or with which the offender believed the victim was associated.

Section 5(2) of the Sentencing Act sets out those considerations which should be taken into account by the court in sentencing offenders. Factors such as the gravity of the offence and the impact on the victim should take into account hate crimes. Nevertheless it is fitting and proper that the Parliament, on behalf of the community, makes a clear and unequivocal statement as to how it views crimes involving hatred and prejudice, and that this community statement form guidance in sentencing.

The mechanism being used is clause 3 of the bill, which inserts proposed paragraph (daaa) into the Sentencing Act 1991 after section 5(2)(d). It states:

> "(daaa) whether the offence was motivated (wholly or partly) by hatred for or prejudice against a group of people with common characteristics with which the victim was associated or with which the offender believed the victim was associated; and".

I find it sad that in Victoria in 2009 we even have to talk about race hate crimes.

I would like to finish on a more positive note. Generally Australia is a multicultural society that works. We are a welcoming and inclusive society. That is borne out by a report in news.com.au, which appeared online on Monday, 12 October 2009.

With the headline 'Australia "safest for Indian students"', the article previewed a survey and said in part — —

An honourable member interjected.

Mr SOMYUREK — Let us keep this positive. It is not all bad. I am just making the point that our multicultural society works. The article states:

> A sneak peek at a poll of 1130 Indian students and graduates from around the world found that 26 per cent ranked Australia as the no. 1 nation for safety.
>
> It was followed by Great Britain and Canada with 20 per cent of the vote, New Zealand with 13 per cent and America with 5 per cent, according to international student recruiter IDP Education.

For those who are sceptical, I repeat: the website is called news.com.au and the headline is 'Australia "safest for Indian students"'.

I commend the Attorney-General for acting decisively on behalf of the community, and I wish the bill a speedy passage.

Mr KAVANAGH (Western Victoria) — The Sentencing Amendment Bill 2009 seeks to, in effect, provide for additional legal penalties for crimes, especially assaults, motivated by hatred for people of particular races, religions or sexual preferences. In my opinion the bill's motives are noble, but to some slight extent at least it is also somewhat misguided.

To the extent that this bill seeks to punish an offender more severely for deliberate, planned violence, the principle of the bill is in my opinion correct. I think we all know that the moral wrong of an assault that is premeditated is vastly greater than that of an assault that is the result of spur-of-the-moment anger. In my opinion penalties should be more severe when an assailant is motivated by a belief that their victim is weak and unable to defend himself or herself. The reasons why attacking those perceived to be vulnerable should be even more strongly punished are, firstly, the degree of moral reprehensibility of attacking the defenceless, and secondly, the necessity of deterring violence against those who lack the strength to defend themselves.

To offer more legal protection to members of particular racial, religious or sexual preference groups seems to be inconsistent with our principle of equality before the law. Our legal system should particularly defend those who cannot defend themselves. This principle will often achieve in practice what the bill seeks to achieve in principle — that is, perpetrators of crimes who are motivated by hatred of particular religions, races or sexual orientations will effectively be given extra legal punishment. That is what this bill intends. In other words, there will often be consistency between this bill and what I regard as the correct legal principle of offering particular legal protection to those in particular need of legal protection. On that basis I will not vote against or oppose the bill.

Tonight we have had a wide-ranging discussion about violence and the relationship between violence and legal protection. In my view a fundamental legal principle is that removing legal protection for some people will inevitably weaken legal protection for all people.

Mr ELASMAR (Northern Metropolitan) — I rise to support this bill, not only because it clearly demonstrates the Brumby Labor government's commitment to educating the bigots in our community but also because it has never been acceptable in a

civilised society to attack or vilify other members of the community because of their race, religion or other differences.

We have all seen and heard racist comments that are cruel and hurtful. Unfortunately it is not sufficient to simply state as a matter of principle that hate crimes are wrong in every sense of the word. We have to strengthen our resolve by legislating for appropriate punitive measures for those offenders.

Violence motivated by racial hatred must and will be stamped out. The Sentencing Amendment Bill 2009 reflects this aim by reinforcing through legislation this government's commitment to outlawing racially motivated crimes of violence.

Because of the rise of racially motivated offences, the Brumby government sought urgent advice from the Sentencing Advisory Council. The council provided insight into the current model of sentencing and said that the judiciary does not currently have within the sentencing provisions explicit legislative recognition of crimes motivated by hate or prejudice.

This bill contains the council's recommended amendment to section 5(2) of the Sentencing Act 1991. This requires a court sentencing an offender to have regard to matters related to hate crimes, including the nature and gravity of the offence, the offender's culpability and the impact of the offence on the victim. In making its recommendation the council considered the steps taken by Australian jurisdictions, international jurisdictions and other human rights bodies in the fight against hate crime.

The bill clarifies that sentencing courts must have regard to whether offences are motivated by hatred for or prejudice against a particular group of people with common characteristics.

It is time to arm our courts with the legislative capacity to appropriately sentence people who perpetrate racist violence. During my brief time as a member of this Parliament I have spoken at countless citizenship ceremonies, and in my speeches I always ask our new Australians to respect our laws and freedoms and to live in harmony with their neighbours. Now we as legislators must empower our courts with the tools needed to uphold our harmonious way of life. The abiding principle of live and let live must be enshrined in our hearts as well as in legislation. I look forward to the day when we will no longer hear of senseless and cruel racism. I commend the bill to the house.

Motion agreed to.

Read second time.

Business interrupted pursuant to standing orders.

EMERGENCY SERVICES LEGISLATION AMENDMENT BILL

Introduction and first reading

Received from Assembly.

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

ADJOURNMENT

The PRESIDENT — Order! The question is:

That the house do now adjourn.

Mental health: Bendigo

Ms LOVELL (Northern Victoria) — I wish to raise a matter for the attention of the Minister for Community Services, who is also the Minister for Mental Health, regarding the dire shortage of psychiatric beds for children in Bendigo as well as a lack of respite and in-home care for the families of severely disabled children. I request that the minister immediately investigate unmet need for psychiatric services for children in Bendigo as well as unmet need for respite and in-home care for the families of severely disabled children and ensure that these services are boosted in Bendigo so that families and children can be provided with the support and assistance they so desperately need.

I refer specifically to Bendigo's O'Sullivan family, whose 14-year-old daughter, Holly, is severely autistic, with an intellectual delay and probable mental illness. A moving letter written by the O'Sullivans was recently published in the *Bendigo Weekly* newspaper. The O'Sullivans' son, Connor, is in remission after battling leukaemia. However, the family is currently struggling to find assistance for their daughter and believe children with disabilities and/or mental illness have been completely forgotten in Bendigo.

Their daughter's condition has deteriorated since she entered adolescence, and she is prone to self-abuse, which includes hitting herself in the face and hitting her head at night. While the O'Sullivans have access to some Department of Human Services funding, they struggle to make use of these funds because the services they need are just not available in the Bendigo area. The O'Sullivans pointed out in their letter that there is

not one psychiatric bed that their child can be given in Bendigo when she becomes psychotic or unmanageable at home. There is also no respite facility in Bendigo for children like their daughter, who are under 18. There is nowhere the O'Sullivans can take their child so they can be afforded a short break.

The O'Sullivans have also been informed that there is not one carer who works for the Greater Bendigo City Council's respite services who has enough qualifications to care for their child in their home. Bendigo Health's child and adolescent mental health services recently reviewed Holly's condition but were unable to offer any assistance. In fact the O'Sullivans are yet to receive a communication in response to the visit. There is something very wrong in Victoria when a family is forced to go without urgent assistance for their disabled child. It is clear that this family is being pushed close to breaking point.

It appears the Brumby Labor government has provided insufficient funding and few services for disabled children aged 7 to 18 years, particularly in the Bendigo region. The minister must urgently investigate unmet need for psychiatric services for children in Bendigo as well as unmet need for respite and in-home care for the families of severely disabled children. She must ensure that these services are boosted in Bendigo so the families and children are provided with the support and assistance they so desperately need.

Yarra River: contamination

Ms PENNICUIK (Southern Metropolitan) — My adjournment matter is for the attention of the Minister for Environment and Climate Change. It relates to the issue of the dispersal of radionuclides in the Yarra River on the former CSIRO site at 506 Lorimer Street, Fishermans Bend, and the lack of any current rigorous testing of Yarra sediments by the Office of the Environmental Monitor (OEM).

As outlined in my question of 11 August 2009, investigations into Lorimer Street found radioactive contaminants throughout the site and in a 380-millimetre pipe leading to the Yarra. Thousands of tonnes of contaminated soil were removed in 1990, but no investigation of the sediments around the site was conducted. Noting that the OEM claims that if radioactive contaminants had entered the river, they would already have been dredged and dumped in the bay, I asked the minister whether the bund area was being sampled for radionuclides. The minister's response indicated there was testing for a range of contaminants as part of the channel deepening supplementary environment effects statement (SEES), but he did not indicate that any testing for radionuclides had been conducted. The SEES omitted testing for radionuclides and made no mention of uranium processing at Lorimer Street, Fishermans Bend.

The issue of the potential risk of Yarra sediments being contaminated by radionuclides was raised by the Channel Deepening Liaison Group (CLG) in July 2008. The OEM provided a one-page written response dismissing the concern. It reported that 30–32 South Wharf, adjacent to Lorimer Street, had been extensively dredged between 1965 and 1990 and that implications would arise only if the material were still present in the surface sediments of the Yarra River, without citing any reference documents to support this conclusion.

Seven months later, when the OEM finally provided charts to the CLG documenting historic dredging adjacent to wharf 32 from 1952 to 2002, examination of the charts revealed that substantial areas of riverbed where radionuclides might be present, including under the wharf and along the riverbank, had not been dredged historically. The OEM had not considered relevant factors such as the riverbed being subject to a random combination of processes affecting stormwater dispersal and sediment transport, such as river current speed, turbulence at riverbed due to ship propellers and dredging operations, position of the drain outlet in the water column, tidal movements and levels at time of rainfall events and volumes and speed of water released from the pipe relative to rainfall intensity. The implications of these random processes and the fact that silt particles remain in suspension suggest that contaminants in stormwater discharge would not be restricted to areas that have been dredged historically.

In light of this new information, which I know has been sent to the minister, I ask that he request that the OEM test for uranium and thorium to establish whether there is residual radionuclide contamination of the Yarra River or the seabed in the vicinity of the bund disposal area in Port Phillip Bay, where thousands of tonnes of dredged Yarra sediments have been placed and remain uncovered as part of the channel deepening project.

Housing: first home owner grants

Mr HALL (Eastern Victoria) — I wish to raise a matter tonight for the attention of the Treasurer. It is in relation to the waiving of conditions applying to the first home owner grant. I raise this matter on behalf of my constituents Mr Brian Edwards and his wife, who are both members of the Australian Defence Force (ADF).

Mr Edwards obtained a position at the Royal Australian Air Force base at East Sale and started in that position on 6 October 2008. It was a three-year appointment, so Mr Edwards and his wife decided to build their own home. They purchased some land on 15 May, entered into a building contract on 1 July, applied for the first home owner grant on 17 July and received approval of that grant on 12 November. In the interim, on 1 October there was a sudden change to his posting and Mr Edwards was advised he would be sent to the Australian air force base in Singapore. That will be effective from 11 January next year. The couple had already entered into a building contract and qualified and received approval for the first home owner grant. Given that the house would not have been completed until at least late December and that they will be required to transfer to Singapore in early January, they will fail to meet the six-month residency requirement of their first home owner conditions.

They did the right thing: they advised the State Revenue Office of their position and applied for a waiver of that condition in relation to the residency requirement. They have received notification back from the State Revenue Office, which says that, in the view of the person who has made this assessment, it is unable to waive that condition.

I have some sympathy for Mr Edwards and his wife, given that they applied for this grant and arranged for the building of their home in good faith. They thought they would be there for three years, but the ADF suddenly reduced that three-year period to one year. They cannot afford to lose the significant first home owner grant which they would have qualified for.

My request is that the Treasurer investigate this matter fully to see if there is some potential for him to intervene and waive the residency requirement so that my constituents Mr Edwards and his wife are not disadvantaged through no fault of their own but because the Australian Defence Force has decided to relocate them to a different position.

Libraries: funding

Mr KOCH (Western Victoria) — My issue is for the Minister for Local Government and relates to the chronic lack of funding made available for library services throughout western Victoria. The financial stability of regional libraries is continually threatened by a lack of recurrent funding. Libraries are struggling to survive because the Brumby government is not keeping up with the real cost increases incurred in the provision of services. Local councils are being forced to pick up this funding shortfall.

Historically public library funding was shared on a 50-50 basis between councils and state government. Under successive Labor governments the state government's share has dropped to below 20 per cent. This lack of funding is placing undue pressure on both local municipalities and regional libraries and is undermining their efforts to improve their services at a time when they are doing their best to keep up with changing technologies.

Glenelg Shire Council has been forced to provide more than 82 per cent of core operational funding for Glenelg libraries while the Brumby government is contributing less than 18 per cent. Only 22 per cent of the Geelong Regional Library Corporation's core operational funding can be attributed to the Brumby government; member councils pick up the balance and contribute 78 per cent.

The commitment of member councils and the neglect by the state government is highlighted when looking at the Geelong Regional Library Corporation where contributions of member councils have increased by 67 per cent in the past five years. During the same period the government's contribution increased by a mere 18 per cent. Councils supporting Corangamite Regional Library Corporation have increased their contributions by 130 per cent in the last 10 years. The government's contribution increased by only 23 per cent during the same period.

Technological advances in recent years have led to the demand for more sophisticated library services, often involving the use of computers and internet technology. These funding shortfalls by the state government have occurred while the government's revenues have doubled over the last 10 years. The ongoing cost-shift of library funding by the Brumby government to councils threatens the operation of libraries. Throughout western Victoria regional libraries are unable to spend sufficient money on maintaining their book stocks. Many collections are old and desperately need replacing. The ageing of the book stocks has become too obvious and is impeding many, especially the young, from interacting with the library services.

My request is for the minister to genuinely review the current situation and increase recurrent library funding so that local municipalities can meet the ongoing demands of ratepayers for valuable library services.

Roads: Footscray tunnel

Ms HARTLAND (Western Metropolitan) — My adjournment matter is for Minister Pallas, the Minister for Roads and Ports. On Saturday I joined the

Brimbank Transport Action Group and No Freeway 4 West Footscray at a public rally in the Footscray Mall against the government's plans to built a dirty, great road tunnel under Seddon and Footscray with its hell mouth at the opening on Geelong Road and an elevated freeway though West Footscray and West Sunshine. No other local member of Parliament attended, and there were empty chairs for MPs who did not bother to show up to listen to the public's concerns.

A road tunnel and freeway would have a terrible impact on the community on a number of levels: noise, pollution and destruction of communities. I have repeatedly asked questions of the government, especially of Minister Pallas, the Minister for Roads and Ports, as to what the plans are and what the impact will be on our community. I have also asked the minister to show me any evidence that his department has considered any of the public submissions made against the tunnel and freeway in the Eddington report process. The minister has responded with an arrogant disregard for the public. In fact today a question on notice that I had asked was reinstated to the notice paper as it has not been answered.

I am especially concerned for people in Williamstown Road, Kingsville, in Junction Street, Seddon, in Sredna Street, Tottenham, in Hyde Street, Footscray, in Staff Street, Seddon, which is behind my office, in Windsor Street, Seddon, which is in front of my office, and more who have received letters of possible property acquisition. These people are under terrible stress because they do not know what is going to happen to their homes.

The action I ask of the minister is that he contact the households that have received letters of possible property acquisition and explain to them what is going to happen. If their houses are no longer under threat, tell them so. If their houses are to be considered for acquisition, tell them and tell them now.

Trams: Vermont South line

Mr DALLA-RIVA (Eastern Metropolitan) — My adjournment matter tonight is for the Minister for Public Transport, Ms Kosky. Trams are a very important mode of transport for the people of Forest Hill and Vermont South because there are so very few other public transport options available to them. If local residents choose not to or cannot drive a car, just getting to a TAFE or university, to their place of work or to a doctor or medical specialist can be a frustrating, time-consuming logistical nightmare.

Thanks to a combination of poor planning and lack of investment by this government, the people of Vermont South and Forest Hill unfortunately do not have a reliable, frequent or disability-compliant public transport system. There is no train station; I am told the bus network services are unreliable and infrequent; local residents are still waiting for their tramline to Knox Shopping Centre, which was promised by Labor in 1999; and not a single tram running along the half-finished no. 75 tram route to Vermont South is disability compliant. In fact they all have stairs.

Vermont South and Forest Hill are wonderful communities, but the second-rate public transport infrastructure left by Labor has badly let them down. It is particularly callous that despite public money being spent to construct disability access tram stops in Forest Hill and Vermont South, the only trams that run along route 75 are old and obsolete. They have narrow and cumbersome stairs which are impossible for the disabled and frail to get up. In fact the Labor member for Forest Hill in the other place recently did a feelgood story about getting more trams. Did she ask for low-floor trams? No. She even stood in front of an old, obsolete step-up tram.

The policy of running old trams along route 75 to Vermont South has unnecessarily constrained the lives of many local residents by denying the elderly, the frail and the disabled who cannot climb stairs the opportunity to access public transport. The local residents of both Forest Hill and Vermont South have asked that I raise the issue of low-floor, disability-compliant trams on route 75 because the local member for Forest Hill is either incapable of doing so or does not know where Forest Hill is.

The action I seek therefore is for the minister to urgently provide modern, low-floor, air-conditioned trams on the route 75 tram service for the people of Forest Hill and Vermont South so that the elderly, the frail and the disabled can safely access the tram network this Christmas and into the future.

Western Highway: Bulmans Road interchange

Mr VOGELS (Western Victoria) — The matter I raise is for the attention of the Minister for Roads and Ports, Tim Pallas, and it concerns the $200 million Western Highway realignment from Melton to Bacchus Marsh. This is a joint state and federal government-funded project, with the state contributing $40 million and the federal government contributing the remaining $160 million.

Melton Shire Council has been in discussions with VicRoads asking for improved freeway access to the Melton township. Due to state government intervention, with changes to the urban growth boundary et cetera, Melton is growing quickly with a predicted increase in population of approximately 90 000 over the next 10 years. The council is very disappointed that the plans for the construction of a freeway interchange at Bulmans Road, Melton, designed to ease traffic congestion and accommodate the rapid population growth, have been scrapped.

Recent editions of *Melway* have clearly indicated the construction of the Bulmans Road interchange as part of the Anthonys Cutting roadworks. Instead of building a freeway interchange, Labor has proposed building an overpass linking Bulmans Road with Clarkes Road but not providing access on or off the freeway. It appears the Bulmans Road freeway interchange has fallen victim to the decision to provide freeway access for Hopetoun Park residents. The Melton Shire Council fully supports providing freeway access for Hopetoun Park residents, but this was never meant to be a divisive issue at the expense of the Bulmans Road interchange.

Whatever small short-term savings the government makes from not building on and off ramps at Bulmans Road as part of the current project will be well and truly lost when Victorians are forced to come back at great expense in a few years time to put in the ramps then. The action I seek from the minister is to ensure that the original plans to construct a freeway interchange at Bulmans Road are adhered to.

Victorian certificate of applied learning: funding

Mrs PETROVICH (Northern Victoria) — The matter I raise is for the attention of the Minister for Education and concerns the Victorian certificate of applied learning (VCAL) and in particular the inconsistent and inadequate funding community VCAL receives. Since the introduction of the Victorian certificate of applied learning in 2002 enrolments have grown to almost 16 000. The majority of VCAL students study at government schools, while the remainder undertake programs delivered in partnership with community providers and schools.

It is community VCAL that has, in particular, played an enormous role in helping students, who might otherwise have fallen through the cracks in the system to go on to complete year 12. It is recognised that the students enrolled in this program are young people disengaged from mainstream schooling and often their communities as well. The success of community VCAL has proven that this program provides an effective alternative pathway for these young people to complete a year-12 qualification which opens doors that may otherwise have been shut to them.

Unfortunately a University of Melbourne study found earlier this year that the funding for this vital program is inconsistent and inadequate. The community providers do not have guaranteed funding from year to year, nor do they have flexibility to fund additional at-risk students throughout the year — the target students are not always ready to engage at the start of the school year — although I understand this is currently under review.

One of the longest running community VCAL programs is the Macedon Ranges community-based VCAL program which has operated continuously since 2004 and currently has 16 students enrolled. The funding is around $1500 per student annually, but I understand it needs to be more in the order of $4000 per student.

A government report issued earlier this year recognised the inadequacies of the current funding, but the solution of providing a one-off payment of $500 per student next year is clearly not enough and does not provide any surety for the following years, putting community-based VCAL programs at risk and leaving them unable to expand this much-needed course. It is interesting to note that by comparison the youth guarantee funding is closer to $10 000 per student.

The action I seek from the minister is that she, as a matter of urgency, review the current policy, including her department's report, and provide better, more secure funding to ensure the ongoing viability of this very important VCAL program.

Western suburbs: gang violence

Mr FINN (Western Metropolitan) — The matter I raise is for the attention of the Minister for Police and Emergency Services. I first raised this matter on 22 May 2007, and it concerns gang violence, particularly in the western suburbs. At that time the then Chief Commissioner of Police not only declared that there was no gang violence in Melbourne, much less the western suburbs — —

Mrs Coote — Christine?

Mr FINN — I cannot remember her name, but she would not even use the word 'gang'. As I recall; she used to use the term the 'g-word'; a quite ludicrous position for somebody in her role. I am sad to say that the gang violence, indeed the gang warfare, in the

western suburbs has not improved since the time I first raised the matter.

In fact last Friday at the Robert Barrett Reserve in Maribyrnong, at around 8 o'clock, there was an attack involving a variety of weapons including machetes and knives. Then around 2 hours later there was a full-on attack, what I suppose you would call an open warfare attack at, the Sunshine bus depot. I have visited the depot before and have seen the gang activity there. There were 60 to 70 youths involved from gangs including the Asian gang B4L and TT/20-30, which is the postcode for Sunshine.

On Saturday night, following an attack on a bouncer at a nightclub, there was gang-related violence at the Royal Melbourne Hospital emergency department. It is yet to be decided whether that was related to the earlier attack, but certainly there are reports, and I have received reports, that there was gang-related violence at that hospital.

We now have a situation where people are confronted with gang violence on public transport, on our streets, in schools and now in hospitals. It is clearly totally and absolutely out of control. This government can no longer sit back and do nothing about it, so I ask the minister as a matter of urgency to convene a task force involving police, youth workers, education department officials and representatives of local governments to sit down and decide what needs to be done to tackle this issue before we see more bloodshed. I have spoken to renowned youth worker Les Twentyman. He is very happy to sit on this task force. I ask the minister to act and to act now.

Students: truancy

Mrs COOTE (Southern Metropolitan) — I raise a matter for the attention of the Minister for Education relating to truancy from school. Most of us in this chamber would agree that education, particularly of young children, is a very important aspect of how our community runs, and we would all expect children to attend school on a regular basis and expect the schools themselves to be accountable.

I am a member of the Parliament's Drugs and Crime Prevention Committee, which recently tabled a report in this chamber on youth recidivism. Our inquiry looked into some of the issues involved with children who are continuing to perpetrate crime in this state. One of the surprising findings of that inquiry is that a number of children are leaving school simply by dropping out. The schools are not picking them up and no-one is picking them up, so these kids do not go back to school after perhaps year 7 but they turn to a life of crime, and we all know what the results of that can be. Therefore I was particularly horrified to read in the *Age* of 13 September about a continuing trend in this state for families to take their children out of school to go on cheap package-deal holidays. These people are taking their children on holidays during school hours and in term times, and the children are missing school. The article states:

> For Diane and Mario Di Stefano, it was a chance to give their boys a cultural experience. Tired of missing out on the best deals because they fell inside the school term, last month they did what growing numbers of parents are opting to do and took their children out of school for a holiday — in their case, two weeks in Bali.

The article goes on to say a growing number of parents are doing this and that illness is an acceptable issue for students being away from school, as are family tensions or a death in the family. The article also states that parents should be more aware that they are technically breaking the law and that under the Victorian Education and Training Reform Act 2006 parents can be fined $116.82 a day for keeping their child at home without a reasonable excuse. Taking children on holiday during term time is not seen to be a valid excuse.

The action I ask of the minister is to start policing some of these truancy laws and to start monitoring the types of truancy being perpetrated and investigating why these children are not going to school. If they are not going to school for a reason that is not legitimate, then these fines should be imposed and the government should be reporting in an open and transparent manner to the Parliament and to the community at large why children are missing out on school for no proper reason.

City of Monash: multicultural policy

Mrs PEULICH (South Eastern Metropolitan) — I raise a matter for the attention of the Premier in his capacity as Minister for Multicultural Affairs. My issue relates to a matter I have become aware of that involves a particular policy adopted at a recent council meeting of the City of Monash — a Labor-dominated council, where nine of the 11 councillors are members of the Labor Party. I suspect the adoption of the policy may have been the reflection of a caucus vote; however, this policy is one that relates to council festivals and stalls and events. Basically the policy marks a very dramatic divergence from the bipartisanship of our multicultural affairs policies that have been practised in Victoria for some decades by stipulating:

> It is proposed that council endorse criteria for selection for festival stallholders to ensure that these events retain their local community focus.

This is interesting, because most multicultural communities have a much broader membership than just the local community. The policy continues:

> It is also proposed that council endorse that state and/or federal government representatives are invited to officially speak at council presented or supported events and festivals only if funding has been received from the state or federal government for that event.

A little earlier the document says that 'local members of Parliament may be invited to officially speak'. This marks a significant divergence from policy, because previously the shadow minister for multicultural affairs or the Leader of the Opposition, irrespective of which party, would also be invited and be able to address such gatherings. This new policy is in direct contravention of the Multicultural Victoria Act 2004, section 4(3) of which says clearly:

> (d) all individuals in Victoria are equally entitled to access opportunities and participate in and contribute to the social, cultural, economic and political life of this State …

The council's policy is also in breach of a range of other provisions of that act.

The specific matter that causes me concern is that also on the council's multicultural committee are Cr Baines, Cr Banerji and Cr Stephen Dimopoulos, who is an adviser to George Lekakis in Multicultural Affairs Victoria and who should know better and should know that this is not the sentiment the policy should contain. This is hijacking multicultural affairs.

I call on the Premier, through Multicultural Affairs Victoria, to counsel members of this local council to ensure that the policies that it adopts, especially in relation to multicultural affairs, are consistent with the past practices of bipartisanship of multicultural affairs in this state as well as the Multicultural Affairs Act of Victoria, and in particular to offer counselling to Cr Stephen Dimopoulos. Should the Premier be not able to succeed in reversing this policy, then he should sack Cr Dimopoulos.

Water: Thomson River supply

Mr P. DAVIS (Eastern Victoria) — I raise a matter for the attention of the Minister for Water. The government's announcement early in September that an extra 10 billion litres will be diverted from the Thomson River to Melbourne has outraged the Gippsland community. Their outrage is entirely justified, because this decision poses a grave threat to the environment of the entire Gippsland Lakes catchment and will have a severe impact on the regional tourism industry. However, it goes even further in that in taking this decision the minister has undermined the current consultative process to develop a sustainable water strategy for Gippsland. A Gippsland community consultative committee is working earnestly to assist in developing a strategy that is intended as a government discussion paper to plan for a secure water future.

The minister has invited the community to participate in a detailed negotiation but has totally repudiated that process by unilaterally making an announcement to divert water from the Gippsland Lakes catchment. I put to him a concern raised in a letter to me from the Gippsland Local Government Network, which points out that the strategy will identify the region's supply-and-demand requirements and the minister's announcement could undermine the work and goodwill shown by many stakeholders.

The Gippsland councils have also raised a number of pertinent questions that need answering. Why was further extraction from the Thomson favoured over stricter water restrictions in Melbourne? How will the reduced flow impact on the Thomson River and Gippsland Lakes environments, and how will the impact be managed? What additional support will local economies receive should the water quality deteriorate further and detrimentally affect tourist and fishing activities and environmental values?

The minister has conceded in comment on the government statement, in which the Thomson diversion was mentioned as a footnote only in passing, that taking the extra water would pose a risk to the health of the Thomson River. The statement indicated it was a matter of choice between the Thomson and Yarra rivers, and we could well observe that the second option would have posed a high political risk for the government. The circumstances surrounding this decision are highly dubious, and beyond a couple of glib lines we have had no real explanation of it.

I therefore ask that the minister take action to provide a full understanding of this major policy decision and to formally set out for Parliament the reasons for the decision.

Barwon Health: leaked document

Mr D. DAVIS (Southern Metropolitan) — I raise a matter for the attention of the Minister for Health. It concerns a memo leaked from Barwon Health in recent days under the name of Paul Cohen, the acting chief executive of the Barwon Health network, which covers the Bellarine Peninsula, the city of Greater Geelong and surrounding areas, including communities on the Surf Coast. It is a communication to all staff and the Barwon Health executive. I will quote briefly from the

document, because it is important to put it on the public record and understand the context of the memo. The memo states:

> Barwon Health is currently facing a number of challenges that have the potential to inhibit our ability to develop and grow our services. Our budget projects a deficit of $3 million in the current year, which will be the third year in a row we have made a significant loss. Looking forward, this situation is worsening and we currently project an ongoing operating deficit of around $5 million. The challenge is that if we don't balance our books, it impacts our ability to maintain the level of service for our community.

A significant difficulty has already emerged at Barwon Health in terms of the quality of service, with a failure to achieve benchmarks in the number of emergency patients treated and discharged within 4 hours. There are already nearly 2200 people on the official waiting list and many thousands more on the outpatient waiting list, if you can believe the waiting lists. The category 2 — the 90-day subacute category — benchmark has not been passed for a number of years, with the network always failing to meet its targets.

The memo says that in the first round of cuts 26 staff positions will be removed from the network. Some of these people have been at the network for up to 30 years. Previous premiers Joan Kirner and Jeff Kennett did not cut the staff at Barwon Health, but John Brumby is the one who has laid the boots into the staff at Barwon Health and, in effect, the patients, because the waiting lists are growing and people are being forced to wait in pain, with great discomfort in many cases.

The point I want to make tonight is about Barwon Health and the upshot of this memo. Regional health staff are reported to be on a campaign of retribution to find the source of the leak. They are now targeting a number of people at Barwon Health to find out who the source of the leak is and to exact some price from them. I ask the Minister for Health to give an assurance to the community that there will be no retribution, that there will be no pain inflicted on people who may have in good faith blown the whistle on his cuts, ordered from Spring Street, and that he will protect those people in the way that the public would demand.

Responses

Hon. J. M. MADDEN (Minister for Planning) — I have written responses to 16 adjournment debate matters raised between 24 June and 15 October 2009: Ms Darveniza on 24 June, Mr Vogels on 28 July, Mr Guy on 29 July, Mr Finn on 30 July, Mr Finn on 1 September, Ms Hartland on 15 September, Mr Guy on 16 September, Mrs Peulich on 17 September, Ms Lovell on 13 October, Mr Finn on 13 October, Ms Lovell on 14 October, Mr P. Davis on 14 October, Mr Finn on 14 October, Mr O'Donohue on 14 October, Ms Lovell on 15 October and Mrs Petrovich on 15 October.

Wendy Lovell raised the matter of respite psychiatric care for children in the Bendigo region. I will refer the matter to the Minister for Mental Health.

Sue Pennicuik raised the matter of radionuclides in the Yarra River. I will refer this to the Minister for Environment and Climate Change.

Peter Hall raised the matter of a first home buyer grant and particular matters associated with that. I will refer this to the Treasurer.

David Koch raised the matter of library services in western Victoria. I will refer this to the Minister for Local Government.

Colleen Hartland raised the matter of transport issues in the western suburbs. I will refer this to the Minister for Roads and Ports.

Richard Dalla-Riva raised the matter of services on the no. 75 tram route. I will refer this to the Minister for Public Transport.

John Vogels raised the matter of the Western Highway realignment. I will refer this to the Minister for Roads and Ports.

Donna Petrovich raised the matter of community Victorian certificate of applied learning funding. I will refer this to the Minister for Skills and Workforce Participation.

Bernie Finn raised the matter of perceived violence in the western suburbs. I will refer this to the Minister for Police and Emergency Services.

Andrea Coote raised the matter of truancy. I will refer this to the Minister for Education.

Inga Peulich raised the matter of Monash City Council and various funding issues. I will refer this to the Premier.

Philip Davis raised the matter of the Thomson River flow. I will refer this to the Minister for Water.

David Davis raised the matter of issues at Barwon Health. I will refer this to the Minister for Health.

The PRESIDENT — Order! The house now stands adjourned.

House adjourned 10.38 p.m.