PARLIAMENT OF VICTORIA

PARLIAMENTARY DEBATES (HANSARD)

LEGISLATIVE ASSEMBLY

FIFTY-SEVENTH PARLIAMENT

FIRST SESSION

Thursday, 21 August 2014

(Extract from book 11)

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By authority of the Victorian Government Printer

The Governor

The Honourable ALEX CHERNOV, AC, QC

The Lieutenant-Governor

The Honourable Justice MARILYN WARREN, AC

The ministry

(from 17 March 2014)

Premier, Minister for Regional Cities and Minister for Racing	The Hon. D. V. Napthine, MP
Deputy Premier, Minister for State Development, and Minister for Regional and Rural Development	The Hon. P. J. Ryan, MP
Treasurer	The Hon. M. A. O'Brien, MP
Minister for Innovation, Minister for Tourism and Major Events, and Minister for Employment and Trade	The Hon. Louise Asher, MP
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Minister for Sport and Recreation, and Minister for Veterans' Affairs	The Hon. D. K. Drum, MLC
Minister for Planning, and Minister for Multicultural Affairs and Citizenship	The Hon. M. J. Guy, MLC
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Minister for Housing, and Minister for Children and Early Childhood Development	The Hon. W. A. Lovell, MLC
Minister for Public Transport and Minister for Roads	The Hon. T. W. Mulder, MP
Minister for Energy and Resources, and Minister for Small Business	The Hon. R. J. Northe, MP
Minister for Liquor and Gaming Regulation, Minister for Corrections and Minister for Crime Prevention	The Hon. E. J. O'Donohue, MLC
Assistant Treasurer, Minister for Technology and Minister responsible for the Aviation Industry	The Hon. G. K. Rich-Phillips, MLC
Minister for Environment and Climate Change, and Minister for Youth Affairs	The Hon. R. Smith, MP
Minister for the Arts, Minister for Women's Affairs and Minister for Consumer Affairs	The Hon. H. Victoria, MP
Minister for Higher Education and Skills	The Hon. N. Wakeling, MP
Minister for Agriculture and Food Security, and Minister for Water	The Hon. P. L. Walsh, MP
Minister for Police and Emergency Services, and Minister for Bushfire Response	The Hon. K. A. Wells, MP
Minister for Mental Health, Minister for Community Services, and Minister for Disability Services and Reform	The Hon. M. L. N. Wooldridge, MP
Cabinet Secretary	Mrs I. Peulich, MLC

Legislative Assembly committees

Privileges Committee — Ms Barker, Mr Clark, Ms Green, Mr Hodgett, Mr Morris, Mr Nardella, Mr O'Brien, Mr Pandazopoulos and Mr Walsh.

Standing Orders Committee — The Speaker, Ms Allan, Ms Asher, Ms Barker, Mr Hodgett, Ms Kairouz, Mr O'Brien and Mrs Powell.

Joint committees

Accountability and Oversight Committee — (*Assembly*): Ms Kanis, Mr McIntosh and Ms Neville. (*Council*): Mr D. R. J. O'Brien and Mr Ronalds.

Dispute Resolution Committee — (*Assembly*): Ms Allan, Ms Asher, Mr Clark, Ms Hennessy, Mr Merlino, Mr O'Brien and Mr Walsh. (*Council*): Mr D. Davis, Mr Drum, Mr Lenders, Ms Lovell and Ms Pennicuik.

Economic Development, Infrastructure and Outer Suburban/Interface Services Committee — (*Assembly*): Mr Burgess and Mr McGuire. (*Council*): Mrs Millar and Mr Ronalds.

Education and Training Committee — (*Assembly*): Mr Brooks and Mr Crisp. (*Council*): Mr Elasmar and Mrs Kronberg.

Electoral Matters Committee — (*Assembly*): Mr Delahunty. (*Council*): Mr Finn, Mrs Peulich, Mr Somyurek and Mr Tarlamis.

Environment and Natural Resources Committee — (*Assembly*): Ms Duncan, Mr Pandazopoulos and Ms Wreford. (*Council*): Mr Koch and Mr D. D. O'Brien.

Family and Community Development Committee — (*Assembly*): Ms Halfpenny, Mr Madden, Mrs Powell and Ms Ryall. (*Council*): Mrs Coote.

House Committee — (*Assembly*): The Speaker (*ex officio*), Ms Beattie, Mr Blackwood, Mr Burgess, Ms Campbell, Ms Thomson and Mr Weller. (*Council*): The President (*ex officio*), Mr Eideh, Mr Finn, Ms Hartland, Mr D. R. J. O'Brien and Mrs Peulich.

Independent Broad-based Anti-corruption Commission Committee — (*Assembly*): Ms Kanis, Mr Kotsiras, Mr McIntosh and Mr Weller. (*Council*): Mr Viney.

Law Reform, Drugs and Crime Prevention Committee — (*Assembly*): Mr Carroll, Mr McCurdy and Mr Southwick. (*Council*): Mr Ramsay and Mr Scheffer.

Public Accounts and Estimates Committee — (*Assembly*): Mr Angus, Ms Garrett, Mr Morris, Mr Pakula and Mr Scott. (*Council*): Mr O'Brien and Mr Ondarchie.

Road Safety Committee — (*Assembly*): Mr Languiller, Mr Perera, Mr Tilley and Mr Thompson. (*Council*): Mr Elsbury.

Rural and Regional Committee — (*Assembly*): Mr Howard, Mr Katos, Mr Trezise and Mr Weller. (*Council*): Mr D. R. J. O'Brien.

Scrutiny of Acts and Regulations Committee — (*Assembly*): Ms Barker, Ms Campbell, Mr Gidley, Mr Nardella, Dr Sykes and Mr Watt. (*Council*): Mr Dalla-Riva.

Heads of parliamentary departments

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

Council — Acting Clerk of the Legislative Council: Mr A. Young

Parliamentary Services — Secretary: Mr P. Lochert

MEMBERS OF THE LEGISLATIVE ASSEMBLY
FIFTY-SEVENTH PARLIAMENT — FIRST SESSION

Speaker:
The Hon. CHRISTINE. FYFFE (from 4 February 2014)
The Hon. K. M. SMITH (to 4 February 2014)

Deputy Speaker:
Mr P. WELLER (from 4 February 2014)
Mrs C. A. FYFFE (to 4 February 2014)

Acting Speakers:
Mr Angus, Ms Beattie, Mr Blackwood, Mr Burgess, Ms Campbell, Mr Languiller, Mr McCurdy, Mr McGuire, Mr McIntosh, Ms McLeish, Mr Morris, Mr Nardella, Mr Northe, Mr Pandazopoulos, Ms Ryall, Dr Sykes and Mr Thompson. (to 2 April 2014)
Mr Angus, Mr Blackwood, Mr Burgess, Mr Crisp, Mr McCurdy, Mr McIntosh, Ms McLeish, Mr Morris, Ms Ryall, Dr Sykes and Mr Thompson. (from 3 April 2014)

Leader of the Parliamentary Liberal Party and Premier:
The Hon. D. V. NAPTHINE (from 6 March 2013)
The Hon. E. N. BAILLIEU (to 6 March 2013)

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

Leader of The Nationals and Deputy Premier:
The Hon. P. J. RYAN

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

Leader of the Parliamentary Labor Party and Leader of the Opposition:
The Hon. D. M. ANDREWS

Deputy Leader of the Parliamentary Labor Party and Deputy Leader of the Opposition:
The Hon. J. A. MERLINO

Member	District	Party	Member	District	Party
Allan, Ms Jacinta Marie	Bendigo East	ALP	Languiller, Mr Telmo Ramon	Derrimut	ALP
Andrews, Mr Daniel Michael	Mulgrave	ALP	Lim, Mr Muy Hong	Clayton	ALP
Angus, Mr Neil Andrew Warwick	Forest Hill	LP	McCurdy, Mr Timothy Logan	Murray Valley	Nats
Asher, Ms Louise	Brighton	LP	McGuire, Mr Frank [6]	Broadmeadows	ALP
Baillieu, Mr Edward Norman	Hawthorn	LP	McIntosh, Mr Andrew John	Kew	LP
Barker, Ms Ann Patricia	Oakleigh	ALP	McLeish, Ms Lucinda Gaye	Seymour	LP
Battin, Mr Bradley William	Gembrook	LP	Madden, Mr Justin Mark	Essendon	ALP
Bauer, Mrs Donna Jane	Carrum	LP	Merlino, Mr James Anthony	Monbulk	ALP
Beattie, Ms Elizabeth Jean	Yuroke	ALP	Miller, Ms Elizabeth Eileen	Bentleigh	LP
Blackwood, Mr Gary John	Narracan	LP	Morris, Mr David Charles	Mornington	LP
Brooks, Mr Colin William	Bundoora	ALP	Mulder, Mr Terence Wynn	Polwarth	LP
Brumby, Mr John Mansfield [1]	Broadmeadows	ALP	Napthine, Dr Denis Vincent	South-West Coast	LP
Bull, Mr Timothy Owen	Gippsland East	Nats	Nardella, Mr Donato Antonio	Melton	ALP
Burgess, Mr Neale Ronald	Hastings	LP	Neville, Ms Lisa Mary	Bellarine	ALP
Campbell, Ms Christine Mary	Pascoe Vale	ALP	Newton-Brown, Mr Clement Arundel	Prahran	LP
Carbines, Mr Anthony Richard	Ivanhoe	ALP	Noonan, Mr Wade Mathew	Williamstown	ALP
Carroll, Mr Benjamin Alan [2]	Niddrie	ALP	Northe, Mr Russell John	Morwell	Nats
Clark, Mr Robert William	Box Hill	LP	O'Brien, Mr Michael Anthony	Malvern	LP
Crisp, Mr Peter Laurence	Mildura	Nats	Pakula, Mr Martin Philip [7]	Lyndhurst	ALP
D'Ambrosio, Ms Liliana	Mill Park	ALP	Pallas, Mr Timothy Hugh	Tarneit	ALP
Delahunty, Mr Hugh Francis	Lowan	Nats	Pandazopoulos, Mr John	Dandenong	ALP
Dixon, Mr Martin Francis	Nepean	LP	Perera, Mr Jude	Cranbourne	ALP
Donnellan, Mr Luke Anthony	Narre Warren North	ALP	Pike, Ms Bronwyn Jane [8]	Melbourne	ALP
Duncan, Ms Joanne Therese	Macedon	ALP	Powell, Mrs Elizabeth Jeanette	Shepparton	Nats
Edwards, Ms Janice Maree	Bendigo West	ALP	Richardson, Ms Fiona Catherine Alison	Northcote	ALP
Eren, Mr John Hamdi	Lara	ALP	Ryall, Ms Deanne Sharon	Mitcham	LP
Foley, Mr Martin Peter	Albert Park	ALP	Ryan, Mr Peter Julian	Gippsland South	Nats
Fyffe, Mrs Christine Ann	Evelyn	LP	Scott, Mr Robin David	Preston	ALP
Garrett, Ms Jane Furneaux	Brunswick	ALP	Shaw, Mr Geoffrey Page [9]	Frankston	Ind
Gidley, Mr Michael Xavier Charles	Mount Waverley	LP	Smith, Mr Kenneth Maurice	Bass	LP
Graley, Ms Judith Ann	Narre Warren South	ALP	Smith, Mr Ryan	Warrandyte	LP
Green, Ms Danielle Louise	Yan Yean	ALP	Southwick, Mr David James	Caulfield	LP
Halfpenny, Ms Bronwyn	Thomastown	ALP	Sykes, Dr William Everett	Benalla	Nats
Helper, Mr Jochen	Ripon	ALP	Thompson, Mr Murray Hamilton Ross	Sandringham	LP
Hennessy, Ms Jill	Altona	ALP	Thomson, Ms Marsha Rose	Footscray	ALP
Herbert, Mr Steven Ralph	Eltham	ALP	Tilley, Mr William John	Benambra	LP
Hodgett, Mr David John	Kilsyth	LP	Trezise, Mr Ian Douglas	Geelong	ALP
Holding, Mr Timothy James [3]	Lyndhurst	ALP	Victoria, Ms Heidi	Bayswater	LP
Howard, Mr Geoffrey Kemp	Ballarat East	ALP	Wakeling, Mr Nicholas	Ferntree Gully	LP
Hulls, Mr Rob Justin [4]	Niddrie	ALP	Walsh, Mr Peter Lindsay	Swan Hill	Nats
Hutchins, Ms Natalie Maree Sykes	Keilor	ALP	Watt, Mr Graham Travis	Burwood	LP
Kairouz, Ms Marlene	Kororoit	ALP	Weller, Mr Paul	Rodney	Nats
Kanis, Ms Jennifer [5]	Melbourne	ALP	Wells, Mr Kimberley Arthur	Scoresby	LP
Katos, Mr Andrew	South Barwon	LP	Wooldridge, Ms Mary Louise Newling	Doncaster	LP
Knight, Ms Sharon Patricia	Ballarat West	ALP	Wreford, Ms Lorraine Joan	Mordialloc	LP
Kotsiras, Mr Nicholas	Bulleen	LP	Wynne, Mr Richard William	Richmond	ALP

[1] Resigned 21 December 2010
[2] Elected 24 March 2012
[3] Resigned 18 February 2013
[4] Resigned 27 January 2012
[5] Elected 21 July 2012
[6] Elected 19 February 2011
[7] Elected 27 April 2013
[8] Resigned 7 May 2012
[9] LP until 6 March 2013

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THURSDAY, 21 AUGUST 2014

Thursday, 21 August 2014

The SPEAKER (Hon. Christine Fyffe) took the chair at 9.33 a.m. and read the prayer.

BUSINESS OF THE HOUSE

Notices of motion

The SPEAKER — Order! Notices of motion 2 and 6 to 15 will be removed from the notice paper unless members wishing their notice to remain advise the Clerk in writing before 2.00 p.m. today.

PETITIONS

Following petitions presented to house:

Bellarine Peninsula police resources

To the Legislative Assembly of Victoria:

The petition of concerned citizens of the state of Victoria draws to the attention of the Legislative Assembly the proposed closure of police stations in Portarlington, Drysdale and Queenscliff on the Bellarine Peninsula.

These growing communities need and deserve ongoing police presence.

The petitioners therefore request that the Legislative Assembly ensure that Portarlington, Drysdale and Queenscliff police stations not be closed and have dedicated police staff rostered on for at least 16 hours a day to ensure the safety and wellbeing of all residents of the Bellarine Peninsula.

By Ms NEVILLE (Bellarine) (297 signatures).

Peter Greste

To the Legislative Assembly of Victoria:

The petition of concerned residents and citizens draws to the attention of the Legislative Assembly of Victoria the current situation of Australian journalist Peter Greste and other Al Jazeera journalists in Egypt. And in particular that:

Peter Greste, an Australian journalist with the Al Jazeera network, has been detained, tried, convicted and sentenced to an extended prison term by Egyptian authorities as a result of his reporting of the ongoing conflict in Egypt;

the freedom of the media to report without fear or favour is acknowledged and supported internationally;

the petitioners therefore request that the Legislative Assembly of Victoria urge the Egyptian government to do whatever possible to ensure the expeditious and appropriate release of Mr Greste and his Al Jazeera colleagues.

By Mr BAILLIEU (Hawthorn) (83 signatures).

Doreen and Mernda police resources

To the Legislative Assembly of Victoria:

The petition of certain citizens of the state of Victoria draws to the attention of the house the need for a new 24-hour police station to serve the fast-growing suburbs of Mernda and Doreen and for increased numbers of police in the area.

In particular, we note:

1. the population of Mernda and Doreen, which is now estimated to be 31 867, is expected to be 51 093 by 2031;

2. at present the Whittlesea township police station, which covers the suburbs of Doreen and Mernda, is only open during business hours with police responding from Epping and Mill Park after hours;

3. the ongoing population growth in the city of Whittlesea is putting increased pressure on the two nearest 24-hour police stations in Epping and Mill Park, meaning that the fast-growing suburbs of Doreen and Mernda are getting a worse service.

The petitioners therefore request that the Legislative Assembly urge the Napthine state government to fund a new 24-hour police station to cover the policing needs of the growing suburbs of Mernda and Doreen.

By Ms GREEN (Yan Yean) (1115 signatures).

Tabled.

Ordered that the petition presented by honourable member for Bellarine be considered next day on motion of Ms NEVILLE (Bellarine).

Ordered that the petition presented by honourable member for Yan Yean be considered next day on motion of Ms GREEN (Yan Yean).

Ordered that the petition presented by honourable member for Hawthorn be considered next day on motion of Mr BAILLIEU (Hawthorn).

DOCUMENTS

Tabled by Clerk:

Subordinate Legislation Act 1994 — Documents under s 16B in relation to the *Education and Training Reform Act 2006*:

Ministerial Direction MD142

Ministerial Direction MD144

Ministerial Order 769

Victorian Law Reform Commission — Review of the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* — Ordered to be printed

CHILDREN, YOUTH AND FAMILIES AMENDMENT (PERMANENT CARE AND OTHER MATTERS) BILL 2014

Statement of compatibility

Ms ASHER (Minister for Innovation), by leave, tabled following revised statement in accordance with Charter of Human Rights and Responsibilities Act 2006:

In accordance with section 28 of the Charter of Human Rights and Responsibilities Act 2006 (the 'charter act'), I make this statement of compatibility with respect to the Children, Youth and Families Amendment (Permanent Care and Other Matters) Bill 2014.

In my opinion, the Children, Youth and Families Amendment (Permanent Care and Other Matters) Bill as introduced to the Legislative Assembly, is compatible with the human rights protected by the charter act. I base my opinion on the reasons outlined in this statement.

Overview of bill

The bill makes a number of amendments to the Children, Youth and Families Act 2005 (the act), including:

Amendments to the provisions for the protection and permanent care of children. These amendments are directed at promoting more timely decision-making, improving permanency for children in care, simplifying protection orders and streamlining case planning.

Increase in penalties for offences relating to the protection of children.

Changing the time frame for lodging an application for breach of a good behaviour bond.

Providing consistent time frames for lodging court reports.

Abolishing the Youth Residential Board and transferring its functions to the Youth Parole Board.

Enabling the entering of private premises in the execution of a warrant issued on cancellation of parole of young persons.

Human rights issues

Provisions for protection and permanent care of children

Section 17(1) of the charter act recognises that families are the fundamental group unit of society and are entitled to be protected by society and the state. Section 17(2) of the act provides that every child has the right to such protection as is in his or her best interests and is needed by him or her by reason of being a child. Section 13 of the charter act provides that every person has the right not to have his or her privacy, family, home or correspondence unlawfully or arbitrarily interfered with. Children's Court protection orders involve interference with families, but I consider that the interferences authorised by the bill are reasonable and justified, and achieve an appropriate balance between the rights of families and the rights of children.

The Children, Youth and Families Act and the amendments in the bill give effect to the principle in article 9 of the United Nations Convention on the Rights of the Child that 'children should not be separated from their parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child'. While the act and bill authorise the intervention in families where children are in need of protection, they do so subject always to the principle that the best interests of the child are paramount (section 10(1)). The basis for intervention in a family is clearly set out in the act as are the procedures for doing so. The Children's Court of Victoria is primarily responsible for making such orders. The act and amendments contained in the bill also recognise and protect the distinct cultural rights of Aboriginal persons contained in section 19(2) of the charter act. In particular, new section 176 inserted by clause 98 of the bill requires that case plans for Aboriginal children address the cultural support needs of the child, and new section 323 inserted by clause 62 imposes restrictions upon the making of permanent care orders in respect of Aboriginal children.

There are, however, two aspects of the bill that require more detailed consideration. Firstly, the bill provides for a greater emphasis on permanency for children who are the subject of child protection orders. Secondly, the bill makes amendments to the provisions relating to ongoing contact between a child and their family where permanent care orders are made.

Increased emphasis on permanency

The amendments contained in the bill retain and reinforce the importance of a child remaining in the care of their parents or other members of their family, where this is possible. The importance of the family is recognised as part of the best interests principles in section 10 of the act. Pursuant to new section 276(2) inserted by clause 17 the court may only make a protection order removing a child from the care of their parents where it has considered an order allowing a child to remain in the care of their parents and rejected such an order as being contrary to the child's best interests. In case planning, under new sections 167 to 169 inserted by clause 97, family preservation and family reunification are the preferred options (see new section 167(1)).

However, the bill makes amendments that place greater emphasis on the importance of permanency to the development and wellbeing of children. The *Protecting Victoria's Vulnerable Children Inquiry* report identified the need for more timely permanent care arrangements for a child who is unable to be reunited with their biological family. Delays in making decisions and providing alternative permanent or long-term care arrangements for children can be harmful and are not in their best interests. It is important in the best interests of the child that alternative permanent or long-term care arrangements are made if the child is not able to be permanently reunified with their family within a reasonable time. In practice, if family reunification is achievable, it usually occurs within the first 12 months. The chances of successful family reunification diminish significantly after that. If family reunification is not achieved within two years, it is highly unlikely to occur.

The bill provides for express recognition of the need for expeditious decision-making and 'permanency' in the protection and promotion of a child's best interest (clause 6). New section 276A, inserted by clause 18, directs the court to

have regard to certain matters in determining whether to make a protection order. These matters bear upon whether family reunification is realistic and the desirability of minimising time in temporary care.

New section 287, inserted by clause 26, provides for a family reunification order. A family reunification order is one which confers parental responsibility and sole care of the child upon the secretary. The child is removed from the care of their parent(s) and placed in temporary care while the department works with the family with a view to reunifying the child with them. An initial order can be made for a period that has the effect of the child being placed in out-of-home care for up to 12 months. However, section 294A inserted by clause 34 places limits upon extensions. An extension may only be granted if there is compelling evidence that it is likely that a parent of the child will permanently resume care of the child during the period of the extension. An extension cannot be made if its effect would be to place the child in out-of-home care for a cumulative period of more than 24 months. Although a family reunification order cannot be made beyond two years, it does not necessarily preclude family reunification in the event that circumstances change (see, for example, new section 289(1)(d) inserted by clause 30).

New section 289, inserted by clause 30, provides for care by secretary orders. These orders confer parental responsibility on the secretary and remain in force for two years. Pursuant to new section 294A(2), inserted by clause 34, such orders can only be extended if neither a permanent care order nor long-term care order is appropriate, or if there are exceptional circumstances (new section 294A(3)).

I consider these provisions are compatible with human rights. Although they may be seen as involving greater interference with family in that they will result in long-term and permanent care orders being made earlier, they do so for the protection of the best interests of children and are also intended to promote earlier family reunification.

Contact between children and their biological family where permanent care orders are made

A child's best interests are usually served by preserving their identity, connection to the culture of origin and relationships with their biological family. However, whether this is in fact the case, and the manner in which these goals are achieved, varies significantly for children who are in permanent care.

The bill includes a number of amendments to the provisions for the making of permanent care orders and the imposition of conditions relating to ongoing contact between a child and their biological family. Currently, section 321(1)(d) requires the court to include conditions concerning contact with the child's parents. In practice, these conditions have often proven to be inflexible and can end up operating in a manner that is contrary to the best interests of the child. In many cases regular direct contact with a parent can be extremely disruptive to a child in permanent care, and can end up being the cause of a breakdown in the placement.

The bill amends section 321 to include a range of measures that are designed to protect the child's ability to maintain a relationship with their family, while providing for greater flexibility in any conditions imposed to ensure the best interests of the child are served. In particular:

Clause 59 inserts a provision that requires the secretary to be satisfied that a person proposed as a permanent carer will, to the extent that it is appropriate and in the child's best interests, support and encourage the child's contact and relationship with the child's mother and father, siblings by birth and any other person of significance to the child.

Clause 60 provides for a mandatory condition that the person caring for the child must, in the best interests of the child and unless the court otherwise provides, preserve the child's identity and connection to the child's culture of origin; and the child's relationships with their biological family.

Clause 60 provides for the court to include conditions in the best interests of the child concerning contact with the child's parents. In imposing such a condition (or other conditions under sections 321(1)(e) or (f)) the court is directed to have regard to certain matters including relating to permanency, and ensuring sufficient flexibility over time.

I consider that these provisions, which place the emphasis on the child's best interests and recognise the role of permanent carers in protecting those interests, are compatible with the rights of families and children in section 17 and the right to privacy in section 13 of the charter act.

Disclosure of information

Section 13 of the charter act provides protection against unlawful and arbitrary interferences with privacy. This right is relevant to clause 136 of the bill which amends section 129 to clarify the power of the secretary to disclose records and information in relation to out-of-home carers, for the purpose of protecting a child.

I consider that the interference with privacy authorised by the amendment is neither unlawful nor arbitrary. The amendment is necessary and appropriate in order to ensure that children are able to be protected, as is their right under section 17 of the charter act.

Increase in penalties for offences relating to the protection of children

Clause 150 increases the penalties for a number of offences relating to the protection of children. This includes the offences in sections 496(1) and (3) of the act, which include an evidential onus on the accused to adduce or point to evidence of a lawful authority or excuse to remove a child. I consider that these evidential onuses are reasonable limits upon the right to be presumed innocent in section 25(1) of the charter act, and the increase in the penalty does not alter that assessment.

Changes to youth justice procedures

The bill makes a number of amendments to youth justice procedures, including extending the time for application for breaches of a good behaviour bond (clause 151) and altering the time requirements for various court reports (clauses 122 to 132). I consider that these provisions are compatible with the criminal procedure rights in section 25 of the charter act. The extension of time for breach proceedings is necessary to ensure that delays in Victoria Police becoming aware of a breach do not preclude an application being made. The time for making such an application is still relatively short and is

consistent with the rights in section 25 of the charter act, particularly the right to be tried without unreasonable delay. The amendments to the time periods for filing court reports ensure consistency and require the filing of such reports no less than three working days before the return date, thereby enabling the court to have up-to-date reports while also ensuring an accused has a reasonable opportunity to consider the report. There is nothing preventing the adjournment of a case in the event an accused requires additional time in order to file material in response to such a report.

Transfer of functions of the Youth Residential Board to the Youth Parole Board

Part 5 of the bill abolishes the Youth Residential Board and transfers its functions to the Youth Parole Board. Both boards are prescribed by regulation as being exempt from being a public authority under the charter act. I do not consider that the provisions, which merely transfer the functions but do not alter them in any substantive way, raises any issue of compatibility with the rights in the charter act.

Power to enter private premises to execute warrants

Sections 456 and 460 of the act provide for the issuing of warrants to apprehend young persons and return them to a youth justice centre or youth residential centre. However, there is no express or implied power to enter private premises to execute such a warrant. This has resulted in young persons avoiding apprehension, and poses risk to the safety of the young person and members of the community. Clause 113 inserts a new provision into the act authorising entry into premises under warrant where the person is believed to be located and the use of reasonable force to do so. Although this involves interference with the privacy of the occupier of the premises, I consider that the interference is neither unlawful nor arbitrary and is therefore compatible with the right to privacy in section 13 of the charter act.

Expansion of group conferences and powers to defer sentence and detain

Part 4 of the bill expands the availability of youth justice group conferences. This is a restorative justice-based program that enables the young person to meet with other persons who are impacted by the young person's offence, such as the victim or the victim's representative, members of the young person's family and other persons significant to the young person. The program has proved to be a powerful and cost-effective way of reducing the likelihood of a young person reoffending and resulted in positive outcomes for young persons with very serious offending.

The court is empowered to defer sentencing for up to four months. In the meantime, the child may be released either unconditionally or on bail or may be remanded in custody. If the child is remanded in custody, the court may only defer sentencing for up to two months.

I consider that these provisions are compatible with the criminal procedure rights in section 25 of the charter act. Although it results in some delay in sentencing, that delay is reasonable and necessary to promote the aims of the restorative justice program. I also consider that the power to remand the child in custody is compatible with the right to liberty in section 21 of the charter act. That power lies within the discretion of the court and is subject to a range of safeguards including time constraints (see clause 102 and new sections 414(2)(ab)(iii) and (4)) and a prohibition against refusal of bail on the sole ground that the child does not have any or any adequate accommodation (see new section 414(5)).

Clarification of obligation to consult

Clauses 157 to 160 amend the Commission for Children and Young People Act 2012. Section 48 of that act currently imposes a prohibition on the commission giving a report of an inquiry to a minister or the secretary if the report includes 'material that is adverse' to any person, health service, human service or school, without first giving that person or body an opportunity to comment on the material. As currently worded, section 48 is too broad and has the potential to stymie inquiries in circumstances where neither the principles of natural justice nor any rights in the charter act would require such consultation. Clause 158 amends that provision to refer instead to 'any comment or opinion that is adverse to any person' or specified body. This is not to say that the commission will never have to provide a person with the opportunity to comment upon other material contained in a report that is adverse to them. Whether that is required by the principles of natural justice or the rights in the charter act, particularly the right to privacy, will depend upon the particular circumstances including any impact upon the person's rights or interests.

The Hon. Mary Wooldridge, MP
Minister for Community Services

BUSINESS OF THE HOUSE

Adjournment

Ms ASHER (Minister for Innovation) — I move:

That the house, at its rising, adjourns until Tuesday, 2 September 2014.

Motion agreed to.

MEMBERS STATEMENTS

Australian Red Cross centenary

Mr RYAN (Minister for State Development) — Today marks exactly 100 years since the first meeting of the Victorian branch of the Australian Red Cross. On Friday, 21 August 1914, Lady Margaret Stanley, wife of the then Governor of Victoria, convened the first public meeting of the Victorian branch of the Red Cross in the Melbourne town hall. The Australian Red Cross also shares a great affinity with Victoria, having been formed under the leadership of Lady Helen Ferguson, wife of the then Governor-General, on 13 August 1914 at Victoria's Government House. The foundations of the Red Cross are of course inextricably tied to another important centenary in 2014 — that of the First World War. The Australian Red Cross was founded just nine days after the outbreak of war. Since these beginnings the Red Cross has continued to make an invaluable

contribution to Australian society, with many of its achievements having their origins in Victoria.

The Victorian government is proud to support the Australian Red Cross with over $30 million in funding every year via the Department of Health and the Department of Human Services. On this wonderful day, on behalf of the Parliament of Victoria I mark the centenary of the establishment of the bases for the Victorian Red Cross while also recognising the extraordinary feats of an extraordinary organisation doing extraordinary things for all Australians. We congratulate the Red Cross movement.

Tarneit electorate schools

Mr PALLAS (Tarneit) — I am pleased to reflect on Victorian Labor's commitment to funding education in Melbourne's western suburbs. I have in the past few weeks joined with the parents and teachers of two schools in my electorate, Tarneit P–9 College and Werribee Secondary College, after having spent most of the last four years of this government's term calling on it to provide the funding necessary to complete the capital works at both of these schools to no avail.

However, today I am pleased to say that the pleas of these schools have not fallen on deaf ears when it comes to this side of the house. It was the Labor government that provided $12 million to complete the first two stages of Werribee Secondary College, and despite the election promise of a member in the other place, Mr Elsbury, it is only Labor that has committed to funding the third and final stage. Those opposite might be content to let our schools fall apart and our kids fall behind, but that is not what we stand for on this side of the house. In its last term in office Labor spent an average of $467 million a year on capital works for schools. This government has spent a statewide average of $278 million a year — a figure indicative of the neglect it has shown some of our neediest schools.

Local learning and employment networks

Mr PALLAS — I am also very proud that Victorian Labor has announced that, if elected, it will ensure funding for the local learning and employment networks (LLENs) over the next four years, which would assist so many organisations, including Wyn Bay LLEN in my own community, in doing their excellent work helping young people get the skills they need to do the jobs they want.

Maroondah Symphony Orchestra

Ms VICTORIA (Minister for the Arts) — On Sunday I had the great pleasure of attending the 50th anniversary concert of the Maroondah Symphony Orchestra. Under the baton of Willem van der Vis, more than 50 musicians played an incredibly entertaining and broad selection of classical pieces, showcasing their expertise. The players range in age from a 12-year-old harpist to an 89-year-old cellist, and they share one vision — to bring wonderful music to the outer east at a very reasonable price. Congratulations on your first 50 years, Maroondah symphony; may you entertain us for at least 50 more.

Ann Fraser

Ms VICTORIA — This month the outer east said goodbye to one of our finest advocates. Tragically, Ann Fraser lost her hard-fought battle with cancer. Ann was a wife, mother, champion athlete and driving instructor, but it is Ann the local councillor I will best remember. Ann was a champion of change and spent many years trying to right wrongs, advocate for her constituents and generally make Maroondah a better place. Once Ann got a bee in her bonnet, there was no shaking her intention to achieve a positive resolution. To Ann Catherine Fraser, I say thank you; our area is a much better place thanks to you.

Boronia K–12 College

Ms VICTORIA — Last Friday I had one of the most rewarding days of my career in politics so far, being principal for a day at Boronia K–12 College. This is a school with the most wonderful, positive outlook, starting from the very top. The three principals, the teachers, the students and the school council representatives are some of the most proactive I have ever had the pleasure to meet, and they were most welcoming. I thank them for giving me such an uplifting and brilliant opportunity to spend the day at their school.

Kabaddi tournament

Ms KAIROUZ (Kororoit) — On 10 August I was proud to attend a kabaddi tournament hosted by Melbourne's Indian community and the Young Kabaddi Club Melbourne at Errington Reserve in St Albans. Members might associate the sport of cricket with Indian culture, but kabaddi is a traditional game that is enjoying growing popularity both here in Australia and back in India. Originating in Bangladesh, it is very popular in rural areas of India and has a particular popularity in the Punjab region. I will not be

able to do it justice by explaining the rules, other than to say that it does not require a ball or any equipment, and it is very physical. I encourage members to look it up online.

I was joined on the day for the tournament by over 4000 members of the community, and I enjoyed traditional Indian food and music as part of the festival. Eight clubs from across Australia participated in the tournament, and I am proud to say that the members of my local team, the Young Kabaddi Club Melbourne, were crowned champions on the day. I would like to pay special tribute to the club's secretary, Mr Mukesh Sharma, for making me feel most welcome throughout the day.

There are four kabaddi clubs across Melbourne, and it is important that local and state governments step up and support this growing sport that is so important to the Indian community. I look forward to working with Mukesh and the rest of the Young Kabaddi Club Melbourne in the future as they expand and continue to engage Indian Australians in Melbourne's western suburbs.

Bairnsdale Primary School

Mr BULL (Minister for Local Government) — It was fantastic to see so many past and current residents of Bairnsdale come together on Saturday to celebrate the 150th anniversary of Bairnsdale Primary School 754. The attendees included the Minister for Police and Emergency Services, who is an ex-student of the school. Members may be surprised to learn that he was once a dux of the school. Current and past students and teachers gathered for three days of activities, with over 500 people attending the school on Saturday for a special roll call. I would like to say a big thank you to the members of the organising committee for the great job they did.

Princes Highway, Newmerella

Mr BULL — Last week I joined with members of the Newmerella and Orbost communities to announce $760 000 in road repair funding for a section of the Princes Highway just west of the township of Newmerella. Residents had been advocating for this section of road to be repaired for some time. This funding comes on top of recent announcements of major road repair works at Benambra, Cobungra and Bengworden.

Country Fire Authority Maffra brigade

Mr BULL — The Maffra community came together on Saturday to celebrate the centenary of the Maffra fire brigade. I was pleased to be on hand to present the keys to a new $350 000 pumper, which will be a great resource for the community and will assist in emergency responses to nearby towns such as Tinamba, Boisdale, Heyfield and Coongulla. I commend the brigade on its fantastic work.

Heyfield ambulance station

Mr BULL — The hardworking Heyfield ambulance auxiliary had cause to celebrate on Saturday with the official opening of its expanded facility. The local Bendigo Bank branch donated $84 000 towards the project, with $8000 coming from Ambulance Victoria. Thanks to the expansion the station will now house the region's complex patient ambulance vehicle.

Australian Red Cross centenary

Ms EDWARDS (Bendigo West) — As co-chair of the newly formed Victorian Parliamentary Friends of Red Cross I would like to place on the record my congratulations to the Australian Red Cross, which this month celebrates 100 years. Red Cross has had an extraordinary history, with 100 years of people helping people — from the formation of the Australian branch of the British Red Cross Society at the outbreak of the First World War to today. There are now 1 million Red Cross members, volunteers, donors, staff, blood donors and supporters who continue this remarkable legacy. Red Cross is a world-renowned organisation which strives to give assistance without discrimination and to alleviate human suffering across the world, irrespective of nationality, race, religious beliefs, class or political opinions.

In Australia the story of Red Cross is one we can all be proud of and hold up as a beacon for humanity and compassion. In 1918 the first Junior Red Cross was formally established in Australia. The foundation's president, Lady Helen Munro Ferguson, is considered to be one of Australia's most notable citizens for her vision and tireless efforts in establishing the Australian Red Cross.

At the outbreak of every war Red Cross has been mobilised. Its members have gone into battle to fight for the lives of countless men, women and children in war-torn countries across the globe. Through all natural disasters — floods, droughts, famines, bushfires and terrorist attacks — the Red Cross is there. The valiant and selfless individuals who come together in times of

crisis demonstrate that the power of humanity can and does change people's lives for the better.

This month is a remarkable milestone for the Australian Red Cross. There are many ways to ensure that its legacy continues: by becoming a member, making a donation, volunteering, donating goods or, as many of us do, donating blood.

Wodonga Senior Secondary College

Mr TILLEY (Benambra) — I was thrilled to host the Minister for Education in the Benambra electorate last week. During his visit the minister had the pleasure of officially opening the $12 million regenerated Wodonga Senior Secondary College, $10 million of which was funded by the Victorian coalition government. All sorts of promises had been made to Wodonga secondary colleges when they were the first ones in the state to go through a total restructure in 2006. Wodonga Senior Secondary College was enduring out-of-date, white-ant-devoured, leaking and mould-infested buildings, maintenance bills to keep students and staff safe were out of control and classes were often interrupted and relocated due to the discovery of new infestations. Another fine Labor legacy in education!

As I toured the new facility with the minister it was difficult to recall those times — —

Mr Merlino interjected.

Mr TILLEY — You left it, boys! It was difficult to recall those times as we looked at the state-of-the-art science labs, learning studios, lecture theatres, library, staffrooms, IT suites and administration areas. The problematic 50-year-old grey brick building in Woodland Street will now be demolished. Staff and students are thrilled with the new facility. Once again we see Labor's failure.

I acknowledge and thank all students, parents and staff of the school. Particular mention must be made of Mr Vern Hilditch, the current principal; Mr Peter McLean, the former principal; and Mr David Whitehead, the assistant principal. I am proud to be a member of a coalition government that is identifying issues and fixing them.

Mr Merlino interjected.

Mr TILLEY — Settle down, little man. I am proud to be a member — —

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

Monbulk College

Mr MERLINO (Monbulk) — I was very pleased to visit one of my great local schools, Monbulk College, last week with the Leader of the Opposition. I would like to read from the school council president's contribution to the *Monbulk College News*. It states:

> Together with myself, Margaret Uren —

who is the principal —

> and the school captains, they toured the school building and grounds. We were able to provide them with an insight into the recent improvements to the school, but more importantly the areas of the school that still require updating and modernising.
>
> …
>
> I am very pleased to advise you that at the conclusion of the tour Labor have committed to providing $3 million towards the refurbishment and replacement of classrooms, to create 21st century learning spaces.

This is a terrific school, Speaker, as you may well know. It is held back by poor facilities, particularly the main building at the front of the school. Labor will make the investment to help our schools do so much more. The fact is that the Napthine government has slashed capital funding in our schools, leaving them to rot or burst at the seams — or both — in areas of growth.

It is not enough for those opposite to cut funding in half; when Labor makes commitments to schools neglected by the Napthine government, their responses are extraordinary. When we made a commitment to rebuild Bentleigh Secondary College by replacing 1950s buildings and providing new classrooms, a technology wing and basketball courts, the response from the Liberal member for Bentleigh was that it would be a waste of money. The Bentleigh College community is appalled at these remarks.

Myrtle Park, Balwyn North

Mr McINTOSH (Kew) — This morning I will refer to a statement from residents who live near Myrtle Park in the Kew electorate. I have slightly edited the statement to conform with the rules of the house.

Boroondara City Council has proposed the installation of 25-metre-high lighting towers, each tower supporting lights of 150 luxe, at Myrtle Park and that such lights remain on every night of the week during the winter months from 5.30 p.m. to 9.00 p.m. Further, residents have been advised by council that the current use status of these parks is being changed from 'passive recreation' to 'active use'.

The overwhelming majority of residents whose homes surround Myrtle Park strongly object to the proposed installation of sportsground lighting in the park. The residents consider that the existing lighting on the sporting grounds on the immediately adjacent Macleay Park, which is currently used by the North Balwyn Baseball Club for night-time training, is sufficient and that the construction of additional structures on Myrtle Park, which will come at a huge cost to taxpayers, is not warranted. Such an installation would also irreversibly and detrimentally affect the amenity of the environment. The residents foresee an inevitable increase in noise, traffic and parking congestion in the surrounding streets at night.

Current light towers in Macleay Park are located a minimum of 70 metres from any resident's property. Also, Macleay Park is bordered by a road easement and Balwyn High School. The proposed new lighting towers in Myrtle Park are closer than 10 metres from residents' homes.

Westbreen Primary School

Ms CAMPBELL (Pascoe Vale) — Labor will rebuild Westbreen Primary School. Team Westbreen needs Victorians to elect an Andrews Labor government so that the school will be rebuilt. The school community was advised by shadow Minister for Education, the member for Monbulk, together with ALP candidate for Pascoe Vale Lizzie Blandthorn and me that one of the member for Monbulk's first priorities as minister would be to ensure the project is delivered. Labor will provide $4 million in funding for the demolition and rebuild of six new classrooms, an art room and an administration area.

In late 2010, the school's rebuild was supported by the Department of Education, but unfortunately the election of the coalition saw the school's hopes dashed. The school was denied rebuild funding in the 2011, 2012, 2013 and 2014 budgets.

It will be a Labor government that will deliver Westbreen's rebuild, just as a Labor government rebuilt Oak Park Primary School and Pascoe Vale North Primary School. Labor governments rebuild schools — coalition governments do not. The Napthine government abandoned Labor's plan to renovate, rebuild or modernise every Victorian government school. It has only spent a statewide average of $278 million a year on capital works, compared to an average spend of $467 million by Labor in its last term.

I acclaim the drive and tireless work of principal Tony Cerra, deputy principal Trevor Daly, school council president Bridget Kille, past presidents Paula Ainsworth and Pauline Olson and committee members. Their dedication and vision for the students and school is extraordinary. The announcement was also a fun day when we — —

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

Jack Dawson Green

Mr BAILLIEU (Hawthorn) — I have twice raised the story of Jack Dawson Green, a 22-year-old from Camberwell who died in a lone Spitfire crash in the Netherlands in 1945. The Rehoboth Elementary School and the Binnenmaas Council in the Netherlands have erected a memorial to Jack, and they lovingly tend his grave.

Last year, in gratitude, winners of Victoria's Spirit of Anzac Prize visited Barendrecht general cemetery and furthered the warm relationship with locals. Sadly, 12 months ago, Jack's memorial was badly vandalised. However, I am pleased to report that once again the Dutch community has stood firm. The memorial has been restored, and the daily care and attention has been resumed.

On behalf of Jack's family and all Victorians, I again thank the people of the Binnenmaas community. Their kindness, like Jack, will never be forgotten.

World War I centenary

Mr BAILLIEU — On 4 August for the centenary of the start of World War I, our beautiful parliamentary library opened the new Deakin Gallery on its upper floor. What was once the local papers gallery is now a historical display. Each day the pages of the *Age* and *Argus* from 100 years ago are turned. The headlines for today's date in the *Argus* include 'Australian contingent' and 'Massing for great battle', and in the *Age* 'German advance checked', 'Death of Pope Pius X' and, presciently, 'A Dardanelles incident'. Early memorabilia from the war is also on show, as is a record of all MPs who served.

Melbourne was the capital of Australia from 1901 to 1927. This chamber was the home of Australia's federal Parliament. The political battles of prime ministers Joseph Cook, Andrew Fisher and Billy Hughes over the duration of World War I took place at this table.

In this period, I urge members to visit the gallery and honour the service of the original Anzacs, who were

their predecessors. I thank the staff who have developed the concept and prepared the material.

Ballan pedestrian crossing

Mr HOWARD (Ballarat East) — Last week I was joined by the shadow Minister for Roads, the member for Narre Warren North, in Ballan to announce that if elected in November, Labor will fund a traffic light pedestrian crossing on Ballan's main street, Inglis Street.

Labor's commitment to providing a pedestrian crossing with lights will mean better road safety in Ballan on a road which carries 3700 vehicles every day. Those present at the announcement, including local resident Natalie Jones, who is sight impaired, were excited to know that they would be able to cross their busy main street with greater confidence.

A number of residents, including Natalie, have raised their concerns with me about the need for a crossing with lights. Such a crossing would be safer and provide greater support for older community members, residents with disabilities and school students. If elected in November, an Andrews government will work with VicRoads and the Ballan community to develop the most appropriate placement and design for this crossing.

Most residents I have talked to suggest that the crossing be in the middle of the town, near the Fisken Street corner, while some have suggested a crossing near the hospital. I look forward to seeing this commitment become a reality for the residents of Ballan. Labor is determined to improve pedestrian safety.

Buninyong pedestrian crossings

Mr HOWARD — Along with the Buninyong community I have been pleased and relieved to learn that Labor has also committed to providing a pedestrian crossing on Warrenheip Street, as well as flashing speed signs for the school crossing around the corner on the Midland Highway on the Buninyong hill.

The Napthine government, by contrast, ceased funding the school safety program, which provided flashing speed zone lights to schools which needed them.

SPC Ardmona

Mrs POWELL (Shepparton) — The future of SPC Ardmona in Shepparton has been secured, with Coca-Cola Amatil accepting an adjusted plan. After initial investment plans were put on hold following a council decision not to close Andrew Fairley Avenue, which divides the site, the Victorian government worked continuously with SPC and Coca-Cola Amatil to assist in securing the adjusted plan. I would like to thank SPC managing director, Peter Kelly, and the Coca-Cola Amatil board for their commitment to Shepparton. I thank the Premier and Deputy Premier for their strong support of SPC.

The $100 million investment in Shepparton, with $22 million from the Victorian government and $78 million from SPC, will secure 500 full-time jobs and more than 2700 flow-on jobs. This is great news for the staff, growers and businesses and their families who provide goods and services to SPC.

While the amended plan has a number of adjustments due to certain efficiencies not being realised, SPC is strengthening its business with new products. Sneaky Veg, Fruit in Coconut Water, Perfect Fruit and My Daily Fruit have recently won awards for their health benefits. SPC also won the award for the best use of social marketing in a campaign following a very successful social media campaign encouraging people to support SPC in Shepparton. I know SPC was grateful for the support from people right across Australia. I urge people to continue to buy SPC products and to try the company's award-winning new products as well as the new snacks that will be in supermarkets soon.

Geelong employment

Ms NEVILLE (Bellarine) — As members will be aware, Alcoa has now closed its Point Henry smelter operations. I spent some time with Alcoa workers in the two days prior to the closure. It was sad and difficult farewelling colleagues, many of whom were facing an uncertain future, with only one in five having found some option moving forward. Some have taken jobs on the other side of Victoria, leaving their families behind. Many of these people are also volunteers in the local community, so the closure is impacting on families and communities.

Despite the rhetoric, the Napthine government has done little to assist these communities. It has failed to put in place any sort of strategic plan to support them, to provide practical assistance or to assist in buffering the Geelong economy. The cuts to TAFE, the lack of strategic infrastructure investment, the failure to provide coordinated training and job placement services and the lack of additional funding for the investment fund to attract new businesses have left these workers, the Geelong community and the Geelong economy high and dry.

This assistance is even more vital considering the latest unemployment figures released by the Australian Bureau of Statistics. They are the worst figures for Geelong in 15 years, showing that 1 in 10 people are out of work. They are the worst overall figures in Victoria, with our July unemployment figures at 10.5 per cent compared to the state average of 6.6 per cent. These figures do not take account of the Alcoa closure. The figures also show that 18.2 per cent of Geelong's young people were unemployed and that female unemployment was at 10.4 per cent — nearly double last year's average.

The government must acknowledge that we have a major challenge ahead. The Napthine government is failing the community of Geelong, particularly its young people.

Prahran Netball Association

Mr NEWTON-BROWN (Prahran) — It was a pleasure to meet with representatives from the Prahran Netball Association to discuss their needs at their home courts at Orrong Romanis Recreation Centre in Prahran. The Prahran Netball Association was established in 1983, and over 1300 children are active players. It only has two courts, one of which is undersized. By contrast, the city of Stonnington has over 60 tennis courts. A recreation strategy is being developed by Stonnington City Council, and a feasibility study is being done on the provision of a new indoor stadium. I commend the council on this; however, it may take up to three years.

I call on Stonnington City Council to look at short-term options for increasing the number of courts available to the Prahran Netball Association as a matter of urgency. Netball is the only organised team sport for girls and women in Stonnington, and in the context of most of the open space being available for boys team sports, such as football, Rugby and cricket, it deserves to have equitable access to facilities.

Toorak Primary School

Mr NEWTON-BROWN — It was once again a pleasure to be involved in the principal for a day initiative, this time at Toorak Primary School. I had a great time meeting students, reading stories, touring the edible garden and collecting eggs from the chicken coop. I commend principal Julie Manallack for her support for this great initiative, which is an ideal way to learn about the workings of our local schools.

Albert Park education forum

Mr NEWTON-BROWN — It was a pleasure to co-host the Albert Park education forum with Shannon Eeles, the Liberal candidate for Albert Park. We were able to detail the significant advances in education in the local area, including the Ferrars Street school, Circus Oz and the new Prahran secondary school.

Hurstbridge railway line

Mr CARBINES (Ivanhoe) — Only Labor will deliver more trains on the Hurstbridge line. Victorian Labor will deliver three additional train services during the morning peak on the Hurstbridge line. The additional peak services will be delivered by adding two new services to the line, one originating at Eltham and one originating at Hurstbridge. Labor will also shift one service that currently starts from Greensborough back to Eltham. To date the Napthine government has not added the required number of trains on the Hurstbridge line, even though when in government Labor made a significant investment of $60 million for stabling and signalling works on the line to allow for extra peak services.

Only Labor is committed to delivering extra peak services for Hurstbridge line commuters after nearly four years of neglect by the Napthine government. Local commuters deserve better than an overcrowded and unreliable public transport system. Commuters from Macleod, Rosanna, Heidelberg and Ivanhoe will welcome Labor's commitment to provide additional morning peak services. Under Labor Hurstbridge line commuters will also benefit from 24-hour train services on weekends to get them home safely and the extension of zone 1 ticket fares for residents travelling to and from the city using Macleod or Rosanna stations. I have been pleased to secure this commitment to extra peak services under an Andrews Labor government on the Hurstbridge line.

I thank the Labor candidate for Eltham, Vicki Ward, and the member for Yan Yean for their ongoing lobbying and campaigning with me to secure these extra peak services for residents in the northern suburbs. Labor will also remove the traffic bottleneck on Lower Plenty Road at Rosanna station by separating road and rail at the intersection. With Victoria's unemployment rate at 7 per cent, the highest since the Kennett government, this construction project will also create much-needed jobs in our local community.

Wangaratta cycling safety

Mr McCURDY (Murray Valley) — I met with Wangaratta cyclists on the weekend to hear their ideas and thoughts about ways that safety for pedestrians and riders can be improved on our roads. The Murray Valley is a fantastic area for cycling to maintain fitness and engage in recreation and cycle tourism activities on rail trails as well as on roads. Our local cyclists know the roads and are best placed to make suggestions regarding the priorities for funding that is available from the local government small infrastructure grants program. Thanks go to Tony Ransom from the Wangaratta Bicycle Users Group and John Myles from the cycle safety committee for organising this meeting.

Wangaratta infrastructure funding

Mr McCURDY — It was fantastic to have the Deputy Premier visit Wangaratta, Bright and Myrtleford recently. Multiple Regional Growth Fund announcements were made, including of funding for the Merriwa Park bicycle hub and the Wangaratta CBD master plan. I also congratulate First National Real Estate, which was announced as a sponsor of the 2015 Regional Victoria Living Expo, with Garry Nash First National situated in Wangaratta. They are not just good at selling property; they are great at selling our whole region.

Yarrawonga Mulwala memorial wall

Mr McCURDY — Congratulations to members of the Yarrawonga Mulwala Historical Society, whose hard work and dedication resulted in the opening of the memorial wall marking the World War I avenue of honour on the weekend. I took much pleasure in the event. The avenue of honour plays an important role in helping us remember the role played by local servicemen and servicewomen. This project preserves the remaining trees, emphasises the significance of the railway station forecourt as a war memorial and helps to ensure that future generations will be able to acknowledge the history of Yarrawonga and remember the local soldiers who lost their lives.

Wangaratta Liberty Swing

Mr McCURDY — The installation of a Liberty Swing at Batchelors Green in Wangaratta was a Lions Club project made possible through funding from Variety, State Trustees Australia Foundation and Charter Hall. The swing was presented to the community last week as part of the 2014 Variety Bash.

Kyneton sporting clubs

Mr EREN (Lara) — I was pleased to be at the Kyneton Showgrounds last Saturday to make an announcement with the Labor candidate for Macedon, Mary-Anne Thomas. I would like to commend Mary-Anne on her efforts to make this announcement happen for Kyneton sporting clubs. Regional Victoria needs hardworking and passionate members of the community in order to see positive developments — and what a great candidate she is.

The Kyneton Showgrounds are home to the Kyneton Football Netball Club, the Kyneton United Cricket Club, the Kyneton Agricultural Society Inc., Little Athletics and other sporting and community groups. Hundreds of local footballers and netballers use these showgrounds every year. During football season the showgrounds is home to 70 senior footballers, 197 junior footballers — boys and girls, including an under-18 youth girls team — 74 Auskick participants and 47 netballers. That is why Labor has committed $100 000 toward a $350 000 lighting project.

Kyneton has fielded a side in the Bendigo Football Netball League for the 2014 season. The club is now looking at fielding a women's senior team in 2015. The previous government provided funding to upgrade the showgrounds grandstand. By supplying lighting for Kyneton Football Netball Club, we are providing night matches and a safe training environment for a club with history that dates back to the 1860s.

Sporting club defibrillators

Mr EREN — Over the weekend Labor also announced its $2.7 million plan to see 1000 defibrillators distributed to Victorian sporting clubs to improve survival rates for people who have entered cardiac arrest. As people would know, most deaths from cardiac arrest occur before the person has reached hospital.

Orchard Grove Primary School

Mr ANGUS (Forest Hill) — Last week I had the great pleasure of being the principal for a day at Orchard Grove Primary School in my electorate of Forest Hill. It was a fantastic experience which I found very informative and enjoyed very much. During one of the classes I tried the hula hoop, something I had not done for many years. I thank the school principal, Glenda Harry, all her staff and of course the students for making me feel most welcome and allowing me to participate fully in the activities of the school.

Box Hill Hospital redevelopment

Mr ANGUS — Last week I was pleased to join the Premier, the Minister for Health and other parliamentary colleagues at the opening of a new building at Box Hill Hospital, part of a $447.5 million redevelopment project. It is a great example of how major projects are run under the coalition government. As a result of good management, the building consists of 10 floors for the original price of 9 and has been completed ahead of schedule. I congratulate all those involved in this project, in particular the builder and the team from Eastern Health, who have worked tirelessly to deliver this fantastic new health facility for the eastern suburbs. The new Box Hill Hospital building will provide capacity for 200 additional beds, a larger and more efficient emergency department, 11 new operating theatres and a new 18-bed intensive care unit.

Nunawading Swimming Club

Mr ANGUS — Last week I was delighted to join the Minister for Sport and Recreation at the opening of the new high-performance gymnasium at the Nunawading Swimming Club in my electorate of Forest Hill. I congratulate club president Malcolm Moore, CEO Gary Barclay and all the volunteers and staff involved in this project. It will provide a great facility for club members for many years to come. I also congratulate the Nunawading Swimming Club members who recently participated at the Commonwealth Games in Glasgow, and in particular Belinda Hocking, who won a gold medal and a bronze medal in the pool.

Sri Guru Nanak Satsang Sabha gurdwara, Blackburn

Mr ANGUS — I was pleased to join with the Premier, the minister for Multicultural Affairs and other parliamentary colleagues recently to again visit the Sri Guru Nanak Satsang Sabha, a Sikh temple in Blackburn. It was great to visit and have a comprehensive tour of the building, including the large kitchen, where each week approximately 3000 meals are prepared.

Kingston green wedge

Mr LIM (Clayton) — I rise to voice my concerns that positive action to protect the city of Kingston's green wedge continues to stall at Kingston City Council. Firstly, I am pleased that councillors have voted to ask the Minister for Planning to approve a planning scheme amendment to rezone the special-use zone north of Kingston Road to a green wedge A zone, which will prohibit further concrete crushers and other waste-related applications in this area. This decision is to be commended.

However, I am concerned that some councillors still do not accept the opinions of the vast majority of Kingston residents, particularly residents living close to the green wedge, who wish to protect the area from development that will forever destroy the lungs of the south. These councillors unsuccessfully sought to obtain the planning minister's consent to rezone the green wedge south of Kingston Road to residential development and/or subdivision into 2000-square-metre house blocks. Now they are wasting ratepayer monies on hiring another consultant to undertake more so-called strategic planning work to try to provide some justification for this proposal, despite a clear majority of Kingston residents demanding that they do the right thing and abandon their folly. There are also many genuine market gardeners in Kingston's green wedge who continue to place their business plans on hold — —

The ACTING SPEAKER (**Mr McIntosh**) — Order! The time for member's statements has expired. I note the boys from Camberwell Grammar School, in the magnificent electorate of Kew, in the gallery.

INQUIRIES BILL 2014

Statement of compatibility

Dr NAPTHINE (Premier) tabled following statement in accordance with Charter of Human Rights and Responsibilities Act 2006:

In accordance with section 28 of the Charter of Human Rights and Responsibilities Act 2006 (charter act), I make this statement of compatibility with respect to the Inquiries Bill 2014 (bill).

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

Overview

The primary purpose of the bill is to provide for the establishment and conduct of executive inquiries in Victoria, and to make related amendments. Specifically, the bill provides for:

the establishment and conduct of three types of executive inquiry: royal commissions, boards of inquiry and formal reviews (inquiries);

powers for each type of inquiry;

matters relating to privilege, secrecy and protection from liability in relation to inquiries; and

offences in relation to inquiries.

Human rights issues

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

Section 13(a): Privacy

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

Powers to obtain evidence

The bill provides royal commissions and boards of inquiry with a range of powers to coercively obtain evidence.

Both commissions and boards may compel a person to produce a document or thing, to answer questions on oath or affirmation, to attend the inquiry to give evidence and/or produce a document or thing, and have power to inspect, retain and copy documents or things produced. In addition, commissions have power to enter and search premises (under a warrant issued by a magistrate), and to inspect, retain and copy documents or things found.

The right to privacy is relevant to these coercive powers, as a person may be required to disclose personal information to the inquiry in a public hearing. This information could also be included in a report of the inquiry.

In my opinion, the bill does not limit the right to privacy. Commissions and boards are established to inquire into significant matters of public importance. The ability to compel evidence is necessary to ensure these inquiries are effective and can achieve this important function. These broad powers are limited by the purposes and subject matter of the inquiry, and a person may object to the production of evidence which is not relevant to the inquiry's subject matter.

The coercive powers in the bill are subject to limitations and safeguards which protect personal information. Commissions and boards may conduct their inquiries in private, where appropriate, and may exclude persons from inquiry proceedings and prevent the disclosure or publication of evidence. The execution of a search warrant is subject to procedural safeguards, including announcement and notification requirements. In addition, the bill includes confidentiality provisions and offences which ensure that evidence cannot be taken advantage of or inappropriately used or disclosed.

Disclosure of information

The bill provides that an inquiry may disclose information or provide documents to another person or body where the disclosing person considers that:

> the information or document is relevant to the performance of the functions of the person or body to whom it is given; and
>
> it is appropriate to disclose the information or to give the document.

While this provision allows for the disclosure of personal information, it ensures that inquiries have flexibility to share important information with other relevant persons and bodies (e.g. police, prosecutors or integrity bodies) where appropriate.

Section 13(b): Reputation

Section 13(b) of the charter act provides that a person has the right not to have his or her reputation unlawfully attacked.

The bill requires royal commissions, boards of inquiry and formal reviews to report on their inquiry. These reports may be tabled in Parliament. The right to reputation is relevant, as reports may include adverse findings about individuals. However, the bill ensures that reputations are not unlawfully or arbitrarily damaged, by providing that an inquiry (a) must adhere to the requirements of procedural fairness, (b) cannot make a finding that is adverse to a person unless satisfied that the person has been given an opportunity to respond to that finding, and (c) must consider and fairly set out in its report any such response.

Section 20: Property

Section 20 of the charter act provides that a person must not be deprived of his or her property other than in accordance with law. The right requires search and seizure powers to be clear, confined, formulated precisely, and accessible to the public.

As outlined above, royal commission officers may inspect, retain and copy relevant documents and things found in the execution of a search warrant. The bill clearly sets out the scope and operation of this power, including the circumstances in which property may be seized. The occupier of the relevant premises must be provided with receipts for any seized items, as well as copies of any seized documents or things (where a copy can be readily made) as soon as practicable, unless contrary to the public interest. Seized property must also be returned if the retention is no longer necessary for the purposes of an inquiry or if the property is required as evidence in a legal proceeding.

Any interference with the right to property is strictly confined, and does not limit this right.

Section 24(1): Fair hearing

Section 24(1) of the charter act provides that a person charged with a criminal offence or a party to a civil proceeding has the right to have the charge or proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing.

In my view, the right to a fair hearing does not apply to inquiries established under the bill. These inquiries will not constitute a 'tribunal' for the purposes of the charter act. Further, examinations by inquiries will not constitute civil or criminal proceedings, as they do not possess the key features inherent to these proceedings (e.g. determining issues between parties in a binding way, such as by finding fault and imposing penalties).

Notwithstanding this conclusion, I note that the bill includes a range of general protections which promote fairness for participants in inquiry proceedings. For example, inquiries must comply with the requirements of procedural fairness, a person may be allowed to be legally represented, and must be given an opportunity to respond to any proposed adverse findings.

Section 15(2): Freedom of expression

Section 15(2) of the charter act provides that every person has the right to freedom of expression. This includes the freedom to seek, receive and impart information and ideas.

The right may be subject to lawful restrictions reasonably necessary to respect the rights of other persons or for the protection of national security, public order, public health or public morality.

Restrictions on publication

As noted above, inquiries may make an order to prevent the publication of information or evidence given to it. This allows an inquiry to protect sensitive information and thereby protect the privacy of individuals and public order. As such, the right is not limited.

Exemption from Freedom of Information Act 1982

The bill provides that the Freedom of Information Act 1982 does not apply to any document in the possession of an inquiry, or to certain documents in the possession of any other person or body during the existence of an inquiry.

This exemption is aimed at protecting the integrity of the inquiry process during the life of the inquiry, and is appropriate given the sensitivity of the information that inquiries will handle. It ensures inquiries can operate effectively and without the danger that sensitive material will be publicly released. As such, I consider that the exemption does not limit the right to expression.

Section 25(1): Presumption of innocence

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

The bill creates criminal offences in relation to a person's participation in inquiries. Several of these offences shift the burden of proof from the prosecution to the accused. As such, the right to be presumed innocent is relevant.

A number of offences include a 'reasonable excuse' exception. In my view, these offences place an evidentiary burden on the accused, but they do not transfer the legal burden of proof. This is because, once the defendant has pointed to evidence of a reasonable excuse, the burden will shift to the prosecution to prove the absence of the exception or defence raised.

Courts in other jurisdictions have generally taken the approach that an evidential onus on a defendant to raise a defence does not limit the presumption of innocence.

For these reasons, I consider that the placing of an evidentiary burden on a defendant does not constitute a limit on the right in s 25(1). Further, even if this were found to limit the right, the limitation would be reasonable and justifiable under section 7(2) of the charter act.

Section 12: Freedom of movement

Section 12 of the charter act provides that every person lawfully within Victoria has the right to move freely within Victoria.

As outlined above, the bill permits a commission or board to compel the attendance of persons at a hearing. The right to freedom of movement is relevant to the extent that a person may be required to attend at a particular place and time. However, I consider that any interference is minor and lawful. As a result, the right is not limited.

Section 17(2): Best interests of the child

Section 17(2) of the charter act provides that every child has the right, without discrimination, to such protection as is in his or her best interests and is needed by him or her by reason of being a child.

This right is relevant to the extent that the bill allows coercive powers (outlined above) to be exercised with respect to persons under 18 years of age. The bill provides that such powers must be exercised subject to the requirements of procedural fairness. It also provides for commissions and Boards to take account of the age of a child when determining whether to allow them to participate in, or be legally represented at, an inquiry.

I am satisfied that these requirements ensure the best interests of children are considered by inquiries and, as such, this right is not limited.

2 Human rights that are limited by the bill

Section 25(2)(k): Protection against self-incrimination

Section 25(2)(k) of the charter act provides that a person who has been charged with a criminal offence has the right not to be compelled to testify against himself or herself or to confess guilt. This is also an aspect of the right to a fair trial protected by section 24.

As explained above, inquiries established under the bill will not constitute civil or criminal proceedings. Nevertheless, this right is relevant to clauses of the bill relating to the subsequent use of evidence given to inquiries.

The bill partially abrogates the privilege against self-incrimination for royal commission inquiries. It provides that it is not a reasonable excuse for a person to fail to comply with a requirement to provide information on the basis that it might tend to incriminate the person or make him or her liable to a penalty, except in relation to proceedings that have been commenced against the person but not finally been disposed of. The privilege against self-incrimination is only abrogated for commissions, which will investigate matters of the greatest public importance and, therefore, require access to the broadest suite of evidence gathering powers.

The abrogation of this privilege is balanced by a use immunity, which ensures material given to a commission by a person is inadmissible in any subsequent proceedings against that person (with limited exceptions, discussed below). The immunity:

> extends to information, answers, documents and things (although, as discussed below, documents are treated differently from other materials in certain respects);
>
> applies directly to all materials obtained by a commission, whether by compulsion or voluntarily, including material obtained as a result of an abrogation of privilege. In the case of self-incriminating material, the Supreme Court has held that similar immunity

provisions extend to other evidence obtained as a direct result of such materials; and

applies in all subsequent criminal, civil, administrative proceedings before a court or tribunal or any disciplinary proceedings.

There are limited exceptions to this use immunity, which allow materials to be used in a proceeding for an offence under the bill or for perjury or destruction of evidence under the Crimes Act 1958. Documents may also be used where they are, or could have been, obtained independently of their production to the commission, either before or after that production. This ensures authorities are not prevented from making use of documents that have, or could have, been obtained independently of a royal commission's inquiry.

While the bill limits the protection against self-incrimination, I consider that this limitation is reasonable and justified. The privilege against self-incrimination is abrogated only in a royal commission proceeding, and continues to apply in respect of any proceedings against a person which remain on foot. Additionally, the use immunity ensures self-incriminating evidence will be inadmissible against a person in subsequent proceedings in most circumstances. Where materials are capable of being admitted in subsequent proceedings, this would be a matter for the relevant court or tribunal to determine, based on the rules of evidence and having regard to other considerations including the circumstances of the production of the evidence to the commission.

The measures outlined above limit any possible disadvantage to a person who is required to give self-incriminating evidence to a royal commission. To the extent that the bill allows such evidence to be used against a person in subsequent proceedings, I consider that this is reasonable and justified. The bill seeks to balance the need for authorities to use relevant evidence to which they would otherwise be entitled; the need for commissions to access the materials needed to undertake an effective inquiry; and the need to protect the rights of individuals who provide self-incriminating evidence. I consider that there is no less restrictive means available to ensure this balance.

The Hon. Dr Denis Napthine, MP
Premier

Second reading

Dr NAPTHINE (Premier) — I move:

That this bill be now read a second time.

Speech as follows incorporated into *Hansard* in accordance with resolution of house:

This bill will establish Victoria's first dedicated legislation for royal commissions and other ad hoc executive inquiries. It will create a flexible and effective modern legislative framework for the establishment and conduct of these inquiries. In doing so, it will also deliver the government's commitment to implement a recommendation of the 2009 Victorian Bushfires Royal Commission, which called for the enactment of such legislation.

Royal commissions and other executive inquiries serve an important role. They allow issues of significant public importance to be thoroughly and independently examined. They are also a catalyst for change, with the reports and recommendations of previous inquiries delivering far-reaching benefits to the Victorian community. This importance is well highlighted by recent examples of inquiries, including the Hazelwood coal mine fire inquiry and the Royal Commission into Institutional Responses to Child Abuse.

Victoria is one of the few Australian jurisdictions without specific legislation for executive inquiries. The existing legislation is dated and unwieldy, and has been strongly criticised by previous royal commissions as a consequence. The bill will address this by providing a legislative framework befitting of these inquiries and which will support their important work.

The bill also makes related amendments and consequential amendments to other Acts, including the Constitution Act 1975, Evidence (Miscellaneous Provisions) Act 1958, Public Administration Act 2004 and the Parliamentary Committees Act 2003.

Overview of the bill

The bill provides a modern, flexible framework for the establishment and conduct of three forms of inquiry:

Royal commissions remain at the apex of the hierarchy and will be able to exercise extensive coercive and investigative powers.

Boards of inquiry are a mid-tier inquiry option. These inquiries will be able to exercise a more limited range of coercive and investigative powers.

Formal reviews are the lowest tier of inquiry. These inquiries will not be able to exercise coercive powers, but can receive information voluntarily.

The bill provides for a number of matters in relation to the establishment and conduct of inquiries including:

the process of establishing an inquiry;

the administrative arrangements for an inquiry (including the employment of staff and consultants);

the manner of conducting an inquiry;

the powers and protections for inquiry members;

the rights and protections for participants in an inquiry; and

the process of reporting to Parliament.

The bill will provide for the efficient and effective conduct of inquiries, without being unduly prescriptive. In particular, the bill provides flexibility for an inquiry, once established, to determine how best to conduct itself. To this end, the bill allows inquiries to determine matters such as the employment of staff, whether to hold public or private hearings, how to gather evidence, and how to respond to those who hinder or obstruct the inquiry process.

This flexibility is consistent with the independence of executive inquiries, which is an important and necessary feature for an inquiry to be successful. Executive inquiries are tasked with examining issues of the highest public

importance. This will often require the inquiry to examine the actions of the executive government. The independence of inquiries is essential for this task, and is therefore affirmed by the bill. For example, inquiry members are not subject to the direction and control of ministers, and inquiry officers are exempt from the obligations to implement government policies which ordinarily apply to public servants under the Public Administration Act 2004.

Powers of inquiries

A royal commission will have extensive information-gathering and investigative powers. This includes requiring persons to produce documents and give evidence on oath, and entering and searching premises with a warrant from the Magistrates Court. In particular, a royal commission will be able to abrogate legal professional privilege and, in some cases, the privilege against self-incrimination, in pursuing its inquiry. These powers are appropriate for a royal commission given it will be inquiring into significant matters affecting the community.

A board of inquiry will have some information-gathering powers. It will be able to require a person to produce documents and answer questions on oath. As with a royal commission inquiry, failure to do so will be an offence under the act. However, a board of inquiry will not be able to abrogate privileges nor enter and search premises. As such powers are a significant limit on individual rights and freedoms, they are inappropriate for this second-tier inquiry, which is intended to operate in a less formal manner and will examine less serious matters than royal commissions.

In contrast to a royal commission or board of inquiry, a formal review will not be able to exercise any coercive information-gathering powers. However, these inquiries can seek and receive evidence voluntarily and through cooperation. This third tier is intended to formalise and provide a legislative basis for inquires, such as the Protecting Victoria's Vulnerable Children Inquiry, which are currently established and conducted on an informal basis without any statutory protections for those who conduct or are involved in the inquiry. This form of inquiry is likely to operate with the least level of formality.

In summary, the bill offers the executive the choice of three forms of inquiry with differing levels of power. It assists the executive to choose an inquiry fit for purpose when faced with the need to establish an inquiry. Further, the bill will also provide an option to convert an inquiry from one tier to a higher tier where necessary or desirable. For example, a formal review could be converted into a board of inquiry if it is necessary to provide the inquiry with more extensive information-gathering powers.

Independent bodies and office holders

The bill will prevent a coercive executive inquiry into various Victorian independent bodies and office holders, including independent officers of the Parliament (like the IBAC, the Ombudsman and the Auditor-General) and the judiciary. This is consistent with the independence and status of these bodies and officers, who are not accountable to the executive government. Further, such inquiries are not necessary, as there are more appropriate existing mechanisms for examining the actions and performance of these persons and bodies. For example, the Victorian Inspectorate oversees Victoria's key integrity bodies, and the proposed judicial commission will be able to receive and investigate complaints against judicial officers.

Conclusion

The Inquiries Bill will rectify a significant legislative gap in Victoria, by establishing a new and effective framework to support the establishment and conduct of executive inquiries. The need for such legislation is well recognised, as demonstrated by the comments and recommendations previously made by the Victorian bushfires royal commission and other inquiries. The bill provides a modern and adaptable legislative scheme, which strikes an appropriate balance between flexibility and clarity. It also reflects the importance and independence of executive inquiries.

I commend the bill to the house.

Debate adjourned on motion of Mr NOONAN (Williamstown).

Debate adjourned until Thursday, 4 September.

INVASIVE SPECIES CONTROL BILL 2014

Statement of compatibility

Mr WALSH (Minister for Agriculture and Food Security) tabled following statement in accordance with Charter of Human Rights and Responsibilities Act 2006:

In accordance with section 28 of the Charter of Human Rights and Responsibilities Act 2006, (the charter act), I make this statement of compatibility with respect to the Invasive Species Control Bill 2014 (the bill).

In my opinion, the bill 2014, as introduced to the Legislative Assembly, is compatible with human rights as set out in the charter act. I base my opinion on the reasons outlined in this statement.

Overview

The bill introduces a new legislative framework for regulating plant, pest and disease control and plant product description in order to improve responsiveness to biosecurity threats in Victoria, by:

preventing, monitoring, controlling and eradicating invasive plants and animals;

imposing obligations in respect of declared invasive species; and

improving Victoria's capability to satisfy its obligations under the National Environmental Biosecurity Response Agreement.

These invasive species contribute to the extinction or decline of native species, and can cause significant damage to ecological communities.

Human rights protected by the charter act that are relevant to the bill

The right to privacy and reputation

Section 13(a) of the charter act provides that a person has the right not to have his or her privacy unlawfully or arbitrarily interfered with. Section 13(b) provides that a person has the right not to have his or her reputation unlawfully attacked.

Entry and search of land and premises without warrant

The bill empowers authorised officers, inspection agents approved by the secretary to carry out certain functions of authorised officers under the bill, and persons authorised to assist an authorised officer, to exercise a range of powers to enter land and premises, and conduct searches on that land and premises, without a warrant. I note at the outset that these entry and search powers are conducted in a regulatory context, and are connected with the need to provide incentives to comply with the relevant legislative framework established by the bill. In my view, each of powers contains internal safeguards in the form of either a requirement that the person may only enter land or premises in connection with a specified function under the bill, or may only conduct a search when he or she has reasonable grounds for believing that it is necessary to determine compliance with the bill.

Clause 107 provides that an authorised officer who reasonably believes or has reasonable grounds to believe that it is necessary may enter and inspect any place for the purposes of searching for any invasive species, declared carrier or potential carrier, inspecting records to determine compliance with the bill, or to otherwise determine compliance with the bill or regulations thereunder. An authorised officer may also enter a place if the authorised officer cannot reasonably gain access by other means to a place where entry is reasonably necessary to monitor an invasive species. However, an authorised officer may not enter or search a building or structure occupied as a residence, and may only enter and search a place at a reasonable time. Further, the authorised officer must inform persons present of their authority to enter and search a place, and must leave details of their entry and search to an occupier who is not present when these powers are exercised. In exercising their powers under clause 107, authorised officers must cause as little inconvenience as possible and must not remain on the premises any longer than is reasonably necessary.

Clauses 110 and 111 provide that an authorised officer may, at any reasonable time, require a person, respectively, to answer a question or produce a document. Before exercising a power under clause 110 or 111, an authorised officer must inform the person of his or her right under clause 165(2) of the bill to refuse to answer a question or produce a document. Clause 112 provides that an authorised officer may, at any reasonable time, inspect or examine anything in connection with a declared or suspected invasive species or declared carrier, or require any person who appears to be in charge, for the time being, of an animal, plant, plant product or declared carrier to produce it and permit the authorised officer to open it and/or inspect it. Clause 26 provides that land or a declared carrier in respect of which a control notice has been issued may be subjected to examinations at specified intervals.

Clause 117 provides that an authorised officer, having found a disk or other device for the storage of information, may operate or require the operation of equipment at the premises to access the information. Usage of the equipment is limited to accessing the data stored on the device and does not permit any further search of the data stored on the equipment.

Clause 139 provides for a power to enter land in an area declared by the Governor in Council to be a 'control area' to apply bait or deal with lures, bait, traps or other equipment in order to monitor, control or eradicate any invasive species. An authorised officer may only exercise this power either upon giving 24 hours notice to the occupier or with the occupier's consent, but may only enter residential premises with the occupier's consent. The power must be exercised at a reasonable time, and an authorised officer must cause as little inconvenience as possible and not remain on the premises for any longer than necessary when exercising it.

In my view, the carefully circumscribed entry and search powers in these clauses reflect an appropriate balance between protecting Victoria from the risks posed by invasive species and the individual occupier's reasonable expectation of privacy. Furthermore, each power has appropriate safeguards to ensure that any interference with privacy will not be arbitrary. For these reasons, I consider that the above clauses do not limit the right to privacy.

Additionally, the bill provides authorised officers with certain additional powers to deal with invasive species declared to be category 1 species. For example, clause 144 provides that an authorised officer may enter and search any place, open and search any box, container, package or receptacle, may inspect, fumigate, treat, or disinfect any declared invasive species or declared carrier or any item or receptacle, and may inspect, examine, test, disinfect, fumigate or take samples from a place or vehicle. As with the entry and search powers in clause 107, an authorised officer acting under clause 144 must leave details of his or her entry and search for an occupier who is not present at the time of the search, must cause as little inconvenience as possible, and must not remain on the premises any longer than is reasonably necessary. For the purpose of exercising the powers of an authorised officer under the bill relating to category 1 species, an authorised officer may also enter and search any vehicle (clause 145) and may, for the purpose of preventing, controlling or eradicating a category 1 species, may require a person to answer any question and/or produce any record of document (clause 149), and the person cannot refuse to comply with that requirement on the ground that it might tend to incriminate them (clause 150).

I consider that the entry and search powers in respect of category 1 species do not occasion an unlawful or arbitrary interference with privacy. These powers strike an appropriate balance between the privacy rights of individuals and the need to enable authorised officers to quickly and effectively deal with a species that the minister considers is, or is likely to be, invasive to Victoria or another state or territory, and can reasonably be expected to be eradicated. Moreover, I note that, pursuant to clause 153 of the bill, an authorised officer must not give to any other person any information he or she acquires, except to the extent necessary to carry out of the authorised officer's functions.

Entry and search of premises with a warrant

Clauses 120 and 121 permit searches of premises under warrant, including a residential premises. Although approval to search premises and seize specified items must be granted by a magistrate under the Magistrates' Court Act 1989,

clause 125 permits the seizure of items obtained outside the scope of the warrant during execution of that warrant. It is possible that, in some cases, the seizure of items by an authorised officer exercising a search power under warrant pursuant to clause 125 may interfere with a person's privacy. In my view, however, any such interference will be neither unlawful nor arbitrary. The statutory precondition of an independently issued warrant acts to prevent an unjustified exercise of the search power. The authorised officer must have reasonable grounds for believing the item to be seized is of a kind which could have been included in the search warrant, and that there is a risk of concealment, loss or destruction of the relevant evidence. This risk would make it impracticable for an inspector to obtain a further warrant. Further, when executing a warrant, an authorised officer must, generally, announce their presence before entry and allow an occupier to allow entry before using force (clause 123), and give details of the warrant to the occupier (clause 124).

For the same reasons, I consider that any deprivation occasioned by the seizure of property in the execution of a warrant will be in accordance with the law, and will not engage the right to property under section 20 of the charter act.

Powers to stop and search vehicles

Clause 109 provides that an authorised officer may stop a vehicle the authorised officer reasonably believes or suspects is being used to transport an invasive species or declared carrier. The authorised officer may enter the vehicle and examine any invasive species or declared carrier found in the vehicle, or alternatively, may require the driver or person in charge of the vehicle to present the vehicle at some other reasonable time and place for inspection by an authorised officer. Clause 145 provides that, for the purpose of exercising his or her powers under the bill relating to category 1 species, an authorised officer may stop, board, enter, search or detain any vehicle.

Given the importance of restricting the spread of invasive species, and the risks associated with the transport of invasive species and declared carriers, the power to enable authorised officers to stop and search vehicles for the limited purpose of examining invasive species or declared carriers in the vehicle, or in the exercise of their powers under the bill in respect of category 1 species is proportionate and not arbitrary. Additionally, a search under clause 109 may only be conducted at a reasonable time, and only where an authorised officer reasonably believes or suspects the vehicle is being used to transport an invasive species or declared carrier.

For these reasons, clause 109 does not limit the right to privacy.

Collection of personal information

Clause 76 provides that the secretary must keep a register of persons accredited to issue assurance certificates about plants, animals or declared carriers. I note that accredited persons are persons who elect to participate in a regulated industry. Moreover, access to the register is strictly limited: a person must not access the register unless he or she is employed under part 3 of the Public Administration Act 2004 and is authorised in writing by the secretary to access the register.

Clause 143 provides an authorised officer may require the person having custody of any records relating to ratepayers to disclose a ratepayer's name, address or other contact details. The power to require this information can only be exercised by an authorised officer in relation to their official powers. It is a necessary power for ensuring the efficiency and effectiveness of the authorised officer's functions.

In my view, these clauses do not provide for arbitrary or unlawful interferences with privacy and are not, therefore, incompatible with section 13 of the charter act.

Adverse publicity orders

Clause 163 empowers a court to make an adverse publicity order against a person upon their conviction for an offence under the bill, which may involve requiring the person to publicise particulars of the offence, its consequences, the penalty imposed and any other related matter. This information is likely to already be on the public record. Further, because an adverse publicity order may only be made by a court, and therefore attracts all of the attendant safeguards for court proceedings, I am of the view that it does not engage the rights to privacy and reputation under section 13(a) and (b) of the charter act.

The rights to freedom of movement and liberty

I have considered whether the requirements under clause 109 for a person to stop their vehicle or present their vehicle for inspection at a later time and place, or stop their vehicle or have it detained under clause 145, or stop at a road barrier under clauses 140 and 141, limit the right to freedom of movement. I consider that any restriction occasioned by these clauses would be so temporary and minimal as to not limit the right to freedom of movement, and further would not amount to detention so as to engage the right to liberty in section 21 of the charter act. In this regard, I note that while a person may be required to stop or present their vehicle under these clauses, they would not otherwise be prevented from moving from the area.

The right to property

Section 20 of the charter act provides that a person must not be deprived of their property other than in accordance with the law. This right requires that powers which authorise the deprivation of property are conferred by legislation or common law, that these powers are confined and structured rather than unclear, are formulated precisely, and are accessible to the public.

The operation of clauses 10, 11, 13, 14, 17, 18, 20, 22, 23, 24, 25, 26, 27, 34, 36, 127, 137 and 148 may restrict the ability of a person to possess or deal with property that is a declared invasive species or declared carrier. Each of these prohibitions, including those clauses which empower the minister, secretary or an authorised officer to require the disposal or destruction of declared carriers, only operate in respect of things declared by the minister to be an invasive species (clauses 6 or 7) or declared by the secretary to be a declared carrier (clause 9), are formulated precisely, and are directed to ensuring that invasive species are prevented from entering into or spreading in Victoria. In respect of the powers of authorised officers to seize invasive species or declared carriers under clause 127, I note that an authorised officer must provide the owner or consignor with reasons for the seizure to the owner or consignor, and must immediately

return the seized item if an examination shows that it is not, or is not affected by, an invasive species or declared carrier.

Accordingly I consider that, to the extent that the operation of these clauses may result in a deprivation of property, that deprivation will be in accordance with the law.

In considering the right to property under section 20 of the charter act, I have concluded that clauses 112, 113, 144, and 146 of the bill, which permit authorised officers to take samples of things in certain circumstances, will not interfere with property to such an extent so as to constitute a deprivation of that property.

The right to be presumed innocent

Section 25(1) of the charter act provides that a person charged with a criminal offence has the right to be presumed innocent until proven guilty according to law.

Certain clauses in the bill contain a presumption that, in the absence of evidence to the contrary, certain evidence amounts to proof of certain matters. These presumptions are relevant to the right to be presumed innocent because they require that, in proceedings under the bill, a person bears an onus of proof to provide evidence of certain matters.

The presumption in clauses 43 and 162 operate in relation to a range of proceedings under the bill. Clause 43 provides that, for any proceedings under the bill, any matter to be proved in respect of a person's contravention or failure to comply with the bill or regulations made thereunder is taken to be proved if it is proved that the person failed to observe a relevant and applicable approved code of practice. Clause 162 provides that, if in any prosecution under the bill a contravention of the bill's provisions is proved for any sample, the contravention is deemed to have been proved with regard to the lot from which the sample was taken.

In my view, these two provisions do not engage the right to be presumed innocent, as they establish a method of proof of an element of an offence, and do not impose any onus on the accused. Clause 43 provides a clear yardstick for a court to determine compliance with the bill, while leaving it open for a court to determine that a person has not contravened a provision of the bill notwithstanding their non-observance of a code of practice. Further, the deeming mechanism in clause 162 ensures that, where contravention of a provision of the bill has been proved in respect of a sample, it is not necessary to undertake that process again in respect of the rest of the lot from which the sample was taken. Not only would this process be time consuming, but, by their nature, invasive species are likely to have infested and/or infested more than just the sample and are difficult to prevent or contain from spreading throughout Victoria.

The presumptions in clauses 43(1) and 164 operate in relation to proceedings for offences under the bill. The presumption in clause 164 applies to an offence under clause 165. It provides that a person must not, without reasonable excuse, obstruct or hinder an authorised officer in exercising his or her powers under the bill. Clause 43(2) contains a reverse onus of proof in relation to a statutory defence for all proceedings under the bill. It provides that it is a defence to an offence under the bill in relation to an activity if the person was carrying out the activity in accordance with a code of practice that regulates that activity. In my view, this clause does not limit the right to be presumed innocent because it imposes an evidential burden on the accused.

I do not consider that either clause 43(2) or clause 164 limits the right to be presumed innocent, as each only places an evidential burden on an accused to raise certain evidence. In each case, once a person has adduced some evidence to the contrary of the assumed fact, the burden of proof shifts to the prosecution to prove the elements of the offence. Moreover, the presumption only requires a person to adduce evidence that is within his or her personal knowledge.

Human rights protected by the charter act that are engaged by the bill

The right not to be compelled to testify against oneself

Section 25(2)(k) of the charter act protects the right of persons charged with a criminal offence not to be compelled to testify against themselves or to confess guilt.

Clause 149 empowers an authorised officer to require a person to answer any question and produce any record or document for the purpose of preventing, controlling or eradicating a category 1 species. Clause 150 provides that the person cannot refuse to answer the question or produce the record or document on the ground that it may tend to incriminate the person. If, however, the person asserts the privilege, the answers, records or documents are not admissible as evidence in criminal proceedings against that person.

Taken together, clauses 149 and 150 expressly abrogate the privilege against self-incrimination, and replace it with an immunity from the direct use of the answers given and records and documents produced to an authorised officer. The answers, records and documents may, however, be used to provide investigative clues to finding other evidence that incriminates the person.

For the reasons that follow, I consider that the abrogation of the privilege against self-incrimination in clauses 149 and 150, and the ability to use evidence derived from compulsory questioning under those clauses, are reasonable and justified limitations on section 25(2)(k) of the charter act, and are compatible with the right to a fair hearing under section 24(1) of the charter act.

The abrogation of the privilege against self-incrimination is limited. An authorised officer may only require an answer or the production of a record or document for the purpose of preventing, controlling or eradicating a category 1 species, and before doing so must notify the person of the effect of clause 150. This will necessarily involve notifying the person of his or her ability to avail themselves of the direct use immunity, which preserves the core of the protection afforded by the privilege against self-incrimination.

I consider that ensuring that derivative evidence is able to be used is necessary to enable authorised officers to obtain all relevant information they require to prevent, control or eradicate a category 1 species. I note that clause 165 otherwise expressly preserves the privilege against self-incrimination in respect of the powers of an authorised officer to require answers to questions and the production of an invasive species or declared carrier.

Further, while the clauses limit the privilege against self-incrimination, the inclusion of a derivative-use immunity

would significantly undermine the ability to effectively prosecute breaches of the bill that threaten Victoria's economy, social amenity and environment. Even a qualified derivative-use immunity would jeopardise the success of proceedings which may be brought for breaches of the bill. This may in turn negatively affect the way authorised officers undertake their functions under the bill, because they would be placed in the difficult position of having to weigh up the potential impact that a requirement to answer questions or to produce records or documents may have on a subsequent prosecution. Finally, I note that it would be open to a court to interpret clauses 149 and 150 to read in a complete or qualified derivative-use immunity if the absence of such an immunity would unjustifiably limit rights.

I also consider that the admission of derivative evidence obtained as a consequence of answers given or documents or records produced under the bill will not result in an unfair trial. The law has long recognised that the privilege against self-incrimination may be limited by statute and the admission of such evidence does not render the trial unfair.

Certain clauses of the bill make it an offence for a person to fail to provide information regarding their contravention of a direction by the secretary. For instance, clause 14 provides that the secretary may give directions to a person to take, or refrain from taking, specified measures, and a failure to comply carries a penalty of 240 units. Clause 15 requires a person to advise the secretary whether or not he or she has complied with a direction under clause 14. Similarly, clause 28 compels a person to notify the secretary whether he or she has taken measures in accordance with a notice or direction issued under division 2 of part 4 of the bill, and clause 37 compels a person to notify the secretary whether he or she has complied with a direction issued under clause 36 in respect of an infested place or restricted area. Each of these notification provisions carries a penalty of 10 units for failure to comply. I note, however, that none of these provisions expressly abrogates the privilege against self-incrimination. Accordingly, a person may refuse to comply with a notification requirement under clauses 15, 28 or 37 on the ground that it may intend to incriminate the person.

Peter Walsh, MLA
Minister for Agriculture and Food Security

Second reading

Mr WALSH (Minister for Agriculture and Food Security) — I move:

That this bill be now read a second time.

Speech as follows incorporated into *Hansard* in accordance with resolution of house:

The Invasive Species Control Bill 2014 will establish a new principal act for the management of risk posed by invasive species in Victoria and complement current legislative biosecurity powers provided by the Livestock Disease Control Act 1994, the Plant Biosecurity Act 2010, and other relevant legislation such as the Wildlife Act 1975 and the Flora and Fauna Guarantee Act 1988. This bill will also repeal and replace the noxious weeds and pest animals provisions of the Catchment and Land Protection Act 1994 (the CaLP act) which has until now provided the key legislative framework for these matters.

The bill provides a simple, comprehensive and enabling framework, which is not constrained by land tenure, to manage the serious threats posed by invasive species to Victoria's economy, environment and social amenity. The bill will improve the government's ability to implement Victoria's biosecurity policy and to apply prevention, eradication, containment or asset-based protection approaches, as appropriate.

The provisions of the bill are standardised with those of other Victorian biosecurity legislation and provide the basis for the adoption of a range of subordinate rules and instruments that will enable more flexible and well-adapted responses to particular invasive species problems.

The bill will provide an appropriate range of authorities in important areas, such as powers of entry and the ability to deal with carriers of invasive species. The bill will enable Victoria to meet fully its obligations under the National Environmental Biosecurity Response Agreement (NEBRA) and will provide a comprehensive framework for action to be taken in response to the threat of invasive species.

The need to control invasive species

Human movement around the world has resulted in plant and animal species being introduced to new areas, sometimes deliberately, sometimes accidentally. Many of these introduced species have established naturalised populations and some have proven to be highly invasive and damaging, resulting in major problems. Invasive species are recognised to cause a range of serious problems through impacts on one or more of: the environment, economic activity, social values or human health. The Victorian government has responded to the threat posed by invasive species by investing in management and research, through public awareness, by providing coordination and information, and regulating certain activities through legislation.

Limitations of current legislation and changes in the operating environment

At present, the Conservation, Forests and Lands Act 1987 (CF&L act) provides a framework for a land management system and makes necessary administrative, financial and enforcement provisions for relevant acts. The CaLP act is a relevant act under the CF&L act and is the primary legislation to regulate the control, importation into the state, keeping, movement, trade and release of noxious weeds and pest animals and certain potential carriers. It does this through orders, permits and regulations. The bill will expand the focus beyond the scope of existing legislation.

Many of Victoria's key strategies and policies relating to invasive species reflect a modern approach to biosecurity based on risk-management principles as the basis for government involvement and investment. However, Victoria's invasive species legislation has not maintained pace with the breadth and nature of change in the biosecurity sphere.

The expansion of overseas trade and travel, changing land use and demography, climate variability, as well as changing consumer preferences and expectations, have changed the risks relating to the management of invasive species.

As a result of these altered risks, existing Victorian invasive species legislation is no longer sufficient to enable appropriate

response to the range of challenges that can arise in managing terrestrial and aquatic invasive species.

The government is committed to an effective legislative framework for the management of invasive species in Victoria. The former Department of Primary Industries (DPI) reviewed the noxious weeds and pest animals provisions of the CaLP act in 2011 and assessed other relevant legislation against the Intergovernmental Agreement on Biosecurity.

The review processes highlighted key deficiencies in the provisions of the CaLP act and in Victoria's ability to acquit its obligations under NEBRA, particularly with respect to incursions of new terrestrial and aquatic invasive plants and animals. Key deficiencies include:

inadequate provisions to enable prevention and early intervention;

over-reliance on a complex system of declaration categories to determine the responsibilities for managing specific invasive species; and

the limited ability to deal effectively with incursions of certain types of invasive species by existing biosecurity legislation.

Given the range of issues that was identified and the extent of amendments that would be required to existing legislation, I approved the development of this bill to create a new principal act to replace the noxious weeds and pest animals provisions of the CaLP act. The bill also closes the gaps in powers to deal with incursions of types of invasive species currently not, or only partially, covered by Victoria's suite of biosecurity legislation.

Effective new system

The broad purpose of the bill is to provide a framework for effective management of the risks posed by invasive species to Victoria's economy, community and environment, including Victoria's lands and waters. The bill deals with the means to monitor and control the entry, establishment, spread and impact of invasive species.

Specific objectives of the bill are as follows:

enable timely and comprehensive action to be taken to address invasive species threats;

ensure that adequate legislative powers exist to enable control activity in respect of all types of invasive species;

establish a more cohesive legislative framework for controlling the entry, establishment, spread and impact of invasive species;

improve Victoria's ability to acquit its obligations under NEBRA; and

enable the establishment of a set of legislative, regulatory and administrative rules and instruments that are better adapted to meeting specific invasive species threats.

Scope

The bill applies to all Victorian lands and waters, including marine and coastal waters. As well as applying to terrestrial invasive species, the management of marine and freshwater aquatic invasive species is included within the scope of the bill, although the management of ballast water will continue to be regulated through the Environmental Protection Act 1984.

The bill eliminates current gaps in taxonomic coverage of Victoria's biosecurity legislation and enables the regulation, if the government chooses to do so, of a range of taxonomic groups that previously could not be regulated. This is consistent with the scope of Victoria's invasive plants and animals policy framework. The bill however does not apply to overabundant species that are native to Victoria nor to organisms (such as diseases of animals and plants) that are regulated by the Plant Biosecurity Act 2010 and the Livestock Disease Control Act 1994.

Declaration categories

A simple two-category system for declaring invasive species is provided for in the bill. This system is aligned to Victoria's biosecurity approach of preventing and eradicating species that are at the early stages of invasion; containing species to prevent further spread when eradication is no longer feasible; and protecting assets where the invasive species is already widely established and such protection is justified. The categories would apply to any taxonomic group (e.g., they can be used for any invasive terrestrial or aquatic plant or animal) and the bill would enable declaration of a species to be made at any geographical scale appropriate to its management.

In accordance with the Subordinate Legislation Act 1994, members of the public will be able to provide comment during a consultation period on any aspect of a proposed declaration.

The proposed categories are:

Category 1. A species in this category would not be known to be present in the wild in the state of Victoria or, if it is present, it is reasonable to expect that it can be eradicated from the state. A species in this category would also have or may have significant adverse effects on the economy, environment and/or social amenity in Victoria or in another state or territory of the commonwealth. Alternatively, the potential adverse effects of a category 1 species are unknown.

Category 2. A species in this category would be present or believed to be present in the state. The species would also have, or may have, significant adverse effects on the economy, environment or social amenity in Victoria or in another state or territory of the commonwealth. Eradication from the state would not be feasible for species in this category although ongoing management would be required to prevent further increase and spread.

The bill also provides arrangements for the making of emergency declarations of species as invasive, or declarations of things as a carrier. This would enable the minister to respond rapidly to incursions when this is needed. These declarations would be effective immediately upon publication of the order in the *Government Gazette* but the duration would be limited.

Declaring carriers of invasive species

Under the bill the government's ability to manage the risks associated with carriers of invasive species (i.e., the risk of moving an invasive species from a place to another place) would be brought into line with its ability under other biosecurity legislation. In certain circumstances — for example, where the invasive species is a weed seed or an inconspicuous invertebrate — it may be more effective and efficient to manage the risk of spread by managing the carrier in addition to the species itself.

Obligations on persons regarding declared invasive species

The bill contains a number of generic obligations in relation to declared invasive species and a number of specific obligations pertaining to category 1 species, category 2 species and declared carriers.

This part of the bill marks a shift from the approach adopted in the CaLP act. The shift is in relation to the control obligations placed on parties — under the CaLP act the focus is on landowners, while the focus under the bill is on 'persons'. This effectively broadens the scope of the legislative controls by enabling obligations to be placed on land and water managers and other persons (including businesses) as appropriate and thereby enhance the effectiveness of the bill. The purpose of this change is to ensure that all persons whose actions may give rise to invasive species-related risks can be subjected to control obligations.

There will be three broad types of control obligations, as follows:

'general obligations' that will apply to all declaration categories (for example, in relation to keeping, breeding, or cultivating an invasive species);

obligations specific to either of the two declaration categories; and

obligations in relation to prescribed carriers of invasive species.

The main general obligation is that persons must not keep, breed, cultivate, release, display or sell or supply a live individual of an invasive species unless this is authorised by a subordinate instrument (e.g., a permit or regulation) made under the authority of the act. This 'general' obligation would be common to all declared species. It will be an offence to release a domestic form of a species, when the feral or wild form is a declared species.

Key additional obligations in respect of category 1 declarations are that a person must undertake actions as directed by the regulator, notify the secretary of the presence of a notifiable invasive species, not move a category 1 species, and not bring a category 1 species into Victoria.

These obligations (other than the first) may, however, be obviated by means of subordinate instruments made under the act. The requirement to notify the secretary of the presence (actual or suspected) of a notifiable species will bring invasive species legislation in line with other biosecurity legislation.

The secretary will also have the ability to give a person a written direction to do, or not to do, something in relation to a category 1 species, if the secretary is satisfied that measures need to be taken by the person for the purpose of eradicating the category 1 species from the state.

It is important to note that with respect to category 1 species, the bill allows the secretary to determine what action is required, when the action is required and who should undertake that action (including the department). This marks a shift from the CaLP act where the secretary has a statutory obligation to eradicate certain categories of noxious weeds from all land in the state and control certain categories of pest animals on any land in the state. The department is generally best placed to eradicate category 1 species from the state. The decision to intervene would commonly be made when an outbreak occurs so that the secretary is not precommitted to attempt eradications where this is not realistic or achievable. This approach is also consistent with that under other Victorian biosecurity legislation.

The key additional obligations in respect of category 2 declarations are that a person must take all reasonable steps to prevent the spread and increase of a category 2 species (unless otherwise provided by a subordinate instrument) and that they must not move a category 2 species within Victoria if this is prohibited.

The key additional obligations in respect of declared carriers are that a person must not bring a declared carrier into, or move within, an area for which the carrier is declared unless authorised by a subordinate legislative instrument such as a permit. The authorisation could include conditions to minimise risks associated with movement.

Government intervention powers

The bill provides the government with a number of powers to undertake management actions in a manner that is similar to that provided in other Victorian biosecurity legislation. It also enables the government to address the failure on the part of a regulated party to discharge his or her obligation.

The powers are scalable according to the need for prompt action. The bill provides stronger powers that are specifically designed to support prevention and early intervention of category 1 species. This is because the window of opportunity to eradicate a species is generally brief at the early stages of invasion. These stronger level powers are in addition to generic powers that would be appropriate for a range of day-to-day circumstances such as dealing with widespread established species.

Powers of authorised officers include:

power to enter, inspect and search;

power to stop and inspect vehicles;

power to require information or power to require the production of documents, power to take samples, photographs et cetera;

power to give directions; and

powers of detention, retention and seizure.

Use of statutory rules and subordinate instruments

The bill enables the establishment of several different types of subordinate rules and instruments, including infested land

notice; general control areas and control orders; category 1 control areas and control orders; permits; regulations; management plans; guidelines; accreditation systems; and codes of practice. This toolbox of statutory rules and subordinate instruments is similar to those provided for under the Plant Biosecurity Act 2010 with appropriate modifications. These rules and instruments will be widely used as means of defining the obligations placed on parties by the act, thus enabling them to be better tailored to specific circumstances. Most of these rules and instruments are expected to be subject to the scrutiny of the Subordinate Legislation Act 1994.

The bill provides for the establishment of two distinct types of management plan. The first covers roadsides of municipal roads. The second type of plan applies to other types of land managers. The two types of plan are conceptually similar, with the key difference between them being that roadsides plans are compulsory, on ministerial declaration, whereas other plans are voluntary. The provisions for municipal roads will thus continue the arrangements put in place by amendment to the CaLP act in 2013. With the exception of municipal councils managing roadsides, a land manager will be able to choose whether to adopt a management plan which, if adopted, will set out what actions he or she will undertake to acquit the relevant obligations under the act.

The management plan mechanism will provide certainty to the land managers as to what actions must be taken to meet their obligations under the act and help to ensure that the costs involved are reasonable and proportionate in respect to their individual circumstances, as they will be adopted via negotiation and agreement with the Department of Environment and Primary Industries (DEPI). The content of the plans may thus vary from place to place according to local circumstances, but will be in accordance with clearly set out overarching principles or standards to promote consistency in approaches across the state.

The bill also contains a number of administrative provisions that are similar to those provided for under the Plant Biosecurity Act 2010 with appropriate modifications. Most notable provisions include:

conferring functions on the secretary;

providing for delegations and authorisation of persons as officers;

providing the ability to set, demand, recover, and receive charges and fees;

providing the ability to issue, amend, vary permits, establish codes of practice, management plans and other statutory rules and subordinate legislative instruments for the purposes of the act (including the ability to issue an infringement notice).

In conclusion, the bill will provide a contemporary approach to the future control of terrestrial and aquatic invasive species in Victoria. This bill will substantially improve the ability of government to manage risks by preventing invasive species from establishing, eradicating invasive species already present, reducing the spread of established invasive species, and managing the impacts of invasive species that are already widely present in Victoria. The bill will provide the necessary flexibility to respond efficiently and effectively to biosecurity threats. The bill will result in greater alignment to both national and Victorian biosecurity policy and legislation.

I commend the bill to the house.

Debate adjourned on motion of Mr NOONAN (Williamstown).

Debate adjourned until Thursday, 4 September.

CRIMES AMENDMENT (SEXUAL OFFENCES AND OTHER MATTERS) BILL 2014

Statement of compatibility

Mr CLARK (Attorney-General) tabled following statement in accordance with Charter of Human Rights and Responsibilities Act 2006:

In accordance with section 28 of the Charter of Human Rights and Responsibilities Act 2006 (the charter act), I make this statement of compatibility with respect to the Crimes Amendment (Sexual Offences and Other Matters) Bill 2014 (the bill).

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

Overview

The bill will make Victoria's sexual offence laws clearer, simpler and fairer by making various amendments to the definitions of key indictable sexual offences (including rape), removing redundant marriage exceptions to sexual offences against children, removing time limits on the prosecution of certain former sexual offences against children, introducing certain exceptions to child pornography offences for minors, and creating two new summary offences concerning distribution of intimate images. The bill will also provide for a 'course of conduct' charge for multiple incidents of sexual offending and other specified offences (e.g. fraud-related offences).

Human rights issues

Privacy and reputation

Section 13 of the charter act provides that '[a] person has the right — (a) not to have his or her privacy, family, home or correspondence unlawfully or arbitrarily interfered with; and (b) not to have his or her reputation unlawfully attacked'.

The two new offences of distributing, or threatening to distribute, an intimate image, at clause 25 of the bill, promote the protection of a person's privacy and reputation while protecting the right to freedom of expression where an adult has consented to the distribution of their intimate image. The consent exception does not apply to children due to their greater vulnerability and need for protection.

Right to freedom of expression

Section 15 of the charter act provides that '[e]very person has the right to freedom of expression'. Section 15(3) of the charter act provides that the right to freedom of expression may be subject to lawful restrictions reasonably necessary to respect the rights and reputation of other persons or for the protection of national security, public order, public health or public morality.

Criminalising threats to commit sexual offences (at clause 4 of the bill) falls within the exception in section 15(3) for lawful restrictions reasonably necessary for respecting the rights of others. Accordingly, the offence is relevant to but does not limit the right to freedom of expression.

Criminalising the distribution of an intimate image or the threat to distribute an intimate image (at clause 25 of the bill) also comes within section 15(3) because the offences are restricted to conduct that is contrary to community standards of acceptable conduct and do not apply to an image of an adult who expressly or impliedly consented to that distribution. The consent exception does not apply to minors as they are more vulnerable and require additional protection.

Right to protection of families and children

Section 17(2) of the charter act provides that '[e]very child has the right, without discrimination, to such protection as is in his or her best interests and is needed by him or her by reason of being a child'.

Persons who engage in repeated sexual abuse of a child over a period of time are among the worst abusers of the child's right to protection. The new 'course of conduct charge' (at clause 13 of the bill) promotes the protection of children by providing for a more effective mechanism for prosecuting this kind of sexual abuse of children.

The bill also promotes the protection of children by removing redundant but potentially misleading words concerning supposed exceptions to sexual offences against children under 16 years where the accused is married to the child (see clause 5 of the bill). These exceptions are redundant, since it is no longer possible for a person to be legally married in Australia under the age of 16.

The bill's new exceptions to child pornography offences enhance the protection of minors who engage in non-exploitative peer-to-peer sharing of images from unwarranted prosecution for child pornography offences (see clause 8 and clause 28 of the bill).

The new offence (at clause 25) of distributing an intimate image will not apply if the image is of an adult who has given express or implied consent to distribution, but this exception does not apply to children, recognising their greater need for protection. Further, the rights of children are protected by providing that age and vulnerability are relevant factors in determining whether the distribution is contrary to community standards of acceptable conduct.

Rights in criminal proceedings

Section 25(2)(a) of the charter act provides that '[a] person charged with a criminal offence is entitled without discrimination to the following minimum guarantees — to be informed promptly and in detail of the nature and reason for the charge in a language or, if necessary, a type of communication that he or she speaks or understands'.

The course of conduct charge allows the prosecution to charge a person with engaging in a course of conduct involving multiple incidents of a sexual offence or other specified offences (e.g. theft and obtaining a financial advantage by deception) without providing precise particulars of the incidents. This does not limit the right to details of charges under section 25 of the charter act. The accused's right to details of the charge is a right to know what the prosecution case against him or her will be. It is not a right to more details about the prosecution case than the prosecution itself is able to provide. The course of conduct charge will still disclose to the accused the nature of the charge, namely that the accused engaged in a course of conduct of offending. The prosecution will still need to prove that charge beyond reasonable doubt, and will not be at a forensic advantage. Where the course of conduct charge concerns repeated sexual offending, it is unfair to victims of such sustained sexual abuse to have their evidence systematically excluded because of a lack of specificity that may be due to the repeated nature of the offending itself.

Right against retrospective criminal laws

Section 27(1) of the charter act provides that '[a] person must not be found guilty of a criminal offence because of conduct that was not a criminal offence when it was engaged in'. The bill (at clause 10) retrospectively removes historical time limits on the prosecution of certain sexual offences against children committed prior to 1991. This repeal does not retrospectively create any criminal offence, because the conduct was (and remains) a criminal offence at the time the conduct was engaged in. Removing the immunity from prosecution that arose 12 months after the offending does not limit section 27(1) of the charter act because such changes to criminal procedure do not amount to the retrospective creation of criminal liability.

Presumption of innocence

Section 25(1) of the charter act provides that '[a] person charged with a criminal offence has the right to be presumed innocent until proved guilty according to law'. The bill provides for exceptions to certain sexual offences (at clause 4) and child pornography offences (at clause 8 and clause 28). For example, a person does not commit the offence of sexual assault if the touching was done in the course of a procedure carried out in good faith for medical or hygienic purposes. In accordance with section 72 of the Criminal Procedure Act 2009, an accused wishing to rely on such an exception will have an evidential burden of presenting or pointing to evidence that suggests a reasonable possibility of the existence of facts that would establish the exception. This does not limit the presumption of innocence, since it is an exception that narrows the scope of the offence, and the prosecution must prove beyond reasonable doubt that the exception has not been met, as well as all the elements of the offence.

The bill also provides, as does the current Crimes Act 1958, a list of circumstances in which a person is defined not to have consented to an act. This does not deem an element of the relevant offence to have been proved without evidence. The prosecution must still prove beyond reasonable doubt that the consent-negating circumstance existed. Moreover, those circumstances are not legal fictions concerning lack of

consent. Rather they are circumstances where the person does not in fact consent.

The bill will also allow a trial judge to inform the jury that the fact that a person did not say or do anything to indicate consent is enough to show that they did not consent, and that if an accused knew or believed that a consent-negating circumstance existed, that knowledge or belief is enough to show that the accused did not reasonably believe that the other person consented. The provisions do not shift the burden of proof but are essentially indicating the degree of relevance and strength of such evidence. For these reasons, the bill is relevant to, but does not limit, the right to the presumption of innocence.

Where an accused wishes to rely on an exception to a child pornography offence by arguing that they believed on reasonable grounds that they were not more than two years older than the other minor depicted in the image, or that they believed on reasonable grounds that the image did not depict a criminal offence, then the accused (under new section 70AAA(7) of the Crimes Act 1958 and new subsection 57A(8) of the Classification (Publications, Films and Computer Games) (Enforcement) Act 1995 will bear the legal onus of proving that reasonable belief.

This does not limit the presumption of innocence because the matter concerns an exception, what is to be proved lies peculiarly within the knowledge of the accused, and the prosecution must still prove all the elements of the offence beyond reasonable doubt.

Robert Clark, MP
Attorney-General

Second reading

Mr CLARK (Attorney-General) — I move:

That this bill be now read a second time.

Speech as follows incorporated into *Hansard* in accordance with resolution of house:

Rape and sexual assault are among the most despicable crimes, which can cause severe and devastating harm to victims. The government is committed to better protecting the community from these horrible crimes, holding perpetrators to account and providing support to victims.

Existing sexual offence laws are highly complex and confusing to apply. Uncertainty in the law has led to numerous appeals and retrials, which is highly traumatic for victims and their families, and contributes to unnecessary court delays.

This bill introduces important reforms to Victoria's sexual offence laws to improve the effectiveness of the law and ensure that perpetrators of sexual offences are held to account. It will make sexual offence laws clearer and fairer, and improve the way that the law deals with cases of repeated and systematic sexual abuse.

These reforms are based on proposals by the Department of Justice in its *Review of Sexual Offences — Consultation Paper* released in October 2013.

The bill also addresses the phenomenon of 'sexting'. It implements recommendations made by the Victorian Parliament Law Reform Committee in its report on the inquiry into sexting. Sexting involves the sharing of sexually explicit images through the internet, mobile phones and social media. It has become increasingly common, especially between teenagers. It is important that this practice is regulated to provide protection to both children and adults against exploitative sharing of intimate images, while ensuring that teenagers do not face unwarranted prosecution for child pornography offences.

Improvements to key sexual offences

The bill will introduce clearer and simpler sexual offences into the Crimes Act 1958 to cover:

rape;

rape by compelling sexual penetration;

sexual assault;

sexual assault by compelling sexual touching;

assault with intent to commit a sexual offence; and

threat to commit a sexual offence.

The bill will modernise outdated language in existing offences and make it easier for juries to determine whether or not an accused is guilty of these offences.

The bill will introduce a new fault element into these offences, which will apply when 'the accused does not reasonably believe that the other person consents' to the sexual activity. This means that the accused will come within the fault element if they did not believe that the complainant was consenting or, if they did have such a belief, it was not a reasonable one. This fault element is conceptually simpler than the current law, which is complex and confusing. It will be significantly easier for juries to understand and judges to apply, which will reduce the number of appeals and retrials.

The new fault element is also consistent with laws in other jurisdictions, including the United Kingdom, New Zealand and New South Wales, where the fault element has worked successfully for a number of years. It is also similar to the approach in Queensland, Tasmania and Western Australia. It means that offenders will not escape liability for committing sexual offences where their belief that the other person is consenting is unreasonable.

The new fault element requires a person to have objectively reasonable grounds for their belief that another person consents to sexual activity with them. It will not be a matter of what the accused thinks it is reasonable to believe. Instead, the courts will apply a more objective standard that reflects community standards of what is a reasonable belief. The bill provides that whether or not an accused reasonably believes that the other person is consenting to an act depends on the circumstances. This includes any steps that the accused has taken to find out whether the other person consents. The bill expressly excludes the accused's self-induced intoxication as a circumstance to consider. Otherwise, it will be a matter for the jury in each case to determine whether the accused's belief was reasonable in the circumstances.

The bill contains a list of circumstances in which a person is taken not to have consented to a sexual act. This reflects the current law and includes when a person is asleep or unconscious, and when they submit to an act because of force or fear of force. The bill provides that when an accused has knowledge that one of these circumstances exists, this is enough to show that he or she did not have a reasonable belief in consent.

The bill will also amend the Jury Directions Act 2013 to simplify jury directions in sexual offence trials. Under the bill, the parties may request that the trial judge direct the jury on the meaning of consent, the circumstances in which a person is taken not to have consented to a sexual act and reasonable belief in consent. This will allow directions to be tailored to the particular circumstances of the case. This will encourage shorter jury directions and minimise unnecessary and unhelpful directions.

Course of conduct charge

As the Parliamentary Family and Community Development Committee's *Betrayal of Trust* report found, repeated and systematic sexual abuse of children is all too common. The government is committed to providing effective criminal law responses to this insidious problem.

Regrettably, the criminal law has not responded effectively to some of the most serious instances of repeated sexual abuse. At common law, a high degree of specificity in charges laid against an accused is traditionally required. This is difficult to satisfy in cases of repeated sexual abuse, as it is common for complainants to have trouble recalling precise details of each act of abuse.

In order to address this issue, the offence of maintaining a sexual relationship with a child under 16 years was introduced in section 47A of the Crimes Act in 1991. This offence is now called 'persistent sexual abuse of child under the age of 16'. This offence allows less specific evidence by a complainant to be sufficient to identify and prove a charge.

However, the applicability of the section 47A offence remains limited. Under section 47A, it is not sufficient for a complainant to give evidence about what the accused would typically or routinely do. Such evidence is admissible to prove a course of conduct. Instead, section 47A requires proof of three separate offences. This means that the complainant must remember details to distinguish between different acts of abuse. This requirement is difficult to satisfy where sexual abuse is ongoing, as complainants commonly find it difficult to remember precise details of each act of abuse.

The bill will address these limitations in the current law by introducing a new way of charging repeated sexual abuse. This reform is based on a similar approach used in the United Kingdom. The bill will enable the prosecution to file a 'course of conduct' charge alleging multiple incidents of sexual offending against the same complainant. Under this new approach, the prosecution will not need to prove particular incidents of abuse or identify distinctive features differentiating any of the incidents. Therefore the complainant will not need to provide details about separate incidents of abuse. This is a significant change, but the law remains fair because the prosecution will need to prove the course of conduct beyond reasonable doubt.

Where an accused has been found guilty of an offence in a course of conduct charge, the court will be required to impose a sentence reflecting the totality of the offending.

This important reform will ensure that the law responds effectively to cases of repeated and systematic sexual abuse, and that perpetrators of these horrible crimes can be brought to justice.

The course of conduct charge will also be available in relation to other specified offences such as theft, money laundering and obtaining a financial advantage by deception. While the need for this new approach is most pressing in relation to sexual offences, it will also have considerable value for charging high-volume offences which typically involve an element of dishonesty or deception, which can number in the hundreds or thousands. Charging a course of conduct of defrauding thousands of victims is more practical and better reflects the criminal behaviour than filing thousands of separate charges for each of the incidents.

Removing restrictions on prosecuting sexual offences committed prior to 1991

The bill will remove inappropriate time limitations which currently prevent the prosecution of certain sexual offences alleged to have been committed against children prior to 1991.

Prior to 1991, criminal prosecutions for sexual offences committed against children had to be commenced within 12 months from the alleged offence. Research shows that more than half of child sexual abuse victims do not complain to anyone for over 12 months. Although this time limit was removed from legislation in 1991, the restriction on commencing prosecution for offences committed before that time still applies. This effectively gives perpetrators of these heinous crimes immunity from prosecution, which is completely inappropriate.

The bill ensures that perpetrators of sexual crimes against children can be brought to justice by removing these inappropriate time limits.

Exceptions to sexual offences against children under 16

The bill will remove the exceptions to sexual offences against children under 16 years, which purport to apply where the accused is married to the child. These exceptions are redundant, since it is no longer possible for a person to be legally married in Australia under the age of 16.

Removing the exceptions will make the law clearer and end unjustified community concern that these provisions create a 'loophole' through which children can be abused.

Exceptions to child pornography offences

In recent years, the growing phenomenon of 'sexting' has prompted concerns that teenagers may be inappropriately criminalised by existing child pornography laws. It is important that the criminal law is updated to reflect changing uses of technology, while providing protection against harmful behaviour.

Currently, any sexually explicit depiction of a person under 18 years old is potentially child pornography. Teenagers who create, possess or distribute explicit images of themselves or their peers commit a child pornography offence.

Consequently, teenagers who engage in sexting risk a criminal conviction and possible registration on the sex offenders register. When non-exploitative, consensual sexting occurs between peers, these serious consequences are unwarranted.

To address this concern, the bill introduces four exceptions to the child pornography offences. The exceptions aim to capture non-predatory and non-exploitative sexting. They do so by focusing on age and the nature of the act depicted. In relation to age, the exceptions only apply to sexting by minors. Once a person turns 18, these exceptions will no longer be available. Further, where explicit images of minors are shared, the exceptions are limited to sharing between peers — that is, the minor must not be more than two years older than another minor depicted in the image (or reasonably believe this to be so).

In relation to the nature of the act depicted, the exceptions will not apply to an image that depicts a criminal offence punishable by imprisonment, unless the minor involved in the sexting is the victim of the offence depicted. It is important that the exceptions do not protect minors who create, possess or transmit child pornography that depicts a criminal activity.

The restrictions concerning age and the nature of the act depicted will ensure that child pornography offences continue to protect children against exploitative and predatory behaviour.

The four new exceptions will also apply to the publication and transmission of child pornography offences in the Classification (Publications, Films and Computer Games) (Enforcement) Act 1995.

New summary offences

Currently, the law provides limited protection against non-consensual distribution of intimate images. This behaviour can cause considerable harm, particularly if an image 'goes viral'. This bill creates two summary offences designed to protect individuals against such harm.

The first new offence prohibits intentional distribution of an intimate image where that distribution is contrary to community standards of acceptable conduct. This offence does not apply if the person in the image is an adult and has consented (expressly or impliedly) to the distribution. This exception does not apply to consent by children, due to their greater vulnerability and need for protection. The offence is punishable by a maximum of two years imprisonment.

The second offence prohibits a person from threatening to distribute an intimate image of another person depicted in the image, and the distribution would be contrary to community standards of acceptable conduct. The person who makes the threat must intend that the other person will believe, or will probably believe, that the person will carry out the threat. The offence is punishable by a maximum of one year's imprisonment.

The bill provides guidance to courts to determine the application of community standards of acceptable conduct in a particular case. The court is directed to consider the context in which the image was captured and distributed, the personal circumstances of the person depicted, and the degree to which their privacy is affected by the distribution. The purpose of the community standards test is to ensure that the offences do not unjustifiably interfere with individual privacy and freedom of expression, while at the same time targeting exploitative, harmful and non-consensual behaviour.

Conclusion

This bill makes significant improvements to sexual offence laws. It will hold offenders of horrible sexual crimes to account but make sure that minors are not inappropriately prosecuted for child pornography offences when they engage in sexting with their peers.

I commend the bill to the house.

Debate adjourned on motion of Mr NOONAN (Williamstown).

Debate adjourned until Thursday, 4 September.

GUARDIANSHIP AND ADMINISTRATION BILL 2014

Statement of compatibility

Mr CLARK (Attorney-General) tabled following statement in accordance with Charter of Human Rights and Responsibilities Act 2006:

In accordance with section 28 of the Charter of Human Rights and Responsibilities Act 2006, (the charter act), I make this statement of compatibility with respect to the Guardianship and Administration Bill 2014.

In my opinion, the Guardianship and Administration Bill 2014, as introduced to the Legislative Assembly, is compatible with human rights as set out in the charter act. I base my opinion on the reasons outlined in this statement.

Overview

The Guardianship and Administration Bill 2014 repeals the Guardianship and Administration Act 1986, re-enacts with amendments the law relating to guardianship and administration, and amends various other acts.

The bill establishes or re-enacts, among other things, the following mechanisms: the Office of the Public Advocate; the making of orders appointing a supportive guardian, guardian or administrator for certain persons with a disability in specified circumstances; the making of administration (missing person) orders in relation to a missing person's estate; and mechanisms by which consent to certain medical and other procedures may be provided on behalf of persons who are incapable of giving consent.

Human rights protected by the charter act that are relevant to the bill

The right to equality

Section 8(1) of the charter act provides that every person has the right to recognition as a person before the law.
Section 8(3) of the charter act relevantly provides that every person is equal before the law and is entitled to the equal protection of the law without discrimination. Discrimination in relation to a person means discrimination within the meaning of the Equal Opportunity Act 2010 on the basis of an attribute set out in section 6 of that act. This includes

discrimination on the basis of a disability. Section 8 of that act provides that direct discrimination occurs if a person treats, or proposes to treat, a person with an attribute unfavourably because of that attribute.

The bill is directed to decision-making on behalf of persons who have impaired decision-making capacity because of disabilities, and sets up a framework for supportive and substitute decision-making for such people. Many clauses in the bill will have the effect of conferring decision-making powers on a guardian or administrator in relation to certain persons with a disability (represented persons) that may consequently affect the capacity of represented persons to make legally effective decisions for themselves in important areas of their personal life.

Section 8(1) of the charter act is based on article 16 of the International Covenant on Civil and Political Rights. International jurisprudence has held that article 16 is concerned with the capacity to be a person before the law, namely to be a bearer of rights and duties, and not the capacity to act. Accordingly, although the position has not been authoritatively determined under Victorian law, section 8(1) of the charter act may not be limited by laws which impose limits on a person's capacity to act or which impose restrictions on a person's autonomy.

In relation to section 8(3), the bill authorises the making of guardianship orders which ameliorate the consequences of the person's lack of decision-making capacity, including the legal disabilities imposed by the common law that the person lacks legal capacity in matters affected by the lack of decision-making capacity. A guardianship or administration order may only be made where a person has impaired decision-making capacity as a result of a disability. The bill provides for orders to be made which are the least restrictive of the person's autonomy as is possible in the circumstances. Although a guardianship or administration order will restrict the legal autonomy of the represented person, in many cases, the common law of incapacity will already have this effect and in those cases, the bill has a favourable rather than unfavourable effect on the represented person which is not discriminatory in the relevant sense. The bill requires that an order can only be made if the order promotes the person's personal and social wellbeing and is therefore made for that person's benefit.

Accordingly, in many respects the rights set out in section 8(3) of the charter act are not limited by the provisions of the bill which establish a process for making guardianship orders because the bill does not amount to unfavourable treatment but is ameliorating the operation of the common law in relation to legal capacity of persons with impaired decision-making capacity.

However, it may be argued that some aspects of the bill treat persons with disabilities who are subject to a guardianship order unfavourably by restricting their legal decision-making in a manner not already effected by the common law and hence may constitute discriminatory treatment which limits the rights set out in section 8(3) of the charter act.

To the extent that the bill does limit the rights set out in s 8 of the charter act, such limits are reasonable and justifiable, and the bill specifically provides that a person's rights must only be limited to the minimum extent possible.

The objective of the guardianship and administration regime as contained in the bill is to provide a solution to the difficulties posed when a person with a disability lacks decision-making capacity in relation to certain matters. In such circumstances, the bill allows for a guardian or an administrator to be appointed, in order to promote the person's personal and social wellbeing. Further, the bill contains numerous safeguards (outlined below), which protect the rights of persons affected by the bill. The bill expressly provides that provisions of the bill and functions, powers, authorities, discretions, jurisdictions and duties conferred or imposed by the bill are to be interpreted to adopt the way which is the least restrictive of a person's ability to decide and act, and so that a person is given all the possible support to enable that person to exercise their decision-making capacity. The bill also contains a 'supported decision-making regime', which is a less restrictive alternative to substitute decision-making and which allows VCAT to make a supportive guardianship order where the criteria for a substitute guardianship order are not satisfied.

Consequently, I consider that the bill, as a whole, constitutes a reasonable and justifiable limit on the right to equality. Nevertheless, I will specify below the ways in which clauses of the bill are relevant to the right to equality.

Guardianship and administration orders

Part 4 of the bill provides for the making by VCAT of guardianship or administration orders, following an application by a person, in relation to certain persons with a disability who are of or over 18 years old, on the basis that: the person does not have decision-making capacity with respect to the personal or financial matters in relation to which the guardianship or administration order is to be made; the person needs a guardian or administrator; and the appointment would promote the person's social and personal wellbeing.

Clause 3 of the bill defines 'disability' as a neurological impairment, intellectual impairment, mental illness, brain injury, physical disability or dementia.

A guardianship order may confer on a guardian a range of powers in relation to a 'personal matter' of a represented person, including to determine where the represented person lives, with whom the represented person associates and whether the represented person works (see definition of 'personal matter' in clause 3(1) and clause 50(1)(a)). A guardianship or administration order may confer on a guardian or administrator powers in relation to a 'financial matter' of a represented person (see definition of 'financial matter' in clause 3(1), clause 50(1)(b) and clause 55) which may include: the general care and management of the represented person's estate (clause 69(1)), including selling any property (clause 69(2)(g)) and the power to make a gift of the represented person's property under certain circumstances (clause 64).

The authority of a guardian or an administrator is such that their acts have effect as if taken by the represented person with the relevant decision-making capacity (clauses 53, 55(3)). A represented person is taken to be incapable of dealing with, transferring, alienating or charging his/her money or property without the order of VCAT or the written consent of the administrator or guardian (if the relevant power is conferred on the guardian), and any such dealing by any represented person is void and of no effect (clause 82).

Clause 28 of the bill permits the making of an administration or a guardianship order, and could arguably limit the right to equality of represented persons as contained in section 8(3) of the charter act, if the effect of the order is to treat the person unfavourably, for example by imposing greater restrictions on their autonomy than the common law. It could also be argued that clause 82 of the bill limits the right to equality for represented persons as contained in section 8(1) of the charter act, as it provides that a represented person does not have legal capacity with respect to dealing with, transferring, alienating or charging his/her money or property without the order of VCAT or the written consent of the administrator or guardian. Whether this is discrimination which limits the right in section 8(3) depends on whether the person is treated unfavourably by comparison with the limits on their autonomy and legal capacity that would apply at common law without such an order.

To the extent that these provisions do limit the right in section 8 of the charter act, the limitation is justified and necessary given the purpose of appointing a guardian is to assist the person to participate in the community.

Further, a person will only be subject to a guardianship or administration order if VCAT makes such an order following a hearing, at which the proposed represented person must be present unless VCAT is satisfied that the person does not wish to attend or his or her presence is impracticable or unreasonable. Additionally, the process for the making of guardianship and administration orders is designed to promote the participation of the represented person and requires VCAT to have regard to their wishes. In making a guardianship or administration order, VCAT will be subject to section 38 of the charter act and, accordingly, must give proper consideration to, and act compatibly with, human rights.[1]

VCAT may only make a guardianship or administration order if it is satisfied of several matters, including that the order would promote the person's personal and social wellbeing; and, subject to the act, the order is the least restrictive alternative possible in relation to the person's ability to decide and act. VCAT must consider a range of criteria in determining whether a person needs an order and whether a person is suitable to be a guardian or an administrator, including the wishes of the proposed represented person. A party to an application may apply to VCAT for a rehearing of an application and VCAT must conduct a reassessment of orders made under the bill within specified time frames. In my view, these factors mean that any limit on the right to equality arising from the making of a guardianship or administration order will be kept to the minimum extent necessary to achieve the purpose of the bill.

Similarly, once an order is made, the bill also imposes duties and obligations on guardians and administrators. The power to make decisions in relation to a number of highly personal matters may not be conferred on a guardian or an administrator, such as decisions in relation to marriage and the care and wellbeing of any child. Guardians and administrators are subject to obligations to avoid conflicts of interest (clause 58(b)(iv)), to ensure that their personal property is kept separate from the property of the represented person (clause 74), and to act honestly, diligently and in good faith, among other obligations (clause 58(b)(i)).

[1] *PJB v. Melbourne Health, State Trustees Limited* [2011] VSC 327, [123] per Bell J.

In my view, to the extent that the making of a guardianship or administration order limits the right to equality, any such limitation constitutes the minimum interference necessary to enable persons with limited decision-making capacity to participate in society and enjoy personal and social wellbeing.

Administration (missing person) orders

Part 8 of the bill provides for an additional category of administration orders in relation to missing persons. A person may apply to VCAT for an administration (missing person) order in relation to the estate of a missing person (clause 107). VCAT may make an order in relation to the estate of a missing person if it is satisfied of certain, specified matters (clause 108). An administrator of a missing person's estate has similar powers and duties to an administrator of a represented person's estate. However, an administrator of a missing person's estate must only take actions that are necessary or desirable for: the payment of debts and engagements of the missing person; the maintenance and benefit of dependants of the missing person; or the care and management of the estate of the missing person (clause 116).

Like other administrators, an administrator of an estate of a missing person must act in a way that promotes the personal and social wellbeing of the missing person. Further, clause 125 requires an administrator of a missing person's estate to lodge annual accounts of the administration. Division 5 of part 8 provides other protections, such as a requirement that an administrator must notify VCAT in writing without delay when the administrator becomes aware that the missing person is alive, or that the missing person has died (clause 136). Additionally, an administration (missing person) order continues in effect for the period not exceeding two years as specified in the order (clause 138).

For similar reasons to those discussed above, any limitation of human rights caused by the above clauses is reasonable and justifiable within the meaning of section 7(2) of the charter act.

Orders appointing a parent as guardian or administrator

Part 5 creates a new, streamlined procedure for appointing a parent of a person with impaired decision-making capacity because of a disability who has turned, or is about to turn 18 years old, as the person's guardian or administrator, in order to formally recognise the necessity for the parent to act in that role, in circumstances where an equivalent role was taken by the parent when the person was under 18 years old.

The appointment of a guardian or administrator under part 5 differs in some respects from the process of appointing a guardian or administrator as described above, in that, in some circumstances, a hearing may not be held as VCAT is required to decide the application on 'the papers' unless satisfied that the order sought would be harmful to the proposed represented person's social and personal wellbeing. Consequently, the streamlined process in part 5 will allow parents who meet the applicable criteria to be appointed as guardians or administrators without needing to satisfy VCAT of the more extensive criteria applicable under the normal application process. To the extent that a guardianship or administration order limits the rights of the represented person as discussed above, the streamlined process will also limit those rights.

The bill provides that part 5 will apply to persons with a disability who are over 18 years of age or are about to turn 18 years of age, who do not have decision-making capacity, and for whom it is unlikely that any such decision-making capacity will improve during the term of the order. The purpose of such orders will be to consequently formally recognise the existing responsibility and role that a parent has or parents have in relation to such a person.

The necessity for the introduction of part 5 of the bill has arisen due to what the Victorian Law Reform Commission (VLRC) referred to in its report entitled *Guardianship Final Report 24* as '[a] growing concern with risk management throughout the community' (para 24). The report states '[i]t is now much more common for third parties, such as financial institutions, medical professionals and disability service providers, to seek authorisation from formally appointed substitute decision-makers, rather than to rely upon informal arrangements when providing services to a person who lacks capacity' (para 24). This issue, when combined with the fact that, as the VLRC acknowledged, 'VCAT is unlikely to find there is a need to appoint a guardian or administrator if informal arrangements, such as family members making decisions on behalf of a person with a disability, appear to be operating successfully' (para 23) means that a guardianship or administration order may not be made once a person turns 18 years of age where the parents of such a person take an informal role, and this can then cause real difficulties for the parents of such a person when interacting with third parties who require greater evidence of their authority to make decisions and access information on their child's behalf. In my view, the streamlined process is an appropriate means to assist in resolving this problem.

As well as the limited nature of the operation of part 5, the part also includes numerous restrictions and safeguards, including that the application must be accompanied by a medical report that provides that it is unlikely that the person's decision-making capacity will improve during the term of the order, that notice of the proposed application be provided to the person and other relevant individuals, such as care workers, health providers and the nearest relative of the person and that such persons can make submissions, that VCAT cannot make the order if VCAT is satisfied that the person does not want the order to be made or that there is a significant risk that the order sought would be harmful to the personal and social wellbeing of the person, and that VCAT must hold a hearing in such circumstances. Consequently, I consider that any limit on the right to equality that may occur due to the operation of part 5 of the bill will be reasonable, necessary and justifiable.

Right to freedom of movement, freedom of expression and freedom of association

Section 12 of the charter act provides that every person lawfully within Victoria has the right to move freely within Victoria and to enter and leave it and has the freedom to choose where to live. Section 15 of the charter act provides that every person has the right to hold an opinion without interference and the right to freedom of expression. Section 16 of the charter act provides, relevantly, that every person has the right to freedom of association with others.

Guardianship and administration orders

A power conferred on a guardian in relation to a represented person's personal matters (as defined in the bill) such as to determine their residence, employment, education and social relationships may be relevant to, and may impose limits on, a number of rights of the represented person contained in the charter act, such as: the freedom of movement (section 12), freedom of expression (section 15) and freedom of association (section 16).

It should be noted that many of these rights are subject to internal limitations, either explicitly stated in the charter act (e.g. section 15(3)), or implicit limits in a free and democratic society.

The ability of represented persons to exercise these rights may be already limited by the impairment of their decision-making capacity and any denial of legal capacity to them as a result of the operation of the common law. The bill's provisions for supported decision-making and mandated involvement of represented persons in decisions to the extent possible may be an enhancement of the represented person's rights in comparison to the situation without an order. To the extent that any of these rights are limited by an order, the obligations on a guardian in relation to the exercise of his or her powers outlined above prevent any of the powers conferred by a guardianship order from being exercised in a manner that unreasonably or unjustifiably limits the represented person's rights. Furthermore, VCAT may only confer a power on a guardian in relation to a particular personal matter if it is satisfied that the power is necessary or desirable for the purpose of promoting the represented person's personal and social wellbeing. For these reasons, I consider that any limitation of other charter act rights discussed above imposed by any of the above clauses is reasonable and justifiable.

Right to liberty and freedom of movement

Section 21 of the charter act relevantly provides that every person has the right to liberty and security and must not be subject to arbitrary arrest or detention.

Compliance by represented person with guardianship orders

Clause 54(1) of the bill provides that VCAT may authorise a guardian or other specified person to take specified measures or actions to ensure that the represented person complies with the guardian's decisions in the exercise of the guardian's powers and duties under the guardianship order.

The power of a guardian or other specified person to enforce compliance with a guardianship order, pursuant to an order made by VCAT under clause 54(1), may potentially impose a limit on a represented person's right of liberty (section 21, charter act) and freedom of movement (section 12, charter act), as it may authorise a guardian or other specified person to use physical or non-physical measures to prevent a represented person from taking certain actions. A guardian may also be authorised to take measures such as enforcing a curfew, preventing certain persons from visiting the represented person, or imposing rules regarding the person's diet or dress. Other human rights, such as the right to privacy and the right to freedom of association, may also be relevant and/or limited depending on the order made.

However, in addition to the safeguards outlined above in respect of the duties imposed on a guardian, the bill provides for oversight of the exercise of the power to enforce compliance by providing that VCAT must authorise a person to take specified measures and must hold a hearing to reassess

an order made under clause 54(1) as soon as practicable after the making of that order, but within 42 days (clause 54(2)).

Special powers in relation to proposed represented persons

Clause 27 confers special powers on the public advocate or another specified person in relation to a person in respect of whom an application for a guardianship order under the bill has been made (proposed represented person). If VCAT has received information on oath that the proposed represented person is being unlawfully detained against their will or is likely to suffer serious damage to their health or wellbeing unless immediate action is taken, VCAT may by order empower the public advocate or some other specified person to visit the person in the company of a police officer for the purpose of preparing a report to VCAT. A police officer may use such force as is reasonably necessary to enter the premises (clause 27(4)).

Clause 27(3) provides that if, after receiving a report from the public advocate, VCAT is satisfied that the person is being unlawfully detained or is likely to suffer serious damage, VCAT may make an order enabling the person to be taken to a specified place for assessment and placement until the application for the guardianship order is heard.

The removal of a person from their place of residence and the holding the person in an alternative residence until the hearing of the application for the guardianship order under the bill may constitute a limit on a person's right to freedom of movement and freedom to choose where to live (section 12, charter act). If the person is restrained from leaving the alternative residence, clause 27 is relevant to a person's right to liberty and security (section 21, charter act). However, any such deprivation will not be arbitrary, and so in my view this power will not limit section 21 of the charter act. Furthermore, given the limited circumstances in which a person may be removed from their residence and the safeguards outlined above, I do not consider that clause 27 of the bill unreasonably or unjustifiably limits the right to freedom of movement. Finally, the public advocate will be subject to section 38 of the charter act and, accordingly, must give proper consideration to, and act compatibly with, human rights.

Right to privacy, family or home and the protection of families

Section 13 of the charter act relevantly provides that all persons have the right not to have their privacy, family, home or correspondence unlawfully or arbitrarily interfered with. Section 17 of the charter act provides that families are the fundamental group unit of society and are entitled to be protected by society and the state.

Guardianship and administration orders

The right not to have one's privacy, family or home unlawfully or arbitrarily interfered with (section 13, charter act) and the right to protection of families (section 17, charter act) is relevant to the power conferred on a guardian in relation to personal matters and the power conferred on an administrator or guardian in relation to financial matters. For example, a decision that a person must reside in a particular place or a decision to sell a represented person's family home may interfere with a person's right to family and home.

The safeguards outlined above in relation to the duties imposed on guardians and administrators ensure that the powers of a guardian and an administrator, if exercised in accordance with the bill, will not unlawfully or arbitrarily interfere with a person's right to home and family life. For this reason, the right in section 13 of the charter act is not limited.

Additionally, any limitation to the right of families to protection which may arise due to a represented person being separated from his or her family will be reasonable and justifiable within the meaning of section 7(2) of the charter act for the same reasons.

Special powers in relation to proposed represented persons

Entry to residential premises under clause 27(2), and the removal of a person from their place of residence, may interfere with the right to privacy, family and home of that person and any other person residing in the premises. However, the bill provides that entry to premises and any subsequent transfer may only occur in limited circumstances, namely by order of VCAT and based on evidence on oath regarding the unlawful detention of a person or serious imminent damage to the person. In the absence of a power to visit a proposed represented person, the public advocate and VCAT would be unable to ascertain the conditions of the person's detention and accommodation which may be relevant to determining whether to make the relevant guardianship order under the bill. The power to remove a person may be authorised by VCAT in very limited circumstances, namely where VCAT is satisfied that a person is being unlawfully detained against their will or is likely to suffer serious damage to their health or wellbeing unless immediate action is taken. Accordingly, for these reasons, I consider that any interference with the right to privacy would be neither unlawful nor arbitrary and therefore not limit section 13 of the charter act.

Supportive guardianship orders

Part 7 of the bill provides that VCAT may make a supportive guardianship order in relation to a person with a disability, subject to a number of requirements in clause 95. A person in relation to whom a supportive guardianship order is made is referred to as 'the supported person'. The role of the supportive guardian is to support a supported person in making and giving effect to their decisions in relation to any personal, financial or other matters specified in the order. A supportive guardian does not have powers to substitute his or her decision for the decision of the supported person (clause 99(2)).

A supportive guardian has certain powers under clause 100 of the bill to collect and disclose personal information of a supported person which are relevant to the right to privacy in section 13 of the charter act. However, in my view, clause 100 does not limit the right to privacy as the collection of personal information by the supportive guardian is permitted for a defined, limited purpose, namely information that is relevant to a supported decision and may be lawfully collected by the supported person. Similarly, the supportive guardian may only disclose personal information for the purpose of enabling the supportive guardian to carry out his or her role, for any legal proceedings under the bill or for any other lawful reason. Thus, any interference with the supported person's right to privacy will be neither unlawful nor arbitrary. Furthermore, the purpose of clause 100 is to enable a supportive guardian to effectively support a supported person to make and give effect to a relevant decision.

Powers of the public advocate

The public advocate has a range of powers under the bill to obtain information from persons and, in some circumstances, to enter premises. These powers are relevant to the right to privacy contained in section 13(a) of the charter act to the extent that a person is required to provide personal information to the public advocate, and the public advocate may enter residential premises in some circumstances.

The purpose of the powers is to ensure that the public advocate can carry out its functions under the bill of investigating complaints or allegations relating to persons under guardianship or in need of guardianship, and its function of making representations on behalf of, or acting for, persons with a disability. As noted above, the public advocate will be subject to section 38 of the charter act and, accordingly, must give proper consideration to, and act compatibly with, human rights. The clauses are precise in their application and are appropriately confined to ensure that any interference with privacy is limited. The powers to obtain information under clause 14 are limited to an investigation or a report prepared by the public advocate. The power of entry to premises in clause 17 is limited to the premises of an institution, which is defined in clause 17(5) to include a disability service provider, a residential service, residential institution or residential treatment facility within the meaning of the Disability Act 2006, or a designated public hospital within the meaning of the Health Services Act 1988. Under clause 17, the public advocate is not authorised to inspect a person's medical records or personnel records, which may contain more sensitive personal information, without the person's consent. For these reasons, in my view, the clauses do not limit the right to privacy.

Right to property

Section 20 of the charter act provides that a person must not be deprived of his or her property other than in accordance with law.

Guardianship and administration orders

The power conferred on a guardian or an administrator to control and deal with a represented person's financial or property affairs is relevant to the right contained in section 20 of the charter act. The exercise of management and control of a person's property by an administrator may be considered to be analogous to the deprivation of a person's property. However, an administrator or another guardian with financial powers is required to hold and manage the represented person's property on behalf of, and for the benefit of, the represented person. There are also many safeguards and duties outlined above which apply to a guardian with financial powers, including an administrator, in the exercise of his or her powers. Any deprivation of property (if it occurs at all) will occur in accordance with law as required by section 20 of the charter act.

Clause 80 provides that an administrator or guardian may sell all personal effects of a person who is no longer a represented person, that are in the possession of the administrator, within two years after the date on which the person ceased to be a represented person. The sale must occur after public notice and is provided for by law. Accordingly, the right in section 20 of the charter act is not limited.

Right not to be subject to medical treatment without consent

Section 10(c) of the charter act provides that a person must not be subjected to medical experimentation or treatment without his or her full, free and informed consent. This right either assumes the person is capable of giving full, free and informed consent and is silent as to the position when the person is not capable of giving consent due to legal incapacity, or else must be taken to allow for other arrangements in relation to persons not capable of giving consent due to legal incapacity, since otherwise such persons would not be able to receive any medical treatment.

Where the person is not capable of giving such consent due to a legal incapacity, it cannot be the case that all medical treatment of the person is a limitation on their section 10(c) right. Rather, where a guardian or attorney or other healthcare decision-maker has been lawfully appointed to act on the person's behalf and to give or refuse consent to medical treatment in the best interests of the person, I consider that either the right in section 10(c) is not relevant, or else it is not limited but complied with if that guardian or attorney or other healthcare decision-maker properly and appropriately gives their full, free and informed consent on behalf of the person to the medical treatment.

Part 9 of the bill concerns medical and dental treatment and the carrying out of 'special procedures' (defined as any procedure that will have the effect of rendering a person permanently infertile; terminating a pregnancy; removal of tissue for purposes of transplantation to another person; or any medical or dental treatment that is prescribed by the regulations to be a special procedure for the purposes of part 9), as well as provisions for the carrying out of a medical research procedure on a patient.

Part 9 applies to 'patients'. Clause 142 defines a 'patient' as a person with a disability who is of or over the age of 18 years and is incapable of giving consent to the carrying out of a procedure or treatment, regardless of whether the person is a 'represented person'. For the purposes of clause 142, a person is incapable of giving consent to the carrying out of such procedures if the person is incapable of understanding the general nature and effect of the proposed procedure or treatment, or indicating whether or not the person does or does not consent to the carrying out of the proposed procedure or treatment.

Part 9 contains processes by which other persons or bodies, such as the patient's health decision-maker, a registered practitioner or VCAT, may consent to the carrying out of a treatment, procedure or research.

Part 9 contains numerous safeguards. In particular, any such treatment, procedure or research must be in the best interests of the patient (clauses 144, 153, 156, and 168). In relation to emergency treatment, the procedure or treatment must be necessary, as a matter of urgency, to save the patient's life; prevent serious damage to the patient's health; or, in the case of a medical research procedure or medical or dental treatment, to prevent the patient from suffering or continuing to suffer significant pain or distress (clause 149).

Accordingly, in my view, if the right in section 10(c) is relevant, it is not limited by part 9 where consent is properly and appropriately given on behalf of a patient who cannot give consent by a lawfully appointed substitute

decision-maker who must act in the best interests of the patient.

In the alternative, even if the right is limited for persons incapable of giving consent, given the numerous safeguards in part 9, including the oversight function of VCAT and the fact that any treatment or participation in medical research must be in the best interests of the relevant patient, I consider that the limitation is reasonable and justified to enable persons without the requisite capacity to receive medical care or assistance.

Robert Clark, MP
Attorney-General

Second reading

Mr CLARK (Attorney-General) — I move:

That this bill be now read a second time.

Speech as follows incorporated into *Hansard* in accordance with resolution of house:

This bill and the Powers of Attorney Bill 2014 together form the first stage of reforms designed to strengthen and enhance the law on alternative decision-making arrangements, including responding to the needs of people with impaired decision-making capacity and their carers and families.

The bill will replace the current Guardianship and Administration Act 1986. It will improve the effectiveness of the guardianship framework and will complement the powers of attorney reforms. The powers of attorney reforms focus mainly on enduring powers of attorney where people make arrangements for their future care before they lose capacity. Guardianship law focuses mainly on situations where people have not made such arrangements and may need a guardian or administrator to be appointed by the Victorian Civil and Administrative Tribunal (VCAT).

The bill re-enacts the Guardianship and Administration Act 1986 with key changes to make better provision to meet the current and future needs of persons with impaired decision-making capacity and for their families and other carers to assist them, while strengthening the protective roles and of the Victorian Civil and Administrative Tribunal (VCAT) and the Office of the Public Advocate (OPA).

The bill makes a range of changes to improve VCAT processes when dealing with guardianship applications, and to assist the operation of the OPA. The bill also introduces a process to make it easier for parents of people with profound decision-making incapacity to obtain a guardianship order. A number of the reforms arise from the recommendations made by the Victorian Law Reform Commission in its final report on guardianship tabled in Parliament in April 2012.

More flexible powers for VCAT

The bill provides greater scope for VCAT to customise the powers conferred on a guardian or administrator to suit the circumstances of the represented person. While VCAT can currently appoint a person to be both a guardian and administrator, the changes will allow three categories of appointment:

(a) guardians with only personal powers;

(b) guardians with personal and financial powers; and

(c) administrators, who will only exercise financial powers.

The bill removes the current often artificial separation of roles between guardians and administrators by enabling VCAT to appoint, in suitable cases, one person to undertake all necessary matters on behalf of the represented person. This will remove the need to resolve whether a particular matter is a personal care matter or a financial matter and thus whether it is to be attended to by a guardian or by an administrator.

Guardians with personal powers or personal and financial powers will simply be referred to as a guardian. A person who is appointed only to exercise financial powers will be referred to as an administrator. Guardians with financial powers as well as personal powers will need to show that they meet the same statutory criteria for appointment as an administrator, and they will be bound by the same duties that apply to administrators.

VCAT will also be able to appoint people with more limited, supportive roles, to be known as 'supportive guardians', where a person in relation to whom a guardianship application has been made is found to be able to make decisions with support. This will help overcome the perceived 'catch 22' situation where a person is unable to have VCAT appoint a guardian because they are considered to have a level of decision-making capacity themselves, but yet they cannot take advantage of the decision-making capacity they do possess unless there is someone with the legal authority to assist them to make and implement their decisions.

A supportive guardian appointed by VCAT will be able to assist a person in the same way as a supportive attorney appointed by a principal under the Powers of Attorney Bill 2014, helping the person to gather and consider information, and to communicate and to implement their decisions. Once VCAT has appointed a supportive guardian, and specified the applicable powers in the appointment order, the same provisions of the Powers of Attorney Bill 2014 dealing with the powers of a supportive attorney will apply to the supportive guardian.

The creation of supportive guardian and supportive attorney roles is a significant change. It recognises that a person has capacity if they can make a decision with support. Formal recognition of a supporter's role enhances the ability of a person with impaired decision-making capacity to make decisions for themselves and to participate more fully in the life of the community.

Separate streamlined process for parents of people with profound decision-making incapacity

The bill will provide for a separate streamlined process for parents of a person with profound decision-making incapacity to be appointed as guardians or administrators. This process is intended to overcome the difficulties faced by parents of people with profound intellectual disabilities who, when their child turns 18, lose their legal status as the people responsible for caring for and making decisions on behalf of their child, although there has not been any change in the child's lack of decision-making capacity and their need for ongoing care.

Under the current guardianship application process, the parents are often not able to obtain even a limited guardianship order. Frequently they must rely on informal authority to assist the person with profound intellectual

disabilities. Assisting a person with a disability by informal means is becoming difficult, as third parties increasingly demand formal authority before they are willing to engage with parents on behalf of the person with a disability.

The bill simplifies the current guardianship application process for parents of people with profound decision-making incapacity so that they can more easily obtain legal recognition of their responsibility and authority in the form of guardianship. It will give certainty to parents whose current informal guardianship status can be challenged at any time.

Requirements to be met for application under streamlined process

The new process will be available where an application for guardianship or administration is made by the parent or parents of a person who is 18 years of age or over, and:

the person does not have decision-making capacity because of a disability that arose before they turned 18;

the lack of decision-making capacity is such that the person does not have capacity to make either a supportive attorney appointment or an enduring power of attorney as provided under the Powers of Attorney Bill 2014;

the lack of decision-making capacity is unlikely to change during the term of the order;

there is a history of parental care for the person; and

the person has not by law been removed from the care of the applicant parent in a Family Court proceeding or been the subject of a guardianship or similar order in favour of the Secretary of the Department of Human Services.

VCAT decision 'on the papers'

The new process is intended to allow VCAT to make a decision 'on the papers' — without a hearing — based on the evidence provided in the application in relation to the requirements outlined above.

The applicant parent or parents must provide to VCAT independent professional evidence of the proposed represented person's decision-making incapacity and of the views of the proposed represented person or the fact that those views cannot be ascertained. The applicant must disclose any prior conviction for an offence involving violence, or for an offence with a maximum penalty of five years or more or for any other prescribed offence. They must also state whether there has been any order in which the proposed represented person was by law removed from the care of the applicant parent or parents in Family Court proceedings or through an order that granted custody or a similar arrangement to the Secretary of the Department of Human Services or their interstate counterpart.

An applicant under the new process will be required to notify other relevant persons, who will have 60 days to make a submission to VCAT. VCAT must make an order appointing the parent or parents as a guardian if satisfied that the requirements for the appointment have been demonstrated, taking into account any submissions received, unless VCAT is satisfied that the proposed represented person does not want the order made or has other concerns that VCAT wishes to consider at a hearing, or that there is a significant risk that the order sought would be harmful to the personal and social wellbeing of the person. The powers conferred by the appointment will depend on the order sought.

If either of those caveats is relevant, VCAT must convene a hearing to consider the application. The hearing must be held within 30 days of the expiry of the 60-day period for receiving submissions, and the proposed represented person must attend unless VCAT is satisfied that the person does not wish to attend or their presence is impracticable or unreasonable.

After the hearing, VCAT must make the order appointing the parent or parents as a guardian in the terms sought, unless it is satisfied that the order would be harmful to the personal and social wellbeing of the person or that the order would not be appropriate after taking into account the views of the person who would be subject to it.

VCAT can make a guardianship order conferring more limited powers than the terms sought if VCAT is satisfied that an order in the terms sought would be harmful to the personal and social wellbeing of the person or that the order made by VCAT more closely reflects the views of the proposed represented person.

VCAT will be required to conduct a reassessment of such orders at least once within each five-year period after making the order. VCAT is also able to conduct a reassessment of an order at any time, either on its own initiative or on the application of any person with a sufficient interest in the matter.

The new streamlined process for parents of people with profound decision-making incapacity will provide a straightforward process for parents to continue to support their son or daughter without the need to go through a full guardianship hearing at VCAT. It provides appropriate recognition of the important role played by parents of people with profound decision-making incapacity. At the same time it avoids guardianship appointments that do not reflect the interests or wishes of the person with a disability.

Improving VCAT processes

The bill also includes many amendments to improve processes at VCAT when dealing with guardianship and administration and associated applications.

The bill will require greater involvement by VCAT in the early stages of an application to determine who has an interest in it and what information they should receive about it.

The bill will ensure greater participation in the process by the proposed represented person.

The bill includes further considerations for determining the suitability of a person to be a guardian or administrator, which emphasise the desirability of VCAT appointing someone who has an existing personal relationship with the proposed represented person rather than a professional person or organisation.

VCAT will be able to determine the manner in which financial reports by guardians with financial powers and administrators must be made. In respect of small estates, guardians with financial powers and administrators will

be able to lodge a more limited, less burdensome form of report based on the size of the estate being administered and the nature of the relationship between the administrator or guardian and the represented person.

The bill will ensure that VCAT is able to provide advice and direction to guardians, administrators and supportive guardians, either on application or on its own motion.

The bill will enable a relative or primary carer of a represented person with ongoing impaired decision-making capacity to file a document with VCAT that states their wishes about future decision-making arrangements.

Many of these improvements will make it easier for individuals with impaired decision-making capacity and their families and carers to interact with VCAT.

Consistency with the Powers of Attorney Bill

The bill is drafted to be consistent with the provisions of the Powers of Attorney Bill.

It provides for a statutory presumption of decision-making capacity, as well as legislative guidance for determining decision-making capacity.

The same general principles will be applied by someone performing a function under the bill for a person who does not have decision-making capacity. A guardian or administrator must perform their functions in a way that is as least restrictive as possible of the ability of a disabled person to decide and act. In doing so, the guardian or administrator must ensure that that person is given all the support that is possible to enable him or her to exercise their decision-making capacity.

When a guardian or administrator appointed by VCAT makes a decision on behalf of a person who does not have decision-making capacity, the guardian or administrator must: give all the effect that is possible to the person's wishes; encourage the person to participate in decision-making, even though he or she does not have capacity for the matter; and act in a way that promotes the personal and social wellbeing of the person, having regard to the person's current and previous activities, interests, relationships and culture.

A guardian or administrator must also comply with the same duties that apply to an enduring attorney, to act honestly, diligently and in good faith; exercise reasonable care and skill; not use their position for profit; avoid conflicts of interest; and not disclose confidential information. The bill will also retain the current requirements for a guardian with personal powers to act as an advocate for the represented person and to protect them from neglect, abuse or exploitation.

It will be an offence for a guardian or administrator or a supportive guardian to dishonestly use the appointment order for their own financial gain or for the financial gain of another person, or to cause loss to the represented person or another person.

The Supreme Court or VCAT will have the power to order a guardian or administrator to compensate the represented person for loss caused by a guardian or administrator who has breached their duties under the act.

Operations of the Office of the Public Advocate

The bill also includes reforms to assist the operation of the OPA.

It clarifies the basis on which the public advocate and staff of OPA can disclose information obtained in the course of performing their functions under the act.

It clarifies the basis on which the public advocate prepares an annual report about OPA's functions and operations.

It will allow the public advocate to delegate his or her powers and duties as a guardian appointed by VCAT to a member of staff of OPA, without requiring VCAT's consent.

It will allow the public advocate to delegate their powers and duties as an enduring attorney to a member of staff of OPA. Any appointment of the public advocate as an enduring attorney will automatically transfer to a new public advocate on their appointment.

This bill, together with the Powers of Attorney Bill 2014, establishes a strong legal framework to better provide for the needs of Victorians who require assistance with decision-making now or will do so in the future.

I commend the bill to the house.

Debate adjourned on motion of Mr NOONAN (Williamstown).

Debate adjourned until Thursday, 4 September.

EDUCATION AND TRAINING REFORM AMENDMENT (MISCELLANEOUS) BILL 2014

Statement of compatibility

Mr DIXON (Minister for Education) tabled following statement in accordance with Charter of Human Rights and Responsibilities Act 2006:

In accordance with section 28 of the Charter of Human Rights and Responsibilities Act 2006 (the charter act), I make this statement of compatibility with respect to the Education and Training Reform Amendment (Miscellaneous) Bill 2014.

In my opinion, the Education and Training Reform Amendment (Miscellaneous) Bill 2014 (the bill), as introduced to the Legislative Assembly, is compatible with the human rights protected by the charter act. I base my opinion on the reasons outlined in this statement.

Overview of bill

This bill proposes amendments to the Education and Training Reform Act 2006 (ETR act) firstly, to strengthen school regulation by enhancing the functions and powers of the

Victorian Registration and Qualifications Authority (VRQA) to protect the interests of students as consumers.

The VRQA is the statutory body responsible for the registration of schools and vocational education and training providers. It also carries a number of regulatory and enforcement functions with respect to registered schools and providers. In the last two to three years, following the high-profile closure of several independent schools and the scaling back of several others, there have been concerns with respect to the VRQA's abilities to monitor the financial viability of non-government schools.

The bill will broaden the VRQA's current information-sharing powers to enable the VRQA to disclose information that it has obtained in the course of performing its functions to prescribed bodies if the information relates to the performance of a function of that body.

Secondly, the ETR act will be amended to implement the government's response to recommendations 12.1 and 16.1 of the report of the Family and Community Development Committee of the Parliament — *Betrayal of Trust: Inquiry into the Handling of Child Abuse by Religious and other Non-Government Organisations* (*Betrayal of Trust* report).

Recommendation 16.1 of the *Betrayal of Trust* report recommended that the government review procedures for responding to allegations of criminal child abuse within Victorian schools and identify a benchmark to apply to non-government schools. Recommendation 12.1 of the *Betrayal of Trust* report recommended that government implement minimum standards for maintaining 'child-safe environments' for all organisations with direct and regular contact with children.

The proposed bill will amend the ETR act to require registered schools to satisfy the VRQA that they have implemented a policy for managing the risk of child abuse, including responding to allegations of child abuse, as a condition of registration. The matters to be included in the policy will be addressed in a ministerial order.

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

Most provisions of the bill relate to schools, universities, TAFE institutes and adult education institutions, which are incorporated entities and statutory bodies which therefore do not have rights under the charter.

However, the following charter act rights are still relevant to some extent:

- the right to privacy and reputation, as set out in section 13 of the charter act; and
- the right to protection of families and children, as set out in section 17 of the charter act.

Section 13: privacy and reputation

This charter right is relevant to clause 28 of the bill, which broadens the VRQA's powers to share information with a prescribed group of external persons or bodies.

Currently the VRQA has limited information-disclosure powers under section 4.9.4 of the act both in terms of nature of information that can be shared, as well as the entities that it can be shared with. Namely, the VRQA could only disclose to the secretary, a department of the commonwealth government or to another registering body, but only with respect to information about or arising from:

- the registration or approval of a person or provider including the application for that registration or approval;
- a compliance audit conducted about a person or provider;
- any action the VRQA takes in relation to a registered or approved person or provider;
- the performance of a function or the exercise of a power by the VRQA at the request of another registering body; and
- the breach of, or failure to comply with, a government training contract by a registered training organisation (RTO) (which provides vocational education and training).

The bill proposes to extend the class of prescribed person or body to include the secretary of another department in Victoria, a public sector body, a municipal council, a registering body, a school registering body, a department of the commonwealth government or of another state or territory government; and an agency of the commonwealth.

Similarly, the circumstances under which the VRQA can share information will no longer be prescribed in legislation. Instead, the bill will enable the VRQA to disclose information to a prescribed person or body if that information relates to the performance of a function of that person or body.

Whilst the majority of information that the VRQA obtains relates to the registration of a school or RTO, there may also be collection of incidental information which could be of a private nature. For instance, a registered non-government school could have a sole proprietor who is a natural person rather than a body corporate. Similarly, the VRQA obtains personal information about individual students, apprentices/trainees as well as sole trader employers as a result of its apprenticeship regulation functions.

The proposed amendment would allow the VRQA to disclose information about a school's registration to a registration body in another jurisdiction where the school has interstate campuses or operations. Likewise, the VRQA could also disclose information about an employer who has been found to engage in unsafe work practices to WorkSafe. In these circumstances, information being disclosed could include private or personal information.

However, I consider that such disclosure is neither unlawful nor arbitrary. Information may only be shared for purposes related to the exercising of functions by the recipient entity under the bill. The sharing of such information is necessary to ensure that regulatory bodies and government agencies are able to access all information necessary to regulate the education and training sectors.

In determining the scope of information-sharing powers, the bill needs to take account not only of section 13 rights, but also the interests of students as consumers as well as the welfare of apprentices and trainees. Therefore, in my view,

the provisions are compatible with the right to privacy in section 13.

Section 17: protection of families and children

Subsection (2) of section 17 of the charter provides that 'Every child has the right, without discrimination, to such protection as is in his or her best interests and is needed by him or her by reason of being a child'.

The *Betrayal of Trust* report put forward a number of recommendations relating to monitoring organisations' responses to criminal child abuse as well as preventing criminal child abuse in organisations. In particular, the report recommended that procedures developed by the Department of Education and Early Childhood Development should be reviewed so as to identify a benchmark that could be applied more broadly to non-government schools.

Clause 18 of the bill will implement recommendations 12.1 and 16.1 by ensuring that all schools in Victoria, as a requirement of registration, have in place a policy for managing the risks of child abuse including the implementation of minimum standards for a child-safe environment and responding to allegations of such abuse. Consequently, I consider the imposition of such a requirement on schools to develop such a policy upholds the right of children to protection from risks of child abuse.

The Hon. Martin Dixon, MP
Minister for Education

Second reading

Mr DIXON (Minister for Education) — I move:

That this bill be now read a second time.

Speech as follows incorporated into *Hansard* in accordance with resolution of house:

This bill proposes amendments to the Education and Training Reform Act 2006 (ETR act), primarily to strengthen school regulation by providing additional tools for the Victorian Registration and Qualifications Authority (VRQA).

The bill is also a timely vehicle to implement the government's response to recommendations 12.1 and 16.1 of the report of the Family and Community Development Committee of the Parliament — *Betrayal of Trust: Inquiry into the Handling of Child Abuse by Religious and other Non-Government Organisations* (*Betrayal of Trust* report).

The bill also proposes a number of amendments that are machinery in nature, such as clarifications to administrative powers and technical corrections.

Firstly, the bill will give the VRQA broadened powers to be able to conduct periodic financial health assessments and take action to protect the interests of students as consumers.

The VRQA is the statutory body responsible for the registration of schools and providers of vocational education and training.

Concerns were raised with respect to the VRQA's abilities to monitor the financial viability of non-government schools as a result of a number of high-profile closures of independent schools and the scaling back of several others in the last two to three years. The closures in particular had significant adverse impact not only on students of the schools who experienced severe disruptions to their studies but also the wider school community.

A number of other deficiencies have been identified in the current legislative framework which fails to adequately protect the interests of students as consumers. For instance, students and parents were not informed of the school's financial difficulties until closure was looming. Similarly, after the closure, students were unable to recover tuition or other school fees which were paid in advance.

The bill will enable the VRQA to assess a school's financial viability and impose conditions where the VRQA determines there are concerns with the school's financial position — for example, reporting to parents about the school's finances and establishing fee protection schemes. However, it is not intended that these new regulatory powers will result in additional liability for the VRQA or the government in the event that a school ceases operation in spite of these measures.

The bill will also allow VRQA to share information about a school's compliance with registration bodies in other states and territories, to improve overall regulation of non-government schools.

This is consistent with the commitment that I, the Minister for Education, undertook in 2012 to consider options for giving additional powers to the VRQA to enable more proactive monitoring of non-government schools.

Importantly, the VRQA already has these functions and powers in the vocational education and training space and they are essentially duplicated to apply to the school sector.

Secondly, the bill will implement the government's response to recommendations 12.1 and 16.1 of the *Betrayal of Trust* report.

Recommendation 16.1 of the *Betrayal of Trust* report recommended that the government review procedures for responding to allegations of criminal child abuse within Victorian schools and identify a benchmark to apply to non-government schools. Recommendation 12.1 of the *Betrayal of Trust* report recommended that the government implement minimum standards for maintaining 'child-safe environments' for all organisations with direct and regular contact with children.

The bill will amend the act to require schools to satisfy the VRQA, as a condition of registration, that they have implemented a policy for managing the risk of child abuse, including responding to allegations of child abuse. The matters to be included in the policy will be prescribed in a ministerial order.

It is critical that the government take the opportunity presented by this bill to implement these recommendations. Upon the tabling of the *Betrayal of Trust* report on 13 November 2013, the Premier advised the Legislative Assembly that the government would respond to its recommendations 'as quickly as possible'. The bill is fulfilling the Premier's commitment to act quickly and decisively to protect Victoria's children.

Thirdly, the bill will foster a more strategic approach to school governance and increase the autonomy of school councils by removing certain 'red tape' burdens which undesirably limit their functions. In particular, the bill will enable school councils to enter into licensing arrangements with respect to school land to set up a school canteen or uniform shop on school grounds.

This amendment addresses some of the restrictions identified as barriers to school autonomy by the Victorian Competition and Efficiency Commission in its May 2013 report on school devolution and accountability.

Fourthly, the bill aims to improve governance for adult, community and further education (ACFE) regional councils.

ACFE refers to secondary, further or vocational education for adults, provided by an adult education institution or a community-based organisation (other than a TAFE). The role of ACFE regional councils is to support the ACFE board by providing strategic advice and information to the ACFE board regarding adult and vocational learning needs and issues for each region.

Currently the act is overly prescriptive with respect to the composition of the regional councils and requirements for meetings. The government is acting to give regional councils more autonomy and flexibility in terms of their composition and meeting requirements.

The bill enables each of the regional councils to determine the size which is appropriate for its circumstances. The bill will further broaden the skill mix on regional councils to include leaders from local industry, the broader community, as well as from the adult community education sector.

Lastly, the proposed bill will give effect to various minor amendments such as to rectify typographical errors as well as clarify mechanical and timing provisions.

There will also be a single amendment to all eight Victorian university acts to provide greater flexibility to university councils and enable renewal of council composition at different times of the year rather than at end of the year as is currently mandated.

In conclusion, the bill will amend the Education and Training Reform Act 2006 to provide the tools necessary to respond to any further unexpected closures or scaling back of non-government schools. This will enable the government to fulfil a prior commitment to consider options for using the VRQA to improve financial regulation of non-government schools.

Equally importantly, the bill will amend the act to require registered schools to implement a policy for managing the risk of child abuse, including responding to allegations of child abuse, as a condition of registration. This amendment addresses recommendations 12.1 and 16.1 of the *Betrayal of Trust* report, which the government has committed to respond to 'as quickly as possible'.

The bill will also implement reforms to the structure of ACFE regional councils to provide for more effective functioning which will lead to more successful outcomes for the adult education sector.

I commend the bill to the house.

Debate adjourned on motion of Mr NOONAN (Williamstown).

Debate adjourned until Thursday, 4 September.

TOBACCO AMENDMENT BILL 2014

Second reading

Debate resumed from 20 August; motion of Ms WOOLDRIDGE (Minister for Mental Health).

Ms WREFORD (Mordialloc) — I will resume my contribution on the debate on the Tobacco Amendment Bill 2014 where I left off last night. The outdoor smoking ban applies to all education and care service premises within the meaning of the Education and Care Services National Law (Victoria), with the exception of family day care and premises for which a licence to operate a children's service has been granted under the Children's Services Act 1996.

On the advice of the chief health officer, the bans will apply from within 4 metres of the entrance to all the places discussed so far, which also include buildings occupied by Parliament; all administrative offices and special bodies, such as the Victorian Auditor-General's Office and the Victorian Civil and Administrative Tribunal; the Victorian Public Sector Commission; and the Victorian courts, including the Children's Court, the Coroners Court, the County Court, the Court of Appeal, the Magistrates Court and the Supreme Court. Four metres from the entrance was chosen because it has been proven that the concentration of smoke produced near a door can be as high as the concentration retained indoors. Four metres provides some distance for the smoke to dissipate and also prevents an unsightly mess of butts at the entrance to a building. I guess an added benefit is that people who recently quit smoking will not be tempted as frequently by the sight and smell of smoking.

In order to inform the community of these legislative changes there will be an extensive media and public awareness campaign. 'No smoking' signs will be supplied at no cost by the Department of Health to all the organisations whose building entrances are affected, and they must display the signs. This includes school gates and hospital entrances. There will be signs outside every school in the Mordialloc electorate, as well as at places like Sandringham Hospital, Monash Medical Centre and Frankston Hospital. There will also be signs outside kindergartens, preschools, childcare centres and places like Central Bayside Community Health Services.

From past experience and from the strong support of the general community for such bans, it is anticipated that there will be a very high level of voluntary compliance. However, council officers under the Tobacco Act 1987 are empowered to educate the public and if necessary enforce the bans. There is a $147 on-the-spot fine available and a maximum penalty of over $730 for a breach.

Additionally this bill amends section 11A of the Tobacco Act to quadruple the penalties for tobacco wholesalers and retailers possessing illicit tobacco. There need to be strong deterrents around illicit tobacco because of the damage that it can cause. We do not want to see its popularity grow any further, and nor do families in my electorate of Mordialloc. The fines are now very stiff — over $35 000 for a natural person and $177 000 for a body corporate. That is a pretty powerful deterrent.

Finally, this bill enhances inspectors' powers of entry under section 3A of the Tobacco Act 1987 so as to clarify that inspectors can enter public places to monitor compliance with outdoor smoking bans. They are also able to enter, inspect, monitor and investigate compliance within schools, kindergartens, preschools and childcare centres that are not open to the public. Given that we are talking about premises where children will be present, there must be a representative of the organisation accompanying the inspector.

In summary, we as a government are committed to protecting all Victorians, especially our children, from smoking, and through this legislation we are promoting harm minimisation. It is very disappointing that still over 4000 Victorians lose their lives to smoking each year. It is not only about the lives that are lost: it is also about the other serious health effects of smoking that cost our health sector so much money and cause quality of life issues for people in our electorates — problems such as lung disease, heart disease and macular degeneration, among many others.

Smoking is already banned at or near many public places where children can be found, but this bill goes further by banning smoking at and near entrances to, and within the grounds of, all Victorian secondary and primary schools, preschools, kindergartens and childcare centres and at and near entrances to children's indoor play centres and Victorian public premises, which include all Victorian public hospitals, registered community health centres and certain Victorian government buildings. This is a good bill for Victoria, and I commend it to the house.

Mr MADDEN (Essendon) — We will not be opposing the bill. Its main purpose is to amend the Tobacco Act 1987 to prohibit smoking in specific outdoor areas and within 4 metres of the entrance of certain facilities. We support that, but I have to say there is a bit of confusion in relation to how that is going to be enforced. It is one thing to have an idea about noble causes and noble legislation that is going to do its job, but I am a bit concerned about how it is going to be policed. A number of the facilities listed in the bill already have bans on smoking in the areas outside them, and that is important. That needs to be encouraged and made to continue. I am concerned, however, about how this behaviour will be measured — to what extent people will be pressured to make sure they are standing exactly 4 metres away from a facility as opposed to 3.8 or 3.9 metres away and how much discretion any enforcement agency might have about whether or not they move people away from a building on a first warning or a second warning and then fine them accordingly. There is therefore a bit of confusion, and I am concerned that the confusion is going to create some problems.

Mr Delahunty — What would you do?

Mr MADDEN — The suggestion could be — and I am not saying this should be done — that you are going to have to put line markings outside some of these facility doorways.

Honourable members interjecting.

Mr MADDEN — You would not, would you, because that sounds absolutely silly. But how is it going to be measured and how is it going to be policed? It is one thing to have a great and noble idea and to have it in legislation, but the way in which you enforce and implement it is going to create complexities and challenges. That might not seem a great problem, but it might be once it gets into courts and people have to defend their position as to whether they believed they were 3.8 metres away from a building or 4.2 metres away from a building — which, if you take my stride as an example, might represent the difference between one stride more or less away from the building.

The scourge of the use of tobacco is closely felt by my family. My father died somewhere in the order of 40 years ago, and I remember that as a child I used to go down to the milk bar and buy him a packet of Viscount cigarettes. I would have been eight or nine at the time, but I could buy a packet of Viscount for my father.

Mr Delahunty interjected.

Mr MADDEN — I think he would give me 30 cents, and the packets of Viscount in those days were 27 cents, so that allowed me 3 cents for an icy pole. I would come home very happy that I had delivered a packet of Viscount to my father, not understanding what it might do in the years ahead. My father ended up dying of coronary heart disease, much of that probably caused by smoking. He died young, at the age of 56. Interestingly, he had come back from the war and had already had a lung removed, so he was smoking two packets of Viscount a day on one lung.

What that has highlighted to me is that you would suspect that some anxiety might be expressed by high levels of smoking as part of the way that people displace their anxiety through some type of compulsive behaviour. I am very conscious of the question of how, if you smoke heavily and consistently and then are not allowed to keep doing so, you replace that behaviour in terms of meeting those needs. Is it replaced by some other compulsive or anxiety-offsetting behaviour? Whilst we will stop people from smoking in public places, and we may reduce their need and desire to smoke, because smoking is frowned upon, will people end up replacing smoking with another behaviour? I am a big believer in the contention that they will. I am no psychiatrist, but I suspect that people will replace that behaviour with other sorts of behaviours. Whether they are positive or negative behaviours might depend on the individual. Some people who have some sort of compulsive need to smoke, which is the basis of why they smoke, might replace it with training for triathlons or marathons, for example, because they can be compulsive about those things. Others might replace smoking with eating more. My suspicions are that as we as a society push people away from one compulsive behaviour —

Ms Wreford — Or vice.

Mr MADDEN — Or vice — yes; it might be described as a vice — they will supplement that by finding something else. My suspicion is that we are seeing a lot of people in the community with varying degrees of anxiety who displace that anxiety through behaviours. That displacement is usually located in compulsions around smoking, eating or gambling. As people are displaced from one compulsive behaviour — and I am talking broadly on a community level, not necessarily an individual level — they replace it with another. My sense is that as our lives get more complex and there is more anxiety across the community, we will see an increase in these compulsive behaviours. As we shift people in the community from one activity they will turn to other negative compulsive behaviours, such as gambling, including using gaming machines, and compulsive eating.

While I believe we need to act on tobacco, we also need to act on the fundamental elements that lead to a need for people to offset some degree of anxiety through these behaviours. That is not easy to do. I do not have any science before me that tells us how to do it, but I believe we need to tackle the way people often seek out negative compulsive behaviours and, as I have already said, even some of the positive compulsive behaviours, such as running marathons, competing in triathlons and undertaking long-distance swimming. These might seem to be great things to do, but people might use them to distract themselves from other parts of their lives that may be the cause of the compulsive behaviour.

We support the bill. However, there are some issues around how it will be implemented, policed and defended should it be challenged in court. I also think there is a greater need for us as a community through public health organisations such as VicHealth to look beyond compulsive behaviours towards the needs of the community and those individuals who engage in them and try to alleviate them or provide support so that people can overcome their issues. It is not just about smoking; it is also about compulsive eating, gambling and all those other compulsive behaviours that are often associated with anxiety disorders. If VicHealth could investigate this over and above outcomes, then I think we could make some quite dramatic inroads into the needs of the community and improve general public health for the sake of all Victorians.

The opposition supports the bill. We have some queries about how it is going to be implemented, but we look forward to seeing it have a positive impact on the public health of Victorians in years to come.

Mr DELAHUNTY (Lowan) — I rise to speak for the great Lowan electorate on the very important Tobacco Amendment Bill 2014. It is always great to follow the member for Essendon. I was disappointed when years ago he left the great team that I used to play for — the Bombers — to move to Carlton.

Honourable members interjecting.

Mr DELAHUNTY — I did not quite hear that one. We all have problems, don't we? The member for Broadmeadows knows — —

The ACTING SPEAKER (**Mr McIntosh**) — Order! The member should return to the bill.

Mr DELAHUNTY — Returning to the bill, I live and reside in country Victoria. I went to school there, and I will never forget dabbling in smoking when I was on a school trip, like a lot of people at that age did. I went to Ballarat on a football trip where I bought my first packet of cigarettes, which were called Country Life. They were in a brown packet; I can still see them. I reckon I smoked two or three of them and thought, 'Why are people sucking on these things?'. They were the only two or three cigarettes I ever smoked. Someone said to me later that they were the worst cigarettes ever made. I bought them, and thankfully I did, because from then on I have become antismoking.

I was very privileged to be a member of the board of VicHealth for nearly nine years. VicHealth has achieved an enormous amount. I learnt a lot during my time on the board, and I applied a lot of my learnings as a board member to my role as Minister for Sport and Recreation. VicHealth did a lot of work around addressing smoking rates. I can remember years ago a lot of events were sponsored by tobacco companies. I remember playing in the Winfield Country Football Championships, which were sponsored by Winfield cigarettes. VicHealth eventually bought out Winfield, and the championships became the VicHealth Country Football Championships. It was the same for other sporting activities and arts events. I congratulate those who set up VicHealth in 1987, and I acknowledge the enormous achievements of its board members, who include the member for Forest Hill and other members.

As I said, I applied a lot of what I learnt from VicHealth to my role as Minister for Sport and Recreation. We still have problems around smoking, and that is what this legislation is all about. There are also the issues of obesity and type 2 diabetes. One thing this Parliament can do is to try to address some of these things, particularly the influence smoking has on children. We need to help people give up smoking and encourage them to eat well and, most importantly, to exercise. As I have often said in this chamber — and I will keep saying it — we need to get more people more active more often. Therefore, on behalf of the Lowan electorate I am very happy to support the Tobacco Amendment Bill 2014.

As we know, smoking claims approximately 4000 Victorian lives every year and leads to around $2.4 billion in direct healthcare costs and lost productivity. Evidence suggests there is no safe level of exposure to tobacco smoke. I am pleased to be part of a government which is committed to reducing the prevalence of tobacco-related illnesses and disease in Victoria through reducing exposure to second-hand smoke and, importantly, denormalising the use of tobacco. Ultimately we want to reduce the proportion of people who smoke.

As I said, the work done by VicHealth has been very important in influencing all governments, and I have a paper here which was presented to the Minister for Health back in June 2013. It is titled *Victoria Doesn't Want Its Children to Smoke*. It contains advice to the Minister for Health on smoke-free outdoor areas and other interventions to reduce the youth uptake of smoking. I want to pick up on a couple of points in this document. It says:

> VicHealth has completed a robust process to compile the following advice …

The document goes on to say:

> The results and findings from this process clearly demonstrate that Victorians want smoke-free areas, particularly where families and children congregate, and they do not want their children to smoke.

I have three sons, all happily married, and I have seven grandchildren. My great fear is that some of them, particularly the grandchildren, will take up the scourge of smoking.

Back in June 2013 VicHealth made recommendations to the Victorian government. It wanted to create a smoke-free environment to denormalise smoking in young people. It wanted to prohibit smoking between the flags at patrolled beaches, which the government has done; within 10 metres of all children's playgrounds, which it has done; in all sporting grounds and facilities, which it has done; and in all outdoor dining areas, which it is now doing. Again, VicHealth has helped the government to do a lot of work in that area.

This morning I was proud to attend a breakfast organised by the National Heart Foundation of Australia. Many members of Parliament were there, and I congratulate them on that. The member for Forest Hill was there. We were addressed by a speaker named Dr Robert Grenfell, who comes from my area of Horsham, although he lived at Natimuk and still owns a little art gallery there. The Heart Foundation benefits from having Rob Grenfell, but he is a terrible loss to our community. He still comes back to visit frequently, having been a great GP in our area.

At this morning's breakfast Dr Grenfell highlighted the fact that 1 in 3 Victorians have high cholesterol and 1 in 6 Victorians aged 45 and over have high blood pressure and high total cholesterol. It is interesting to note that 43 per cent of Victorians aged 45 and over have high cholesterol but 90 per cent are unaware of it. There are

a lot of members in this chamber who are over 45 years of age, and I encourage them to have a yearly medical check-up, as I do, because it is important to be aware of these things.

People like Kellie-Ann Jolly worked at VicHealth when I was involved with that organisation, and she is a member of the Heart Foundation. I congratulate her for the work she did at VicHealth in getting more people more active and for the work she is doing with the Heart Foundation. At the breakfast this morning we were given stress balls. I know that the Speaker has one — 100 days from the election we probably all need one — and it will be interesting to see whether she is using it today.

We were given information today on tobacco smoking and its links to disease. Importantly we were given statistics, which I want to highlight today, and I have to say that those for my electorate of Lowan were particularly disappointing. Looking at the five council areas that are predominantly in my electorate, the municipality with the highest prevalence of smokers is Hindmarsh shire, with 19.8 per cent; 21 per cent are ex-smokers and nearly 58 per cent are non-smokers. In the rural city of Ararat 16.8 per cent are smokers, 29.3 per cent are ex-smokers and 53.5 per cent are non-smokers. In West Wimmera shire 14.6 per cent are smokers, 30 per cent are ex-smokers and 55 per cent are non-smokers. In the Southern Grampians shire 12.2 per cent are smokers, 23.7 per cent are ex-smokers and 63.1 per cent are non-smokers. In the shire of Horsham, where I live, 11.1 per cent are current smokers, 23.8 per cent are ex-smokers and 64.7 per cent are non-smokers.

We can see from those statistics that there is still a lot of work to be done, and I want to congratulate the Ararat Rural City Council. Ararat, unfortunately, is ranked second when it comes to the number of current smokers, with 16.8 per cent. I did not see a lot of the program on TV because I do not have time to watch a lot of it, but Ararat was involved with the television program *The Biggest Loser*. That program was about reducing obesity, and it highlighted the fact that one of the contributing factors in people's cardiovascular problems is the prevalence of smoking. There is still more work to be done.

The Heart Foundation has some good maps about the prevalence of high cholesterol and cardiovascular disease in Victoria. When I look at the two maps I have, it is a little frightening to see that in relation to cardiovascular disease, a lot of which is caused by smoking, the area with the highest percentage is Latrobe-Gippsland, with 25.6 per cent. Bendigo has 15.2 per cent, and another area with a high percentage is Melbourne's outer east. It is interesting to see that we are improving a little in relation to areas where people have high cholesterol.

I strongly support this bill because it is a very important step forward in eliminating smoking, but more particularly it protects our children.

Mr SCOTT (Preston) — I rise to speak on the Tobacco Amendment Bill 2014. As has been stated, Labor does not oppose this bill. Indeed this bill continues a tradition of smoking reforms. When I say 'reforms' I mean limitations on the ability to smoke in places where the health of others can be damaged. A number of those major reforms were introduced under previous Labor governments, including bans on smoking inside pubs and clubs and at workplaces, moving the displays of cigarettes in shops and banning smoking in cars with kids. These are reforms that the Labor Party is rightly proud of, but we also welcome efforts in this place to limit the damage caused by tobacco smoking.

It is important to note the insidious and terrible damage that is being done to the community through tobacco smoking. The criticisms of tobacco by those who hold public office literally go back, if I am not mistaken, to at least James I and his treatise *A Counterblaste to Tobacco*. There has been more recent criticism. The destructive nature of tobacco is perhaps best highlighted by a report commissioned by Philip Morris. This is a particularly repugnant document prepared by Arthur D. Little International, which members may be aware of, imploring the Czech Republic not to restrict smoking on the basis that it kills people and so lowers costs to government, such as pensions and housing. This is a report from November 2000. Again, this report was commissioned by Philip Morris itself.

Despite the very vigorous denial at the time of the health effects of passive smoking (ETS), as it is referred to in this bill, the report states:

> Recent health research shows that there is a relationship between ETS and several diseases. The most recent and comprehensive study in this field … concluded, based on review of recent studies in the field of respiratory diseases, that ETS causes lung cancer, chronic airways obstruction, aggravation of asthma in asthmatic children and other respiratory diseases.

There is little doubt about this. Only the most obtuse persons would wish to ignore the heaviest weight of scientific evidence and claim that smoking itself, as well as passive smoking, is not very deleterious to health and does not shorten life. In the same report it was clearly stated that the Czech government would

save money if it did not restrict smoking because of the effect of killing its own citizens at an earlier age.

I think it is right that this Parliament takes action on smoking, and I am sure that in the future legislation will come before Parliament to further restrict smoking, particularly smoking that affects individuals who do not smoke themselves. I understand the government has foreshadowed that smoking will be outlawed in outdoor drinking and dining areas, although this is to be subject to some consultation. At the time when smoking bans in pubs and clubs were introduced by the Labor government, as I previously outlined, it was stated that this would have a very negative impact on those businesses. However, the evidence shows that that was not the case. I urge the government when conducting this consultative process not to be swayed by those who have vested interests in purveying products that kill consumers and third parties as well — and there is little doubt that that is exactly what tobacco does.

Again, we are certainly not opposing this bill. In fact we welcome legislation that continues a tradition established under previous governments, including Labor governments. However, we would be concerned if those who wish to defend their vested interests in selling such products were able to unduly influence the consultative process. The Labor Party is proud that it does not receive donations from tobacco companies, and I urge all parties to adopt that position. Tobacco companies play a special role — and I use that term in a different way than it is often used in this house — in our community. There is little doubt that the products they sell kill their consumers. They are not safe products. There may be arguments about what a safe level of alcohol consumption is — in fact there is evidence that a small amount of alcohol could be beneficial to health — but there is little doubt that the consumption of tobacco products has entirely negative health effects for the consumer.

With those brief comments I will conclude my remarks. I hope there will be future legislation to protect Victorians from the negative impacts of smoking, both direct and indirect.

Ms McLEISH (Seymour) — I rise to make a contribution in support of the Tobacco Amendment Bill 2014. In a nutshell, the purposes of this bill are to prohibit smoking in specified outdoor areas and to prohibit smoking in the vicinity of pedestrian access points to certain places. The bill also amends the powers of inspectors in relation to monitoring compliance with and investigations of possible contraventions of prohibitions on smoking in outdoor areas.

I want to provide some background. The dangers of smoking are now very well known and documented. There has been a lot of research done over the years; indeed smoking has been around for a very long time and it has taken quite a number of turns. In the early part of last century — for instance, in the 1920s — smoking was extremely fashionable. It was very fashionable for women to have long cigarette holders; that was part of the gown and the glamour at the time. However, over the years people started to get sick, and they started to understand that smoking is not good for your health. As our understanding progressed further, we began to get a grip on the fact that passive smoking is also a danger to health.

Community attitudes have changed over time with this understanding that smoking causes health problems. My mother was a smoker, and she would have been able to tell you the day that she stopped smoking. She suffered from emphysema. She always maintained that she knew the dangers of smoking, but sadly she enjoyed it, and eventually it got the better of her. However, she was aware in recent years that she needed to do things differently around other people — as opposed to those earlier years when smoking was so commonplace. People smoked fairly consistently, whether at the workplace, indoors or in their cars.

As our awareness of the dangers and health impacts of smoking have altered, legislation has changed and protections have been introduced. These protections have increased and they continue to increase. As I mentioned, it was once commonplace for people to smoke in the workplace and in indoor areas. The introduction in 2006 of indoor smoking bans and similar measures were quite important. The previous government speaker, the member for Lowan, spoke about cigarette advertising during sports events — for instance, the Benson & Hedges World Series Cup. There was so much cigarette advertising on TV. It was a source of revenue, and it was very difficult for a lot of these sporting bodies to give up the revenue from these major cigarette companies.

That is when health bodies stepped in and started doing health promotion work. We have seen changes to cigarette packaging, messages on the packages and now in the way cigarettes are presented for sale. We have also seen the introduction of outdoor smoking areas. These things are not just happening in Victoria or Australia; they are also happening extensively overseas, and certainly in some countries more than others. If you travel overseas, it is easy to see in some countries that their tolerance for smoking is very different from here.

We are always keen to protect children particularly from the effects of second-hand smoke but also from taking up smoking in the first place. Sadly, every year 4000 Victorians lose their lives because of smoking. Smoking is avoidable. It is a choice people make, but I understand that people have an addiction and find it difficult to give up smoking. However, if people can avoid taking it up in the first place then they can avoid the effects of smoking, including ill health. We want to protect our children from the impact of passive smoking by encouraging people not to smoke in cars when children are present and by ensuring that the places where they spend a lot of time, such as childcare centres and schools, are smoke-free. Parents are role models; children are very impressionable and they copy adults. It is important when we are tackling the issue of smoking bans and restrictions that we make changes that bring changes to habits and attitudes.

The bill bans smoking in outdoor areas, within the grounds, at the entrances or near the entrances of childcare centres including long day care centres, kindergartens, preschools and primary and secondary schools. Some 2200 secondary and primary schools and about 4200 kindergartens and childcare centres will benefit from the bans. Bans will also be in place within the grounds, at the entrances and near the entrances of children's indoor play centres. People who have small children often take them for parties or outings to a play centre. The bans will also be in place for public premises such as community health centres, hospitals and buildings where government departments, the police, courts and the Parliament are housed.

Bans at schools will apply to anybody on school premises during and after school hours. Childcare centres are a little different, because the ban will exist during the hours of a centre's operation. This recognises that while schools are used pretty much exclusively for educational purposes, childcare centres can be in a hall or other facility which is used for other purposes. Therefore the ban will be in place during the hours when a venue is operating as a childcare centre.

The distance from an entrance that the smoking ban applies to has been determined to be 4 metres, which is what is considered to be safe when you take into consideration things like smoke drift. We had a look at what other states have been doing to try to be consistent with them. In Tasmania there is a 3-metre ban and the Northern Territory has a 2-metre ban. At 5 metres the West Australia ban is a little further than ours. In New South Wales the ban is about the same, and at the moment South Australia does not have a ban.

It is important to regulate the distance from entrances for smoking bans, because there have been so many complaints. Members would know that when bans were first introduced inside buildings and workplaces smokers hovered around doors to smoke, and many people complained about having to walk through huge clouds of smoke and there being cigarette butts everywhere. In many instances smokers moved a little further away from entrances because people were not very tolerant of them and made their views known. I have seen people tackle smokers and say that they are creating a health hazard by being so close to a door. Coming up with a figure of 4 metres gives consideration of proximity to a building and recognises the issue of smoke drift.

Obviously there will need to be an awareness campaign about the smoking bans through radio and print, online advertising, brochures, posters and fact sheets. There will be 'no smoking' signs at building entrances, so if you go to a hospital to visit someone, there will be a sign at the entrance, and there will be signs at school gates.

With regard to schools, I know Catholic and private schools and Independent Schools Victoria have come on board with the legislation. The director of the Catholic Education Office, Stephen Elder, has confirmed that the legislation is consistent with actions and practices already in place in the Catholic system. One of the independent schools said that it already has these policies in place. It has facilities across three campuses, and the implementation of the smoking bans has not been an issue. There will be very strong community support for the bill. Most people do not smoke and many people complain about smoking, so you would expect compliance to be high. There will be on-the-spot penalties of $147, with a maximum penalty of $730.

The bill quadruples penalties for the possession of illicit tobacco by retailers and wholesalers. We know some people seek out illicit tobacco as a way to cut the cost of buying cigarettes rather than doing it the right way and helping people to give up smoking. I commend the bill to the house.

Mr McGUIRE (Broadmeadows) — Every cigarette does you harm. The science is uncontested, and the facts are chilling. We know that every cigarette destroys lung tissue and that 80 per cent of lung cancer cases are caused by smoking. It is also established that the impact of tobacco in Victoria is that almost 4000 deaths occur each year and the healthcare and social costs to the community total more than $5 billion annually.

The other critical issue for me as the member for Broadmeadows is that smoking rates are higher in areas of disadvantage. A chain reaction occurs within areas of disadvantage, which has been referred to by other members. It is encouraging that smoking rates are decreasing. That is why all sides of Parliament support this bill. It is part of a long tradition within the Victorian Parliament which has involved outstanding bipartisan leadership. While the Cain government was in office David White, as Minister for Health, was able to win bipartisan support for a preventive strategy. Actually it was tripartisan support, because The Nationals also came on board.

This has been one of the great attributes of the Victorian Parliament over a long period. Even when there were cost-cutting measures during the Kennett government era, that government quarantined the Victorian health promotion area from those cuts. Mark Birrell, a former minister and member for East Yarra Province in the other place, was involved with that, and he is still involved as chair of VicHealth. The general public should understand that this has been a long tradition within the Victorian Parliament which must continue. I see this bill as a further step along that line of progress.

At the end of the day this is an exercise in persuasion. Over a long period big tobacco, even when it knew that every cigarette was doing harm, continued its marketing exercises, which included advertisements in the media and product placement in films and on television. It even involved political advertising in post-apartheid South Africa. I remember seeing a South African ad about a white tennis player playing with a black player and handing over a cigarette, which implied that smoking helped race relations. In Africa there was a black Marlboro man. Big tobacco tried many ways of marketing to people — particularly children and young people — to get them hooked. That is what it was about — getting people to take up the habit and engage in it so they would become addicted.

In Australia tobacco promotion also had a big impact on sport. Benson & Hedges World Series Cricket was one element of it. In response to that, governments developed the Quit campaign, which sponsored the former Fitzroy Football Club. The Victorian Parliament has introduced legal reforms intended to prevent the direct advertising of tobacco and to limit its sponsorship and promotion. Tobacco companies were using sport, film and popular culture in a whole range of ways to try to encourage people to have their first cigarette and thereby get them hooked. At the end of the day, it was just about making money. These companies had no concern for people's health, even though as pressure mounted they introduced light cigarettes.

The tobacco companies were ultimately just trying to create as much market segmentation as possible. You could be the rugged individual if you smoked Marlboro, you could be the man of the world and the international traveller with Peter Stuyvesant or you could just be Kool. Each brand targeted its marketing in particular ways. That is why plain packaging of cigarettes has been a success. Its success is illustrated by the attempts of the cigarette companies to stop it going ahead. The tobacco companies spent a fortune creating these brand values, as they are described, using psychological testing and marketing to try to get the message across.

This bill continues a long line of progress by Victorian governments. There have been arguments that it does not go all that far, but anything that creates progress in this field is of value. There are still issues about where this ban will operate and how it will work specifically. However, it is clear that the community, including the health and hospitality industries, should be consulted on its implementation and the specifics of its rollout. It is good to see that as part of this progress Prime Minister Tony Abbott has changed Liberal Party policy. The Premier has also now stated that the Victorian Liberal Party will no longer accept contributions from big tobacco. We hope this policy will continue so there will not be a crossover of influence from big tobacco, which in the past has meant minimal positions have been taken on this issue. We can make further strides, and hopefully that will happen in the 58th Victorian Parliament. With those comments, I commend the bill to the house.

Mr CRISP (Mildura) — I rise to support the Tobacco Amendment Bill 2014. The purpose of the bill is to amend the Tobacco Act 1987 to prohibit smoking in specified outdoor areas, to prohibit smoking in the vicinity of pedestrian access points to certain places, to increase the penalty at the foot of section 11A of the principal act and to amend the powers of inspectors in relation to monitoring compliance and investigating possible contravention of certain provisions prohibiting smoking in outdoor areas.

The bill inserts a number of new outdoor smoking bans into the principal act, which will expand on the 2012 and 2013 amendments. Those amendments prohibited smoking between the flags at patrolled beaches and within a 50-metre radius of those flags, and in outdoor areas of public swimming pools, at complexes and in the vicinity of outdoor children's playground equipment, outdoor public skate parks and outdoor

sporting venues during under-age sporting events. It is intended that the new smoking bans will further limit exposure to second-hand smoke, denormalise smoking, minimise littering and improve public amenity. Before we look at the areas that will be affected by this, I point out that Mildura has a lifesaving club. We have one of the few indoor beaches in the state near the town and no-smoking bans apply in that beach area. That is something that a few people did not realise but now understand.

The bill defines where a person can no longer smoke. Smoking is banned at children's indoor play centres, children's services, children's service premises, education and care services, education and care service premises, pedestrian access points, school premises and Victorian public premises. When we look at how many venues this involves, we see some interesting numbers. The new outdoor smoking bans will include approximately 2200 primary and secondary schools, 4200 childcare centres and kindergartens, 152 public hospitals and 37 registered community health centres. The bans will also apply at entrances to all premises occupied by Victorian courts, public service bodies and special bodies. The distance that has been chosen is 4 metres, so smokers will be required to be 4 metres away from access to those areas. This will prevent the issue of people clustering around doorways, which is where smokers tend to congregate.

It is fair to add at this point that I am not a smoker. That is probably something one should declare up-front. I am very pleased that I am not a smoker. I have observed people who are smokers, and over the years I have watched them work very hard to give up. Giving up smoking is certainly very difficult. However, I urge people to persist. As Quit campaigns tell us, each time you fail to give up, you are one step closer to the time when you will give up. I think that is important to say. There is an enormous amount of support out there. Smoking rates are of interest. They have fallen in my lifetime. When my wife and I were first married, when one had guests who smoked one put an ashtray on the coffee table in the lounge room and they were welcome to smoke. That does not happen anymore. We have come a long way in our time.

I have three local government areas in my electorate for which I have smoking rate data. In the shire of Buloke, which is in the southern part of my electorate, 20.2 per cent of people are current smokers, 21.1 per cent are ex-smokers and 58.2 per cent are non-smokers. In the rural city of Mildura, the largest municipality in my electorate, 16.2 per cent of people are current smokers, 30.7 per cent are ex-smokers and 52.7 per cent are non-smokers. In the shire of Yarriambiack 20.9 per cent of people are smokers, 21.3 per cent are ex-smokers and 57.1 per cent are non-smokers. Non-smokers very much outnumber the smokers now, which is evidence of the considerable amount of work that has been done over time to reduce our smoking rates and increase some of the health benefits that come from quitting smoking.

The Victorian government has been successful in reducing smoking rates in Victoria. In 2012 the number of regular smokers in this state was 13.3 per cent, down from 14 per cent in 2011. In 1998, 21 per cent of Victorian adults were regular smokers. When we look at the difference in smoking rates for those three local government areas, we can see there is work to be done in country areas to match the state average smoking rate.

In the past we have banned smoking within 10 metres of children's outdoor play equipment, outdoor skate parks, sporting venues during organised under-age events and outdoor areas within swimming pool complexes. We also introduced smoke-free transport stops and smoke-free patrolled beaches. We recently and courageously introduced smoke-free prisons. The government has been busy in the area of smoking. I encourage those who smoke to quit. My wife is a nurse, and our few friends who are smokers certainly get strong lectures from her. She works in palliative care and reminds me that the end of life is not pleasant for smokers.

This bill is evidence of the government taking action step-by-step to reduce smoking rates and improve health in our community. As time goes on we will continue to do what we as a government need to do to reduce smoking rates and will continue to see smoking rates decline in our community. This bill is an important next step in controlling smoking rates, and I wish it a speedy passage.

Mr LANGUILLER (Derrimut) — I rise today to add my voice to the debate on this important bill, the Tobacco Amendment Bill 2014. From the outset I indicate that Labor will not oppose the important measures that have been introduced by way of this amendment bill. This is another step in the long journey which was started many years ago during the Cain government and with the introduction of the first important legislation in 1987. The principal amendment in this bill will, rightly, denormalise smoking in our community.

All schools will now be required to be smoke free at all times, including within 4 metres of entrances. Currently smoking is banned under ministerial orders in all

government schools, but I understand that Catholic schools and other independent schools have their own bans and measures in place — or at least most of them do. Premises where family day care is provided will be excluded from these bans, but smoking will also be banned within 4 metres of the entrance to a children's indoor play centre. Smoking is already banned inside these centres, as they are enclosed workplaces, but the ban will be extended to the outside. It will also be an offence to smoke within 4 metres of pedestrian access points of Victorian public premises, like Parliament House, courts, public hospitals, government department offices and so on.

The first important component of all this is that there is bipartisan agreement on the introduction of legislation on the regulation and measures to be taken in relation to this important area of public health. The other important component of all this is that, luckily, for a long time now in Victoria — we lead the world in most aspects of the way in which we deal with these areas — the development of policy and implementation through legislation and regulation to deal with problems has been evidence based, so that we can articulate in an intelligent and scientific way what the impact of smoking is and what damage it causes. We know that 4000 Australians die yearly as a result of smoking or causes associated with smoking. We also know that it costs the economy in the order of $5 billion. These are important facts, but we also know that this is a health issue. It is not a moral or ethical issue; it is a health issue.

I will direct the house to an important conversation by detailing my personal experience, going back a couple of decades. I was a smoker. In the early days as a shop steward or health and safety representative you had to argue the case, and I very quickly learnt, particularly in the health sector — in public hospitals — that one should not be ethically judgemental on this issue. That is not how we will win a conversation with anyone on this issue, and we should not try to. We need to be scientific. We need to put the evidence on the table. We need to put facts on the radar. We need to increase the visibility of these conversations. We need to continue to educate.

The truth of the matter is that we are progressively making significant inroads into persuading the community of the ill effects of smoking. Ultimately it is a choice that individuals make, and we have a much greater chance of winning this conversation by discussing the issues constructively with individuals and recognising that this is a health issue on which people require support. Those who smoke, those who drink excessively or those who do all sorts of other unhealthy things know that they are addicted. The issues have to be dealt with in those terms. We cannot simplify the situation and assume we can tell people what to do and that they will stop their negative behaviour. People make choices, and addiction is a difficult area where people can require medical support and psychoanalysis. All sorts of jurisdictions and different types of treatment which help the individual may be involved.

As a member representing an area in which the level of smoking is significant, it is not surprising to see that in underprivileged areas — areas where there is unemployment, where there are drugs and alcohol, where there is domestic violence and all sorts of things but particularly unemployment and homelessness and so on — we confront the prevalence of cardiovascular disease and diabetes at higher levels per capita than in other areas. In these areas many people have respiratory issues, and most people — or a large number of people — tend to eat more junk food and have a less healthy diet than people in other areas. We have to create an environment which is conducive to the reduction of the excessive use of alcohol and a whole bunch of other things, including junk food consumption, by addressing a number of those issues. The member for Essendon made a very good point, and I see examples of what he was talking about in my office. People who become unemployed or homeless or must confront all sorts of financial challenges often develop very high levels of anxiety and those levels of anxiety tend to lead to addictions of one type or another.

I also refer to the issue of role models, particularly in multicultural communities. As members would be aware, I am the shadow parliamentary secretary to the Leader of the Opposition and multicultural affairs, and I spend a lot of my time working with and having discussions with multicultural communities. We need to do that. I commend VicHealth and other organisations for the work they do, but we need to do more work in the areas of education and arguing this case in a multicultural context and in a multilingual manner. There are many opportunities to engage multicultural community leaders in becoming role models themselves so they can have these conversations in their own languages with people from their own cultural backgrounds.

We must accept that there are a lot of members of our community who are from multicultural or multilingual backgrounds who do not read the *Herald Sun*, the *Age*, the *Australian* or the *Australian Financial Review* or listen to Jon Faine or 3AW. Social media today allows them to be well informed in their own languages. They

listen to their own programs, watch their own television programs and read their own newspapers and tweets, all in their own languages. I can but encourage government departments, particularly the Department of Health and VicHealth and other like organisations, to develop programs in a multicultural and multilingual way simply because I believe in my own judgement and from anecdotal experience that we are not getting the message out as we should to some communities, because people learn to survive in the environment of their own languages and their own cultural backgrounds.

This is a very good step in the right direction. It complements a bunch of other measures that have been introduced in the past by Labor governments. Unsurprisingly, we are taking a bipartisan approach and working together. We should be proud of the fact that we are leading the world in bringing about this important reform. We are doing so because a fair amount of research has been undertaken in Victoria and Australia more broadly. That research puts the evidence on the table in relation to the harms and effects of excessive use of tobacco and other drugs. We have come a long way from the earlier days when such reform started to be introduced.

I conclude by saying that while we can introduce legislation and regulation and run programs, one of our great achievements is what is happening in the community — that is, a significant cultural change is underway whereby mums and dads and other members of the community increasingly do not accept or tolerate smoking. Luckily, it is progressively becoming unfashionable, but it should be more unfashionable. I commend the bill to the house and wish it a speedy passage.

Debate adjourned on motion of Mr WYNNE (Richmond).

Debate adjourned until later this day.

CHILDREN, YOUTH AND FAMILIES AMENDMENT (PERMANENT CARE AND OTHER MATTERS) BILL 2014

Second reading

Debate resumed from 7 August; motion of Ms WOOLDRIDGE (Minister for Community Services).

Opposition amendments circulated by Mr WYNNE (Richmond) under standing orders.

Mr WYNNE (Richmond) — On behalf of the opposition I rise to lead the second-reading debate on the Children, Youth and Families Amendment (Permanent Care and Other Matters) Bill 2014. Initially I will speak on the substance of the bill and make some passing reference to the amendments. I thank the Minister for Community Services, who is at the table, for the courtesy she has shown us regarding dealing with these matters in more detail when we go into the consideration-in-detail stage, which is likely to occur after question time today.

I believe that yesterday evening there was a conversation between the minister and the shadow Minister for Community Services, Ms Mikakos from the other house, and I think there has been some further conversation today. Our amendments essentially deal with the role of the Children's Court. We have concerns about what we would regard as a diminution in the role of that court, but we will have the opportunity to ventilate those issues in the consideration-in-detail stage. I thank the minister for providing us with that opportunity.

We come to this debate today off the back of the Cummins report. We are cognisant that the Royal Commission into Institutional Responses to Child Sexual Abuse is sitting in Melbourne today at the County Court. We have seen much testimony out of New South Wales and Victoria in relation to these issues.

Mr McGuire interjected.

Mr WYNNE — My colleague the member for Broadmeadows was the deputy chair of the joint parliamentary committee that produced the *Betrayal of Trust* report, so there is a broad context within which we discuss these issues today.

I come to the debate in the way we have always come to such debates — and indeed the way in which I seek to conduct myself and the minister conducts herself in relation to these matters — that is, in a measured and considered way. This Parliament works best when members are able to cooperate across the chamber generally in the interests of the broader community and in this particular circumstance in the interests of children. As I am sure the minister would know, I come to this debate with a commitment to try to get the best result for children in our community. We are sincere in the amendments that we have circulated; they are not a political stunt or an attempt to embarrass but are genuinely put forward in the spirit of seeking to reach a better legislative outcome and a better structure than the one in place at the moment.

I want to come to a number of elements of the bill in its initial form. It amends the Children, Youth and Families Act 2005 and the Commission for Children and Young People Act 2012 and makes some consequential amendments to other acts. Most of the bill will come into effect on 1 March 2016, which is the default date for the implementation of these extensive changes.

It is surprising to me that the government has not provided a full briefing to a range of interest groups that have very intimate concerns about the range of provisions within this bill. I will come back to this in detail, both in my contribution and in the consideration-in-detail stage, but at the moment I simply signal three groups that have written to my colleague Ms Mikakos expressing profound concerns about the failure of consultation in relation to this bill. The first is Adoption Origins Victoria, the second is VANISH and the third is the Association of Relinquishing Mothers Victoria.

I indicate to the minister, who is engaged in the debate with me today, that we considered a reasoned amendment to have this bill deferred for one sitting week in order to provide the minister with the opportunity to further ventilate aspects of this bill more broadly amongst key interest groups, which have written to us in no uncertain terms citing concerns about certain elements of this bill and the failure of the government to consult in fuller detail on aspects of the bill. We chose not to take that course. We simply wanted to put on the record the concerns expressed by these groups and, frankly, to provide the government with an opportunity between the houses to, firstly, consult with those groups and, secondly, look in some detail at the amendment that we have proposed. We come to this debate with a serious sense of wanting to get this right, because ultimately we must act in the best interests of children from a moral and social point of view. That is our sacred responsibility, and we think our amendment assists in that endeavour.

The minister herself has indicated that this is the biggest rewrite of the Children, Youth and Families Act since it was enacted in 2005. We acknowledge that; we simply ask the minister to bring people along with her. We ask her to engage with those interest groups and make sure that they are on board. They may not all agree with various aspects of the bill, but they must be brought along on the profound changes proposed. Those groups did not see the drafting of the bill until it was introduced into the Parliament on the Thursday of the previous sitting week. My colleague Ms Mikakos advises me that the Children's Court itself — the judicial division that deals with these questions — only saw, in part, some aspects of the bill. You would have thought the judiciary ought to have seen the bill in its entirety, to get the full scope of what was proposed, but that was not the case.

There are 173 clauses in this bill and only 9 of them relate directly to permanent care orders. This suggests to us that the court was not shown the entirety of the bill, despite the fact that the whole of the bill relates to the Children's Court. This bill puts significant restrictions on the role of the court in reviewing the decisions of the Department of Human Services, and that is why we have proposed this amendment. We were very open about this. During the government business program debate on Tuesday we urged the government not to rush the bill through this week but to provide a further opportunity for consultation. I had hoped that the government would take up that opportunity.

Going to the substance of the bill, Victoria's child protection system and the act are predicated on the best interests of the child being paramount and central. The state will intervene to remove a child from a situation where they are being physically or sexually abused or are being neglected. In those circumstances the Department of Human Services will take certain actions, with the oversight of the Children's Court. In certain circumstances a parent may be able to continue to care for a child subject to conditions imposed by the Children's Court, such as undertaking drug and alcohol screening or counselling, or seeking psychological support.

In a previous life I had the opportunity for short periods of time to perform the role of acting Minister for Community Services, so I am aware of some of the material that comes before the minister in her day-to-day work. Some of it is very confronting. Some of these cases are really quite shocking, and it is incumbent upon the state to intervene to ensure that the best interests of the child are paramount. Where a child is removed from his or her parents' care, they may be placed in out-of-home care, which can take the form of kinship care — that is, with a relative — foster care or residential care. As I understand it there were in the order of 6500 children in out-of-home care in 2013 — the figure might be up a little bit, but it is around about that number. Approximately 2350 of those children are in kinship care and a further 1500 or thereabouts are in foster care. Our advice on that is from the Australian Institute for Health and Welfare report on child protection of July 2014.

The bill seeks to build up the process by which a child may be placed on a permanent care order either with a

relative or with a foster carer by imposing a new hierarchy of permanency objectives as well as imposing new limits for court orders. In doing so the bill has put in place a number of limitations on the ability of the Children's Court to make orders as it considers appropriate in each case. In particular it has removed the court's ability to consider whether the secretary has taken all reasonable steps to provide the services necessary in the best interests of the child.

I know the minister would be aware of some very recent commentary by the Children's Court in relation to what by any measure was a very tragic case of two young children, who I think were in residential care, who were subject to shocking abuse — sexual assault. The court provided some quite extensive and, can I say, pretty scathing commentary on the duty of care — that is the way I would put it best — of the secretary of the department. You would always hope those circumstances would not occur, and I am sure the Minister for Community Services, who is at the table, would do all in her power to ensure that those children are protected, particularly when they are in the care of the state. Hopefully this bill will do something to prevent that circumstance being repeated.

The 2012 *Report of the Protecting Victoria's Vulnerable Children Inquiry*, the Cummins report, found that on average it is five years from the time a child protection report is made that a child is placed in permanent care. The bill gives effect to the thrust of the recommendations in the Cummins report which relate to the simplification of Children's Court orders, simplifying case planning processes and providing permanency for children. However, the bill makes a number of departures from the Cummins report and does not reflect the complete recommendations in some respects.

I move to the best-interest principles. The principal act sets out a number of principles, including that the best interests of the child must always be paramount, and of course we have already canvassed that self-evident principle. A new principle is added to include the desirability of making decisions as expeditiously as possible. Currently under the act a case plan is required to be prepared within six weeks of the Children's Court making a final protection order in respect of a child. There will be no stipulated time frame within which a case plan must be prepared.

The bill provides that a case plan can be prepared in respect of a child if a protective intervener is satisfied on reasonable grounds that the child is in need of protection. My colleague Ms Mikakos was advised that this will occur upon substantiation of abuse or neglect, and the bill repeals the requirement for a separate stability plan. In relation to Aboriginal children, which of course is a matter of deep concern to me as a former Minister for Aboriginal Affairs, and indeed now as the shadow minister, the bill provides that every Aboriginal child in out-of-home care must have their cultural support needs addressed and have their cultural support plan aligned with their case plan. That is indeed good practice.

The hierarchy of permanency objectives is an important matter which has been contested by a range of interest groups. A case plan must now include one of the permanency objectives, to be considered in the following order of preference — and this is most important — as determined to be appropriate in the best interests of the child. They are in effectively a cascading order, the first being family preservation. That is obviously the self-evident first objective you would always want to achieve if you could — that the child or children, where possible, be rejoined with their family. That would always be the first thing. The second is family reunification. Interestingly, the third is adoption. Adoption is now the third option on this cascading list. I know a good deal about adoption. I have spoken about this in the house before. It is a matter that has affected my own family circumstance. I do not seek to canvass that in detail, but one of my sisters has raised two children in an adoptive circumstance. However, that is a permanent legal arrangement. In this case it is counterintuitive, can I say, to the notion of family preservation and family reunification, because it is in fact the third option in the cascading order. The fourth option is permanent care, and the fifth is long-term out-of-home care.

There is a preference for a child to be placed in kinship care when any of the options of adoption, permanent care or long-term out-of-home care are being considered. Any of the above three options would be considered appropriate if a child had been in out-of-home care for 12 months and there were no real likelihood of the reunification of the child with a parent in the next 12 months, except in exceptional circumstances where a child has been in out-of-home care for 24 months.

These new limits and the fast-tracking of permanent care are being made while no new resources are being invested in ensuring that families can be reunited. The opposition, again through my colleague Ms Mikakos, was advised in a briefing that the government does not anticipate an increase in the number of adoptions. But that is an interesting question, because if adoption remains in the cascading order that is suggested here in the bill — adoption is option no. 3 after family

preservation and family reunification — I simply have to question the veracity of the claims being made by the department.

Ms Wooldridge — It has not changed the order.

Mr WYNNE — However, this option will now be put to parents. I simply put that to the minister. As I have indicated, we will perhaps have the opportunity during consideration in detail to canvass some of these questions.

We have concerns in relation to the restrictions on the powers of the Children's Court, and I have circulated amendments which we will seek to move and which we hope have the support of the government on. This bill puts a number of restrictions on the Children's Court and its ability to review decisions made by the Department of Human Services (DHS). I canvassed earlier the commentary provided by the Children's Court in relation to the very tragic matter of two children who had been subjected to terrible systemic abuse while they were in the care of the state and the opportunity for the court to have continuing monitoring and dialogue about this.

The Law Institute of Victoria itself has expressed many deep concerns about this. I have a detailed 13-page submission on this bill from the Law Institute of Victoria. I see there is a nod from the advisers box that the government has also received this submission, presumably today. I have been instructed by my learned colleague that the opposition received it last night. This goes to the question of how serious the potential erosion of the role of the Children's Court is. The court is pivotal to how we conduct the business of the interplay between the Department of Human Services and the courts in the interests of children. I would have thought Minister Wooldridge would have taken the opportunity to pause to consider a very detailed 13-page submission from the Law Institute of Victoria, albeit it came in only last night, and to consider the issues it is concerned about.

We do not want to restrict the ability of the Children's Court to oversee the actions of the Department of Human Services at a time when the department has failed children, at least by way of commentary that we already know about. For the first time I can think of the Children's Court has provided very serious — and scathing — commentary in relation to the responsibilities of the Secretary of the Department of Human Services. We are especially concerned that clause 17 of the bill removes the requirement that the court must not make a protection order unless it is satisfied that all reasonable steps have been taken by the secretary to provide the services necessary in the best interests of the child. There is also a question around this in the submission from the law institute.

We would argue that it is inherently unjust to put a clock on reunifications whilst removing the court's ability to consider whether the department has taken reasonable steps to reunify families. If you are serious about reunifying children with their families, in many circumstances what is required is for the parent or parents to be provided with professional support. That might be support with drugs and alcohol or psychological or psychiatric support. We know that, because there are no further support services to be provided through this bill, there will be time lags. The court needs to have the opportunity of scrutiny. We would always want to reunify children with their families whenever possible, so the court needs to be able to ask, 'How is that family going? How is it going in seeking professional support to remedy whatever behaviours have resulted in the children being taken from the family?'. In that way reunification becomes the ultimate goal. If those support services are not available, and if the court does not have the opportunity to scrutinise how the support process is going, that creates a complete disconnect between the fundamental roles of the Children's Court and the DHS to put in place the care plans to assist people to get better so they can reunify with their children, which surely must be the ultimate goal of the process.

A permanent care order confers parental responsibility for the child on the persons named in the order who are not the children's parents or the secretary to the exclusion of all other persons. Because of the new hierarchy of permanency objectives introduced in the bill, there are limitations introduced on a court's ability to impose other orders. The government is hoping there will be more permanent care orders made. A permanent care order must have a standard condition that it will preserve the child's identity, culture and relationship with their birth parent. However, the bill removes the court's discretion, which is currently unlimited, to include conditions for no more than four contacts a year. I understand from going to the briefing that the general period of contact is possibly six a year on average. Within the broader framework of reunification, four contacts a year is once every three months — —

Ms Wooldridge — As much as they like.

Mr WYNNE — Once every three months — —

Honourable members interjecting.

Mr WYNNE — That is completely unnecessary. Once every three months the family will have the opportunity to have contact with the child. We think that is a very serious impediment to the opportunities for reunification.

Permanent carers can still maintain more frequent contact with the parents if they wish to do so, but the court will not be able to order this. The act remains unchanged with respect to allowing the courts discretion to provide, obviously, for sibling contact.

There are a number of other matters relating to this bill which we will canvass when we have the opportunity to deal with the bill in more detail. In relation to leaving a child unattended in a car, at first blush you would say, 'Of course you wouldn't do that; it's ridiculous', but when questions on this matter were put to the Minister for Children and Early Childhood Development in the upper house, she could not explain to us what the age limit was in terms of when leaving a child unattended in a car was an offence. We will have some further conversation about that as we go forward.

Finally I want to say that this is an important bill, and I will always come into this house seeking to make such a bill better where I can. We do not ever seek to play politics with such legislation. The statement of compatibility was wrong, and if you wanted to be cheap, you would go, 'Yeah, yeah — —

Ms Wooldridge interjected.

Mr WYNNE — If you wanted to — but we did not do that. We did not play that game. We said, 'That's fine. If it's wrong, let's fix it'. We do, however, have genuine amendments. They are proposed in a heartfelt and sincere way to the minister to effect our belief that there is an absolutely vital role that has to be played by the Children's Court. We do not want a diminution of that role. The court's oversight is the absolute and sacred responsibility of the Children's Court as the proper judicial instrument looking after the interests of children. It is the sworn responsibility of the Minister for Community Services to look after children, and it is in that context that we come to this debate today with amendments. We welcome the opportunity to canvass these matters in the consideration-in-detail stage, because our interests and the interests of this Parliament must be the protection of our children, and the best interests of our children must always be at the forefront of debate and at the forefront in developing legislation that protects the long-term interests of our children and provides for the reunification of children with their families.

Mr BATTIN (Gembrook) — I rise to support the Children, Youth and Families Amendment (Permanent Care and Other Matters) Bill 2014. I will first acknowledge for the record — and I note the minister is here with us as we go through this debate — the work that has been put in by the minister and by her staff. I thank them very much for the briefings we have had over the past few days to make sure that we are on top of this and for the work they have done on the most important aspect of this bill, which is putting children first. That is our first and foremost priority.

I would like to take up one matter raised by the lead speaker of the opposition, who spoke about consultation. The consultation period was exceptionally extensive. The lead speaker said three groups were not consulted during the consultation period for this bill. I note that potential changes those groups could have been consulted on pertain to adoption, but there are no changes to laws related to adoption in this legislation. I understand, however, that the minister and her staff would be happy to brief those groups on the bill, though they must understand there are no changes to adoption in this legislation. That is very important to state.

I note that those opposite have put forward an amendment to clause 17. At the moment the government has serious concerns in relation to the amendment, particularly with respect to the issue of the extension to two years relative to what is in place at the moment. I just wanted to put on the record that we have concerns with that; however, we will discuss those as we go through the debate.

The bill is the biggest change to the Children, Youth and Families Act 2005 since that act was established, and it arises because of the 2012 *Report of the Protecting Victoria's Vulnerable Children Inquiry*. The bill seeks to make various changes to the act to put children first, as I said. We are going to hear that phrase many times during this debate, and we should be hearing it, because our most important role as legislators is to protect vulnerable children in our community.

In the new permanency hierarchy in relation to the care of children, the first item is family preservation. We must put family preservation first. It is very important; if there were an opportunity for a child to go home, that would always be the preferred outcome. Consideration must, however, be given to the children and to their futures prior to making that decision in favour of family preservation. Family reunification is the second in line, followed by adoption, permanent care and long-term out-of-home care. I note at this point of the debate that Victoria is very lucky in that of all Australian states and

territories it has the lowest number of children in out-of-home care. We are proud of that achievement, and we want to protect it going forward and make sure we have a proper system in place to protect children.

I have had opportunities to work with young people in out-of-home care and see the situations they are in. The biggest issues for young people going into any out-of-home care, particularly for those going into placements in places such as Berry Street homes — and I used to work side by side with the ones in Dandenong — is the instability. In terms of the system the government is putting in place here, the biggest thing we want to change is that instability. The effects of instability are proven — there is a lot of evidence worldwide of the effects of removing children from their home and putting them into other forms of care with family or with others, which shows that the biggest issue for the future of the child is the instability and the length of time that the instability lasts. With this bill we as a government are making changes to the act so that we can bring that period of instability, which currently has an average of five years, down to two years. That reduction will obviously have huge benefits for young people, meaning they do not have to go through the longer periods of instability of, as I said, up to five years.

A question has been raised in relation to siblings, and I note that the legislation provides that there will be a preference for putting siblings with each other wherever they are located. The government and department will try to keep them together wherever possible and whenever doing so is safe. It is vital that we put those measures in place.

The hierarchy of permanency care orders varies a fraction. One of the variances is in relation to Aboriginal children. It is very important to put the child first when you are talking about Aboriginal children as well. The first priority is to put Aboriginal children with their direct family where it is safe to do so. If you cannot do that, the child should go to their non-direct family. It is about keeping families unified. If a child cannot be put with their non-direct family, the next priority is to try to place them in their own community. That keeps those Aboriginal children in care connected and provides them with stability.

If a child cannot be put into their own Indigenous community, then the next step would be to them place them in another Indigenous committee, either in the same area or further out. That is about keeping them connected with their heritage and cultural background. If none of those are possible, every attempt must be made to keep the child in contact with their heritage and history. We have heard much about that not happening in the past. We never want to have to revisit that. It is important that Aboriginal children who are removed from their families have an opportunity to stay attached to them.

As I said before, stability is very important. The changes to these laws are so important because of their long-term effects on a child's development. It has taken this Minister for Community Services to look at that with her staff and make the best changes within a reasonable timeframe of two years. That is why we are concerned by the amendments that have been put forward by the opposition. This bill puts a system in place that the courts are aware of and that the department can work within to ensure that young people have the best opportunities going forward.

These changes have come about due to input from stakeholders. The Protecting Victoria's Vulnerable Children inquiry found that the average time taken to report a child who needs protection can be up to five years. As we said at the start, this is way too long for a child to face such instability. A 10-year-old who enters out-of-home care may be 15 years old or older by the time they get an opportunity to receive permanent care. This is a key developmental stage in their life. During that period of time, they could develop behavioural issues. The more behavioural or mental health issues they end up with, the more difficult it will be to find a permanent place for them in the community. These are the kids who tend to end up in out-of-home care in places run by wonderful organisations like Berry Street, but however wonderful these organisations are, they are not the best places for a child to be raised or to spend that period of time.

During that five years a child could be going through the foster care system. They could be moving on a daily, weekly or monthly basis for up to 12 months. When a child arrives at a residence, all they want is someone to love them. That is one of the key elements in anyone's upbringing. If you arrive at a house, and you did not even have an opportunity to unpack your bag, that cannot be good for you. It is very important that we put in place things to address this.

Another issue relates to making sure foster carers are treated with more respect than they have been in the past. Foster carers do a wonderful job in our community for these young people. Even if it is only for a short period like 12 hours, 24 hours or a week, they genuinely love that child while the child is in their house. While the child is in their house, the foster carer considers them to be their child. However, at the moment, should the foster carer want to get a haircut

for that child or sign a form to send them on a school excursion or school camp, they are not allowed to do it. They must go through a process of red tape that can take a long time — sometimes 28 days or 30 days — just to be allowed to send a child on an excursion to somewhere like the zoo. If you want to send a child to the zoo, you need to go through a process in the courts to get approval to do so.

I have two children. Most people with children would know that you do not always get that much notice from the school about what excursions are coming up, so this could lead to a child missing out on taking part in opportunities at school. The bill before us will mean foster carers will have the ability to provide consent so kids can go to excursions and camps and do day-to-day things such as have a haircut. Foster carers will also be able to consent to things like supplying aspirin or Panadol and attending to other minor concerns.

An honourable member — Common sense.

Mr BATTIN — Common-sense decisions. However, we must take into consideration that there are implications where major medical concerns are an issue. For day-to-day issues it is important that a foster carer who is giving love to a child is able to provide consent for them. Before I finish, I say to the Minister for Community Services that it is fantastic to have a bill that puts children first, and I congratulate her and her staff on their work.

Mr McGUIRE (Broadmeadows) — At a time when the community is crying out for greater scrutiny, accountability and compliance over the care of vulnerable children and declaring that these are critical issues that must be addressed, this bill reduces scrutiny and accountability. This is of major concern. I put this in the context of being the deputy chair of the inquiry that looked into child sexual abuse and produced the *Betrayal of Trust* report for the Parliament. With nine sitting days left we are still waiting to see if the Parliament will honour its commitment to implement all those recommendations, and I again call on it to do so. The recommendations received bipartisan support. It is a duty of the 57th Parliament to honour that report, which it commissioned and which was delivered to it.

The Royal Commission into Institutional Responses to Child Sexual Abuse is sitting in Melbourne today and is looking at the systemic issues at play. Here we have before the Victorian Parliament in the context of the issues surrounding the question of how we can better care for our children, a bill that places a number of restrictions on the Children's Court and its ability to review decision-making by the Department of Human Services (DHS). This is an issue of critical concern, and that is why Labor will be moving amendments to work through how to get more scrutiny, accountability and compliance.

It is not just the Labor Party that has deep concerns about this; it is also the Law Institute of Victoria. I will come to the institute's submission later in my contribution. Labor is concerned that the Napthine government is seeking to restrict the ability of the Children's Court to oversee the actions of the Department of Human Services at a time when the department is failing children in out-of-home care. We are especially concerned that clause 17 of the bill removes the requirement that the court must not make a protection order unless:

> … it is satisfied that all reasonable steps have been taken by the Secretary to provide the services necessary in the best interests of the child.

The Law Institute of Victoria is concerned that:

> … if DHS is not obligated to provide services to children and families before the Children's Court, those children and their families will not be able to readily access the support they require …

To put a clock on reunification whilst removing the court's ability to consider where the department has taken reasonable steps to reunify families is also contentious and seen by many to be unjust.

There are specific critical issues that must be resolved during this debate. It is important that children are not left in limbo for years to experience uncertainty and anxiety about who will care for them in the future. Under the act a permanent care order confers parental responsibility for the child on the person or persons named in the order — not the child's parents or the secretary — to the exclusion of all other persons. Because of the new hierarchy of permanency care order objectives introduced by this bill and the limitations introduced on the court's ability to impose other orders, the government is hoping more permanency care orders will be made.

A permanency care order must have a standard condition that a permanent carer will preserve the child's identity, culture and relationship with their birth family. However, the bill removes the court's discretion, which is currently unlimited, to include conditions for no more than four contacts per year with the child's parents. The lead speaker referred to the opposition's issues and concerns around that matter. Permanency care orders can still provide for more frequent contact with the parents if the parents wish to do so, but the court will not be able to order this. The

act remains unchanged in respect of allowing the court's discretion to provide for sibling contact. Therefore there are parts of the bill that clearly will win bipartisan support, but there are also parts, as I have stated and as the lead speaker has articulated in detail, that are of concern.

The other point that is of concern, and this is contested by the government, is consultation. Labor has been informed that many stakeholders have expressed concern at the haste in which the bill has been brought on for debate. We have to be careful here because there are only nine sitting days left, and we have to make sure that in the countdown to the expiry of this Parliament that we get things right and that they are not done in haste. As the lead speaker for the opposition has enunciated, there is a need for goodwill and discussion on this legislation to make sure we get things right. We cannot just count down the clock to the line and have a rushed agenda of bills in an effort to cover off when the work should have been done in a more considered fashion and done earlier. That is where we stand.

The minister has placed this bill in the context of the biggest rewrite of the Children, Youth and Families Act since it was enacted in 2005. That fact and the minister's emphasis suggests that this is the type of bill that really should have been put out as an exposure draft to provide more time for it to be considered. The government chose not to do that. There have also been questions raised about whether there were gags on stakeholders talking about their discussions with the department by requiring them to sign confidentiality agreements.

Therefore, in an effort to get a bipartisan approach there needs to be transparency, consultation and time for discussion, debate and consideration so that we do not end up with unintended consequences. I can tell the house that not taking that approach has cost this state dearly, particularly in the area of child care. The *Betrayal of Trust* report revealed that amendments to legislation, although made in good faith, had unintended consequences that led to appalling results for children and for the community.

One of the areas of concern is that this bill makes significant changes but that stakeholders did not get to see it during its drafting. They did not see it until it was introduced into Parliament on Thursday of the last sitting week. Those stakeholders included the Children's Court. The Children's Court is one of the key issues so far as Labor is concerned. The bill makes significant changes to the jurisdiction of the court and its ability to oversee the actions of the DHS, as I have said. One of the points that has come up is that in response to a question from the shadow Minister for Community Services the minister's office advised that — and here is the quote I have been given:

> The President of the Children's Court was privy to various clauses regarding permanent care orders during drafting.

There are 173 clauses in the bill, only 9 of which relate directly to permanent care orders. This would suggest that the court was not shown the rest of the bill, despite the fact that virtually the whole of the bill relates to the Children's Court. The bill is putting in place significant restrictions on the role of the court to review the decision-making of DHS. That is why during the debate on the government's business program Labor urged the government not to rush the bill through this week and to provide a further period of consultation. The government might claim that stakeholders were consulted but only some stakeholders have been, and they were only able to discuss concepts and ideas rather than see the legislation. Some stakeholders were excluded altogether.

Labor has been contacted by groups such as VANISH, Origins Victoria and the Association of Relinquishing Mothers Victoria, known as ARMS, none of which were consulted on this bill and all of which are seeking an urgent briefing with the minister. The shadow minister has requested that the minister provide briefings to all of these interested groups. Their concerns relate in particular to adoption being placed third in the hierarchy of permanency objectives, before permanent care. They have deep concerns about whether this will mean that adoption will be put to parents in an environment of duress where their children have been removed from them. We point out that the vast majority of the provisions in the bill are not due to commence until November 2016.

In summing up, there is goodwill to have a better debate and get a bill through the Parliament that does not have unintended consequences. To do that would mean the government having greater consultation with key stakeholders, going back to the Law Institute of Victoria and most significantly to the Children's Court to make sure that they are onside, that they agree and that we have greater scrutiny, accountability and compliance, because that is critical. We do not need another report or another scandal to explain that. We know and understand it, and we should deliver it.

Mr SOUTHWICK (Caulfield) — It is a pleasure to rise to speak on the Children, Youth and Families Amendment (Permanent Care and Other Matters) Bill 2014. At the outset I would like to commend the Minister for Community Services on her great work in putting this series of very important amendments

together. We need to ensure that whatever we do when it comes to the care of children, it is always about kids; putting kids first and ensuring that all of this reform is about putting kids at the centre of everything we do and think about.

I also acknowledge the member for Richmond's contribution, particularly his comment about this not being about politics — about putting politics aside and focusing on achieving the best outcome in terms of reform in this area. I absolutely agree with him. I think that any reform we can introduce in this house to ensure that our kids are protected and most importantly have a long-term future is what we should be aiming for and working towards.

This bill ensures that there will be timely care planning for a child, that we reunify them with the parent wherever we possibly can and that we do whatever we can to ensure that reunification. If there is a court order on a 12-month separation for a child, we must ensure that during that 12-month period the parent and the child are given all the support necessary to try to get that child back to the parent. At the end of the 12 months if some progress has been made but there is a requirement for another 12 months so that work can be done with the parent and with the child, there should be an opportunity for an extended court order so they can work together again to ensure that there is reunification.

We on this side, and members on the other side I am sure, believe that the first and best option is reunification with the natural parents. That is absolutely the first and foremost thing we should be working towards. However, when that is not possible — when every attempt has been made to reunify the family but, after a two-year period, that child has not been given any permanence in terms of where they are going to live and who they are going to live with — we can end up with a range of different problems for that child. Through the Protecting Victoria's Vulnerable Children Inquiry, the stability, planning and permanent care project that came out of the Cummins report and other research, we know for certain that the most important thing is to provide stability for these children — to provide them with a stable home, a stable life and some certainty. That is what this bill addresses, and that is why it is so important that we in this house vote to ensure that it is passed. It is very important that this is passed. If it is not passed, we will be putting the future of these children at risk. That is why I commend the member for Richmond on speaking in his contribution about putting politics aside. We need to put politics aside and pass this bill.

The opposition has put amendments forward. I understand it wants to ensure that it makes a fair contribution to this debate, which is important. The core of this bill is about ensuring that every possible attempt is made to create certainty for a child and allow the child to move on. The difficulty with the amendments that have been put forward is that they would prevent the court from making that decision. If a decision is not made, there will be further delays; if there are further delays, there will be further uncertainty; and if there is further uncertainty, there will be further risk. That is why we must pass this bill.

There are a number of issues that further demonstrate why we need this bill. When a child is put into foster care, under the current set of circumstances basic provisions for that child cannot be addressed. For example, there have been cases where a child's hair has been lice infested and they have needed a haircut, but under the current provisions that could not easily occur. We are removing the rigmarole and the processes that were preventing the provision of basic needs, like giving a child a haircut. We are making some basic common-sense provisions to allow such basic decisions to be made. If a child needs to go on an excursion, we do not want to have 28 forms that need to be filled in. There is a lot of bureaucracy around allowing a child to do what every child should be able to do. We do not want any child to be excluded or singled out because they are in a difficult set of circumstances; we want to ease the process.

Ease of process will ensure that a child in care can have a form filled in just like any other child and can go on an excursion. That is very important. If a child needs an aspirin because they have a headache, should the person who is looking after that child be required to go through all these processes to get consent? That is the sort of thing we are dealing with. The government is removing this unnecessary bureaucracy and giving basic common-sense powers to the people who are looking after these children. That is why we need to put politics aside and pass this bill.

There are other important elements of this bill. Not only are we providing a common-sense approach for permanent carers, ensuring certainty for children and trying to reunify children with their natural parents in every instance, we are also increasing penalties to reflect the seriousness of offences relating to the protection of children. This is paramount when we talk about protecting children. We have increased penalties for the offence of leaving a child unattended. This is deliberately not prescriptive, because it depends on the child's circumstances as to how the law will be interpreted, and it needs to be so. The offence of

concealing a child disrupts policing. The bill will double the penalty for those people who are going out there to stalk and tackle children, and that is how it should be.

This bill is very simple. We have not changed what was there before in terms of these offences. The opposition should not be concerned about this, because the offences have not been changed. What have been changed are the penalties. I am sure all members of this house would appreciate that if somebody is actually stalking or concealing children, or doing anything to put a child at risk, then we should be doing everything we possibly can to disrupt that behaviour and ultimately ensure that there are proper penalties in place. Those are some of the very important aspects of this bill.

I want to finish by mentioning a couple of other matters. There is mention in the bill of Aboriginal and kinship care and how that will proceed. Arrangements in both of these instances are consistent. When it comes to Aboriginal and kinship care we are putting the interests of the child first. In terms of Aboriginal care we are looking in the first instance at placing the child within their own community. If that is not possible, they are to be placed within another Aboriginal community. Only after every attempt to do so has failed would the child be placed with an unrelated, non-Aboriginal carer. It is the same when it comes to kinship care. Kinship care will be reinforced as the preferred placement type, consistent with the Aboriginal child protection principle. Again, this is about doing what is best for the child.

In concluding, I reinforce the point that this is a very important bill. We talk about a lot of things in this house, but when we talk about children I am sure we would all agree that we need to ensure that we are doing the best for them. I know the opposition may not think this bill is perfect, but to vote it down would put children and their futures at risk. I implore all members of the opposition to vote for this bill.

Ms GREEN (Yan Yean) — I take pleasure in joining the debate on the Children, Youth and Families Amendment (Permanent Care and Other Matters) Bill 2014. I endorse the opening remarks of the opposition's lead speaker, the member for Richmond, who now has carriage of these matters in the Assembly. Many stakeholders know I have a deep and abiding interest in this policy area even though my colleague in the other place Ms Mikakos, a member for Northern Metropolitan Region, has portfolio responsibility for child protection. I work very closely with her in my new responsibility relating to the prevention of family violence.

While the opposition is not opposed to this extensive bill, it has a number of concerns about it, and we will seek to move amendments to it in the Legislative Council. There has been unanimity of purpose of the need to reform the child protection system, and the Cummins report was very welcome, but a bill of this magnitude should have been introduced at an earlier point and not rushed into the place at the end of a parliamentary term. It does not appear to have been the subject of adequate consultation among those in the sector, and that is deeply concerning, particularly in relation to the adoption community with important groups like VANISH, Origins Victoria and Independent Regional Mothers. They have only just discovered that the bill applies to adoption. I received emails from those stakeholders at the weekend. They are concerned and distressed about the legislation.

Earlier in the parliamentary term we had a most moving apology that was supported by members on all sides of the house. It was a deeply respectful apology, which said we wanted to make reparation for the wrongs that were committed through the forceful removal of children by agencies of the state. It is disturbing that yet again stakeholders should be taken by surprise by legislation before this house. It is so important when we are talking about the care of children and their families to bring the whole community with us. I am advised by those community groups that they were again taken by surprise. I have a great deal of regard for the spokespeople for those groups and their integrity and heartfelt concerns about anything that relates to any regulation or legislation pertaining to adoption.

Representations have been made to me by members of the Indigenous community who are very concerned about the length and degree of consultation undertaken with them. Given that a number of parliaments, including this one, have made apologies for the treatment and forceful removal of Indigenous children, we need to be incredibly careful how we move forward in this policy area.

Labor will propose amendments to clause 17 and the removal of the requirement that the Children's Court must not make a protection order unless it is satisfied that all reasonable steps have been taken by the secretary to provide the services necessary in the best interests of a child. This change to the court to restrict its ability to oversee the actions of the Department of Human Services at a time when the department is clearly failing children in out-of-home care could not possibly be lost on the minister. The government's attempts to remove this requirement come only one month after scathing comments were made by the Children's Court about the secretary of the department

in the case of two siblings who were sexually abused while living in separate residential care units.

I would have thought that would have been enough reason for the government to take even another fortnight to do some consultation and to have a think about the bill. We will be asking the government to rethink that and to have a serious look at Labor's amendments. In that case, the secretary and the department were heavily criticised by the magistrate, who found that the secretary was in fundamental breach of her duty of care to each of the children. It was because of the court's express lack of confidence in the secretary and the department that it refused to make a final protection order for the siblings. As a result, the magistrate only imposed interim orders that will require the department to go back to court soon.

It is important to note that the court was only able to do this because of the requirements in section 276(1)(b). In that case the court was not satisfied that all reasonable steps had been taken by the secretary to provide the necessary services in the best interests of the children. Should a similar case go back to the court after the legislative changes are enacted, the court will have to make final orders about the care of the children irrespective of whether the department has provided the necessary services, such as a safe environment in which to live. We have to question the government's motives in the timing of this legislation and, if it has not thought about it, it really should think about it.

The requirement for necessary services can take many forms. Only yesterday I met with a number of representatives of housing and mental health organisations who are very concerned about the Minister for Mental Health, who is also the minister with responsibility for the bill, in that the recommissioning of mental health services has driven a number of — —

Ms Wooldridge — On a point of order, Acting Speaker, the contributor is now straying from the bill and getting into mental health recommissioning, which is in no way mentioned in the legislation we are debating today.

Ms GREEN — On the point of order, Acting Speaker, if the minister had let me finish, I was going to say that some of these people are mothers with children in care — —

The ACTING SPEAKER (**Mr Morris**) — Order! I will rule on the point of order and then the member can keep going. Even though I had my head down I was listening closely to what the member for Yan Yean was saying, and she was getting a little bit too far away from the fabric of the bill. I ask her to tie her comments back in.

Ms GREEN — The government has been telling the community that it is about reducing silos and about the connectedness of services. What I heard from the services yesterday was that the legislation is militating against the reunification of families. In relation to drug and alcohol services, if you have only 12 months and there is a waiting list, and if the recommissioning of mental health services disrupts your rehabilitation and your ability to get over your mental health issues and take up your parenting responsibilities again, of course it is fundamental to the bill. The services we heard from are funded across the system. They are funded to provide mental health services, but they are funded to do child protection services as well. It is completely the opposite of a silo approach, and the minister should be true to her word and not raise a point of order about this matter. People do not begin at the neck, with their head going upwards and being treated by one agency and their bodies and their abilities to parent being treated by another. As a community and as a state we have to be a really good parent.

On the doubling of penalties for leaving children in cars, what a piece of abject stupidity we have seen from the Minister for Children and Early Childhood Development, who could not even define what a child is. Imagine a parent trying to remove an electronic device from a 16 or 17-year-old in a petrol station, saying 'You've got to get out of the car with me now, and come in while I lock up the car and pay for fuel, because I could be subject to a $3000 fine'. How ridiculous. If the responsible minister could not even define what a child is — —

The ACTING SPEAKER (**Mr Morris**) — Order! If the member would like to return to the bill any time soon, that would be welcome.

Ms GREEN — I urge the government to have a good think about this bill and listen to the opposition's amendments.

Mr CRISP (Mildura) — I rise to support the Children, Youth and Families Amendment (Permanent Care and Other Matters) Bill 2014. The purpose of the bill is to make further provision for the protection and permanent care of children, to abolish the Youth Residential Board and transfer its functions to the Youth Parole Board, to provide for group conferences where the Children's Court is considering making certain youth justice orders and to further improve the operation of that principal act. I note that the opposition

has an amendment before the house. The government has some concerns with this amendment, but I am sure they will be fleshed out during consideration in detail.

All members here want to see the child put first. This bill shows that the coalition government is continuing to put the child first and is amending the legislation to make that possible. These changes hinge on several options: family preservation, adoption, permanent care and long-term out-of-home care. The best outcome is family preservation so that children can stay at home. This bill makes no changes to the act with regard to adoption. Long-term out-of-home care is the last resort. Victoria has the fewest number of children in out-of-home care. That is both good and bad, because instability in out-of-home care is one of the issues. This legislation is designed to shorten the period of out-of-home care from up to five years to a maximum of two years.

A number of areas are covered in this legislation. I am mindful of the clock, because my colleague the member for Shepparton, who was formerly Minister for Aboriginal Affairs, wants to talk about issues relating to this bill. I also want to touch on some of those issues, and I will do so now. There is a considerable Aboriginal community in my electorate. We need to be mindful of what the changes brought about by this bill will mean for Aboriginal children. A number of organisations relating to Indigenous people are active in my electorate. These include the Mildura Aboriginal Corporation and also Meminar Ngangg Gimba, a women's refuge that is also trying to keep families together. I welcome its work.

Kinship care is a very important principle for Aboriginal people. If Indigenous families can be kept together and on country, that is very important. Because Indigenous people have large extended families, there are very good opportunities for kinship care. We take into account that issue in this bill.

This legislation represents a marvellous initiative. As a result of it, family preservation will be reinforced as the preferred placement type. This is consistent with the Aboriginal child placement principle. The funding for Aboriginal kinship care support was continued as part of the 2014–15 state budget. That funding goes to 10 Aboriginal-controlled organisations, one of which is very active in Mildura.

I will keep my contribution brief. This is a good bill. It maintains our responsibilities for putting the child first. That is particularly important with regard to Aboriginal children, who are a very important part of my electorate. I commend the bill to the house and wish it a speedy passage.

Mr HOWARD (Ballarat East) — I am pleased to make a contribution to the Children, Youth and Families Amendment (Permanent Care and Other Matters) Bill 2014, although this is a bill that clearly puts a number of challenges before us. All members of this house would have received visits from parents who are in distress because they have had their children removed from their care by the department. These are clearly distressing issues to work with, but we are nonetheless drawn into them in our role as representatives for our communities.

As previous speakers have noted, this bill has four purposes. The first is associated with provisions for the protection and permanent care of children, the second relates to the abolition of the Youth Residential Board and the third is about the group conferences that can take place when the Children's Court is considering making youth justice orders. The fourth part of the bill, which we see as somewhat contentious or at least unclear, relates to the increasing of penalties for parents who have left children unattended. I want to speak on the first and last purposes of this legislation.

As I have already outlined, I have in the past been drawn into issues of child protection. These have been very distressing to me. Often this involves a mother who has come to my office saying, 'My children have been taken from me, and this is inappropriate. I want to have my children back. How can I get my children back?'. When I have discussed these matters with the department I have discovered that there have been significant circumstances that have led the department to take the action to go to court and have the children removed from parental care.

Often a single mother has found herself in circumstances where she is not in a position to care appropriately for her child. Sadly, such mothers often do not understand that that is the case. Sometimes drugs are involved, and there can be other circumstances. In such a situation, the parent is often angry with the department and, as a result, department caseworkers who are dealing with the matter are highly challenged. I understand that this is a very difficult area to work in, and sadly there is a high turnover of staff in the child protection area. It is clearly a harrowing area in which to work.

I commend the staff who work in that area. I hope we can establish a system within our department to ensure that those staff are appropriately supported so that we can keep them on longer. We want to keep staff on a

long-term basis so that there is consistency in the way we deal with children in care and the families associated with those children.

Our concerns with this new legislation relate to getting right the balance between removing children from care and providing a path for those children to have some degree of certainty about their future. There are cases where it is appropriate to permanently remove children from parental care and put them in some other permanent relationship, whether that be a kinship relationship, a foster care relationship or a residential care relationship.

This bill seeks to shorten the process that must be gone through before a child's permanent arrangements are made, which takes on average five years. The bill seeks to move to a shorter term. Our concern, however, is that the parent may not be given the appropriate support — for example, a drug support program — to enable them to demonstrate that they are in a position to take care of their children again. We are concerned that there is sometimes a significant waiting list to get parents into drug support programs and that therefore they may lose ongoing contact with their children. Children might be put into permanent care without a parent having had proper access to a program that will help them with their drug problems and enable them to take appropriate care of their children.

While Labor supports and will not oppose this legislation, we on this side of the chamber are concerned that the balance may have been pushed too far by way of putting children in permanent care away from their parent without giving that parent appropriate support to demonstrate that they are in a position to take responsibility for their children again.

The latter part of the bill increases penalties for leaving children unattended. There is a great deal of concern about interpreting this section of the bill. When is it reasonable that children might be left in a car? Those of us who have children in their teens know that it is not going to be possible or appropriate to ensure that teenagers do not stay in the car when you drop into the supermarket, for example. We want to make sure that any legislation that allows for the penalising of people leaving children unattended stipulates that it must be clearly demonstrated that those children were at risk when they were left unattended. We need to ensure that we get that balance right.

We have clear concerns about an interpretation of this legislation which would see parents who are doing generally responsible things — things that parents do on a day-to-day basis, such as leaving teenage children in a car because they do not want to start a fight to get them out of the car and into the shops or leaving children at home while they go to a shop — penalised despite their children being able to responsibly handle being left alone.

We have concerns with some aspects of the bill. We know this is a very challenging area. I hope that as this bill progresses we will clarify those issues so that we get the balance right. I do not think I need to say any more at this stage. I hope we can progress this bill sensibly and that we see a sound outcome.

Mrs POWELL (Shepparton) — I rise to support the Children, Youth and Families Amendment (Permanent Care and Other Matters) Bill 2014, and while I do so I commend the Minister for Community Services, who is at the table and has been here for the debate, for her understanding of the importance of a child protection system and her understanding of the importance of making sure the child protection system protects our most vulnerable citizens — our children — who have an expectation of a good family life and responsible parents and who, if put in care, should be dealt with in a loving and caring manner.

The opposition has been talking about a number of concerns it has, or has had raised with it by certain groups, about adoption laws. I advise the house that this bill contains no changes to the approaches to adoption and no changes to the Adoption Act 1984. In fact the Minister for Community Services and the Department of Human Services have already had a number of discussions with the groups to address some of the concerns that the opposition has mentioned. Those discussions will continue, but I can advise that in this bill there are no changes to the Adoption Act or to the approaches to adoption.

This bill amends the Children, Youth and Families Act 2005 to provide for the protection and permanent care of children. It provides surety and security for those who are most vulnerable. It also promotes more timely decision-making to improve permanent care for children. We have heard time and again about delays in the court system which have meant that some children have been waiting for a very long time to know whether they are going into foster care, going into state care or remaining with their families with support. We need to make sure that the interests of the child are uppermost in all our decisions.

The bill also simplifies protection orders and streamlines planning. It increases penalties for offences in relation to the protection of children, and we are all very grateful and thankful to see that those who do the

wrong thing are going to receive increased penalties. It also changes the time frame for lodging an application for a breach of a good behaviour bond. It provides for consistent time frames for lodging court reports, and it abolishes the Youth Residential Board, transferring its functions to the Youth Parole Board. There are a number of other provisions in the bill that other members have put on the record, but due to time constraints I will not go through all of those. However, other members have raised them, and the opposition has raised a number of those same issues.

In this house we all understand that the interests of children must always come first in whatever decisions we make as a Parliament. It is every child's right, as I said earlier, to be raised in a family that is loving and responsible. Sadly, that is not always the situation. We have all seen reports in the paper. I have been in this Parliament for about 18 years, in the upper house as well as in this house, and it is always sad when you see reports of children — sometimes babies, sometimes very young children — being abused, sometimes by their parents or a step-parent or somebody else in the family. There is nothing more abhorrent than a child being abused in the family home or by a family member. We see those little faces, and we see the description of some of the injuries they face. We should all make sure that we try to improve the child protection system so that we can work with families to ensure that if a child is to stay in the family, that family has been supported in whatever way possible.

There has been discussion about siblings being broken up when homes are broken up. In every instance we need to ensure that siblings remain together, if that is at all possible, and that families remain together, if that is at all possible. If that is not possible, then those children need to be removed and put into a safe place. I have spoken with a number of child protection workers over the years. It is so difficult. If you go to a family, assess the family and get it wrong, then it is on your head. If you remove the child when you should not, you are criticised. If you do not remove the child when you should, you are criticised by the families. Sometimes the system fails; it fails the family, and it fails the child.

In 2011 the coalition government commissioned the Protecting Victoria's Vulnerable Children Inquiry. I congratulate the Minister for Community Services. After a number of issues were raised during her time as minister, she commissioned this inquiry into protecting Victoria's vulnerable children. I met with Justice Philip Cummins, the person who chaired the inquiry. I talked to him about cultural importance and Aboriginal children; at the time I was the Minister for Aboriginal Affairs. One of the issues we spoke about was the importance of keeping children connected to their families where possible and to Aboriginal families if it were not possible to stay with their own family.

We also talked about the importance of connecting people to their culture and their country. I know the member for Richmond, who is a former Minister for Aboriginal Affairs, also touched on this and supported the importance of making sure that Aboriginal children are connected to their culture wherever possible. This is so important, and I am really pleased to see that this bill recognises that and has put in place carers plans to make sure that there is a separate cultural plan to be developed for all Aboriginal children who are in out-of-home care. It is so important to make sure that those children are left with their families where possible, but where that is not possible, we must make sure that they are left with somebody who continues to connect them with their culture so that we do not see what happened in the past, when Aboriginal children were removed from families and became disconnected from their culture.

Sitting suspended 1.00 p.m. until 2.02 p.m.

Business interrupted under standing orders.

DISTINGUISHED VISITORS

The SPEAKER — Order! Before calling for questions, I welcome to the gallery the Honourable Tim Fischer, former federal member for Farrer, former federal Leader of the National Party of Australia and former Deputy Prime Minister of Australia.

QUESTIONS WITHOUT NOTICE

Member for Frankston

Mr MERLINO (Monbulk) — My question is to the Attorney-General. I refer to his admission this morning that the member for Frankston sought judicial appointments for one or two individuals, and I ask: when did the member for Frankston first make these requests of the Attorney-General?

Mr CLARK (Attorney-General) — The member is a bit slow on the uptake, because the issues he raised were fully reported in the media as far back as — —

Honourable members interjecting.

Mr CLARK — These matters were reported in the media as far back as 5 June this year. The *Herald Sun* said:

> Mr Shaw's demand eventually reached the ears of Attorney-General Robert Clark …
>
> Government spokesman James Copsey said … Premier, Denis Napthine, had made it clear that 'Mr Shaw has made demands for a particular judicial appointment that were completely unacceptable'.

Mr Merlino — On a point of order, Speaker, on the question of relevance, we do not need a reading of a report. The question to the Attorney-General was: when were these requests made of him? He should answer the question.

The SPEAKER — Order! I ask the member not to repeat the question. I do not uphold the point of order. The Attorney-General has only been speaking for 50-odd seconds.

Mr CLARK — The report continues:

> 'The Attorney-General has also rejected those demands', Mr Copsey said.

The government has always rejected inappropriate and unacceptable demands, unlike some members opposite. For example, if there were conduct that would lead a well-known radio commentator to say, 'It's theft. It's as simple as that', then that sort of unacceptable conduct would be rejected by the government.

Honourable members interjecting.

The SPEAKER — Order! It is impossible for me to hear the Attorney-General's answer. I ask members to come to order.

Mr CLARK — If there were conduct that would lead a commentator to say, 'And worse than that, whoever copied it, that's appalling conduct — —

Ms Allan — On a point of order, Speaker, the question asked by the member for Monbulk is a very serious question and one not to be made light of, particularly by the government's backbench — —

The SPEAKER — Order! The member for Bendigo East will not use making a point of order to attack any member in the house. I ask her to stay within the confines of a point of order.

Ms Allan — The question raised by the member for Monbulk is a very serious matter. We can understand why the Attorney-General might want to be on the defensive; however, we ask you — —

The SPEAKER — Order! A point of order is not an excuse for making a point of debate.

Honourable members interjecting.

Ms Allan — You are on the defensive too, aren't you? We are asking you — —

The SPEAKER — Order! Once again, points of order will be heard in silence. The member for Bendigo East knows very well how to take a point of order. She will not enter into debate on a point of order. I ask the member to go back to her point of order.

Ms Allan — Under standing order 58, Speaker, the content of answers is required to be direct and relevant. The Attorney-General is being neither at this point; he is choosing instead to attack the opposition. It is clear what his strategy is. We ask you to bring him back to answering the question, which is a very serious matter given that he is the chief law officer of this state.

Ms Asher — On the point of order, Speaker, according to standing order 58(1)(a), answers to questions must be direct, factual, succinct and relevant. Indeed the Attorney-General was being all those four things — direct, factual, succinct and relevant — and he was in order for the question that was asked.

The SPEAKER — Order! The Attorney-General was being relevant. I cannot rule on the member for Bendigo East's point that he was attacking members because I could not hear the last few words the Attorney-General said.

Mr CLARK — If the sort of inappropriate conduct were to come to the attention of the government such as that I have referred to which has come to the attention of the opposition, the contrast between the government and the opposition would be stark — —

Ms Allan — On a point of order, Speaker, under standing order 58, I am confident now that you have had the chance to hear the Attorney-General absolutely attack the opposition, because he clearly mentioned the word 'opposition' twice in his last statement. We now ask you to uphold the standing orders and bring him back to answering the question, which was very direct. We ask him to be relevant under standing order 58 and answer what is a very serious matter for the Attorney-General.

Ms Asher — On the point of order, Speaker, again, the content of answers, under standing order 58(1)(a), is required to be direct, factual, succinct and relevant, and the Attorney-General was being direct, factual, succinct and relevant. Similarly, the Attorney-General is allowed to use the words 'the opposition'. There is no standing order that says you cannot use the words 'the opposition'. The Attorney-General was complying with standing orders.

Mr Merlino — On the point of order, Speaker, the preamble of the question only referred to the Attorney-General's comments this morning. The question is quite narrow — as to when the Attorney-General heard these demands.

The SPEAKER — Order! The member for Monbulk should not repeat the question.

Mr Merlino — That was all that the question pertained to. The Attorney-General should not be protected. The Attorney-General should answer the question — —

The SPEAKER — Order! The member for Monbulk! I will listen very carefully to the Attorney-General's answer. The Attorney-General was being relevant to the question that was asked.

Mr CLARK — Inappropriate demands and other inappropriate conduct are consistently rejected by this government, in stark contrast to those opposite.

Australia-China relations

Mr K. SMITH (Bass) — My question is to the Premier. The question is: how is the coalition government growing jobs and building a better Victoria by fostering close links with China, and are there any threats to this?

Dr NAPTHINE (Premier) — I thank the honourable member for Bass, and acknowledge his longstanding work with China to grow jobs and opportunities here in Victoria. The growing Asian economy offers enormous opportunity for Victoria and Victorian businesses and jobs. The consumer class across Asia is expected to grow from over 500 million to 3.5 billion by 2030, and one of the most important markets in that area is China. Victoria has a long and deep relationship with China dating back over 35 years, through the work of former Premier Dick Hamer, who established the Jiangsu sister state relationship with that country. Indeed Victoria is home to over 250 000 Victorians who claim Chinese ancestry. I am proud to have two nieces and a nephew who claim Chinese ancestry.

China is our no. 1 trading partner. It is the no. 1 destination for our food exports, which have increased to China by 140 per cent from 2010 to 2013. It is the no. 1 source of tourists, with over 300 000 Chinese tourists in 2012–13. Indeed if you look at July 2014 versus July 2013, we have seen a 24 per cent increase in visitors from mainland China and 33 per cent from Hong Kong. China is the no. 1 source of international students, and we expect that the free trade agreement being driven by the Abbott coalition government will create even greater opportunities in China. We in Victoria have been actively involved in pursuing opportunities in China, with nine China trade missions since 2011, involving nearly 900 businesses and generating $2.3 billion in sales and exports.

We have Victorian government business offices in Nanjing, Shanghai and Hong Kong, and under this coalition government we have added offices in Beijing and Chengdu. Indeed Chinese investments in Australia, and in Victoria in particular, are extraordinarily significant — CITIC in Portland Aluminium; Sichuan Airlines, with its headquarters and direct flights; and Hainan Airlines coming into Avalon. PowerChina announced its new headquarters in Melbourne. Samic Shanghai has a new purchasing office in Melbourne. There is Qenos, the China Construction Bank, Shanghai Electric and the Industrial and Commercial Bank of China, to name a few.

The member asked whether there are any threats to this relationship and these opportunities. Reckless, ill-informed comments can threaten the relationship and business opportunities with the growing Chinese market. I condemn in the strongest possible terms the stupid, erroneous and inflammatory comments made by Clive Palmer and Senator Lambie. Their comments are wrong, unacceptable and contrary to the interests of Victoria and Australia.

I can advise the house that on Tuesday after these comments were aired I rang China's consul-general here in Melbourne, Mr Song Yumin, and conveyed to him that the Victorian government totally and utterly rejected the appalling comments and appalling behaviour of Mr Clive Palmer and Senator Jacqui Lambie and assured him of the ongoing strong, positive relationship between Victoria and China. We value that relationship. We work positively to grow that relationship on a person-to-person level, through cultural exchange and through business opportunities. We do not want that relationship jeopardised by stupid comments by Clive Palmer and Senator Lambie. We want to grow the relationship and grow the business opportunities to the mutual benefit of China and Victoria.

Mr ANDREWS (Leader of the Opposition) (*By leave*) — I thank the Premier for his indulgence. Let there be no doubt in the mind of any Victorian that all sides of politics in this state condemn the irresponsible, reckless, cowardly and ill-informed comments. He is a big unit, but they are gutless and ridiculous comments, and they mark out Mr Palmer as everything but a leader in Australian politics. All sides of politics in Victoria

stand together. The relationship with China, the partnership and the contribution that Chinese Victorians and Australians make each and every day make this a fairer, stronger and better state for the future.

The SPEAKER — Order! I inform the house that the President and I met with the consul-general last night and reaffirmed Victoria's views.

Member for Frankston

Mr PAKULA (Lyndhurst) — My question is to the Attorney-General. I refer to the Attorney-General's revelations this morning that the member for Frankston sought judicial appointments for one or two individuals, and I ask: particularly in light of the Attorney-General describing those requests as 'inappropriate demands' in his answer to the last question from the Deputy Leader of the Opposition, can he advise the house whether there was any suggestion by the member for Frankston that his ongoing support for the coalition government was dependent on the government's response to his requests?

Mr CLARK (Attorney-General) — As I indicated in response to the previous question, it has been on the public record for some time now that the member for Frankston has made demands of the government and that those demands have been rejected by the government, including by me, and that remains the position. As the Premier has made clear, the government has not and will not accept inappropriate demands by the member for Frankston or by anybody else for that matter. We are getting on with the job of governing this state, providing the roads, the infrastructure, the schools, the hospitals — —

Mr Pakula — On a point of order, Speaker, on the matter of relevance, it was a very simple question, which was about whether the member for Frankston's demands went to the matter of his support for the government. An answer to that question is the only kind of answer that can be relevant to that question.

The SPEAKER — Order! The Attorney-General was being relevant to the question as it was asked and has 3 minutes and 28 seconds to finish his answer. I ask the Attorney-General to continue with his answer.

Mr CLARK — As I was saying, the government has rejected inappropriate demands by the member for Frankston, just as the government rejects inappropriate and unreasonable conduct by other people. We have, for example, rejected the inappropriate conduct of the opposition when it was saying it would not be seeking the member for Frankston's vote and then inveigling the member for Frankston to vote down legislation that would hold them to account for their election policy costings.

Ms Allan — On a point of order, Speaker, surely the Attorney-General is not being relevant. I ask you to bring him back to answering the very direct question from the member for Lyndhurst.

The SPEAKER — Order! I believe the Attorney-General was being relevant to the question that was asked.

Mr CLARK — The point that I have been making is that the government rejects inappropriate and unacceptable conduct, whether it comes from the member for Frankston or from anybody else, including from those on the other side of the chamber, in particular when they try to lure the member for Frankston into supporting their attempts to vote down legislation that would prevent criminals from getting away on technicalities.

The SPEAKER — Order! The Attorney-General will come back to answering the question.

Honourable members interjecting.

The SPEAKER — Order! The house will come to order. The house could not possibly have heard my request to the Attorney-General. I ask members to be silent. The Attorney-General, to come back to answering the question.

Mr CLARK — In short, the government is getting on with governing, regardless of unacceptable conduct by the member for Frankston or by anybody else.

Regional and rural employment

Mr WELLER (Rodney) — My question is to the Minister for Regional and Rural Development. How is the Victorian coalition government helping to secure the future of major employers and jobs across regional and rural Victoria and building a better Victoria?

Mr RYAN (Minister for Regional and Rural Development) — I thank the member for Rodney for his very timely question. As the house would know, the government provides an enormous amount of assistance to industries and in respect of industry development and the growth of employment through the regions of our state. That is not only to do with issues of being able to provide financial assistance. We are able to do it through the Office of State Development, through the Invest Assist group, which is often able to negotiate issues around regulatory

controls, financial matters and the like. There are different means whereby assistance can be granted, and there are many example of where that happens.

Through the Victorian Business Flood Recovery Fund we have been able to provide for a total of 49 projects, $8.8 million in grants, with a total investment of $140 million, resulting in 830 jobs being established. For example, we were able to help Australian Paper a couple of years ago in its future development. We were able to do work for Ryan's abattoir — no relation, I assure the house — or Ryan's meats in Nathalia, in the seat of the member for Rodney, which has 50 full-time equivalent employees. But as the house will know, in 2012 the company was absolutely streeted by the floods. The company was at threat of closing.

Honourable members interjecting.

Mr RYAN — Some might find it a laughing matter, but it was not. The company was nearly finished. We were able to stabilise the company with an initial grant of $200 000 through the flood recovery fund and another half a million dollars to assist in the further development of the business. It enabled the company to stabilise that business and employ another seven people, but importantly it has now laid the foundation for further growth, and I am confident we will hear more about that in the imminent future.

Pureharvest in Drouin, employing 60 people, was at threat of losing jobs because of inadequate warehousing. We were able to help it with a $200 000 grant towards its build of a total of $532 000, which has enabled it eventually to add another 20 employees. SPC's issues are of course renowned now. We have been able to work with the company over the course of these past months, particularly through the agency of Invest Assist, to help with the delicate negotiations that have enabled that package to be restructured and now delivered.

Of course one matter that has been mentioned recently is at McPherson's Printing in Maryborough. As the house will know, the company is part of the Opus Group. It consulted me about three-odd months ago about the difficulties it was then experiencing. The McPherson's company had just lost a major client in Maryborough. It resulted in a loss of about 25 to 30 per cent of its business. It was facing some very serious challenges about the ongoing capacity of this entity. It was of course a major employer in Maryborough.

We were able to work through with the company, with Invest Assist and through other members of my department, to assist it with the difficult negotiations which then ensued, which were concluded at about the end of the financial year and which resulted in the company now in effect having been refinanced by the Hong Kong Stock Exchange-listed 1010 Printing Group Limited. That in turn has meant that there needs to be a restructure of the company. There have been notices issued for 38 redundancies.

We were able a couple of years ago to help with True Foods. We injected money into True Foods and got it into Maryborough, and it has now employed an extra 200 people in Maryborough because of our intervention and assistance. Likewise we are right with Opus Group, helping it in relation to these difficult times. We will make sure, if it is able to sustain its way through these current difficulties, and as I have said to the company representatives personally, we are very, very prepared to continue to help, just as we have helped many other companies throughout regional Victoria.

Member for Frankston

Mr PAKULA (Lyndhurst) — My question is again to the Attorney-General. I refer to the Attorney-General's statement today and to his answers in this house where he has described variously the member for Frankston's approaches to him as 'inappropriate', 'unacceptable' and 'unreasonable'. I ask: in those circumstances, why did the Attorney-General not immediately refer these inappropriate, unacceptable and unreasonable requests to the Independent Broad-based Anti-corruption Commission?

Mr CLARK (Attorney-General) — It seems that there must be some division in the ranks of those opposite because we have had the member for Monbulk and the member for Lyndhurst asking a number of questions whereas we have had the Leader of the Opposition publicly saying, 'I don't know about everyone else, but I'm sick and tired of talking about Geoff Shaw'.

Honourable members interjecting.

The SPEAKER — Order! The Leader of the Opposition knows very well that when I am on my feet he must be silent.

Mr CLARK — This is not a question about unlawful conduct; it is an issue about inappropriate conduct. As the government has made clear on the public record as far back as June this year, these demands were rejected by the government and rejected by me.

TAFE funding and governance

Mr BLACKWOOD (Narracan) — My question is to the Minister for Higher Education and Skills. How is the Victorian coalition government's investment in TAFEs across regional Victoria helping to grow opportunities for students and build a better Victoria, and are there any alternative proposals?

Mr WAKELING (Minister for Higher Education and Skills) — I thank the member for Narracan for his question and for his interest in training in regional Victoria. We know that the best thing to do for regional Victoria is invest in regional Victoria, and we know that when the regions are doing well the whole of Victoria is doing well.

Under this government we are now seeing a record level of investment — $1.2 billion per year — in vocational education and training. That is nearly $5 billion over the next four years, which is a 50 per cent increase on what those opposite were delivering when they were last in government. In our TAFE sector we have seen an increase in funding from $487 million under the previous government to $600 million under this government — a 23 per cent increase in the level of TAFE funding.

We lead the nation when it comes to funding. As was reported recently in the *Australian*:

> … unlike Victoria, which ramped up overall VET funding by hundreds of millions of dollars, other jurisdictions have injected barely an extra dollar.

Clearly on a national level we are leading the way. What has that delivered? It has delivered a 50 per cent increase in enrolments. Across regional Victoria — and I am very proud of what we are doing in our regions — we have seen a 33 per cent increase in enrolments.

I am proud to support the TAFEs, not talk them down and trash their brands like those opposite. At GOTAFE we have seen a 286 per cent increase in government subsidies, which has led to a 133 per cent increase in enrolments. At Wodonga TAFE a 49 per cent increase in government funding has led to a 46 per cent increase in enrolments. At South West TAFE — and I was very pleased to join the Premier there — there has been a 48 per cent increase in government funding and a 25 per cent increase in enrolments. We were very pleased to deliver a $7.7 million funding package recently.

The other important thing we have done — and we have listened very carefully to the sector on this — is strengthen governance. We have removed the CEOs from boards and made the boards accountable. Another thing we have done is clarify the functions of boards and management. This was recently the subject of a Victorian Auditor-General's Office (VAGO) report, which highlighted some of the concerns about the remuneration package of a former CEO of Box Hill TAFE, who actually served on the board at the same time. In the VAGO report it was made very clear that the recent changes by the education department to improve aspects of the accountability and oversight framework relating to the TAFE sector by removing chief executive officers from the boards have been very well received.

When your changes to the governance structure have been supported by the broader community, supported by the TAFE sector and supported by the Auditor-General, you would wonder if there was anyone with alternative policies, as the honourable member raised in his question. Just recently a person in the community made the point that he wanted to 'restore representation of CEOs' on TAFE boards — in direct contradiction to the Auditor-General's commendation of the work of this government. No wonder the TAFE sector shuddered when it heard those words. I only ask: why is it that the Leader of the Opposition made these statements? Again it comes back to the integrity and the strength of the Leader of the Opposition when it comes to this very important issue.

Member for Frankston

Mr PAKULA (Lyndhurst) — My question is to the Premier. I ask quite simply: when did the Premier first become aware that the member for Frankston had approached the Attorney-General regarding judicial appointments?

Dr NAPTHINE (Premier) — I thank the honourable member for his question. With respect to this matter I can advise the house that on 3 June I made some comments publicly, which I can say here, about an example of one of the demands the member for Frankston made of this government, which we have not acceded to, which we found ridiculous and which we rejected out of hand. When the member for Frankston raised this matter with me I said, 'That is nonsense. It will not be countenanced. It will not be done'. With respect to judicial appointments, they are within the purview of the Attorney-General, who brings them to cabinet for approval. I do not involve myself in the Attorney-General's consideration — —

Mr Pakula — On a point of order, Speaker, this was a very simple question with no preamble. The question

simply was: when did the Premier first become aware that the member for Frankston had approached the Attorney-General? The only kind of answer that can be relevant is an answer that goes to that matter.

Ms Asher — On the point of order, Speaker, a point of order is not an opportunity to repeat the question. What the member for Lyndhurst has just done is simply to repeat his question, and I ask that you rule his point of order out of order.

The SPEAKER — Order! The member for Lyndhurst knows he is not allowed to repeat the question. The Premier was being relevant. The member for Lyndhurst had asked when the Premier had become aware that the member for Frankston had approached the Attorney-General, and the summation is that he had approached the Attorney-General about a judicial appointment — the Premier was answering that question.

Dr NAPTHINE — I am explaining how judicial appointments are made under this government. They are made on the basis of a recommendation to the cabinet by the Attorney-General, and if they have been considered by the cabinet, then they go through the Governor in Council process. I do not discuss those judicial appointments with the Attorney-General — they go through the normal cabinet process. There is no discussion between me and the Attorney-General with respect to those appointments. I see the recommendations when they come to cabinet.

Regional and rural infrastructure

Mr TILLEY (Benambra) — My question is to the Minister for Local Government. How is the Victorian coalition government's investment in local government and community infrastructure building a better Victoria, and are there any alternative policies?

Mr BULL (Minister for Local Government) — I thank the member for Benambra for his question and for his great interest in the Victorian government's commitment to supporting rural and regional Victoria. As everybody will know, yesterday it was announced that for the fourth time in a row Melbourne has been ranked the world's most livable city. On this side of the house we also believe that the state of Victoria is the world's most livable state. We understand rural and regional Victoria, and we are very committed to it doing well. We have a Premier and Deputy Premier who live in and represent rural and regional Victoria and a further eight ministers around the cabinet table who are from rural and regional committees.

Since its election in 2010 the coalition government has increased funding to local government by 64 per cent. Much of this funding has been targeted towards rural and regional communities through some absolutely magnificent initiatives. These include the $160 million country roads and bridges program; the $100 million local government infrastructure program, which is part of the larger $1 billion Regional Growth Fund; and our $17.2 million Living Libraries Infrastructure program through which we have delivered new or significantly upgraded libraries to a number of regions around Victoria, including Bendigo, Creswick, Horsham, Hamilton, Violet Town, Corangamite shire, Mansfield, Maryborough, Moe, Mount Beauty, Sale, Woodend and — I might also add — my home town of Bairnsdale. As the member for Benambra would well know, we have also funded library upgrades in his own electorate, in the towns of Beechworth and Yackandandah.

The coalition government's funding of infrastructure in the regions means more Victorians are benefiting from better facilities and better services. As the Minister for Higher Education and Skills pointed out in his contribution, when the regions of Victoria are doing well, all of Victoria is doing well. Our money and our investment have been spread far and wide.

Let us have a look at a snapshot of just a couple of our Victorian councils. The Mitchell shire, in addition to receiving $1 million as part of the country roads and bridges program, has received $684 000 through the community facility funding program to build new and better facilities where communities can come together and interact. It has received $1.1 million through the local government infrastructure program to plan and build new infrastructure and renew the municipality's assets and $300 000 through the early learning facilities capital grant program to increase the infrastructure capacity of the kindergartens within that local government area.

It is a similar story in the Rural City of Ararat, with $1 million being spent on its country roads and bridges program and a further $1.13 million provided in the past two years through the local government infrastructure program.

This government is delivering jobs through spending on important community infrastructure in all the regions of Victoria. This is perhaps best summed up by the president of the Municipal Association of Victoria (MAV), Cr Bill McArthur — —

Honourable members interjecting.

Mr BULL — I will tell you what he said. An MAV media release, in which Cr McArthur is quoted, says:

> … the Victorian government delivered a $360 million windfall for local roads, community facilities and other initiatives, which has funded more than 1500 projects to date.

What a great endorsement from the MAV!

Member for Frankston

Mr ANDREWS (Leader of the Opposition) — My question is to the Premier. Is the Premier seriously asking Victorians to believe that the first he knew of the member for Frankston's inappropriate, unacceptable and unreasonable demands about judicial appointments, made to the Premier's Attorney-General, was at the joint press conference in this building this morning?

Dr NAPTHINE (Premier) — I thank the Leader of the Opposition for his question. I refer the Leader of the Opposition to a *Herald Sun* article of 5 June — a public newspaper which I presume the Leader of the Opposition reads — which states:

> Government spokesman James Copsey said … Premier Denis Napthine had made it clear that 'Mr Shaw made demands for a particular judicial appointment that were completely unacceptable'.
>
> 'The Attorney-General has also rejected those demands …

On 5 June a public newspaper indicated that the Attorney-General was aware of those demands and I was aware of those demands. But what we say on this side of the house is that when these suggestions or demands were made, we totally and utterly rejected them, because we know how to behave in public office. We know about integrity. In 2013 somebody said:

> They want a government they can trust. They want it to be honest.

I can tell the people of Victoria that if they want an honest government, if they want a trustworthy government, they will vote for the coalition each and every time. They will not vote for a government where the leader says he knows nothing about stolen dictaphones, where the deputy leader says he knows nothing about stolen dictaphones — —

Honourable members interjecting.

The SPEAKER — Order! I will not dignify things by talking about the level of noise of interjections. That was just shouting. It makes it impossible for the Chair to hear — —

Mr Andrews interjected.

The SPEAKER — Order! It is discourteous for the Leader of the Opposition to make comments when I am speaking. I cannot hear if members make that level of noise.

Dr NAPTHINE — There were comments about IBAC. Unfortunately the Labor Party has a tragic record — —

Mr Andrews — On a point of order, Speaker, this answer is clearly not relevant to the question that was asked. We have heard about what government spokespeople have said and all sorts of other material. The Premier is avoiding answering this question in accordance with standing orders. That is obvious to everyone watching this, and I would ask you to call the Premier back to answering and being compliant with the standing orders. That requires a relevant answer.

Ms Asher — On the point of order, Speaker, the Premier was asked a question in relation to a media conference today. I refer you to *Rulings from the Chair 1920–2013*, dated December 2013, in relation to relevancy. According to Speakers Delzoppo, Plowman and Maddigan:

> A minister may answer questions as he or she sees fit provided the answers are relevant.

I put it to you that the answer the Premier is giving is relevant and that in fact what the Leader of the Opposition is objecting to is that he does not like the answer. The ruling is that a minister may answer questions as he or she sees fit. That is what the Premier is doing. The Premier is being relevant and is in order, and he is adhering to the standing orders.

Mr Merlino — On the point of order, Speaker, there was a very clear question, which I will not repeat. The Premier was in no way being relevant. We have had five dodgy answers, five rounds of protection — —

The SPEAKER — Order! The member for Monbulk should resume his seat.

Honourable members interjecting.

The SPEAKER — Order! This morning I went to a Heart Foundation breakfast, which was very enjoyable, and they gave us stress balls. I was concerned that one stress ball would not last the day, so the member for Bendigo West gave me one of hers. I think I have used three today. I ask the house to come to order.

Dr NAPTHINE — Tragically the Labor opposition has a track record of raising things with IBAC that have no substance. Indeed it raised something in May, and it

got a letter back saying there was no evidence of wrongdoing. On 13 August — —

Ms Allan — On a point of order, Speaker, in no way is talking about the Labor Party relevant to — —

An honourable member interjected.

Ms Allan — You are not answering your question. Can you please let me give my point of order.

The SPEAKER — Order! The member for Bendigo East should ignore interjections. When she is making a point of order I ask that she stay with it, and I ask members to listen to points of order in silence.

Ms Allan — Speaker, the actions of the Labor opposition are in no way relevant to government administration. We would love them to be, but they are not. Can you please uphold standing order 58 and ask the Premier to answer the question he was asked. He should give a very direct answer to the question from the Leader of the Opposition.

Ms Asher — On the point of order, Speaker, on page 164 of *Rulings from the Chair 1920–2013*, dated December 2013, Speaker Smith made a ruling headed 'Discussion of former government permitted'. The ruling is:

> While it is not appropriate to attack the opposition during question time, it is permissible to talk about something that the former government did.

I believe the Premier was actually referring to something the former government did. It is permissible to talk about something the former government did. Apart from anything else, the Premier was being relevant to the question that was asked.

Mr Andrews — Further on the point of order, Speaker, again on relevance, the question in no way referenced the Independent Broad-based Anti-corruption Commission or any references past, present or future. IBAC was not mentioned in the question. It is therefore impossible for the Premier to provide a relevant answer introducing material focusing almost solely on material that was not referenced in the question. I would say to you, respectfully, that IBAC was not mentioned in the question and is not relevant to the answer.

The SPEAKER — Order! The fact that IBAC was not mentioned in the question does not prevent the Premier from answering it in the manner he sees fit. The Leader of the Opposition might not like the way the Premier is answering the question, but I cannot direct the Premier how to answer it. However, I will ask the Premier not to attack the opposition.

Dr NAPTHINE — I am merely pointing out that IBAC was asked about issues that were raised by the question, and it said the issues raised by the Labor Party were 'lacking substance'. The question asked about the knowledge that I had. The *Herald Sun* published an article about the knowledge I had and the knowledge the Attorney-General had. I have been up-front in media conferences regarding any discussions I have had. We have a real contrast between a government that is honest and up-front and which behaves with integrity.

I can say that the Attorney-General, with his long track record in this house, has more integrity in his toenails then the Labor Party, which is involved in a farrago of lies, cover up and — —

Honourable members interjecting.

The SPEAKER — Order! The Premier has finished answering the question.

Infrastructure delivery

Ms McLEISH (Seymour) — My question is to the Treasurer. How is the Victorian coalition government's management of the state's economy providing capacity to build jobs across Victoria, and are there any alternative proposals?

Mr O'BRIEN (Treasurer) — I thank the member for Seymour for her question and for her interest in what this government is doing to strengthen our economy and build a better Victoria. Because of this coalition government's strong financial management it brought down a budget with a $1.3 billion surplus, payroll tax cuts, WorkCover premium cuts and the biggest infrastructure program in Victoria's history — $27 billion.

As I am sure members of the public and indeed the former Deputy Prime Minister would acknowledge, you need to build better roads and better public transport to grow your economy; and that is exactly what we are doing. There is the Melbourne rail link, the airport rail link, the Cranbourne-Pakenham rail corridor, the CityLink Tullamarine widening and of course the east–west link. The east–west link was identified by Sir Rod Eddington, who was appointed by the Labor government, as the most important road project for Victoria. This is not just a program for Melbourne but for Geelong, for Ballarat, for Colac, for Warrnambool, and for all of western Victoria.

Just one year ago today here is what one commentator said:

> We know the West Gate Bridge carries about 175 000 vehicles a day, and by 2020 that number is anticipated to reach 22 000 … The fact the government has denied the need for an urgent second river crossing shows their priorities lie against the people of Geelong, Ballarat and the western suburbs of Melbourne.

Just one year ago today, who said that? It was the member for Tarneit. Just one year ago the member for the member for Tarneit was the biggest supporter of the western section of the east–west link and now, of course, Labor flip-flops and opposes this vital infrastructure project.

Victorians need a government that can be trusted to be consistent in what it does and who it is. I am reminded of my visit on Monday to McDonald's to announce the 1000 new Victorian jobs this year. I was going to ask the famous corporate mascot of that organisation whether he had any plans to change his name from Ronald to Ron.

Honourable members interjecting.

The SPEAKER — Order! The house will come to order.

Mr Andrews interjected.

The SPEAKER — Order! Leader of the Opposition! I am calling for order.

Mr O'BRIEN — I realise there are some things that even a clown will not do in the name of advertising.

Today I was pleased to join the Minister for Public Transport, who is also the Minister for Roads, and the Deputy Prime Minister to announce that we have appointed Ernst & Young and KPMG as the commercial advisers for the western section of the east–west link and the Melbourne rail link respectively. This is a very important step in getting these projects going forward.

We are determined that we will not make the same infrastructure blunders that Labor always makes. There will be no desal on our watch. There will be no myki on our watch. There will be no north–south pipeline on our watch. We will make sure that we deliver these infrastructure projects on time and on budget for the benefit of the people of Victoria, creating tens of thousands of jobs, growing our economy and building a better Victoria.

CHILDREN, YOUTH AND FAMILIES AMENDMENT (PERMANENT CARE AND OTHER MATTERS) BILL 2014

Second reading

Debate resumed.

Mrs POWELL (Shepparton) — Before the lunch break I was speaking in support of the bill before the house: the Children, Youth and Families Amendment (Permanent Care and Other Matters) Bill 2014. I would like to take this opportunity to clarify a number of remarks made by members of the opposition criticising the 'child unattended' laws, which apply when children are left unattended in cars. Opposition members were very critical of those laws.

I was reminded that those laws were actually brought in by the Labor Party in 2005. There are no changes to the laws that the Labor Party brought in at that time. The offence is not changing. In fact all that is happening is penalties are increasing. I just wanted to put that on the record.

On the issue of child protection, all members have been speaking about the importance of looking after our most vulnerable. I would like to pay tribute to some of our foster carers, who do a great job in looking after children who have to move on from home because they are not protected there. I would like to pay tribute to a Shepparton family. Daryl and Debbie Sloan have three children of their own but have fostered about 100 children over the years. In 2004 this family was awarded the BoysTown Australian Family of the Year award. They beat about 400 families right across Australia. They are a wonderful family. Foster carers do a great job. Daryl himself grew up in orphanages and foster homes, and he wanted to make sure that he was able to help children who needed assistance. His wife Debbie does a wonderful job. She is a wonderful and loving parent.

This is a really important bill. Can I just say how proud I am of the consultation led by the minister at the table, the Minister for Community Services. I know there will be ongoing discussions about a number of issues that the Labor Party has raised, and we can be sure that those issues will be dealt with.

Some members mentioned earlier that some of the most abhorrent things we can see are those pictures in the papers and on the news of children who have been abused, whether it be by their families or by others. After a number of reports in the paper the minister commissioned an inquiry looking into how we can best

improve our child protection system. The bill before the house does just that. I am very pleased to note that it also takes in issues of cultural significance for Aboriginal families. I am a former Minister for Aboriginal Affairs, and I have spoken at length to Aboriginal families. I spoke to the minister about those issues, and I am really pleased to see that those issues have been addressed in this bill.

As I said, this is a really important bill. I hope the opposition supports it. I know it has put amendments forward that the government has some concerns about. I urge the opposition to support this important bill, and I wish it a speedy passage.

Ms WOOLDRIDGE (Minister for Community Services) — I am very pleased to sum up the debate on the Children, Youth and Families Amendment (Permanent Care and Other Matters) Bill 2014. I think it has been a thoughtful and genuine debate. I want to commend all members of the house for their contributions and their thoughts in relation to this bill. I also want to echo the comments of the member for Richmond about the collaboration and discussion between the government and the opposition on this bill. I think there have been about $2^1/_2$ hours of briefings with the shadow minister, which reflects her deep interest in understanding the bill and also the government's commitment to making sure that that understanding is provided and subsequent questions are responded to.

As the member for Richmond outlined, there was also some discussion in advance, which was very much appreciated by the government, about a potential amendment. Having thought about that very thoroughly and having sought advice in relation to it, I am sad that I have to say the government will not be supporting that amendment. I will give some details as to why not, and I am sure we will go into more detail in response to that. I think the shadow minister has engaged in a very appropriate and thoughtful process to look at this bill in substance.

At its heart the bill is about putting children at the centre of decision-making. A lot of people are involved in decisions made around children who have been abused and neglected — obviously the children themselves, their family members and extended family members, the courts involved, child protection and family services, and many other services as well. In commissioning the Cummins inquiry immediately upon coming to government, we acknowledged that the system was not working. We needed the analysis and thoughts of the panel led by Philip Cummins, who with Dorothy Scott and Bill Scales conducted extensive consultation. I think one of the starkest things that came out of that review was the incredible concern about the fact that it was taking, on average, five years to establish permanency for children in out-of-home care and to determine their future. That was only on average; many cases took much longer than that. In fact some never had a determination in terms of what the future would hold. That could go on for many years.

As a result, recommendations were made that sought to address the permanency and stability of children in out-of-home care. That led to a piece of work about stability and permanency for children. Some very significant analysis was undertaken over a 12-month process led by the Department of Human Services with the engagement of the broad community sector, particularly the service providers, to look at what could be done to improve permanency for children so that they could have certainty about what was happening in their lives. The critical thing here is that we are talking about children who may be as young as six months old, or only one or two, through to teenagers. Delayed decision-making in terms of the future has a dramatic impact on children and young people at that very fundamental time.

At the heart of everything that has been done, at all levels and by all the people involved, is the objective of achieving reunification. I am pleased that 80 per cent of children who are removed and placed on an order are reunified within a two-year period. Members have to understand that a very significant point has been reached for the court to make a decision that a child can no longer live with their parent, parents or family. A lot often happens in the lead-up to that decision, and if children are removed, work starts immediately to seek to reunify those families. The government has taken significant steps forward on a whole lot of different fronts in terms of its objective of reunification.

One of the things I am very proud of is the introduction of Australia's first Family Drug Treatment Court. At its heart the court is about identifying parents who have had their children removed as a result of parental drug and alcohol abuse. There are resources now in the court to identify and work with those families to address their drug and alcohol addiction and the other issues they face, with the express purpose of achieving reunification, if that is possible, and coming to a determination because that is in the children's best interest. That is an exciting innovation for Australia right here in Victoria introduced by the coalition government.

We have expanded Stronger Families, an initiative of the former government, which has been significantly

expanded by this government. We have introduced a new program, Cradle to Kinder, where we work for up to four and a half years with mums who are identified as being at high risk of their children being removed or there being intervention from child protection services to strengthen their capabilities to be able to parent and create a safe environment for their children. We do not want to remove children; that is not our objective. But we will always prioritise the needs, the wellbeing and the safety of children and put that at the forefront in terms of the decision-making. Members can be very confident that the government is completely committed to the objective of reunification, and it has invested not only funding but also new ideas and new approaches to help and achieve that as effectively as it can.

If we get into a situation where a child is removed, obviously at that decision point the court can make directions in relation to what needs to happen over the time after a child is removed. It can be things like actions the department needs to take, actions the parents need to take, services that need to be provided, things that need to be accessed, and a whole range of different things. In making a protection order the court has the capacity to very clearly direct what needs to happen for things to change.

Twelve months on the court has another role. It has the role of assessing how the objective of reunification has been going and whether we have an indication or progress from the parent about their capability ultimately to be able to have their child or children returned to them. At the one-year period the court can and does make directions about what is in the best interests of a child and what actions it requires of the department, the parents and other treatment and support services around them. The court has very clear input and oversight at the time of the court order, and it has very clear oversight and direction at the point of year one. The issue we are debating in terms of the amendment is what happens at the end of the second year. The decision that has been made in putting forward this legislation to be considered by the house is that two years is long enough for a child not to have any certainty about what is happening to them and what the plan is for the stability of their future.

This legislation, with the oversight of the court entirely through the process — being able to direct the actions of parents and the department at year two — says that not making a decision is not good enough. What has to happen is that a decision needs to be made. The decision could be for the child to be returned to the parents; it could be for a custody to secretary order; it could be for an objective of permanency. But having had all that time in the lead-up, first of all, to the point where it is decided that the child is removed, and all the time through the first year and all the time through the second year to be able to address the issues, two years is long enough for a decision to be made about whether a child should be in the care of their parent or parents.

We have safeguards in the bill, and that is exactly why we have put them in. If things change fundamentally for parents or a parent, they can apply to the court to have the order reconsidered, and that is a healthy part of the process. They cannot do it willy-nilly; they cannot do it every three months, but they can go to the court and say, ‘Things have changed, and I would like the order that has been made to be reconsidered by the court’. We have safeguards so that if things change and if they are able to provide for the wellbeing and safety of the child, parents are able to apply to the court to vary the court orders.

We have put in a lot of safeguards. We have thought in a very detailed way about how to make this as effective as possible, but all the time prioritising the best interests of the children, and that is what is at the heart of the bill and the changes being proposed. We are saying that the court must make a decision at the end of the second year. It is not good enough to defer the decision and leave it to languish, because the only clock — and we have heard the bit about clocks ticking on the court — that is ticking relates to the safety and wellbeing of the children and their development over a two-year period. If you are one, two or three years old, two years is a huge proportion of your life, and key developmental milestones are reached in that time. If you have uncertainty about what is happening to your future, and whether you are going to go back to mum, dad or aunty, or whether there is another permanent arrangement, that is terribly traumatising for children. We believe that decision must be made at two years with all attempts having been made to reunify at all possible. Permanency in the sense of the bill includes permanency with parents, and, as I have said, that is absolutely our objective.

There has been some commentary about consultation. There has been a huge amount of consultation starting with the Cummins inquiry and going through our stability and permanency project. We initiated consultation with the Children’s Court as far back as last December on this bill. There have been multiple conversations and consultation with the Commission for Children and Young People, the privacy commission, the family law court, Aboriginal agencies and children, youth and families agencies to get their input.

I acknowledge some concern from those organisations outlined that are particularly concerned with adoption. They are disappointed that they have not been consulted in this process. The reason for that is that from our perspective there is no change in terms of adoption. There is no change to the Adoption Act 1984; There is no change to the way adoption is treated. It is treated as it has always been treated under the former government, over the last three years and now going forward. The difference is that for the first time the hierarchy is articulated in the legislation. We do not seek adoption for everyone, because we know that it is a very limited circumstances where adoption is relevant. There are about 20 adoptions every year in Victoria. Most of them do not have connection with child protection at all. We are dealing with a very small group, and it tends to be where perhaps both parents have died or where someone at a very early stage has made a decision to relinquish a child, and with full consent and knowledge they make a decision in relation to adoption. All the provisions of the Adoption Act then apply. I am very happy for the department, my office or even me to sit down with those agencies that have been highlighted when the bill is between the houses to make sure they have an opportunity to get the confidence that this measure does not have unintended consequences in relation to adoption.

This is a critical bill. It will fundamentally change the experiences of young people in our out-of-home care system. What we are seeking to do is to limit what has been on average a five-year process to something that is a lot shorter and to make that proactive decision about a child's wellbeing and security and about their future. We think that is going to make a very significant difference.

In summing up before we go into the consideration-in-detail stage, I want to acknowledge the many people who have been very actively involved with the bill for a very long time. All of those we have consulted with, particularly the court, the commission and many of the children, youth and families agencies, have given us very thoughtful input, which we have absolutely taken on board and engaged with in relation to the development of the bill. I thank them for that. Through that process I want to acknowledge the work of the Department of Human Services in conjunction with other government departments that have also had a say. I particularly acknowledge the leadership of the secretary, Gill Callister, and the deputy secretary, Katy Haire. The bulk of the work has been shouldered by Beth Allen, who with her team has done a tremendous job in grappling with these issues.

As the member for Richmond said, these are challenging, difficult but critically important issues and ones we take exceptionally seriously. What we are trying to achieve are better outcomes for young people who have been traumatised, neglected and abused by the very nature of their experience and the fact that they are in out-of-home care, and to seek the opportunity to address those issues, deal with the trauma they have experienced in their lives and have some permanency and a clear pathway for their future to get their lives back on track and to live happy productive lives. It is a challenging area, and once again, I acknowledge the contribution of all those in the house for the spirit in which they have contributed to the debate as we discuss these very important matters.

Motion agreed to.

Read second time.

Consideration in detail

Clause 1

Mr WYNNE (Richmond) — We acknowledge that the government is providing us with an opportunity to deal with this bill in a bit more detail, and we appreciate that. We also appreciate the spirit in which this debate has been conducted. Both sides have tried to act in a way that is appropriate to a debate which is in the best interests of young children and their protection. We are disappointed that the minister has indicated that she cannot support our amendment. My colleague the shadow Attorney-General will go to some of those questions when we get to clause 17 of the bill.

In her summation, the minister spoke in some detail about the question of consultation. I acknowledge and thank her for making a commitment to both houses to have further consultation with a number of key interest groups. I indicated in my earlier contribution that a number of important groups feel that they have not been appropriately consulted. Origins Victoria is one such organisation. We acknowledge that adoption per se is not covered in this bill, but in the cascading opportunities for intervention, which I talked about in my contribution earlier, adoption is at the higher end of that scale. I would argue that the provisions of this bill represent a different policy setting to what we have had in the past. It would be appropriate that the minister seek the input of organisations such as Origins Victoria. The Victorian Adoption Network for Information and Self Help (VANISH) may have had a meeting with the minister last night. If so, that is good. However, yet again, this is late in the piece.

Ms Wooldridge interjected.

Mr WYNNE — Indeed. That was a result of representations from my colleague in the other place, Ms Mikakos, a member for Northern Metropolitan Region. It is good that the minister has responded to Ms Mikakos. ARMS (Victoria) is the third group that feels its voice needs to be heard in a much clearer way about the concerns it has.

I want to discuss another matter that my colleague the shadow Attorney-General will address in his contribution. I will quote from correspondence from the minister's chief of staff, Mr Ben Harris, who may be listening to this debate, to Ms Mikakos:

> The president of the Children's Court was privy to various clauses regarding permanent care orders during drafting.

I put it to the minister that, with the central role that the Children's Court plays, I would have thought that it would have been appropriate for a full exposure of the legislation to have been — —

Ms Wooldridge interjected.

Mr WYNNE — This is a note from the minister's chief of staff to Ms Mikakos.

It would have been respectful for the minister to show the head of the jurisdiction the full draft of her legislation so that the court was clear on all of the issues that are being canvassed in Parliament today. That was an unfortunate oversight and one I would hope the minister would take the opportunity, perhaps through her chief of staff, to address with the head of the jurisdiction. If she does so, the court will be satisfied that it fully understands the policy and legislative settings the minister has put in place in this legislation.

Ms WOOLDRIDGE (Minister for Community Services) — Two issues have been raised by the member at the table. As I have stated, I am happy to have further discussions with ARMS (Victoria), Origins Victoria and VANISH in relation to the bill. However, I disagree with what the member has said. My advice is that the hierarchy articulated in the bill reflects the hierarchy of approach that has been taken for many years. In fact there are only a small number of circumstances where adoption is appropriate, as evidenced by the fact that there are only 20 adoptions per year. If adoption is appropriate, taking into account all the elements of the bill and the Adoption Act 1984, then that will be presented. Those circumstances are quite limited. I am advised that this is consistent with the practice and hierarchy that has been in place for many years.

The second issue in relation to consultation with the Children's Court is that I agree with the member in terms of the respect that needs to be shown to the court, and I can assure him that the court has seen a full copy of the bill. The note from my chief of staff uses the wording 'privy to various clauses'. Clauses change, and the courts saw clauses and then saw new clauses as they were revised and as things evolved. Ultimately they saw all the clauses. I can say that we think that is appropriate. It is very important.

We respect the division of powers between the houses, but we think it is important that we hear from those who are directly affected by the bill. We have taken the consultation exceptionally seriously, and we are very happy for those three groups identified to get some information in relation to the bill.

Mr McGUIRE (Broadmeadows) — I hear what the minister is saying, but there are still major concerns that this piece of legislation does not carry the weight, support and clout of the Children's Court or of the Law Institute of Victoria. We still have two major organisations that have significant problems with proposed legislation that is absolutely pertinent to their work and expertise. I raised this issue in my earlier contribution.

In this debate about the care of children we are at a time when we are looking for greater scrutiny, accountability and compliance. It has been Labor's concern that limiting the power of the Children's Court specifically in this area is still an issue that needs to be addressed. Exactly how that is going to occur needs to be spelt out before this bill goes through both houses. The law institute has been saying that one of its critical concerns is the diminished ability of the courts to exercise their inherent jurisdiction and to review the decisions of the Department of Human Services (DHS).

We have just gone through the ways we can better care for children and how we can make sure that structures work. Through the Cummins inquiry, the Family and Community Development Committee's report, *Betrayal of Trust*, and the ongoing royal commission into institutional responses to child sexual abuse we have seen evidence of systemic failure. We have seen how appalling the consequences of this abuse can be for individuals, families and communities and how it affects generations. I reiterate that we must make sure that all of these questions are resolved, that we have a better system and that we do not have unintended consequences. To this day we are paying for these failures of the past. It is not a matter of seeing this bit or the other bit; we want to see the entirety. We want to see the big picture view of how it works at all different

levels. They are the issues that are still of concern to the opposition. It is incumbent upon the minister to address those concerns and on the government to respond to them before this bill passes the Parliament.

Ms WOOLDRIDGE (Minister for Community Services) — I have just sought advice from the Clerk. I am concerned with the member's comment about the fact that the Children's Court does not support this legislation. Does the member have some evidence in relation to that?

Mr McGUIRE (Broadmeadows) — The concern is the view that the Children's Court's position, as I have outlined from the law institute, it being the critic — —

Ms Wooldridge — So it is the law institute, not the Children's Court.

Mr McGUIRE — Yes. It is the proposition about who actually has scrutiny and who actually makes sure there is compliance. That is the proposition. That is what I am defining. How do we make that better at a time when compliance is critical? I am looking at it from a systemic point of view. The law institute has articulated it and has put it on the record, and I am happy to provide the notes on that if the minister wants that background. It is the law institute's no. 1 point and the point that the opposition has also raised.

How do we make sure that the department is functioning in the best interests of children? That is the result we are all aiming for. We are unanimous on that. Then we ask, 'What is the mechanism, and what is the system?'. Then we have the department. Who is the oversight body that has scrutiny and is able to make the department accountable and compliant? That is the key point I want to address. I want to make sure it is covered off.

Ms HALFPENNY (Thomastown) — I would like to make a few comments around the permanent care aspect of this bill. As I understand it, this bill is very much welcomed. Everybody agrees that there must be more permanency and stability for children who are removed from their families, because they need to know what they are doing and where they are going. We have heard some of the most terrible cases of children being moved from school to school — 10 or 15 schools in a very short period — without stability in any area of their lives, whether in their friendships or in their out-of-home activities or in being out of home itself.

There is a lot of support for the part of this bill that talks about providing more security and permanency so that children know where they stand. One part of the permanency issue, however, is the great problem of lack of support for foster carers. Many foster carers are leaving the system because they just cannot cope anymore. There is a lack of resources, but I have also heard about the most incredible bureaucratic nonsense that has been put in the way, forming barriers to foster carers. For example, applying for glasses for a child may involve one region saying yes but another making the foster carer wait 12 months to go through the system. All these frustrations contribute to a child's stability and care. I hope there will be further work and further legislation, if legislation is necessary, to look at some of those aspects of permanent care and looking after children.

The main concern I rise to speak about in relation to this legislation is the removal of the provision stating that all reasonable steps have been taken by the Secretary of the Department of Human Services to provide the services necessary in the best interests of the child. This provision was quoted and used in the court case of the two children who were sexually abused in care. We also have the situation that came to light not that long ago of paedophile gangs preying on children in out-of-home care in Dandenong and other areas.

We should not be reducing the responsibility and the duty of care of the Secretary of the Department of Human Services. As I have raised before, I believe the Department of Human Services has misled this Parliament and been very dishonest in areas where it did not disclose information to the parliamentary committee inquiry which produced the *Betrayal of Trust* report. It did not advise that inquiry of all the things that were going on so that there could have been a proper consideration of all concerns around children in out-of-home care in non-government organisations, because a lot of this was happening in the non-government sector.

Even if abuse happens outside the government sector, the Secretary of the Department of Human Services still has overall responsibility. These children are the responsibility of the state, and ultimately they are in the care of the state. Therefore when we are talking about legislation that in any way or form takes away responsibility from the department secretary, who is responsible for these most vulnerable children, who have been through the most terrific, awful and terrible experiences, we should be making sure that there is a higher duty of care, more accountability and more direct responsibility, not less.

Mr PAKULA (Lyndhurst) — I have a simple question, if the minister could take it into consideration

for her response informally. Given the significant changes that have been implemented and introduced as a consequence of this bill, it would be useful for the Parliament and for the sector to understand what additional resources are being provided and will be accompanying the bill before the house. Given the enormous strain on families, the obligations and the difficulties some will have in getting their dependents back and the need to sometimes have counselling, rehabilitation and the like, I ask if the minister could outline whether any additional resources are being provided as a consequence of the attempt to pass this bill.

Ms WOOLDRIDGE (Minister for Community Services) — There are a few speakers to respond to in relation to our consideration of clause 1. To go back to the member for Broadmeadows, I think what he has clarified is that it is the Law Institute of Victoria that has some concerns about some aspects of the bill, not the Children's Court. As I have said, there has been very extensive consultation with the Children's Court over an extended period of time, given the nature of these issues.

In terms of the oversight, which essentially becomes the crux of the matter, we believe that the court still continues to have very significant oversight. It has oversight of the decision to make an order in the first place to remove a child, and it can set conditions and requirements. It can come back in a year and see how things are progressing in relation to that order and then have another opportunity to get from the Secretary of the Department of Human Services, who provided the advice, a disposition on everything that has happened, what has occurred and what progress has been made. There is then another point at which the court can make a decision about where to go from there and make further orders in relation to the actions that need to be undertaken. The question is: how long does that continue? This bill proposes that there be a requirement for a decision to be made by the end of the second year. Presumably the department would be in contempt of the court if those actions that were ordered at the end of the first year were not reasonably sought to be implemented.

The other thing I would say about the oversight, and this is one thing I am very proud of, is the establishment of the Commission for Children and Young People, which within its broad role has a particular responsibility over out-of-home care and what is happening to young people in out-of-home care. That is something that adds independent oversight. It has the capacity to conduct independent reviews, and it reports to this Parliament in relation to the performance of children. We believe that the court has a series of oversight mechanisms, and then we have this independent body which sits over the top and reports to all of us and the people of Victoria in relation to the performance of the government, the performance of our out-of-home care system and what is being achieved for young people. We think there is a very significant hierarchy of oversight in terms of seeking to operate in the best interests of the child.

The member for Thomastown raised a number of issues. Just to touch on a couple of them, I agree that one of the very exciting elements of this bill — and there are many — is the fact that it removes some of the bureaucracy that is in place for foster carers, kinship carers and residential care workers in relation to day-to-day decisions. It is astounding to all of us that they have to get permission for a child to get a haircut or for them to administer a Panadol or allow an excursion for school. I have heard many stories of children missing out on having those things or having hair down to their shoulders or whatever it might be because of limitations and constraints and bureaucracy in relation to those decisions. We will continue to seek to create an environment that is positive for foster and kinship carers because they are absolutely vital and fundamental to the system. I sat down with a group of 15 foster carers a couple of weeks ago to hear directly from them and to hear their message, not only about this but about what else we can continue to do.

I do not agree with the member for Thomastown in relation to the conduct of the Secretary of the Department of Human Services. I understand that it is her view. My understanding is that it is not the view of the Family and Community Development Committee. On my behalf and also the behalf of the secretary I refute this assertion about dishonesty and misleading behaviour. I have reviewed at a very high level the information provided and understand that it is quite comprehensive. However, as I said, I do not believe that that was the view of the committee; it is the view of one individual.

The member for Lyndhurst went to the issue of resources. I would say that over the last four years this government has actually been investing across a range of areas, culminating in us getting to this point today. There has been an investment of more than $900 million in additional funding for vulnerable families. Just in this last budget we have expanded Child FIRST, which goes to the heart of the ability of vulnerable families and parents to parent and keep their children at home and safe and well. We have just announced this year the expansion of the Family Drug Treatment Court, which goes to that issue of

reunification for parents who have had their children removed as a result of drug and alcohol abuse. There are additional resources for alcohol and drug treatment services connected with the court and dedicated to the court. Those services have been expanded.

We will continue to invest. Some of these provisions come into force immediately and many of these provisions will come in over the next 18 months. We will continue to invest for vulnerable families to identify the needs and support that is required. I believe we are investing the resources to date, and we will of course also be acknowledging what else needs to be done in terms of delivering these fundamental reforms.

Clause agreed to; clauses 2 to 15 agreed to.

Clause 16

Mr PAKULA (Lyndhurst) — Acknowledging the time and in the interests of brevity, rather than making a dissertation I will simply ask the minister a question. It goes to this introduction of four new orders to replace a number of existing orders. I would like the minister to tell the house whether any of those new orders allow the courts to specify the exact person who will have care of the child, as is currently the case with a custody-to-secretary order. For example, will any of the new orders be able to specify that a grandparent or an aunt is to have care of the child?

Ms WOOLDRIDGE (Minister for Community Services) — The advice I have received is that those orders will no longer specify in the order the name of the person to whom custody is provided, but people are nominated. The hierarchy that is articulated in other parts of the act specifies, for example, that kinship is always preferred. That is the objective. If it is an auntie or grandma, they become the nominated person, and that becomes how the court and the department effectively work to determine where that child then lives.

Mr PAKULA (Lyndhurst) — Just in response to that, when the minister says 'nominated', I suppose my question is: nominated by whom or by what instrument? We do not want a situation where there are more contested hearings in the Children's Court about who is going to be the guardian. When the minister says a person will be nominated through some hierarchy, what is the method by which that will occur?

Ms WOOLDRIDGE (Minister for Community Services) — The child can nominate, the parents can nominate through engagement through the court order processes, and as I said kinship would always be the first objective if it is not the parents. If it is not a family preservation or reunification order, then kinship would be the first objective, and that can be nominated by those parties mentioned.

Clause agreed to.

Clause 17

The DEPUTY SPEAKER — Order! I advise the house that because the member for Richmond is proposing to omit the clause, he does not have to formally move amendment 1 in his name. However, if clause 17 is agreed to, the member for Richmond cannot move his amendment 2 as it is consequential on clause 17 being omitted.

Mr WYNNE (Richmond) — I rise to address the amendments, essentially, that we are proposing — that is, the deletion of clause 17 and the insertion of a new clause, 'Restrictions on the making of protection orders'. As I canvassed in my earlier contribution, this goes to the heart of the role played by the Children's Court in providing judicial oversight over the actions of the Department of Human Services. The question we have asked is: why is the government now proposing to remove the requirement in section 276(1)(b) of the Children, Youth and Families Act 2005 that the Children's Court must be satisfied that all reasonable steps have been taken by the Secretary of the Department of Human Services to provide the services necessary in the best interests of the child before a final order is made?

I canvass this, as I did in my earlier contribution, only in the context of the extraordinarily tragic case of two young children in the care of the state who were subjected to attacks — to sexual violence — and the finding by the Children's Court that the secretary, playing her statutory role as the chief officer of the Department of Human Services, had failed in her duty to protect those poor, unfortunate young children. It is in that context that we put this amendment in good faith, as I indicated to the Minister for Community Services.

We put it in the context of arguing for the centrality of not only the role of the Children's Court as a judicial check and balance on the government but also its important role of being able to be satisfied that appropriate actions have been taken where a child is under the care of the state — in this context under the statutory care of the Secretary of the Department of Human Services. The amendment we are putting is not unreasonable. It goes not only to providing an appropriate check and balance for DHS but also to ensuring that there is a party that sits back from DHS

and the care of the child, which is able to scrutinise care programs through the proper judicial processes to ensure that an appropriate care plan has been put in place so that, frankly, we as a community and indeed as members of this Parliament — and also the secretary and departmental staff — do not have to revisit the sort of horrendous evidence that was provided through the media about this tragic case of two young children who were subjected to systemic and horrific abuse.

We think that is a reasonable measure, and we put it to the minister genuinely. I understand that the minister is not prepared to consider it at the moment.

Ms Wooldridge interjected.

Mr WYNNE — You say you have considered it; I understand that. We ask the minister to reflect upon today's debate and the spirit in which it has been conducted and perhaps to consider this question yet again when the bill is between the houses — taking further advice, as I am sure she will, from the secretary, the department's lawyers and so forth — in the broader context of the centrality of the role of the Children's Court, which is so crucially important, not only in the judicial sense but also in the monitoring sense, to the outcomes for these young children, because ultimately we are looking to the best interests of the children.

Ms HALFPENNY (Thomastown) — I apologise. I am still unfamiliar with the processes of the committee stage. The comments I made earlier apply to this provision.

Ms Wooldridge interjected.

Ms HALFPENNY — I am just referring to what I said earlier about the removal of this wording. I made the comments under clause 1, but they were in regard to clause 17.

Ms WOOLDRIDGE (Minister for Community Services) — As with the member for Richmond, we enter into the spirit of this debate, we take what is said with the deepest thought and respect and we certainly take it on board. As I said earlier, I also thank the shadow minister for giving me the opportunity to have some time to consider the amendment so that I could make a thoughtful response.

I was open minded in terms of the amendment she gave me, but as I came to understand its implications in detail it became clear that it was going to be difficult to support. That is because we believe there is still an absolutely critical and central role for the Children's Court in relation to decision-making about children in out-of-home care. It happens in the first decision to remove the child, and it happens in the first and second years, so all the decisions are being made in relation to the court. At all times the department is able to be examined and cross-examined in relation to its performance. There is a very clear ability for the court to have that oversight, to be that check and balance, to make sure actions are being taken and to articulate what actions need to happen subsequently.

What we are not prepared for is a decision not to make a decision. We hope that in as many cases as possible the decision will be to return the children to the parent or parents; but the point is that after two years a decision needs to be made. In many cases a lot of time has been spent working with the family in advance of the two years. If we were to allow this clause to be reinstated, it would go to the heart of the issues we have had before — that in some instances a decision has not been made because the court has had that option. That is why we have got children waiting an average of five years before a decision around permanency is reached, and in many cases they wait a lot longer than that. In thinking about and developing this bill, the idea was that a decision needed to be made. As I have said, there are other sources of oversight. There is independent oversight through the Commission for Children and Young People, an organisation we established with support across the Parliament.

I am obviously happy to reflect on the debate, but we say children need to be placed at the centre. In situations like the one that has been referred to a couple of times in the debate, we need the mechanism to drive earlier decision-making and action — from the department, the courts and the community organisations that provide those services. I am optimistic that under the new law — if it is the will of this Parliament that this bill be passed — there will be much more pressure and an expectation that proactive and positive decisions will be made earlier in the interests of children by all the parties engaged in that decision-making, so that by the time we get to two years every effort will have been made by every player to reunify the child or otherwise make a positive decision around the interests of the child.

Mr PAKULA (Lyndhurst) — I am mindful of the time and that when we move to the division on clause 17 it will probably take us to 4.00 p.m. I am wondering if the minister would, by leave, indulge us to ask a question on another clause — clause 150 — prior to the division on clause 17.

Leave granted.

Mr PAKULA — I acknowledge the minister's granting of leave. I appreciate that, and I thank her for it. My question goes to the matter of penalties. I wonder if the minister could possibly clear up this issue about leaving children in cars. I have a 12-year-old who is as tall as my wife. A number of members here probably have teenage children, and there are many other Victorians with 13, 14 or 15-year-olds. I think we would all appreciate some clarity around whether people are committing an offence if, for instance, they leave their child in the car for a couple of minutes while they dash in to pay for fuel or for some other reason. If we have a provision which is doubling the penalties, in those circumstances it is even more necessary for everyone to be clear on what is and is not an offence. I wonder if the minister could provide some clarity in regard to that.

Ms WOOLDRIDGE (Minister for Community Services) — I am very happy to respond to the member for Lyndhurst on that matter. In the first instance, the law has not changed. If this bill were to pass, then next week or in three months time the law would be exactly the same as it has always been. It is the same as was established when this legislation was introduced under the Labor government. The wording of the offence of leaving a child unattended is as follows:

> A person who has the control or charge of a child must not leave the child without making reasonable provision for the child's supervision and care for a time which is unreasonable having regard to all the circumstances …

There is little bit of complexity there. The member of Lyndhurst is a lawyer and he can assess that. From my perspective it means: is it a reasonable decision to make, given the capacity of that child or young person? If you have a teenage child with an intellectual disability, it may be unreasonable to leave them unattended. If you have a young child who is unable to help themselves if something happens — if it is hot and mum or dad is gambling at the casino — it would be unreasonable. But if you have a child with the capacity to deal with the circumstances they may be presented with if left unattended, then it would be reasonable for them to be left unattended. It is a judgement call; there is no arbitrary age level, because people mature at different stages. We need to take account of their life circumstances.

As I say, the law is exactly the same as it has always been. This increasing of the penalties is for the small number of cases where decisions are made that place the child in harm's way. That is what will continue to be communicated. It applies particularly to children who have been left in cars in the summer months. Some have unfortunately died.

The DEPUTY SPEAKER — Order! That question was, by leave, on clause 150. We now return to clause 17.

House divided on clause:

Ayes, 42

Angus, Mr	Napthine, Dr
Asher, Ms	Newton-Brown, Mr
Baillieu, Mr	Northe, Mr
Battin, Mr	O'Brien, Mr
Blackwood, Mr	Powell, Mrs
Bull, Mr	Ryall, Ms
Burgess, Mr	Ryan, Mr
Clark, Mr	Smith, Mr K.
Crisp, Mr	Smith, Mr R.
Delahunty, Mr	Southwick, Mr
Dixon, Mr	Sykes, Dr
Gidley, Mr	Thompson, Mr
Hodgett, Mr	Tilley, Mr
Katos, Mr	Victoria, Ms
Kotsiras, Mr	Wakeling, Mr
McCurdy, Mr	Walsh, Mr
McIntosh, Mr	Watt, Mr
McLeish, Ms	Weller, Mr
Miller, Ms	Wells, Mr
Morris, Mr	Wooldridge, Ms
Mulder, Mr	Wreford, Ms

Noes, 42

Allan, Ms	Howard, Mr
Andrews, Mr	Hutchins, Ms
Barker, Ms	Kairouz, Ms
Beattie, Ms	Kanis, Ms
Brooks, Mr	Languiller, Mr
Campbell, Ms	Lim, Mr
Carbines, Mr	McGuire, Mr
Carroll, Mr	Madden, Mr
D'Ambrosio, Ms	Merlino, Mr
Donnellan, Mr	Nardella, Mr
Duncan, Ms	Neville, Ms
Edwards, Ms	Noonan, Mr
Eren, Mr	Pakula, Mr
Foley, Mr	Pallas, Mr
Garrett, Ms	Pandazopoulos, Mr
Graley, Ms	Perera, Mr
Green, Ms	Richardson, Ms
Halfpenny, Ms	Scott, Mr
Helper, Mr	Thomson, Ms
Hennessy, Ms	Trezise, Mr
Herbert, Mr	Wynne, Mr

The SPEAKER — Order! The result of the division is ayes 42, noes 42. To allow the house to consider the bill in its original form, I cast my vote with the ayes.

Clause agreed to.

The SPEAKER — Order! The time set down for consideration of items on the government business program has expired, and I am required to interrupt business.

Clauses 18 to 173 agreed to.

Bill agreed to without amendment.

Third reading

Motion agreed to.

Read third time.

SENTENCING AMENDMENT (EMERGENCY WORKERS) BILL 2014

Second reading

Debate resumed from 19 August; motion of Mr CLARK (Attorney-General).

Motion agreed to.

Read second time.

Circulated amendment

Circulated government amendment as follows agreed to:

Clause 15, lines 10 to 19, omit all words and expressions on these lines and insert —

"( ) Section 52(2) of the **Summary Offences Act 1966** is **repealed**.".

Third reading

Motion agreed to.

Read third time.

TRANSFER OF LAND AMENDMENT BILL 2014

Second reading

Debate resumed from 20 August; motion of Mr CLARK (Attorney-General).

Motion agreed to.

Read second time.

Third reading

Motion agreed to.

Read third time.

RESOURCES LEGISLATION AMENDMENT (BTEX PROHIBITION AND OTHER MATTERS) BILL 2014

Second reading

Debate resumed from 20 August; motion of Mr NORTHE (Minister for Energy and Resources).

Motion agreed to.

Read second time.

Third reading

Motion agreed to.

Read third time.

GAMBLING AND LIQUOR LEGISLATION AMENDMENT (MODERNISATION) BILL 2014 and GAMBLING AND LIQUOR LEGISLATION FURTHER AMENDMENT BILL 2014

Second reading

Debate resumed from 20 August; motions of Mr O'BRIEN (Treasurer).

Motions agreed to.

Read second time.

Third reading

Motions agreed to.

Read third time.

TOBACCO AMENDMENT BILL 2014

Second reading

Debate resumed from earlier this day; motion of Ms WOOLDRIDGE (Minister for Mental Health).

Motion agreed to.

Read second time.

Third reading

Motion agreed to.

Read third time.

CHILDREN, YOUTH AND FAMILIES AMENDMENT (PERMANENT CARE AND OTHER MATTERS) BILL 2014

Clerk's amendment

The SPEAKER — Order! Under standing order 81 I have received a report from the Clerk that he has made the following correction in the Children, Youth and Families Amendment (Permanent Care and Other Matters) Bill 2014:

In clause 154, page 78, line 3, I have deleted '(i)' and inserted '(ii)'.

Business interrupted under sessional orders.

ADJOURNMENT

The SPEAKER — Order! The question is:

That the house now adjourns.

Cranbourne West Primary School

Mr PERERA (Cranbourne) — I wish to raise a matter for the Minister for Education. The action I seek is for the $940 000 the government committed to Cranbourne West Primary School earlier this year to be provided to the school. I have received both written and verbal communications from Mrs Julie Brooke, the school council president of Cranbourne West Primary School, regarding the school's concerns over the administering of and conditions set in relation to $940 000 allocated to Cranbourne West Primary School in the May budget.

Mrs Brooke advises me that when the Premier announced the funding back in April the school was not made aware of any conditions relating to how it could spend the money. The Premier told the school community that the money was to enhance learning opportunities for students at Cranbourne West Primary School. However, following the surprise public announcement, the school was advised by the Department of Education and Early Childhood Development (DEECD) that its infrastructure division was taking over control of the funding allocation. The school was then directed to outline possible projects it wanted funded and then to apply through the Department of Treasury and Finance.

Although the school council was concerned about the intervention of DEECD regarding how the school should allocate the funding, it complied with everything it was asked to do. Following this process, it was told the funding would become available for the approved projects back in July. However, the school has still not received any of this promised money. Further to this, the school has recently advised me that it will soon lose four of its portable classrooms. This new development makes the need for the promised funding even more critical.

The government made a big song and dance about this funding announcement, led by the Premier and spin doctors. The school wants the money in its account so it can proceed with the work as soon as possible. It does not want to be party to a political propaganda machine. When in government Labor proudly supported Cranbourne West Primary School with a $5 083 000 modernisation of teaching and staff administration spaces. Every student enrolled in Cranbourne West Primary School is assessed to find out their current state of learning, and teams work hard through targeted and explicit teaching so students can progress to the next stage.

Cranbourne West Primary School plays an integral part in educating children in my electorate of Cranbourne and is committed to every child being in a personalised learning environment.

Doncaster Road, North Balwyn, speed limit

Mr McINTOSH (Kew) — I raise a matter for the attention of the Minister for Roads, and it is the speed limit for motorists near Greythorn shopping centre in Doncaster Road, North Balwyn. The action I seek from the minister is to investigate the possibility of reducing the speed limit along Doncaster Road in the immediate area of the Greythorn shopping centre from 60 kilometres an hour to 40 kilometres an hour.

I recently attended a meeting called by traders at the Greythorn shopping centre to discuss the need to reduce the speed limit outside Greythorn shops. About 20 local traders attended and a few members of the public, with representatives from Boroondara City Council, including Cr Jim Parke and Jim Hondrakis from the traffic management area of the City of Boroondara. They made a presentation at that meeting on behalf of the council, and it is clear that the Boroondara City Council supports the traders in their desire to have the speed limit in Doncaster Road reduced to 40 kilometres an hour.

The Greythorn shops are sited on Doncaster Road, which is a very busy feeder road leading onto and from the nearby Eastern Freeway. Cars hurtle along Doncaster Road in both directions, and the approach to the freeway from Balwyn Road is down a very steep incline. There have been a number of near misses as

shoppers seek to cross Doncaster Road or reverse into Doncaster Road from angle parking. Council informed us that there were eight reported car crashes involving casualties within the Greythorn shopping centre zone in the five years to the end of 2012. Three of these were apparently very serious accidents.

Of great concern is that Boroondara Park Primary School, which has over 600 students, is very close to Doncaster Road. I can imagine that many primary school students would have to cross Doncaster Road to walk home.

The proposal of the traders, supported by the council, involves reducing the speed limit on Doncaster Road from 60 kilometres an hour to 40 kilometres an hour to improve safety for pedestrians and other road users. The reduced speed limit would also apply along Doncaster Road between Ferdinand Avenue and Ellsa Street during the period from 8.00 a.m. to midnight, Monday to Saturday.

Reduced speed limits of 40 kilometres an hour through strip shopping centres are reflected in the council's key strategies and are in line with the VicRoads safety strategy. Therefore I ask the minister to investigate the possibility of reducing the current speed limit along Doncaster Road at the Greythorn shops from 60 kilometres an hour to 40 kilometres an hour.

Northcote electorate netball courts

Ms RICHARDSON (Northcote) — The issue I raise is for the Minister for Sport and Recreation, and it concerns the lack of netball facilities in my community of Northcote. The action I seek is for the minister to provide as a matter of urgency additional netball courts for women and girls in my community.

Netball is the largest participation sport for women and girls in Victoria. Unfortunately participation rates in my community are just over one-third of the statewide participation rate of 2.3 per cent. There is one very clear reason for this, and that is the lack of facilities in the inner north and in the Northcote electorate in particular. To give you an example, across all of the city of Darebin we have a population of over 143 000 people but we have only 10 compliant courts. Only seven of these are lit courts, and obviously if the courts are lit, you get more access and playing time.

Ms Green interjected.

Ms RICHARDSON — Very good; the member for Yan Yean is a very keen netball player and has just confirmed she has played in my community. She would know that the demand for court space is tremendous and it is growing, with the last five years recording strong growth in netball participation. The only thing holding us back is the lack of court space, and it needs to be lit court space at that. Inner city councils have not had the capacity or the ability to provide leadership in this space. We get the occasional additional court, but sport and in particular netball needs significant investment and a concentrated effort if we are to meet the demand in the inner suburbs of Melbourne.

The greatest proportion of netball participants is in the 10 to 14-year-old age group, followed by those aged 5 to 9. This is the exact age range we need to target if we are to encourage and embed a lifelong love of sport. Unfortunately in my community we are severely limited in our ability to maintain the player numbers we have, let alone grow them. Netball Victoria CEO Michelle Plane, who does a sensational job, has confirmed the truth of the *Field of Dreams* quote, which I have adapted to say, 'If we build it, they will come'. In our case we are turning people away at the gates.

We know that a lifelong love of sport has significant benefits for health outcomes as well as at many other levels. Therefore, recognising the important role the Minister for Sport and Recreation can play not just in sport but in driving positive health outcomes for people in my electorate of Northcote and across the inner suburbs of Melbourne. I urge him to take up this important initiative.

Moorabbin Community Reserve upgrade

Ms MILLER (Bentleigh) — I direct my request to the Minister for Sport and Recreation. The action I seek is for the minister to visit the Bentleigh electorate to meet with stakeholders in the Moorabbin Community Reserve in Linton Street to provide an update on the progress of the redevelopment. Stakeholders, including the Southern Football League, the Southern Metro Junior Football League, the TAC Cup Sandringham Dragons, the AFL Victoria region and other community users are enthusiastic to get an update from the minister.

The Victorian coalition government contributed $8 million to the Moorabbin Community Reserve upgrade early this year. The upgrade will benefit over 15 000 players and their families and provide 27 junior and 30 senior clubs with revitalised facilities to boost sport participation and performance to new levels in this area of Melbourne's south-east. The redevelopment will expand the facility's current limited use to allow for a community hub for recreation and a suitable training ground for the next generation of footballers.

Moorabbin Community Reserve will provide a playing and training base for a future St Kilda Victorian Football League team as well as a recreation space for the entire community to use.

At the announcement of the upgrade in May this year the community and stakeholders learnt that the redevelopment will include a new multipurpose pavilion, which will have change rooms, umpire facilities, gym and warm-up facilities and accessible public toilets. Dedicated offices will also be built for the Southern Metro Junior Football League, the Southern Football League, the Sandringham Dragons and the AFL Victoria region staff. New lighting will allow for training and night games, there will be a community recreation space, the G. G. Huggins stand will be redeveloped and improved car parking will also be made available.

As the member for Bentleigh I am proud that the coalition government has committed to building better sporting and recreational facilities in Victoria that will benefit many local residents, including young families in the Bentleigh electorate. I am proud to be building a better Bentleigh and planning for the future whilst the coalition government focuses on building a better Victoria through growth, jobs and opportunities. This project will benefit the Bentleigh community and the entire south-east region, and I will be pleased to be provided with an update on these works. The action I seek, as I said, is for the minister to come to the Bentleigh electorate to provide an update to the Southern Football League, Southern Metro Junior Football League, the Sandringham Dragons and AFL Victoria region staff on the progress of the redevelopment of the Moorabbin Community Reserve.

Cambodia asylum seeker resettlement

Mr LIM (Clayton) — My adjournment matter is for the Premier. The action I seek is for the Premier to make representations to the federal Minister for Foreign Affairs, Julie Bishop, to persuade her to abandon her proposed alliance with the Cambodian government with respect to the sending of asylum seekers to resettle in Cambodia. Members of my local Cambodian-Australian community are outraged and insulted by the Abbott government's exploitation of the political instability in Cambodia through its plan to send asylum seekers there amid a violent and deadly crackdown by the Cambodian military regime which has been going on since the unresolved national election of July 2013 and which has resulted in hundreds of thousands coming out to protest on the roads on an ongoing basis.

Doing a deal with the Hun Sen regime at this stage would be tantamount to conferring recognition and legitimacy on a brutal and unrepresentative regime which lost the last national election but claimed power by force — it was a stolen election — even though the people had overwhelmingly voted for change. Transparency International has ranked Cambodia as one the most corrupt countries in the world — 160th out of 176. According to the World Bank, 30 years of Hun Sen's shameful and plundering rule has reduced 85 per cent of the population to the plight of earning less than $3 per day.

Hun Sen, a former Khmer Rouge commander, and his cohort have amassed more than $40 billion through the misappropriation of national resources and assets and through violent land grabs with forced evictions, which have dislocated more than half a million people, turning Cambodians into homeless and landless refugees inside the country. The World Health Organisation reports that Cambodia has one of the highest maternity and infant mortality rates, with 40 per cent of its young children being malnourished on an ongoing basis. There is no rule of law, and the judiciary exists to serve the interests of Hun Sen's entourage. Cambodians who protest against the loss of their land as part of the forced evictions and illegal appropriations are being brutally dealt with: they are shot at or sent to jail.

Human Rights Watch says Hun Sen violates human rights on a daily basis. In January, when I was there, his military's armed thugs shot dead five garment workers for demanding a living wage, as determined by the International Labour Organisation, of $160 per month. These thugs severely injured more than 40 others and locked up unionists and rights activists for seeking a living wage. Any catering for Australian asylum seekers in Cambodia would lead to social unrest, tension and rioting due to local resentment and envy. The Hun Sen regime — —

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

Riverboats Music Festival

Mr WELLER (Rodney) — I have a request for the Minister for Tourism and Major Events — and it is good to see the minister here in the chamber this evening. The action I seek is a commitment of funding to help market the 2015 Riverboats Music Festival, to be staged in the twin towns of Echuca and Moama between Friday, 13 February, and Sunday, 15 February 2015. This event is staged in a wonderful natural amphitheatre on the banks of the Murray River among the towering gums, and the bands that come from

around Australia and the world are exceptional. I have attended, and it has a great atmosphere. There is also catering in that natural amphitheatre by some of the finest eateries in Echuca. I have been there on Sunday afternoons, and it is a wonderful setting. The red wines come from Heathcote and the white wines come from other districts. It is a wonderful atmosphere.

The Campaspe Shire Council conducted a survey there last year. It found that 11 500 visitors turned up to this wonderful event and 98.6 per cent of them came to Echuca specifically for it. The event is renowned. It is wonderful for business in Echuca. This is about creating events in Echuca that create jobs in our entertainment areas, motels and caravan parks. We need these types of events to make sure the tourism businesses in our wonderful town are sustainable and can create jobs. This is a growing area for the economy in our region.

As I said before, the Campaspe Shire Council conducted a survey of visitors and found that 98 per cent of people came to Echuca specifically for this event. I have been there, and I can tell members that the bands are exceptional. The food is provided by the finest eateries via little temporary kitchens set up in this wonderful amphitheatre shaded by the towering gums alongside the Murray. Everyone should go there. The government should support this event for the economic benefit of Victoria.

Youth employment

Mr FOLEY (Albert Park) — The matter I seek to raise on the adjournment is for the Premier. The action I seek is that the Premier address the youth unemployment crisis that is devastating our communities around the state, specifically the unemployment rate for young males, by directing his cabinet to immediately adopt Labor's policy for a jobs plan and a whole-of-government, whole-of-business, whole-of-community response to this crisis. I do so because, as is established by the most recent Australian Bureau of Statistics figures released for the period ending July 2014, there are now 34 100 fewer males in employment in the 15 to 24-year-old category than there were when this government came to power four years ago.

Members of this place who represent regional Victoria — particularly members of The Nationals — might be interested to learn that the worst affected areas are Mildura, the north-west of the state, Shepparton and the Mornington Peninsula.

Ms Asher interjected.

Mr FOLEY — In reply to the interjection by the Leader of the House, I will get to the city. It is no wonder that is the case, given the cuts to TAFE, apprenticeships, training and universities, which are robbing an entire generation of young people of a future. Under this government we now know it is much harder for young people to get the skills they need for the jobs they want. Under this Premier our unemployment rate is the worst it has been for over a decade. It is clear that youth unemployment and in particular the unemployment rate for young males is the worst that it has been for a generation.

The unemployment rate for 15 to 24-year-olds in this state has risen from 2.3 per in December 2010 to 4.8 per cent. At the same time the participation rate has dropped by 4.5 per cent, compared with a 6.9 per cent drop for males as a group. The fact that there are 37 000 fewer young people employed across the state is devastating enough, but when we learn that 34 000 of these 37 000 are young males who have dropped out of the workforce into unemployment, it is even worse. As the honourable member for Brighton wishes to be brought up to speed with where things are in the Melbourne metropolitan area, I point out that on her watch we have seen unemployment rise in Melbourne's south-east from 10.4 per cent to 18.7 per cent — —

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

Fairer Water Bills initiative

Mr GIDLEY (Mount Waverley) — My adjournment matter this afternoon is for the Minister for Water. The action I seek is that the minister outline to residents in my district the steps the government is taking to reduce cost-of-living pressures, specifically in relation to water bills. The Labor government made a commitment to and entered into a contract for the desalination plant. I am particularly concerned about the access charge for that plant and the consequences it has for the water bills of residents in my electorate. I am told that that access charge is estimated to be around $654 million a year every year until the contract finishes.

As a local resident, father and homeowner I understand that cost-of-living pressures are a community-wide concern, particularly in my district. Cost-of-living pressures add up and the household budget simply does not stretch as far as it used to. That is why I have been working hard with this government by providing feedback from local residents and focusing on practical ways to reduce cost-of-living pressures for local residents. I understand a number of recent initiatives are

being implemented by this government which are directly and positively impacting on household budgets. Lower household water bills through the introduction of the Fairer Water Bills initiative is one aspect I would like to touch on. I note also that there are other aspects being delivered on by the government to reduce the pressure on household budgets, which include the reduced fire services property levy for all property owners.

My electorate is in a Metropolitan Fire Brigade area. I note that the estimated fire services property levy in my area has fallen from $193 to $143. Pensioners will continue to receive a $50 concession, which will benefit 400 000 people across the state, including some in my electorate. The elimination of stamp duty on all life insurance policies is welcomed by residents in my district. There is also a reduction in payroll tax for business, which has an effect on the household budget. From 1 July payroll tax was reduced by 0.05 percentage points to 4.85 per cent. This means that local businesses in my district are more likely to either continue the employment of existing employees or hire others. If people have continued employment, they receive income, which assists in stretching the household budget. In particular I note that water bills are being reduced as a result of the Fairer Water Bills initiative, and this will assist residents in my electorate.

Hurstbridge railway line

Ms GREEN (Yan Yean) — I rise to raise a matter for the attention of the Minister for Public Transport. The action I seek is for him to finally deliver additional services to long-suffering commuters on the Hurstbridge line. I know this is now possible, given the $60 million investment in signalling and stabling funded by Labor in 2008–09. It is a matter of public record that this project was funded as part of the South Morang rail extension project to improve the capacity and reliability on both the South Morang and Hurstbridge lines. It is also a matter of public record that members of the Liberal Party in the other place opposed this tooth and nail. Prior to the 2010 election, Mrs Kronberg, a member for Eastern Metropolitan Region in the other place, extensively direct-mailed the Eltham electorate opposing this stabling project and the upgrade to the Hurstbridge line.

Upon taking office the Minister for Public Transport put the project on hold, reviewed it and then tried to worm his way out of it, just like other job and productivity generating projects, including the Wholesale Fruit and Vegetable Market in Epping and the triplication of Cooper Street. Some years later the government even tried to repackage it as resulting from its own funding. The government was unable to halt the works, and they have now been completed, albeit they are some two years late because of the delays imposed by the government. However, there is still no sign of the much-needed services that that $60 million ought to have delivered. The Hurstbridge line is one of the most underserviced lines in the state. Until recently it still relied on manual signalling, which is what this project rectified.

However, we have now seen members of the Liberal Party have a conversion — such as happened on the road to Damascus — on the road to 29 November, and it is gobsmacking that we see Liberal Party candidates in Yan Yean and Eltham now trumpeting that the Liberal Party has delivered a $60 million upgrade to the Hurstbridge line when this is what their political masters and their would-be colleagues opposed.

If members of the Liberal Party are going to claim credit for the $60 million that was funded some years before they took office and which they tried to stop, they should now at least show some respect for the long-suffering commuters on the Hurstbridge line, which has seen no increase in services, none of the timetable improvements, zero spending on roads and no bus services. They should at least have the good grace to deliver the new services and be a bit honest with the community. I urge the minister to act.

Yea Football Netball Club

Ms McLEISH (Seymour) — I raise a matter for the Minister for Sport and Recreation. The action I seek is for him to provide support in the way of funding to assist the Yea Football Netball Club to upgrade its facilities. In particular I know that the club is very keen to have a second netball court in the town. The club has done a terrific job in fundraising and is looking for an acrylic court with lights.

If the minister has some time to visit some of the towns in my electorate, such as Yea, Alexandra and Mansfield, I would be most keen to show him around. I also want to talk about the level of participation in the netball program in Yea. It is a very strong club with some 113 members. This says a lot for women's sport because for many years country towns were dominated by men's sport, and we see this in many areas where they are playing catch-up in trying to get facilities for women in sport. A second netball court in the town would be fantastic.

When I was a child we only ever played at the schools. In fact there were only three teams: Scots, St Luke and Sacred Heart. There was Sacred Heart 1 and 2 and

Scots 1 and 2. I played with Scots, and we played just between ourselves. But now that this has extended to the Yarra Valley Mountain District Football & Netball League there are many tough games every weekend.

Yea in particular had a great year last year; it won three of four grand finals at Yarra Junction. It was a particularly great day when a small town like Yea was able to win the A reserve, B grade and B reserve competitions, and this year I know that the B grade team is on the top of the ladder. They have a very strong junior club in the under-12s, under-14s and under-16s, with some really dedicated coaches in Judy Watts, who does so much for the club, Jackie Graham, who is a very handy netballer and golfer, and Jackie Baynes, who coaches the juniors. Cindy Hayes, a veteran of some 500 games, does the NetSetGO, and at the senior level we have Lauren Tesoriero and Gaby Duncan.

They have all put a lot of effort and energy into the development of netball in the town, with the result that they cannot accommodate all the teams on one court. It is very difficult to have training and accommodate all of the children and adults at prime times, so there is great need for a second court. Ideally it would be an acrylic and multi-use court, because in small towns it is good for facilities to be used for more than one purpose — for example, a netball court might be able to be used as a tennis court as well. I strongly urge the minister to have a look at the club's funding application and support Yea.

Ms Asher — On a point of order, Speaker, the member for Clayton raised a matter with the Premier in which he asked the Premier to make representations to the Minister for Foreign Affairs. Requesting that representations be made to a federal minister is not in order for the adjournment debate, and I refer to page 3 of *Rulings from the Chair*, December 2013. This is a ruling from former Deputy Speaker Loney under the heading 'State government submission to federal body', which says:

> It is in order for a member to raise a matter for a minister relating to the state government's submission or approach to a federal government body, but it may not be in order to raise a matter for the minister to take up with a federal counterpart.

It is on this latter point of the ruling that I ask the Speaker to rule, because there has been a longstanding tradition in this place that to simply ask a minister to make representations to a federal counterpart is not a valid adjournment issue.

The SPEAKER — Order! I uphold the point of order. When I was listening to the member's contribution to the adjournment debate I was of a mind to advise him that the topic was not suitable. It is something that, understanding his passion, he would probably be better raising in a letter to the Premier.

Responses

Ms ASHER (Minister for Innovation) — The member for Rodney raised a matter with me about the Riverboats Music Festival. He requested funding for the 2015 festival, to be held in February 2015. He raises this matter with me annually in the house. He is a longstanding advocate for local tourism opportunities, and he relays that message to the house with particular passion. He is fully aware of the economic impact that these events can have on his electorate. I am pleased to advise the member that the government, through Tourism Victoria's event program, will again provide $27 500 to assist with the promotion of the 2015 Riverboats Music Festival. The member would know that attendance at this festival has grown from 9000 in 2012 to 11 500 at the 2014 event. That is what promotion is all about. The funding provided will be used for a range of television, radio and print advertising, and people at various music venues in Melbourne as well, in areas such as Fitzroy, Collingwood, Brunswick and Saint Kilda, will be encouraged to attend the festival.

The member for Cranbourne raised an issue with the Minister for Education regarding funding for Cranbourne West Primary School. I will refer that matter to the minister.

The member for Kew raised an issue with the Minister for Roads regarding speed limits at Doncaster Road, Balwyn North, near the Greythorn shopping centre. He requested that the speed limit be 40 kilometres per hour. I will refer that matter to the minister.

The member for Northcote raised an issue for the Minister for Sport and Recreation regarding netball facilities in Northcote. I will refer that matter to the minister.

The member for Bentleigh also raised an issue with the Minister for Sport and Recreation asking that he visit Bentleigh and provide an update to stakeholders at the Moorabbin community reserve, where I know the member has been instrumental in the provision of an $8 million grant.

The member for Albert Park raised a matter for the Premier asking that he seek to address youth unemployment, and male youth unemployment in particular, about which we are all concerned, by

adopting an ALP policy. I will refer that matter to the Premier, although I suspect he will have a different response to those concerns relating to youth unemployment and male youth unemployment in particular, and the suggestion that the solution may come from an ALP policy document. I will nevertheless refer that matter to the Premier.

The member for Mount Waverley raised a matter for the Minister for Water asking him to engage with his constituents and outline reductions to water bills. I will refer that matter to the minister.

The member for Yan Yean raised a matter for the Minister for Public Transport regarding Hurstbridge line services, and I will convey that to the minister.

The member for Seymour raised an issue with the Minister for Sport and Recreation regarding a visit in relation to the Yea Football and Netball Club upgrades. The member touched on tennis as well. I will refer that matter to the minister.

The SPEAKER — Order! The house is adjourned until the next day of sitting.

House adjourned 4.39 p.m. until Tuesday, 2 September.