PARLIAMENT OF VICTORIA

PARLIAMENTARY DEBATES (HANSARD)

LEGISLATIVE ASSEMBLY

FIFTY-SEVENTH PARLIAMENT

FIRST SESSION

Thursday, 26 June 2014

(Extract from book 9)

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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)

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Deputy Premier, Minister for State Development, and Minister for Regional and Rural Development	The Hon. P. J. Ryan, MP
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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
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Minister for Higher Education and Skills	The Hon. N. Wakeling, MP
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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 — Clerk of the Legislative Council: Mr W. R. Tunnecliffe

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, 26 JUNE 2014

CONTENTS

Thursday, 26 June 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 7 to 18 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:

Family violence

To the Legislative Assembly of Victoria:

The petition of the undersigned concerned members of public of Victoria draws to the attention of the house our serious concern that dowry demands, demands for money and gifts in the context of a new marriage (up to seven years) is a significant contributor to family and domestic violence within certain cultural communities of Victoria. We are concerned that this pattern is similar to the one reported in India, with documented extensive evidence of serious domestic violence in the context of demands for dowry and gifts by the groom and his family.

The petitioners therefore request that the Legislative Assembly of Victoria amends Family Violence Protection Act 2008, section 6 titled 'Meaning of Economic Abuse, Examples' as soon as possible to add the words 'Dowry or coercive demands for gifts or cash in the context of a new marriage (up to first seven years)'.

By Mr BAILLIEU (Hawthorn) (108 signatures).

East–west link

To the Legislative Assembly of Victoria:

This petition of certain citizens of the state of Victoria draws to the attention of the Legislative Assembly Denis Napthine's $8 billion tunnel. In particular, we note that:

1. Denis Napthine is trampling on the rights and homes of local residents; and

2. the $8 billion tunnel won't do enough to fix congestion and isn't a priority for Victoria.

Petitioners therefore request that the Legislative Assembly calls on Denis Napthine to take this $8 billion tunnel to an election and let the Victorian people decide.

By Mr WYNNE (Richmond) (378 signatures).

East–west link

To the Legislative Assembly of Victoria:

The petition of certain citizens of the state of Victoria draws to the attention of the Legislative Assembly recent news regarding the Napthine Liberal government's intention to build an $8 billion tunnel. In particular we note that:

1. the Napthine Liberal government is trampling on the rights and homes of local residents;

2. the Premier has failed to present a business case for this tunnel which will do nothing to fix traffic congestion for most Victorian motorists; and

3. the $8 billion tunnel will mean there is no funding available for other desperately needed transport infrastructure.

Petitioners therefore request that the Legislative Assembly calls on the Napthine Liberal government to seek a mandate from the people of Victoria before spending $8 billion of taxpayers money on this tunnel.

By Mr WYNNE (Richmond) (3 signatures).

Tabled.

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

Ordered that petitions presented by honourable member for Richmond be considered next day on motion of Mr WYNNE (Richmond).

AUDITOR-GENERAL

Reports 2012–13

Mr CLARK (Minister for Finance), by leave, presented government response to Auditor-General's reports issued during 2012–13.

Tabled.

DOCUMENTS

Tabled by Clerk:

Auditor-General:

Annual Plan 2014–15 (4 documents)
Impact of Increased Scrutiny of High Value High Risk Projects — Ordered to be printed

Multicultural Victoria Act 2011 — Victorian Government Reporting on Multicultural Affairs — Report 2012–13

State Owned Enterprises Act 1992 — Amended Constitution of State Trustees Ltd under s 75

Subordinate Legislation Act 1994 — Documents under s 15 in relation to Statutory Rule 58

BUSINESS OF THE HOUSE

Adjournment

Ms ASHER (Minister for Innovation) — I move:

That the house, at its rising, adjourns until Tuesday, 5 August 2014.

Motion agreed to.

MEMBERS STATEMENTS

Ballarat–Rokewood bus service

Mr HOWARD (Ballarat East) — A constituent from Napoleons has advised me that there are rumours that the bus service which travels twice weekly between Rokewood and Ballarat is about to be axed. This service departs from Rokewood and travels to Ballarat and Wendouree via Dereel, Enfield, Napoleons and Ross Creek on Tuesdays and Thursdays. During school holidays services also run on Wednesdays and Fridays. My constituent, Mr Clem Barnett, advises that he regularly uses the service. In his words, 'Great people use the service and it provides a wonderful lifeline for regional people along the route'. If the Minister for Public Transport is considering discontinuing the service, I strongly urge him to think again and to recognise the value this service provides to the many people who currently rely upon it.

Napoleons Primary School

Mr HOWARD — Members of the Napoleons Primary School community were distressed to learn that the school recently received advice that its only Mod 5 portable double classroom is listed for removal. The Napoleons school is a new school which was built by the Bracks government. The Mod 5 was built into the structure of the school and the school community was advised by department staff who assisted with the plans that the Mod 5 would stay. I recently met with school council president Joanne Gilbert, and she is concerned that predictions of the school's future enrolments, upon which the decision appears to be based, are incorrect and that the school's future enrolments are expected to increase. I strongly urge the Minister for Education to review this decision.

Malvern electorate budget initiatives

Mr O'BRIEN (Treasurer) — The 2014–15 state budget provides for a number of major projects which will benefit all Victorians, but I would like to particularly address some initiatives that will benefit my electorate of Malvern. There is $1.468 million being invested to upgrade the Malvern police station to better support community safety. This also supports our rollout of protective services officers at a number of train stations in Malvern. We already have protective services officers stationed at Armadale, Holmesglen and Kooyong stations, and I am advised that further rollouts will be happening very soon.

One of the most important initiatives in the budget is the commitment to remove the Burke Road, Glen Iris, level crossing near Gardiner station, which is one of the RACV's top five red spot traffic congestion snarls year on year. This government, a coalition government, is finally able to make sure removing that terrible level crossing becomes a reality. Some 26 500 vehicles, 158 trains and 186 trams use this section of Burke Road every day. I am one of those motorists myself, so I know how bad it is.

This will be a fantastic outcome for the people of Malvern, and not just those in Malvern but the people of Burwood, Hawthorn and tens of thousands of people throughout Victoria. It is only because of the good economic management of the Napthine coalition government that we can deliver these projects that are benefiting all Victorians, including the people of Malvern.

Adriana Rivas

Mr LANGUILLER (Derrimut) — Today I call upon the commonwealth Attorney-General to respond to the request made last January by the Chilean Supreme Court for the extradition of Adriana Rivas on charges of gross assault, torture and kidnapping during her time as an intelligence agent in the *Direccion de Inteligencia Nacional* — DINA — the secret police of General Augusto Pinochet. The charges Ms Rivas faces are grave and our government, alongside all governments that respect democracy and human rights, should not treat such allegations lightly. Australia does not condone torture, nor should we allow those who perpetrate such heinous crimes to escape liability.

I have been approached by a number of members of Australia's Chilean community, including members of the Chile Solidarity National Coalition, who are incredibly concerned and upset over Australia's present inaction on this matter. This group has urged me to

consider the strong case put forward by the Chilean prosecutor. From the information publicly available regarding Ms Rivas's involvement with DINA, I, alongside all Australians who value our country's commitment to human rights, strongly urge the federal Attorney-General to expedite this matter.

The rule of the Pinochet government was violent and repressive. More than 38 000 Chileans were tortured by their own government, thousands disappeared and many more were subject to arbitrary imprisonment. Our own extradition policy states:

> Australia needs to ensure that criminals cannot evade justice simply by crossing borders.

I urge the Australian government and the commonwealth Attorney-General to expedite this process.

Art for Life

Ms VICTORIA (Minister for the Arts) — Last week I had the great honour of opening the Art for Life exhibition at the Steps Gallery in Carlton. It was conceptualised by a true gentleman and wonderful artist called Frixos Ioannides. In memory of his beautiful wife, Dalia, who the family lost to cancer last year, Frixos coordinated a great range of artistic contributors to sell their works with part proceeds going to the Peter MacCallum Cancer Foundation. Many items were sold, and the event was a beautiful tribute to a much-loved lady. Congratulations to all involved.

Wantirna Hungarian community

Ms VICTORIA — I could hardly believe it when I was told it is 10 years since the Hungarian society based in Wantirna started its inspirational computer club. With the aspiration of teaching older members of the Hungarian community the latest technology as a means of communicating with family and friends overseas, the tireless Les Stevens applied for grants to get the program up and running. It is still running and is bigger and stronger than ever. In addition to the learning aspects, the program serves as a happy social gathering for members, who enjoy good food and chats on a weekly basis. In addition, they have developed a Hungarian language library for wider use. My congratulations go to Les and everyone else who has made this so successful.

The King and I

Ms VICTORIA — Melbourne's theatres are bursting at the seams at the moment, with every one of them hosting a sensational show. For those who like tunes you can hum to, spectacular costumes and sets, and world-class performers, I can highly recommend *The King and I*. This is yet another successful collaboration between John Frost of the Gordon Frost Organisation and Opera Australia. Jason Scott Lee, Lisa McCune and the rest of the cast transported me to a bygone era and a distant land. This is a true classic performed superbly. My congratulations on such a charming production.

Special and autism education

Ms EDWARDS (Bendigo West) — The Liberal-Nationals coalition governments in Victoria and federally have failed to invest in special education to meet the growing demand in the autism community. This has resulted in students with special needs, especially those with autism, not getting the support they need. Waiting times to access early intervention at specialist services such as speech therapy, occupational therapy and diagnostic assessments have blown out in some cases to two years.

I congratulate the autism community in Bendigo for raising funds for an autism resource centre that will run programs for children with autism. They also plan to run support programs and work experience for teenagers and adults living with autism. In conjunction with La Trobe University they will also deliver an outreach program utilising speech, occupational therapy and oral health graduate students. This program will deliver free therapies at the centre and provide experience for the graduates so that they can utilise the skills gained when they have contact with people living with autism.

Of great concern within the autism community of Bendigo is the continued and increasing use of seclusion, restraint and exclusion in some schools in the region. I have had reported to me clear breaches of the Disability Act 2006 and failures to comply with disability education policy. Schools and teachers are doing an amazing job under increasingly difficult circumstances. Cuts to education and to special education in particular are forcing them to do much more with much less.

I was shocked that the Minister for Education sent in his regional director to fight his battle over this issue. This is typical of the Liberal Party. Every time it is in government it tries to avoid scrutiny of the impact of its cuts and poor policies.

Ambulance Employees Association

Mr K. SMITH (Bass) — What a disgrace question time was over the last couple of days, with all of the questions coming out of the ambulance union, the Ambulance Employees Association, through the weak state opposition. This hardline, left-wing union was a major donor to the Labor Party, using cash out of the pockets of its members, who actually want to accept the generous wage increase from the government, which is 6 per cent followed by two further increases of 3 per cent. That is more than 12 per cent in total. They were also going to get a sign-on bonus of $1500.

But no, the union leader, Danny Hill, a mate of the Leader of the Opposition — maybe even a golfing mate of his; he would have to help him add up his score — wants the so-called crisis to continue until election day. How much will come out of the union's slush fund to help the Leader of the Opposition and the Labor Party this year? Will it be $80 000, $90 000, or $100 000? There has been over $1 million over the last few years. This is not a union that is trying to reach a compromise. It is running a political campaign, wasting its members' money and risking the public's lives. We want to see our paramedics paid well. It is a pity their union does not want to see that and instead wants to use them as political pawns for the Leader of the Opposition and his disgraceful and weak members of the Labor Party. Danny Hill stands alongside John Sekta as a union thug, bully and mate of the Leader of the Opposition.

Hume Global Learning Village

Mr McGUIRE (Broadmeadows) — If you are not fighting for enlightenment, you are allowing ignorance and fear to prevail. This week Hume City Council acknowledged Victoria's longest serving Labor Premier, John Cain, and me with awards for establishing and developing the Hume Global Learning Village. Little more than a decade ago Broadmeadows still did not have its own public library. Now it delivers lifelong learning and features Australia's first multiversity, providing the tertiary education required for 21st century jobs. The multiversity collaboration between Deakin University, Victoria University and Kangan Institute of TAFE is centred in community hubs in Broadmeadows, Craigieburn and Sunbury, despite funding cutbacks by coalition governments.

As chairman of the Hume Safe City Taskforce in 1999, I pioneered the global learning village model to redress the imbalance created by governments increasing funding for bigger police stations, grander courthouses and more prisons instead of investing in the attributes that largely determine where we all end up in life — attitude, education and opportunity. As Albert Einstein put it:

> Insanity is repeating the same thing over and over again and expecting a different result.

The success of the model in coordinating the three tiers of government, business and civil society to deliver smarter, healthier, better connected and sustainable communities has been internationally acclaimed. It blossomed into Hume global learning centres in Broadmeadows and Craigieburn and the Visy Cares Learning Centre in Meadow Heights. It also featured a slice of Silicon Valley, when world leaders in ICT — Microsoft, Intel and Cisco Systems — established an IdeasLAB in a collaboration that harnessed technology for teaching and learning. Numerous communities have adopted the model, and I express my appreciation to all the community volunteers, companies, philanthropists and educational institutions who have committed to the cause during the past 15 years — —

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

Peter Greste

Mr BAILLIEU (Hawthorn) — Yesterday was set aside by the local Egyptian consulate to mark Egypt's national day. It was a day when the Egyptian community in Victoria might have reasonably expected to celebrate the greatest aspects of a nation steeped in history and to do so in the home of tolerance and multiculturalism, Australia. Sadly that hope was dashed by the conviction and sentencing in Cairo on Monday of a number of Al Jazeera journalists, including Australian journalist Peter Greste. Their arrest, detention, trial, conviction and sentencing have been roundly condemned throughout the world. Peter Greste and his colleagues have already spent more than six months in a Cairo jail for offences that remain so indeterminate that they have been widely labelled as the offence of 'being a journalist'.

Egypt has been through turbulent and tragic times in recent years. However, I am confident that such injustices are at odds with the democratic aspirations of the wider Egyptian community and in particular the Egyptian diaspora in Victoria. I urge all Victorians, including our local Egyptian community, to express their support for Peter Greste, his colleagues and their families through available petitions, the federal government, the Egyptian embassy in Canberra and as they otherwise see fit. I also suggest that in support of Peter Greste and his family the Victorian parliamentary press gallery, their crews and other media might show their solidarity on the steps of this Parliament in a

symbolic pyramid form in a manner similar to that which has occurred in so many other jurisdictions across the world.

Boroondara farmers market

Mr BAILLIEU — The Rotary Club of Glenferrie does an amazing job running the monthly Boroondara farmers market in Hawthorn East. The market provides a great community gathering, personal access to growers and consistent fundraising for great causes. I thank and congratulate all involved in making this market the cheerful success that it is.

Lions Club of Ocean Grove Barwon Heads

Ms NEVILLE (Bellarine) — It was great to join with members of the Lions Club of Ocean Grove Barwon Heads recently for its annual changeover dinner. Lions Club members organise and participate in a wide range of community service activities in both the local and wider community and the value of their contribution is substantial. This club has been serving the community since it was first formed in 1955 in Barwon Heads. Congratulations to John Claringbold, who did such a great job; he is both the outgoing and incoming president of the club! Also congratulations to all the club members as well as the incoming and outgoing office-bearers on the important contribution they have made and continue to make as volunteers in the community. I particularly want to acknowledge the club's welfare programs, its food bank programs, its Santa letter program and the fact that it contributed thousands of dollars to 28 community groups in the last year.

Beachlea Boat Hire

Ms NEVILLE — On a further matter, I was pleased to join members of the Indented Head and Portarlington communities to support the Beachlea Boat Hire appeal held on Saturday night. It was a wonderful night, with the community rallying behind Rodney Ludlow and his boat hire business following two recent vandalism attacks. The event was testament to the strong community spirit in Indented Head and Portarlington, with over 200 people turning up to support the business. I want to acknowledge and congratulate all involved for showing their support by getting together to make this event happen and at the same time taking a stand against senseless crime in their community.

Alette De Koker

Ms NEVILLE — Finally, on another matter, I wish to acknowledge and thank Alette De Koker, a Kardinia International College student who is spending this week in my office and who has assisted in putting together these members statements today.

Athol Hann

Mr WELLER (Rodney) — I would like to acknowledge the heroic efforts of Lockington nurse Athol Hann, who saved the life of a country football legend during a Goulburn Valley Football League reserves match at the weekend. Ovens and Murray football league hall of famer John Martiniello was clinically dead after suffering a heart attack while umpiring a match between Rochester and Benalla on Saturday, and Mr Hann's quick-thinking actions brought him back to life. I recommend that Mr Hann be nominated for the Ambulance Victoria Community Hero Awards, which recognise the courage of members of the public assisting others in life-threatening medical emergencies.

Environmental contribution levy

Mr WELLER — I refer to the Victorian Auditor-General's report, *Administration and Effectiveness of the Environmental Contribution Levy*. Since its introduction the environmental contribution levy has proven critical to ensuring the sustainable management of Victoria's water resources. Most recently the levy has been used for the Securing Priority Waterways project, which is providing $59.2 million over four years to improve the environmental condition of Victoria's high priority rivers, wetlands and estuaries through on-ground works.

The Victorian floods of 2010, 2011 and 2012 exposed communities to considerable economic losses and social disruption as well as impacts on the environment. The economic damage of the 2010–11 floods alone were estimated at $1.3 billion. Responding to this, the coalition government has provided $4.34 million through the environmental contribution levy to the Flood Resilient Communities and Catchments project. Funds have assisted in developing flood mapping, providing for localised flood mitigation works and the development of the Victorian flood plain management strategy, which will soon be released for public comment as we progress towards a finalised strategy later in the year.

Professor George Williams

Mr PAKULA (Lyndhurst) — I seek a correction to the record in relation to incorrect statements made by the Treasurer. It is important that the privilege that all members of Parliament enjoy is used to facilitate full

debate. However, it should not be abused or used as a reason to abandon due diligence or to fail to make reasonable inquiries regarding the accuracy of members statements. Last sitting week the government sought to continue the protection racket for the Member for Frankston, while in contrast the opposition moved to end the disfunctionality in this place and deal with the member for Frankston once and for all. The opposition so acted on the basis of firm legal advice from eminent constitutional expert Professor George Williams, AO.

I said in this house last sitting week, and I repeat it now: George Williams is more eminent as a jurist than the Treasurer. Sadly the Treasurer used his position and abused his privilege to make claims about Professor Williams with no regard for the accuracy of those claims. The Treasurer made reference to Professor Williams's advice to the Parliament of the ACT about its same-sex marriage legislation and claimed that his advice was rejected by the High Court of Australia. That is simply not the case. Professor Williams did advise the ACT government, but his advice was that it needed to amend its legislation or it would face defeat in the High Court. Suffice it to say the ACT government did not follow Professor Williams's advice.

The Treasurer needs to have greater regard for the privileges of this Parliament and to seek to ensure that his statements are accurate. If he had done so, he would have known that after Professor Williams outlined his constitutional advice regarding same-sex marriage, it was endorsed by the High Court of Australia. The Treasurer should apologise to the house and Professor Williams.

Ringwood Spiders Football Club

Ms RYALL (Mitcham) — The Ringwood Spiders Football Club, formerly the Ringwood Blues, was established in 1992. Its mission is to provide for and promote active participation in community sport and social activities for people with a disability and to provide people with a disability an opportunity to interact, participate and build social skills and leadership within the community.

This fabulous club plays in the Football Integration Development Association football competition and is an Aussie Rules club for people with a mild to medium intellectual disability. With very strong local links, the Spiders in 2013 changed its name to the Ringwood Spiders All Abilities Sports Club to better reflect what the club is about, which is much more than just a football club. There is now a netball program providing opportunities for girls and boys and a junior development squad so that younger boys and girls can participate. There is also an off-season program. For me as chair of the Family and Community Development Committee, given we have an inquiry under way on social inclusion for Victorians with a disability, it is exciting to have a fabulous club such as the Spiders in my local community. I look forward to joining the club for lunch this weekend to hear chairman Clinton Fullgrabe talk about the programs and initiatives.

Ringwood Prostate Cancer Support Group

Ms RYALL — I look forward to joining members of the Ringwood Prostate Cancer Support Group for the group's 20th anniversary dinner in Mitcham. My dad passed away in March as a result of prostate cancer, so joining members of this group to support them, have a meal together and celebrate the fabulous work they do is something I welcome and is very close to my heart. Congratulations.

Chandler Highway bridge

Ms RICHARDSON (Northcote) — Melbourne's north, and the inner suburbs in particular, have been calling on the Liberal government to recognise that our suburbs are changing and growing. We need more services — not cuts; we need more public transport services — not delays. In short, we need a government that recognises that as a result of in-fill development and change in the inner suburbs there is a requirement for schools, health services, kinders, sporting facilities and so much more. Only Labor recognises this, and hence Sunday, 15 June, was a very proud day for Labor in Northcote. Local residents joined the member for Ivanhoe, the Labor candidate for Kew, Labor's upper house MPs and me to hear the member for Mulgrave, the Leader of the Opposition, make a tremendously significant announcement for our community involving the duplication of Chandler Highway bridge.

Under the leadership of the Leader of the Opposition we now not only have plans to fix the bridge, we also have an $110 million commitment to get on with the job. On top of that, we also have a commitment to fix the bridge in our first term if elected at the end of the year. This bridge has stood for well over 100 years, and for decades the local community has called for a fix to this bottleneck. It has taken a Labor campaign with the support of the local community to get us this far, and with a good deal more work we may be finally able to deliver this significant project for Melbourne's northern suburbs at the end of the year.

The fact that the Greens political party and the Liberal government stand shoulder to shoulder in their

opposition to this duplication has not been lost on the local community. The fact that the Liberal government has ignored the safety concerns and the RACV Redspot survey that ranks this bridge as Melbourne's no. 2 traffic congestion point has also not been lost on the local community. Only Labor will get on with the job and deliver for Melbourne's north.

Shepparton urban fire brigade

Mrs POWELL (Shepparton) — On Saturday, 21 June, I joined many volunteers and career firefighters and their guests at the Shepparton urban fire brigade annual dinner. The guests included my husband, Ian, and The Nationals candidate for Shepparton, Greg Barr, and his wife, Susan. I had the honour of presenting First Lieutenant Ben Linett with a certificate on behalf of the Victorian government and the people of Victoria for their professionalism, commitment and courage in keeping Victorians safe during the trip 2013–14 fire season. I also presented a certificate in recognition of 126 years of dedicated service to the Shepparton district and Victoria, and I paid tribute to the families for the sacrifices they have made.

Shepparton ethnic youth leaders

Mrs POWELL — On Monday, 23 June, I met with the youth leadership group while it was on a tour of Parliament House. The group is auspiced by the Ethnic Council of Shepparton and District. I would like to congratulate Mr Sam Atukorala, the project officer, on organising the tour. These passionate young men and women were at Parliament House to understand how the Victorian Parliament operates. These potential leaders are in the program at Shepparton to learn about leadership styles, learn how to overcome communication barriers, learn about employment opportunities and the benefits of volunteering, and to learn how to identify cultural and language barriers. I have been asked to present the group with certificates at the closing ceremony at Goulburn Ovens TAFE on Friday.

I look forward to meeting them again and to hearing about their experiences and how they are very keen to work with the broader community in making sure that if there are cultural barriers, they are broken down. These people from other countries want to assimilate into the Shepparton community and become leaders — perhaps the next councillors or the next members of Parliament. I appreciate their interest.

Multicultural Aged Care Services Geelong

Mr TREZISE (Geelong) — Last Thursday I had the pleasure of once again visiting Multicultural Aged Care Services Geelong (MACS) to meet with longtime CEO Joy Leggo, together with chair of the board and local leader Jordan Mavros. For the information of the house, MACS is this year celebrating 20 years of quality care and support through accommodation and other services to people of all ethnic backgrounds in the Geelong area. The MACS vision statement says:

> We value a community where there is confidence in aged care, where cultural diversity is truly celebrated and family and community remain connected.

This vision really does reflect the values of the organisation and the work that is performed every day by everyone connected to MACS — the board, the management, the staff and the team of volunteers. The MACS facility in Whittles Road provides a wide range of aged-care services. These include low-level care at Borrela House, high-level care at Mary Costa House, independent living units, supported residential care and respite care — and the list goes on.

In 2014 the facility continues to diversify, and the board of management is now working towards funding and constructing a dementia-specific unit to provide caring, secure accommodation. To this I provide my full support. I take this opportunity to congratulate the team at MACS. I have enjoyed working with them over the past 14 years. I look forward to doing so until November this year and far beyond that time.

Kingston & Districts Netball Association

Ms MILLER (Bentleigh) — The St Peter's Primary School netball team played in a grand final as part of the Kingston & Districts Netball Association competition on the weekend. The winners were the Red Angels Netball Club, whose president, Amanda Bell, was incredibly proud of her under-11s Al team. The Kingston & Districts Netball Association president, Kevin Mowat, does an outstanding job of promoting netball in the region. The association was created in 1999 after the amalgamation of two associations, the Cheltenham Heights Netball Association and the Moorabbin Netball Association. Many players from the Bentleigh electorate participate in the competition and the association has enjoyed another successful season in 2014.

Israel kidnapping

Ms MILLER — I wish to address the recent kidnapping by Palestinian terrorists of three Israeli

teenagers, Eyral Yifrach, Gil-ad Shaar and Naftali Fraenkel, in a brazen act of terrorism. The Australian government must respond to this horrific event. A petition has been organised by the Jewish Community Council of Victoria. So far it has accumulated over 3400 signatures from people in the Victorian Jewish community supporting the Bring Back Our Boys campaign, which is fighting for their safe return. I fully support the Jewish community both in Bentleigh and Victoria generally in its efforts to bring back our boys, and I congratulate David Marlow and Nina Bassett from the Jewish Community Council of Victoria on taking the initiative to respond to this serious and concerning matter.

McKinnon Basketball Association

Ms MILLER — The McKinnon Cougars, a local basketball club in the Bentleigh electorate, have received the Big V Basketball Club of the Year award for 2013. This award was announced in November 2013 and the club is very proud of its success. Further to this, the McKinnon Basketball Association received the 2013 Basketball Association of the Year award. The award, which was announced in May this year, was a result of a team effort by general manager Alison Cody and the executive team, James Cody, Axel Dench, John Humble, Demitrios Stoupas, Sue Macdonald, Lee Bull and Chris Pavlou. Congratulations to the executive team and the McKinnon Cougars players.

FIFA World Cup

Mr EREN (Lara) — The World Cup has consumed many of us in the past two weeks. There have been sleepless nights, tears of joy and tears of sadness. As I am sure members are aware, it is one of the largest sporting events in the world, second to the Olympics, with the World Cup final being the single most watched sporting event around the globe.

It is with sadness that I say our Socceroos are no longer in the competition, but it is with my head held high that I say they did their nation proud. Although it may not show on the scoreboard, the Socceroos really put up a fight in this World Cup. Despite being dealt a place in one of the hardest groups in the World Cup, our boys kept their spirits up and played each game with pride — and what a goal it was that Tim Cahill scored against the Netherlands. In my opinion it was the most phenomenal goal of the World Cup so far and one not only Australia but the world can never forget.

My electorate has been lit up with the lights of thousands of television screens showing the World Cup at all hours of the night, with our very own Matthew Spiranovic playing for the Socceroos and defending against world-class players such as Robin van Persie. I congratulate Matthew and the Socceroos on their fantastic efforts in the World Cup. Now the planning begins for the boys to take on the Asian Cup in 2015.

Melbourne Vixens

Mr EREN — On another matter, the Melbourne Vixens are champions. I had the pleasure of attending the netball finals on Sunday. The Vixens held the game just out of the Firebirds' reach for four quarters. They had me on the edge of my seat as they blossomed to become the victorious Vixens. It was never doubted or debated that the Melbourne Vixens were the better team when they were showcasing their talent. Well done to one and all.

Bob Iskov

Mr McCURDY (Murray Valley) — World War II veteran Bob Iskov was laid to rest in Wangaratta on Friday. Mr Iskov, 93, was among the last of the Kokoda Track veterans. His military service began when he joined the 59th Battalion Citizens Military Force, or militia, at Wangaratta in 1938. He went on to fight in the New Guinea campaign, ending the war at Tarakan in 1945. Bob was married to Amy and they raised five children on the family farm at Tarrawingee. At home he was dedicated to his community, serving on the Wangaratta shire, the Tarrawingee Football Club, the golf club, neighbourhood watch, the Country Fire Authority and school committees.

I admit that when I first met Bob I doubted his recall, but after many meetings I came to understand that he was as sharp as a whip — and his memory was amazing. He was a great man who made a great contribution to our great country. Vale, Bob Iskov.

James McQuillan

Mr McCURDY — I was pleased to join the chair of the AFL Commission, Mike Fitzpatrick, at an event to raise funds for the James McQuillan Future Fund at Yarrawonga on the weekend. James McQuillan, who is 20 years old, sustained a serious spinal cord injury in a routine collision while playing for the Albury Tigers against Yarrawonga in round 1 this year. As a result of this collision, James has been diagnosed with quadriplegia. He is currently undergoing rehabilitation at the Royal Talbot Rehabilitation Centre in Melbourne.

James grew up on a dairy farm made at Nanneella, just outside Echuca. Our local community has united to support James and assist in any way it can, and we look

forward to his rehabilitation and recovery. The generosity of our community always astounds me and $40 000 was raised in 2 hours. Thanks to all who put in a few bob.

Lions Club of Wangaratta

Mr McCURDY — This weekend I will attend the changeover dinner for the Wangaratta Lions Club, whose current president is Em Walder. I wish to acknowledge the great work members of the Lions Club do in Wangaratta. This year alone they have supported RSPCA Wangaratta, Mansfield Autism Statewide Services, the Wangaratta District Specialist School and the North East Regional Pre School Association.

Dionne Wright

Ms GARRETT (Brunswick) — I rise today to acknowledge the wonderful contribution made by Ms Dionne Wright to Merri Creek Primary School over 13 years as principal. Dionne has devoted her many and considerable talents and 37 years of her working life to public school education. We are all enriched by this most commendable commitment. Her role as principal ends on Friday, and I would like to express both the Merri Creek Primary School community's and my deep gratitude for her work.

Looking at Merri Creek primary today you would find it hard to believe that it was slated for closure by the Kennett government as late as 1996. Dionne has played an immense role in transforming Merri Creek primary into the successful school it is today. She is regarded as one of the most outstanding principals in the northern metropolitan region and she has put considerable effort into mentoring her colleagues both at Merri Creek and across the government schools sector. She will be deeply missed by students, colleagues, parents and the local community. I am delighted that my work experience student for this week, Eleanor Smith, who is in the house today, went to Merri Creek primary and benefited greatly from Dionne's leadership.

At the end of term this Friday we will see an appropriate celebration to honour Dionne and thank her for her tireless work. I am delighted that I will be part of the celebrations. I join everyone in wishing Dionne Wright a long, happy and well-earnt retirement and wish her success in any new venture she might put her mind to.

Catherine Arnold

Mr BURGESS (Hastings) — I have been very fortunate to have worked alongside Catherine Arnold and the principal of Somerville Secondary College, Chris Lloyd, on many projects over recent years. Somerville secondary is a wonderful college, and these people are two of its great examples. I worked closely with Catherine to bring one of our major local employers, Inghams Enterprises, on board to support the school's local Victorian certificate of applied learning (VCAL) program. Catherine is an exceptional and innovative teacher who forms strong and lasting partnerships with a broad range of organisations to the great benefit of her students. I am very pleased and proud, but not at all surprised, that Catherine has been awarded the very prestigious VCAL Teacher of the Year Award.

Family violence

Ms KANIS (Melbourne) — I rise to express my support for the Victorian Labor Party's promise to have a royal commission into domestic violence.

WATER BILL 2014

Statement of compatibility

Mr WALSH (Minister for Water) 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 Water Bill 2014.

In my opinion, the Water 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 Water Bill 2014 repeals the Water Act 1989 (the act) and the Water Industry Act 1994, and makes consequential amendments to a number of acts. Its purposes are to restate, with amendments, the law relating to water in Victoria; to reform the regulatory framework for water management and use across Victoria; to further improve how water corporations are governed; and to provide enhanced compliance and enforcement provisions.

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

Right to privacy

Section 13(a) of the charter act provides that all persons have the right not to have their privacy, family, home or correspondence unlawfully or arbitrarily interfered with. The

right to privacy is relevant to a number of clauses within the bill. However, for the reasons outlined below, I consider that none of the clauses interfere with the right to privacy in an unlawful or arbitrary manner.

Entry to land and buildings

Entry without a warrant

The bill contains a number of clauses which permit entry without a warrant to residential and non-residential land and, in some cases, buildings, for a range of purposes connected to authority functions and powers under the bill and the maintenance of associated infrastructure. For example, clauses 367 and 738 permit entry to land for the purpose of installing and reading water meters. Clauses 740 and 741 permit entry to land for the purpose of performing a function or duty on the land, including to carrying out work on the land. The bill provides that powers of entry without a warrant are exercisable by officers (with the exception of the power of entry under clause 742 which must be exercised by an authorised water officer). The bill defines an officer to include an employee of an authority and a person who is authorised in writing by an authority or the minister to assist in performing its functions or exercising its powers. The bill defines an authority to include a water corporation or a catchment management authority.

The entry powers authorise entry to, and in some cases authorise activities to be carried out on, private land. The exercise of these entry powers may interfere with the privacy of individuals in some cases, particularly where the property concerned is residential. However, in each case, the entry powers are directed to the important public purpose of ensuring the safe and efficient supply and use of water and the provision of sewerage services in the state. The powers are appropriately circumscribed, and the bill contains appropriate safeguards to prevent the entry powers from being exercised in an arbitrary manner.

The powers of entry in part 12.2 of the bill are subject to a range of safeguards including: an obligation that an officer entering land cause as little harm and inconvenience as possible (general obligations requirement); a requirement that an officer produce his/her ID card for inspection if asked to do so by the occupier of the land (failure to produce an ID card will result in the officer losing his/her authorisation to exercise the relevant power on the land) (ID requirement); and a requirement that an officer serve a notice of the time and purpose of entry in certain circumstances. When entering residential land or buildings or entering land to carry out work, the bill also provides for a requirement that entry occur within reasonable hours, and detailed procedures for entry with consent, or with written notice, where applicable. While clause 740(7) permits an officer to enter non-residential land at any time to perform a function or duty on behalf of an authority or a minister, it expressly excludes the carrying out of work which would involve more significant disruption of the land from this power of entry. An officer entering land under clause 740 is also subject to the general obligations requirement and the ID requirement. Furthermore, the minister may prepare guidelines for officers in relation to the exercise of the power to enter non-residential land and provide those guidelines to officers.

Additionally, clause 186 of schedule 7 of the bill provides that certain delegations and authorisations made by the Melbourne Water Corporation to AquaSure Pty Ltd to enter land under section 140 of the act for the purpose of the Victorian Desalination Plant continue to have effect, despite the repeal of these sections of the act. This entry power authorises entry to, and in some cases authorises activities to be carried out on, private land. However, section 140 (as it applies to these delegations and authorisations) provides for a number of safeguards which govern the exercise of this power, including: entry may only occur without seven days written notice in an emergency or with the occupier's consent to carry out work; entry to residential land may only occur outside of reasonable hours with the occupier's consent or if there are reasonable grounds for believing that the act or regulations are not being complied with; and a similar general obligations requirement applies to entry to land. For these reasons, any interference with privacy occasioned by this clause will be neither unlawful nor arbitrary.

Entry with a search warrant

Part 12.2 of the bill authorises entry to land for the purpose of investigating contraventions of the act or regulations including under a search warrant issued by a magistrate under clause 745. The power of entry under a search warrant is exercisable by an authorised water officer. Clauses 790 and 791 of the bill provide that an authorised water officer must be appointed in writing by an authority or the minister and must undergo training before exercising any function under the bill.

Under clause 746, a search warrant may authorise an authorised water officer to enter land or a building (and to enter with the assistance of police, and with force where necessary) to inspect and seize evidence of non-compliance with the bill or the commission of an offence under the bill. Clause 743 provides that, upon entry, an authorised water officer may exercise a range of powers to examine items, take images and test infrastructure.

This power of entry is limited to the specific purpose of determining compliance with the act or regulations where reasonable grounds exist to believe that a contravention has occurred. Under clause 745, a warrant may only be issued to a specific authorised water officer in relation to a specific offence to be executed at a specific location and ceases to have effect after 28 days. Under clauses 747 and 748, an authorised water officer must announce their entry (except where it would frustrate the execution of the warrant) and must identify themselves and provide the occupier with a copy of the warrant. For these reasons, any interference with privacy occasioned by these clauses will be neither unlawful nor arbitrary.

Disclosure of personal information

Various clauses in the bill require persons to provide personal information about themselves to a minister, an authority, officers of an authority or police officers.

The bill empowers the minister to make sure a program of assessment of the water resources of a region is conducted. Such assessments provide for the collection, collation, analysis and publication of information about a range of matters set out in clause 16 of the bill, including the availability of water, the use and reuse of water, floodwaters, drainage and waterway management and water quality. Clause 19 authorises the minister, for the purpose of conducting a water resources assessment program, to obtain a range of information, including personal information such as

a person's name and address. Clause 21(3) provides that the minister must not disclose any information obtained by him or her under clause 19(1)(a) without the person's consent. A person's consent is not required if information is published and it does not contain a person's name or address. Given the requirement for consent to disclosure of personal information, I consider that clause 19 is appropriately confined and does not limit section 13(a) of the charter act.

Under clauses 282 and 326 of the bill and clauses 2 and 3 of schedule 5 of the bill, certain statutory officers must disclose information about their financial position which includes personal information. The purpose of the clauses is to ensure that persons such as those involved in the management of water corporations are free from apparent or actual bias in decision making. The clauses are precise in their application and are appropriately confined, and consequently do not limit the right to privacy.

Under clause 365, an authority may provide a person's name and address to the Victorian Building Authority for the purpose of facilitating the effective operation of the Building Act 1993 regarding the carrying out of maintenance work. The disclosure of personal information is appropriately confined to a stated purpose and, as such, does not limit the right to privacy.

Clause 796 makes it an offence for a person to fail to provide their name and address if requested to do so by an authorised water officer or police officer. An authorised water officer or a police officer must have reasonable grounds to suspect that the person has committed or is committing an offence before making such a request and must produce an ID card before making a request. Accordingly, in my view the requirement to provide personal information in these circumstances does not limit the right to privacy.

The bill provides for the continuation of a water register, which is made up of records and information kept by various recording bodies relating to water entitlements and the allocation and use of water resources (see clause 837). The purpose of the water register is to facilitate the responsible, transparent and sustainable use of the state's water resources (clause 837). Clause 863 provides that, before making a recording in the water register, a recording body may require a person to submit documents or provide information about the recording which may include personal information. If the information is not provided, the body may refuse to make the recording. This requirement is not arbitrary or unlawful as it is appropriately limited to obtaining information related to the recording which is necessary for the proper operation and purposes of the water register.

Clauses 856 and 860 authorise a recording body to release personal information about individuals that is contained in the Victorian water register. A recording body may only release information under clause 856 if it is satisfied that it is in the public interest to do so and must provide 28 days written notice to a person prior to any release of information and, under clause 860, it may only release information to the registrar of the water register or another recording body if disclosure is necessary to enable the body to discharge its responsibilities regarding the register. For these reasons, the release of information will not be arbitrary. It will also not be unlawful as the clause authorising the disclosure is clear and appropriately circumscribed.

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. A deprivation of property is in accordance with the law when the deprivation occurs under powers conferred by legislation which is formulated precisely and will not operate in an arbitrary manner.

Carrying out work on the land

The bill contains a number of clauses that authorise an officer to enter land to carry out work. Clauses 17, 395, 504(7), 506(4), 739, 741 and 786(2) are relevant to the right to property insofar as they authorise an officer to remove infrastructure, structures or trees from the land. The removal of infrastructure, such as pipes and fencing, or trees on the land may constitute a deprivation of property. However, any deprivation will not be unlawful.

In clauses 395 and 786, the power to deprive a person of his or her property only arises following a person's failure to comply with either a notice to remove trees or a remedial action notice (RAN). In both cases, a person has an opportunity to challenge the notices in the Victorian Civil and Administrative Tribunal (VCAT).

Clauses 739 and 741 authorise an officer to carry out work either as authorised by clauses 739 and 741 themselves or as specified in other clauses of the bill, such as following non-compliance with a direction under part 8.7, a RAN or a required work notice. In the case of a RAN and a required work notice, the notice must inform the person of the consequences of non-compliance. Moreover, in each case, the clauses are designed to ensure public safety and protect an authority's infrastructure and the environment.

Where an officer is entering land to construct or install specified infrastructure on private land, clause 734 requires that the authority or minister (on whose behalf the officer is acting) must first obtain an easement or enter into an access agreement (cl 756) or a written agreement with the owner in respect of the construction or installation of the class of infrastructure.

Furthermore, all entries to land to carry out work under the bill are subject to the requirements of part 12.2 of the bill, including the general obligations requirement unless the owner of land agrees to other arrangements or the specific clauses provide specific requirements for entry.

In my view, these clauses are formulated precisely and will not operate in an arbitrary manner. Therefore, I do not consider that they limit the right to property.

Seizure and destruction of items

The bill contains a number of clauses that are relevant to the right to property insofar as they permit seizure and destruction of personal property.

Clause 506(4) permits an authority to remove infrastructure or structures built between a declared building line and a waterway or designated land or infrastructure. The bill provides that it is an offence to build a structure in such a location without the relevant authority's consent (cl 504), a person will receive 28 days notice prior to any action, and may seek review of the authority's decision in VCAT (cl 830, item 54).

Under clause 746, an authorised water officer executing a search warrant may seize evidence of non-compliance with the act or regulations and, under clause 749, may seize an item not named in a warrant under certain circumstances. Following this, the seized property may be destroyed under certain circumstances, namely: if an item seized under a warrant is not claimed within 12 months; by a court order, if a person is found guilty of an offence and the item 'relates' to the offence; and by a court order, if the owner of the item cannot be found (cl 753). The seizure of property under part 12.2 is only authorised under a search warrant.

Clause 904 which inserts new section 229C into the Crown Land (Reserves) Act 1978 provides that if a person does not remove a structure or improvement which he/she installed with respect to a jetty or mooring prior to the expiration or cancellation of the person's licence to operate the jetty or mooring (or any longer period allowed by the minister), any such structure or improvements becomes the property of the minister at the expiry or cancellation of the licence and may be sold, removed or demolished, and the former licensee is required to pay the costs of the removal or demolition.

Given that the seizure or destruction of property will only occur in the limited circumstances which are clearly set out in the bill, in my view these clauses do not limit the right to property.

Compulsory acquisition of land

Under clause 379, an authority may compulsorily acquire land that is required for the performance of its functions under the bill. This clause does not limit the right to property as any deprivation is in accordance with law. The Land Acquisition and Compensation Act 1986 applies to the compulsory acquisition of land under the bill and it provides significant safeguards for such acquisition, including notice of intention to acquire and a right to compensation. An officer exercising powers under the Land Acquisition and Compensation Act 1986 must comply with certain safeguards under part 12.2 of the bill (cl 729, 732).

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.

Evidentiary presumptions

A number of clauses in the bill contain a presumption that, in the absence of evidence to the contrary, certain evidence amounts to proof of certain facts. The 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.

Some of the presumptions operate in relation to proceedings for specific offences under the bill. The presumptions operate to remove the need for the prosecution to prove certain facts unless the accused raises contrary evidence. They are contained in clauses 78, 79, 522(2) and (4), 773(2) and 777(2), (3) and (4). For example, clause 79 provides that in a proceeding for an offence of taking water from stormwater infrastructure, evidence that water from stormwater infrastructure has been diverted onto or used on land is, in the absence of evidence to the contrary, proof that an owner, sole occupier, or person authorised to take or use water on that land, took the water.

Other presumptions operate in relation to a range of proceedings under the bill. They concern matters such as the amount of water supplied to a property, the accuracy of maps, and the ownership of land. They are contained in clauses 248, 799–808 and 811, 864, and clause 5, schedule 4 of the bill. For example, clause 799 provides that in any proceeding where the amount of water supplied to a property is relevant, evidence of the amount of water supplied that is recorded by the meter is (in the absence of evidence to the contrary) proof that that amount of water was supplied to that person.

I do not consider that these clauses limit the right to be presumed innocent as they only place an evidential burden on an accused to raise certain evidence. 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. Courts in other jurisdictions have generally taken the approach that an evidential onus on an accused does not limit the presumption of innocence. Moreover, the presumptions for specific offences only require a person to adduce evidence that is within his or her personal knowledge (for example, that he or she was not present on the relevant dates or that another person took the water in question). Without these presumptions, it would be very difficult for the prosecution to prove that a relevant defendant committed these offences. The penalty for these offences is a pecuniary fine and does not involve imprisonment. With regard to the presumptions that operate more broadly, these presumptions are necessary to ensure that the prosecution is not required to devote significant resources to establishing certain background facts. Furthermore, the prosecution retains the responsibility of proving the key elements of each offence.

Even if these provisions limit the right to be presumed innocent through imposing evidential onuses, they would be reasonable and justifiable under s 7(2) of the charter act. As such, I consider that these provisions are compatible with the right to be presumed innocent.

Reverse onus of proof in relation to statutory defences

Clause 591(5) contains a reverse onus of proof in relation to a statutory defence. This clause is relevant to the right to be presumed innocent because it imposes an onus of proof on a person to provide evidence of certain matters in order to avail him or herself of a defence.

Under clause 591(4), the holder of a works licence commits an offence if the licensed driller fails to ensure the work complies with the conditions of the licence. This is a strict liability offence. Under clause 591(5), a works licence holder does not commit an offence if he or she presents or points to evidence that suggests a reasonable possibility that he or she exercised due diligence to prevent the commission of the offence by the licensed driller, and the contrary is not proven beyond reasonable doubt by the prosecution.

In my view, this clause does not limit the right to be presumed innocent until proven guilty under s 25(1) of the charter act because it imposes an evidential burden on the accused. Once a person has adduced some evidence as to the existence of the defence, the burden of proof shifts to the prosecution to prove the absence of the defence. Furthermore, the penalty for the offence is a pecuniary fine, rather than a term of imprisonment, and the offence provision serves the important public purpose of ensuring the integrity of water supply and the environment.

Strict liability offences

The bill provides for a number of offences which are identified as strict liability offences, including some that are punishable by imprisonment. For strict liability offences, the prosecution only has to prove the conduct of the accused for the offence to be made out. Clause 7 of the bill provides that a person does not commit a strict liability offence if he or she acts under an honest and reasonable mistake as to the existence of facts which, if true, would have made that conduct innocent. Strict liability offences are relevant to the right to be presumed innocent when they impose a burden of proof on a person to adduce evidence in order to avail him or herself of the defence in clause 7.

I do not consider that these clauses limit the right to be presumed innocent as they only place an evidential burden on an accused. A person is only required to adduce some evidence that he or she acted under an honest and reasonable mistake; the prosecution retains the burden of proving the absence of an honest and reasonable mistake. The existence of the defence is beneficial to the accused. Finally, the strict liability offences in the bill serve a range of important public purposes which are designed to ensure the safe and efficient supply of water and provision of sewerage services in the state, in addition to water supply protection and environmental protection functions under the bill.

Right not to be compelled to testify against oneself

Section 25(2)(k) of the charter act provides that every person charged with a criminal offence is entitled not to be compelled to testify against himself or herself or to confess guilt.

Clause 478(5) makes it an offence for a person who has permission to discharge trade waste into sewerage infrastructure to fail to provide information about trade waste when required to do so by an officer.

I do not consider that the clause limits the right against self-incrimination, as the privilege against self-incrimination remains available and it is not expressly abrogated. Additionally, with respect to clause 478(5), the bill provides that any information obtained as a result of a person's compliance with the clause is not admissible as evidence against that person in any proceeding except in relation to the offence of providing false or misleading information (see section 479(3)).

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.

A range of clauses in the bill have the effect of limiting or prohibiting the bringing of proceedings in particular circumstances. The fair hearing right is relevant to these clauses, as the right has been held to encompass a right of access to the courts to have one's civil claims submitted to a judge for determination. However, the right to access the courts is not absolute, and may legitimately be limited by the needs and resources of the community and individuals.

Statutory immunities

Clauses 556 and 601 provide statutory immunities for the minister, the minister's delegate and the Crown under certain circumstances. Clause 556 provides that the minister and the Crown are not liable in respect of injury, damage or loss caused by the flow of water from infrastructure authorised by a works licence issued by the minister in good faith and having had regard to all matters required by the bill. Clause 601 provides that the giving or not giving of directions by the minister in good faith concerning any dams does not make the minister, his or her delegate or the Crown liable is respect of a flow of water from a dam.

In other jurisdictions, it has been found that a broad statutory immunity from liability which imposes a bar to access to the courts for persons seeking redress against those who enjoy the immunity may breach the fair hearing right.

However, even if these clauses do limit the right set out in section 24, such limits are reasonable and justifiable under section 7(2) of the charter act. The immunities are designed to protect the public interest in maintaining the independence of officials who perform regulatory and administrative functions. The provision of immunities in these clauses supports independent decision making in relation to the carrying out of necessary regulatory functions and accordingly does not unjustifiably limit section 24(1) of the charter act. Furthermore, a person who suffers injury, loss or damage due to a relevant flow of water would still be able to seek compensation from the dam owner or body undertaking work pursuant to a works licence or direction.

Access to tribunal

The bill enables an authority to determine a charge in relation to a property for the purpose of contributing to the costs of certain works in relation to that property. The charge must be fair and reasonable. This is referred to in the bill as an 'owner contribution infrastructure charge'. Under clause 637, an owner may object, on certain grounds, to an authority's decision to impose an owner contribution works charge. Clause 830 provides that a person may seek review in VCAT of the authority's decision regarding the objection; however, the right to review does not apply to an objection that the owner contribution infrastructure charge was not determined in accordance with a price determination. A price determination is made by the Essential Services Commission under the Essential Services Commission Act 2001 (see definitions). Clause 830 therefore limits the nature of decisions regarding objections that may be reviewed in VCAT. In this case, however, a person can still object in VCAT on the ground that the charge imposed is excessive. Furthermore, an objection that the charge was not determined in accordance with a price determination is more appropriately dealt with by the Essential Services Commission, rather than VCAT. For this reason, in my view, section 24(1) of the charter act is not limited.

Double punishment

Section 26 of the charter act provides that a person must not be tried or punished more than once for an offence in respect of which he or she has already been finally convicted or acquitted in accordance with law.

Clause 819 provides that the finding of guilt for an offence under the bill or regulations does not prevent an authority or

any person from recovering from a person a sum for loss or damage suffered due to the contravention, and the costs and expenses incurred by the authority or the person in remedying that loss or damage.

To the extent that the clause allows for an authority or a person to institute civil proceedings for compensation following on from criminal proceedings under the bill, such orders will not constitute double punishment as such orders will be made in civil proceedings and will not be punitive in nature.

Human rights protected under the charter act that are limited by the bill

Presumption of innocence

Reverse onus of proof in relation to statutory defences

Under clause 284(1), certain statutory office-holders, such as a director of a water corporation, commit an offence if he or she fails to disclose a relevant pecuniary interest or takes part in decisions in respect of which a disclosure has been made. It is defence for a director to prove that he or she did not know that he or she had a pecuniary interest in the matter or that the matter was considered or to be considered at the meeting.

Under clause 590(1) and (3), it is an offence for the holder of a works licence to engage a non-licensed or insufficiently licensed driller to carry work in relation to a bore. It is a defence for a licence-holder to prove that he or she had reasonable grounds to believe that the person engaged was a licensed driller with the correct licence.

These clauses place a legal burden on an accused to prove certain matters in order to escape liability. Accordingly, the clauses limit the right to be presumed innocent until proven guilty under s 25(1) of the charter act because they impose a legal burden on the accused to prove certain matters in order to avail himself or herself of a defence.

However, I consider that the limitations on the right to be presumed innocent in the above clauses are justified within the meaning of section 7(2) of the charter act. Firstly, the matters required to be proven in relation to the defences are only within the knowledge of the accused and it would therefore be very difficult for the prosecution to prove whether the accused knew or did not know. Second, these are strict liability offences, and the existence of the defences are beneficial to the accused. Third, the penalties are fines rather than a term of imprisonment. Further, directors of water corporations and holders of a works licence have chosen to work in a highly regulated environment and such persons may be taken to have accepted the statutory responsibilities that accompany this regulated activity and their enforcement. The clauses serve clear public purposes, namely to ensure that statutory office-holders are free from actual or apparent bias and to protect the integrity of public waterways by ensuring that only licensed drillers carry out work with respect to bores.

The Hon. Peter Walsh, MP
Minister for Water

Second reading

Mr WALSH (Minister for Water) — I move:

That this bill be now read a second time.

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

This water bill restates, with amendments, the law relating to water in Victoria. It consolidates years of reform, and modernises and clarifies the regulatory framework for water management and use across Victoria. This bill gives effect to actions from the government's Melbourne's Water Future strategy. This strategy will support better use of all sources of water in cities and towns to make them more self-sufficient and more liveable. The bill will align better with requirements of the Commonwealth Water Act 2007 (cth) and the Murray-Darling Basin Plan, and will reduce the administrative burden of showing compliance.

The Water Act 1989 established a legislative basis for managing water resources that has served Victoria well. It set out a logical framework for allocating water, and a modular approach to providing services relating to water supply, sewerage, irrigation, waterway management, regional drainage and flood plain management.

However, the Water Act 1989 has been amended continually since it commenced. Major reforms to the entitlement framework included licensing of farm dams, providing for environmental entitlements, 'unbundling' entitlements in declared systems, providing for rights to be permanently qualified, and establishing the Victorian Water Register. There have also been major reforms to the structure of the water industry and governance arrangements including the establishment of catchment management authorities and the Victorian Environmental Water Holder.

The Water Industry Act 1994 was created to implement institutional reforms in the Melbourne metropolitan area, and was amended to support reforms to the economic regulation of the water industry. Since amendments in 2012 shifted most of its provisions to the Water Act 1989, it has become an omnibus of disparate laws.

Changes to Victoria's water laws over the past 20 years have been driven by intergovernmental reforms such as the Council of Australian Governments Water Reform Framework 1994 and the Murray-Darling Basin Plan. Victoria's variable climate, better recognition of the environmental needs of waterways, changing attitudes to the governance of public authorities, and the Charter of Human Rights and Responsibilities Act 2006 have also driven change.

As a result, Victoria's water legislation has ballooned in size and complexity. The Water Act 1989 is cumbersome and can be hard to follow. It is no longer adequate for the water management challenges Victoria faces. These challenges include helping a rapidly growing urban population become more self-sufficient, doubling the state's capacity to produce food and fibre by 2030, and preserving and improving the health of waterways. This bill will help Victoria deal with these challenges by removing the impediment of cumbersome legislation, and establishing the best possible basis for managing water.

In August 2012, I appointed an expert advisory panel comprising of members with extensive legal and water industry expertise to comprehensively review Victoria's water legislation.

The panel reviewed the current legislation and guided the drafting of the new bill with the following principles in mind:

clear and certain rights to water resources for water entitlement holders;

concise, flexible and enabling legislation that provides for clear roles and responsibilities, and fosters community decision making; and

making the best productive use of water while preserving and improving environmental values, by providing integrated and sustainable water services at least cost to farms, businesses and households.

The panel established that the main principles of Victoria's current water legislation were sound, but that there was considerable scope for the Water Act 1989 to be simpler and clearer, to reflect modern legislative practice and to address current concerns.

The panel led two rounds of public consultation. The first round in December 2012 was a call for submissions to inform the drafting of the new bill. A total of 26 submissions were received.

The second round followed the release of the Water Bill exposure draft and explanatory material on 18 December 2013 for an eight-week consultation period. The panel and department hosted eight public forums, six targeted forums and 12 stakeholder meetings, which were attended by about 700 people in total. The government received 151 written submissions on the exposure draft from a range of associations, environment groups, water corporations, catchment management authorities, legal firms, individuals and government agencies.

The bill before the house reflects this feedback. Some of the main changes from the exposure draft, which will be described in more detail later, are:

the inclusion of a whole of water cycle management planning framework to implement actions from the government's Melbourne's Water Future strategy;

further refinements to the statutory liability regime;

improvements to powers of entry to construct and install certain infrastructure;

the term 'infrastructure' is now defined, and replaces the term 'works'; and

amendments in accordance with the Water Amendment (Flood Mitigation) Bill 2014 and the Water Amendment (Water Trading) Bill 2014.

Many other minor amendments were made.

The bill also includes savings and transitional provisions to facilitate a smooth transition between the existing and proposed legislative schemes. The bill will simultaneously repeal the Water Act 1989 and the Water Industry Act 1994.

The new act is proposed to commence on 1 January 2016.

I turn now to the major reforms proposed.

Protecting the environment and water users

Chapter 1 contains a set of objects for the whole bill, which are relevant to how provisions in the bill are interpreted. The object of promoting whole of water cycle management reflects the government's Melbourne's Water Future strategy. The bill also clarifies several mechanisms that water managers use to protect the environment and other water users. The minister, the Victorian Environmental Water Holder, water corporations and catchment management authorities will have to have regard to a set of core considerations when they assess applications for new water entitlements, and make certain other decisions. These considerations will include the impact of a decision on other water users, on environmental water, and on the protection of the environment. They are broadly the same as those in the Water Act 1989, but have been consolidated and refined to enable greater consistency and efficiency in decision making.

The core considerations will require decision-makers to have regard to the need to preserve environmental values of all water ecosystems. Decision-makers will also be required to have regard to any adverse impacts to environmental water and any other water that contributes to the preservation of environmental values. A new, precise, definition of environmental water will support decision-makers in this regard. It is consistent with commonwealth legislation, and replaces the often misunderstood concept of the environmental water reserve. The new definition of environmental water includes water that is committed for environmental purposes, whether through water entitlements held for environmental purposes or rules set out in water resource management orders. The effect of the new definition of environmental water and the core considerations will be to maintain or improve the level of protection for the environment.

In all the decisions they make under the new act, the minister, the Victorian Environmental Water Holder, water corporations and catchment management authorities will also have to have regard to the precautionary principle.

New assessment and planning frameworks

The bill provides for a two-step, staged process of regional resource assessments and strategic reviews to replace the requirement for the minister to produce regional sustainable water strategies. This process will take a long-term view of risks to water for environmental and consumptive purposes, which includes water for livability such as water for parks and gardens. It will more clearly distinguish the stages of identifying problems and solving them, so that only significant problems will receive detailed analysis and planning. The new process in part reflects the substantial investment by the Victorian government and the commonwealth in recovering water for the environment. As a result, there may no longer be the need to review the management of water resources as intensely as over the last decade. The bill proposes that an assessment for each region must be completed at least every 15 years, and that the first assessment must be completed by no later than 1 January 2020.

The bill implements the new approach to urban water cycle planning set out in the government's Melbourne's Water Future strategy. This approach recognises the wider

interconnections between the various components and managers of the water cycle, and will involve water corporations, local councils, other organisations and the community in managing them. It will ensure stronger links between urban water cycle planning and local land use planning, which may mean a greater role for local councils.

The bill provides that the Minister for Water may develop a whole of water cycle management planning framework to guide the preparation of whole of water cycle management plans for urban areas defined by the minister. The bill sets out an open and consultative process by which a framework may be developed, including establishing an advisory committee which has representatives of water corporations and local councils affected by the framework. Urban areas defined by the minister may include subregional and local urban areas, such as Plan Melbourne subregions and local council areas, rather than areas that cover the state.

Plans produced under a framework will replace some of the plans that urban water corporations and local government currently produce, independently of each other, to provide water services. Depending on the timing, plans produced under the framework will either inform, or be informed by, regional resource assessments and strategic reviews.

Over time, this approach will deliver high-quality, reliable services at lower cost because the water sector will be able to defer or scale down capital investments and use less energy. It will also deliver environmental and liveability benefits, such as greener gardens and public open space, better waterway health due to less stormwater run-off, and lower nutrient discharges.

A whole of water cycle planning framework for metropolitan Melbourne is currently being developed. Whole of water cycle management plans for three of five subregions within metropolitan Melbourne are also being prepared. Whole of water cycle management frameworks and plans will be prepared for major urban centres in Victoria's regions such as Ballarat, Bendigo and Geelong. The bill enables the minister to declare a suitably prepared framework that is developed before the new act commences to be a framework under the new act.

Clear and certain rights

The bill sets out the rights to water that a person has, including the right of the Crown to the use, flow and control of water, and the rights of members of a traditional owner group to take and use water for traditional purposes.

The bill extends the Crown's right to the use, flow and control of water to include water in the stormwater infrastructure of a water corporation or local council. The bill also creates clear statutory rights for a water corporation or local council to water in its stormwater infrastructure. The intention is to encourage greater investment in projects that harvest and use stormwater in accordance with the government's Melbourne's Water Future strategy.

The bill provides for a simpler, consistent and fairer definition of domestic and stock use, while maintaining the long-held right of a person to take and use water free of charge for this purpose under certain circumstances. The bill changes the definition to include watering a 1.2-hectare area connected to a house. The distinctions drawn under the Water Act 1989 between watering a kitchen garden or watering an area around the house for fire protection, depending on the source of the water or when the land was first acquired, have been removed. This change will leave no-one worse off, and in some cases will be more generous than the existing right.

However, to ensure statutory rights are not misused, the minister will be able to prescribe criteria about the reasonable use of water for watering stock and watering an area around a house.

The bill maintains the minister's ability to qualify rights to water, both temporarily and permanently. A permanent qualification of rights can only occur as a result of a targeted review. Targeted reviews build on the changes to the assessment and planning frameworks already described. The Water Act 1989 requires a statewide program of long-term water resource assessments every 15 years, which may lead to entitlements being reviewed. Under the new arrangements all water resources will first be assessed by a regional resource assessment. The regional resource assessment may subsequently inform a strategic review that evaluates all management options to improve resource health, if there is a demonstrated need to do so. The minister may subsequently consider the least preferred option of permanently adjusting rights should a targeted review inform this decision. Limiting targeted reviews to specific areas will considerably reduce the level of resourcing needed, and also reduce unnecessary stress for holders of entitlements.

The bill prevents the minister from permanently qualifying rights to water before 3 August 2021. This is consistent with arrangements made when the power to permanently qualify rights to water was created by the Water Resource Management Act 2005.

Improvements to the water entitlement framework

The bill makes a number of improvements to the water entitlement framework, and sets out clearly and in one place what a water entitlement authorises the holder of that entitlement to do. These improvements aim to make the most productive use of water, protect the reliability of entitlements of existing water users, and highlight that water is a valuable natural resource that no-one can afford to waste.

The bill proposes to extend the maximum term for which a take and use licence can be issued from 15 to 20 years. The bill improves the process for applying for take and use licences by providing for:

> tailored obligations on notification requirements for water corporations and some applicants to be imposed by regulation; and
>
> a pre-assessment process to enable a person to seek advice about whether a future application would be approved and, if so, under what circumstances. This process would be used by a person intending to apply for a take and use licence, or a person intending to trade water temporarily.

The bill enables the take and use licensing regime to be extended to water in local council stormwater infrastructure in targeted areas, where there is a current or expected demand for this water that may result in adverse impacts on the environment or third parties. The bill will accommodate existing uses of this water by local councils or third parties. Local councils will be consulted further when any proposal to

specify a stormwater area is considered, including about arrangements for access to their infrastructure.

The bill enables the minister to manage long-term risks to water resources from new forestry plantations in declared forest plantation areas. This is consistent with the western region and Gippsland region sustainable water strategies, which were released in 2011. These controls will only apply to new forest plantations that are greater than an allowable plantation area — which must be at least 20 hectares — and planted on pasture and cropping land. Forest plantations established before an area is declared will not be subject to these new requirements, and will not be required to obtain a licence to take or use water. The forestry industry will be further consulted about these controls when assessing whether areas should be declared, and through the development of regulations which will prescribe methods for calculating the change in water intercepted.

The bill extends the take and use licensing regime to new private aesthetic dams, again consistent with the regional sustainable water strategies. Owners of existing private aesthetic dams would not need to obtain a licence. The proposed changes would only apply to a small proportion of new dams. Most private dams in Victoria are constructed for domestic and stock purposes and will meet criteria for reasonable domestic and stock use, so they will not require a licence. Private aesthetic dams will require a licence if they harvest or store more water than is prescribed as being reasonable for watering stock or watering an area around a house.

Water resource management orders

The bill proposes significant new 'umbrella' instruments called water resource management orders. These orders will consolidate, in one place, all the surface and groundwater system management rules and water resource management roles and responsibilities for a region. They will include rules in management plans, trading rules, carryover rules, capping arrangements, and rules currently set out in a range of disparate instruments. These orders will specify the areas in which new licensing requirements in relation to new forestry plantations and taking water from a local council's stormwater infrastructure will apply, and in which certain charges can be imposed. For example, a reliability contribution charge can only be imposed on certain holders of statutory water rights in an area specified for that purpose under a water resource management order.

The bill sets out a process for making water resource management orders, and for making amendments to the many different matters that they cover. The bill provides flexibility about the level of consultation required. The bill sets out the process for the minister to establish an advisory committee, and when the minister must apply this process. This process will be applied if the minister is of the opinion that there has not already been sufficient consultation. The advisory committee will provide advice to the minister and consult with affected water users and stakeholders.

Water resource management orders will significantly improve existing arrangements. Some of the benefits include:

water management arrangements will be better organised and more accessible, easier to administer and will be better understood by entitlement holders;

they will enable water to be managed locally within a consistent statewide framework;

they will play an important role in specifying passing flows for environmental purposes and identifying flows that contribute to the preservation of environmental values;

the process for making and amending these orders will reduce red tape and unnecessary delays, while maintaining appropriate consultation requirements and ministerial oversight.

They align better with requirements of the Commonwealth Water Act 2007(cth) and the Murray-Darling Basin Plan, and will reduce the administrative burden in demonstrating compliance.

The bill proposes to replace permissible consumptive volumes with maximum entitlement amounts. Maximum entitlement amounts will be the total amount of water that can be taken under entitlements from an area or water system within a specified period, including for both consumptive and environmental purposes. This definition articulates more clearly what will be included in a cap. They will apply across Victoria in relation to groundwater, and across southern Victoria in relation to surface water.

It is proposed that 10 to 15 water resource management orders will be needed to cover the entire state. The majority of these would be based on natural boundaries and cover multiple river basins. Some water resource management orders would complement or overlay other orders, such as for the Melbourne supply system, the Wimmera-Mallee system and for trading rules in declared water systems.

A set of water resource management orders will commence at the same time as the new act. They will contain matters from existing instruments that will no longer have effect once the new act commences, such as maximum entitlement amounts that will replace permissible consumptive volumes. After the new act has commenced, water resource management orders will be amended progressively to incorporate other matters, such as conditions and rules in bulk entitlements.

Institutional arrangements

The bill proposes a new objective for water corporations when performing their functions. This is to provide services in an efficient and commercial manner that supports liveable, environmentally sustainable and productive communities, and to promote whole of water cycle management.

The bill better aligns the governance arrangements for water corporations and the Victorian Environmental Water Holder, and makes several incremental improvements to the governance of these entities. Governance arrangements were recently modernised by the Water Amendment (Governance and Other Reforms) Act 2012, and as such did not require significant refinement.

In assigning functions and powers to water corporations and catchment management authorities, the bill retains the modular approach of the Water Act 1989 and makes several improvements. Functions and powers have been simplified and regrouped based on the existing structure of the water sector, while providing for flexibility in the future. Specific functions and powers relating to water supply, sewerage, and irrigation and water delivery services, among others, will

continue to be assigned according to the type of district that a water corporation or catchment management authority manages. The bill also sets out functions and powers relating to water infrastructure and sewerage infrastructure that are not assigned by district but based on the delivery of related services. The delivery of water to the environment will be undertaken by water corporations with functions and powers relating to water infrastructure.

Certain provisions will be moved from the Catchment and Land Protection Act 1994 and incorporated in the bill. This will make water corporations with functions relating to water infrastructure responsible for declaring open potable water supply catchments for the purpose of protecting drinking water quality.

The bill proposes simpler processes for establishing, altering or abolishing irrigation or waterway management districts, similar to the recently amended arrangements for water and sewerage districts.

Infrastructure and activities

The bill requires a licence issued by the minister to be held for certain infrastructure or activities. For clarity, the bill uses the term 'infrastructure', rather than using both 'infrastructure' and 'works' like the Water Act 1989. The bill provides a specific definition of this term. The term 'works' is only retained in a nominal sense for 'works licences', because the broader community is familiar with this title.

The bill intends that activities licences be applied to things such as the removal of sand, gravel, rocks, or trees that are likely to cause damage to the physical condition or physical integrity of a waterway. These activities are currently regulated by catchment management authorities and Melbourne Water Corporation through permits issued under by-laws. The bill proposes that, similar to works licences, licences may be granted for these activities on waterways and land adjacent to waterways. This will reduce red tape associated with by-laws, provide greater transparency, and will result in minimal changes to the scope of activities regulated.

These changes are intended to ensure that infrastructure or activities on waterways or land adjacent to waterways do not result in unintended or untenable impacts on third parties including to public safety, property and the environment.

The bill defines major infrastructure of water corporations and certain public land managers. This infrastructure is excluded from the works licence regime provided the responsible bodies comply with the process set out in the bill. This includes a public notification and submission process and any referral and notification requirements imposed by the minister. Other regulatory schemes including planning and environmental oversight will continue to apply.

The bill requires operating licences to be held for domestic and stock bores. This requirement will be phased in gradually. There will be no change for a land-holder with an existing bore, unless the land-holder constructs a new bore on their property or the property changes ownership. In these situations, an application fee for the operating licence will apply, but take and use licences will not be needed.

These changes implement actions from the Gippsland region and western region sustainable water strategies. The aim is to obtain information on the operation of domestic and stock bores to improve the protection of domestic and stock supplies and make it easier to assess applications for take and use licences from the same groundwater resource. At present there is a lack of information about which bores are operating. This makes it difficult to assess the potential for any adverse impact on domestic and stock users when approving a new take and use licence or the transfer of an existing licence, and to estimate domestic and stock groundwater use. The capacity to exempt persons with shallow bores from the requirement to hold an operating licence will be retained.

Fees and charges

The bill sets out the powers of the minister, water corporations and catchment management authorities to determine and impose fees and charges, and to require payment of contributions and other payments for the work they carry out, the services they provide, and the infrastructure they construct or install. The intent of these provisions is the same as the corresponding provisions in the current legislation, but they reflect a modern drafting approach. For example, the bill retains specific limits on the services for which catchment management authorities may determine charges. The bill provides that the Essential Services Commission oversees and regulates the process of determining and imposing fees and charges.

The bill retains the current arrangements whereby land that is declared to be a serviced property carries an obligation to pay the fees and charges attributable to the provision of services available to the property, or that are of a direct benefit to the property. The user-pays approach that allows water usage and sewage disposal charges to be paid by occupiers of a metered property under residential tenancy arrangements has also been retained. Other fees, charges and requirements to pay a contribution can be imposed on the person to whom the work, service or infrastructure is provided.

The bill enables, but does not mandate, reliability contribution charges to be imposed on certain holders of statutory water rights. At present, holders of take and use licences and persons taking groundwater under a statutory right within a water supply protection area can be required to contribute to the costs of producing and implementing management plans. These plans also benefit holders of statutory water rights who take water from a waterway, by helping to protect the reliability of the stream flow they depend on. The bill proposes that in an area specified in a water resource management order, holders of statutory water rights that take either ground water or surface water may be required to contribute to the cost of protecting the reliability of their supply. Before a reliability contribution charge is introduced to an area, a proposal to impose these charges on holders of statutory water rights will be canvassed through the process of making or amending the water resource management order.

The contents of the Water Industry Act 1994 will be relocated so that the state scheme for economic regulation of the water industry will sit in the new act, the commonwealth scheme for the economic regulation of the water industry in northern Victoria will sit in the Murray-Darling Basin Act 1993, and provisions relating to land management will be relocated into land management legislation.

Liabilities

The bill consolidates and clarifies the existing exclusive statutory regime for injury, damage or economic loss arising

out of the flow of water, the taking, using or polluting of water or the construction, maintenance or operation of unauthorised infrastructure.

The bill makes several changes to reflect recent decisions from the Victorian Civil and Administrative Tribunal (VCAT) and Supreme Court. It:

clarifies that damage from flows of water can include damage caused by what the water contains, such as salinity or sewage;

removes doubt that flows of water include flows from pipes in urban areas; and

removes doubt that the proportionate liability and contribution provisions of the Wrongs Act 1958 apply.

These and other proposed changes are intended to reduce the potential for conflicting legal interpretations and the burden on VCAT and the courts, reducing legal costs.

There are several amendments to provisions relating to liability arising from flow of water from the infrastructure of water corporations, catchment management authorities and local councils.

The bill provides that water corporations and catchment management authorities will be liable to pay compensation for injury, loss, or damage arising from intentional or negligent releases of water from their infrastructure in the performance of relevant functions. These provisions are intended to protect landowners who, through no fault of their own, are flooded by flows from infrastructure of water corporations or catchment management authorities. This would include release from storages and dams of environmental flows, and the release of water in emergency situations.

These arrangements correspond to section 157 of the Water Act 1989, albeit with amendments to:

incorporate principles from the Wrongs Act 1958 for determining whether the flow of water from the infrastructure of a water corporation or catchment management authority occurred as a result of negligent conduct;

codify existing case law that the claim can be made in relation to injury, loss or damage arising from the water or anything contained in it; and

clarify that this regime includes flows from the vicinity of blocked stormwater infrastructure.

The bill extends this regime to local councils in relation to flows of water from their stormwater infrastructure, or infrastructure identified in a local council water management scheme. At present, local councils are subject to the strict liability regime of section 16 in the Water Act 1989. The panel advised that the liability of councils with respect to flows of water from stormwater or water management scheme infrastructure should not be different from that of water corporations and catchment management authorities.

The bill proposes that land-holders may be compensated for damage caused to their land by water corporations and catchment management authorities that enter their land to carry out work. This provision is based on section 155 of the Water Act 1989.

Statement under section 85(5) of the Constitution Act 1975

Mr WALSH — I make the following statement under section 85 of the Constitution Act 1975 outlining the reasons why it is the intention of clause 726(8) of the bill to alter or vary section 85 of the Constitution Act 1975.

Clause 726(1) states that the Victorian Civil and Administrative Tribunal (VCAT) has jurisdiction in relation to all causes of action (other than any claim for damages for personal injury) arising under section 716, 718, 719, 722 or 723. Clause 726(8) states that such a proceeding must not be brought otherwise than before VCAT. As stated in clause 876 of the bill, it is the intention of clause 726(8) to alter or vary section 85 of the Constitution Act 1975. The effect of this clause is to limit the jurisdiction of the Supreme Court.

These are statutory claims. Common-law actions in respect of any injury, damage or loss caused by water, with the exception of damage caused by the escape of water from a private dam, were expressly abrogated by the Water Act 1989. VCAT, or its predecessor the Administrative Appeals Tribunal (AAT), has had exclusive jurisdiction since 1989 as set out in section 19(10) of the Water Act 1989. Prior to the Water Act 1989 these common-law claims were made under the Drainage of Land Act 1975 to the AAT or its predecessors the Planning Appeals Board and the Drainage Tribunal. For close to 40 years exclusive jurisdiction has been vested in VCAT (and its predecessors).

These claims are highly technical and most commonly arise between farmers in rural Victoria or between water authorities and farmers in rural Victoria in relation to flows from an authority's works. Hydrological, hydrogeological and engineering evidence is often required. Claims need to be dealt with expeditiously as they often involve remedial conduct (to stop or limit the flow) in addition to resolving the question of liability. VCAT, with its experience in this area, is best placed to hear and determine these claims.

As a result it is the intention of clause 726(8) to alter or vary section 85 of the Constitution Act 1975.

Incorporated speech continues:

Powers to enter land

The bill sets out the powers of the minister and water corporations and catchment management authorities and

persons acting on their behalf to enter land they do not manage or control. The bill now provides greater protection for a person's property rights and privacy, and still allows the minister, water corporations and catchment management authorities to operate efficiently and effectively.

In the bill, the powers to enter land, like those in the Water Act 1989, are subject to limits and requirements according to whether the land is residential or non-residential, and according to the purpose for entering the land. Work carried out in an emergency will not be subject to these limits and requirements.

The bill imposes additional requirements on the minister, water corporations and catchment management authorities when entering private land to construct or install specified infrastructure. Specified infrastructure is defined as:

> water supply infrastructure — other than infrastructure that connects a serviced property to a water main of a water corporation; or
>
> a levee — other than a levee installed in response to an emergency and intended to be in place for no longer than six months; or
>
> drainage infrastructure — other than drainage infrastructure that is intended to be in place for no longer than two years; or
>
> a state monitoring station — other than one installed on Crown land; or
>
> infrastructure of any other kind prescribed in regulations for these purposes.

The bill requires that before entering land to construct or install specified infrastructure, the minister, a water corporation or a catchment management authority must first acquire or arrange with the landowner one of the following — an interest in the land such as an easement, an access agreement, or the landowner's agreement in writing to locate the infrastructure on their land. This change is designed to avoid the kind of conflict that occurred between landowners and government-owned entities during the construction of the north–south pipeline.

The bill also proposes that before the minister, water corporation or catchment management authority can enter land they do not manage or control to exercise a power or perform a function under the new act, they must meet the following requirements:

> obtain the informed consent of the occupier rather than just consent;
>
> to leave a notice about the work undertaken on land if the occupier is not present;
>
> all officers — including authorised water officers — entering land will need to carry identification; and
>
> only appropriately trained authorised water officers appointed by the minister, a water corporation or a catchment management authority will be able to inspect and investigate compliance with the new act or regulations.

The bill also modifies existing special arrangements for private individuals to gain access over another person's land for the construction or installation of their infrastructure by setting minimum standards for entering the other person's land to carry out work on the infrastructure to respect the land owner's property rights and to protect the right to privacy.

Compliance and enforcement

The bill provides for a contemporary compliance and enforcement regime. It reflects current government policy for compliance and enforcement regimes, and Victoria's commitment to the national framework for compliance and enforcement systems for water resource management.

The bill provides for a modern enforcement toolbox that includes:

> The ability to apply penalty infringement notices or on-the-spot fines to a broader range of offences. These are an alternative to the often time-consuming and costly pursuit of prosecution in court.
>
> The ability to issue remedial action notices, requiring a person to 'make good' a problem or repair damage their conduct has caused, where it poses a risk to public health and safety, or to the environment. The issue of a remedial action notice is subject to VCAT review.
>
> A moderate increase in penalties in line with current Victorian standards to reflect the seriousness of the offence and act as a suitable deterrent. The bill proposes higher maximum penalties for a corporate or business entity, but directs the court to consider that the ability of a small farm body corporate to pay the fine will be less than that of a larger corporation.

The bill limits the circumstances in which the director of a company can be found liable for an offence that the company has committed, in line with model provisions agreed to under the Council of Australian Governments director's liability reforms.

General provisions

The bill contains a number of general provisions. These include:

> common provisions for the establishment of expert panels and advisory committees;
>
> a consolidated list of decisions reviewable by VCAT;
>
> arrangements by which the minister may delegate their roles and responsibilities;
>
> how exemptions to certain provision can be made;
>
> the content matters for regulations;
>
> provisions about the continuation of the Victorian water register;
>
> savings and transitional provisions to move from the current legislative scheme to the new one; and
>
> consequential amendments to other acts.

Conclusion

This bill retains the best of the Water Act 1989 and Water Industry Act 1994 and provides clear direction to the water sector about the importance of making the best use of all sources of water. This bill is much more coherent, consistent, and simpler to use and understand than the current legislation. These qualities will serve Victoria well in the challenge to help a rapidly growing urban population be more self-sufficient, strengthen the state's capacity to produce food and fibre, and protect and improve the health of waterways.

I commend the bill to the house.

Debate adjourned on motion of Mr FOLEY (Albert Park).

Debate adjourned until Thursday, 24 July.

CRIMINAL ORGANISATIONS CONTROL AND OTHER ACTS AMENDMENT 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 Criminal Organisations Control and Other Acts Amendment Bill 2014.

In my opinion, the Criminal Organisations Control and Other Acts Amendment 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 contains a range of reforms to Victoria's justice system, including amendments to:

the Confiscation Act 1997 to improve the operation of the existing civil forfeiture regime and to implement a serious drug offender forfeiture regime;

the Criminal Organisations Control Act 2012 to modify the procedure for seeking a declaration or control order, ensure that members cannot escape the ambit of the legislation by joining other organisations, and provide that parties will generally bear their own costs in proceedings under that act;

the Firearms Act 1996 and Major Crime (Investigative Powers) Act 2004 to improve the effectiveness of those schemes and also declarations and control orders;

the Criminal Procedure Act 2009 to vary the test applied by the courts when determining whether to grant leave to cross-examine a witness at a committal hearing, and to limit cross-examination during committal hearings to questions related to those issues for which leave has been granted;

the Crimes (Mental Impairment and Unfitness to be Tried) Act 1997 (CMIA) to provide the Children's Court with jurisdiction to hear cases involving fitness to stand trial or the defence of mental impairment; and

the Major Crime (Investigative Powers) Act 2004 to improve the operation of the act by ensuring that persons arrested for seeking to avoid a witness summons may be discharged from custody on bail as if the person had been accused of an offence, clarifying the chief examiner's coercive examination powers, permitting the use of evidence obtained during examinations, and providing for the release of restricted evidence to a person charged with an offence and the Office of Public Prosecutions; and

the Sentencing Act 1991 to allow applications for variation of an alcohol exclusion order to be heard and determined by the Magistrates Court for all orders made by the County Court, and with the direction of the Supreme Court for orders of that court.

The bill also includes several other miscellaneous amendments to the Criminal Procedure Act 2009, Evidence (Miscellaneous Provision) Act 1958, Mental Health Act 2014, Open Courts Act 2013, Personal Safety Intervention Orders Act 2010 (PSIO act), Summary Offences Act 1966, Victorian Institute of Forensic Medicine Act 1985, and Victoria Police Act 2013.

Human rights issues

Confiscation amendments

Serious drug offender forfeiture

The bill provides for the confiscation of all property of serious drug offenders. The following charter act rights are relevant to this new power:

the right to protection of families and children (section 17); and

the right not to have one's home unlawfully or arbitrarily interfered with (section 13) and the right not to be deprived of property other than in accordance with law (section 20).

In my opinion, the bill does not limit the right to protection of families and children.

While the confiscation of property may affect families and the ability of a child's parents to provide for that child's needs, the bill establishes several safeguards to protect families and children who may otherwise be adversely affected by the regime.

The bill provides that an accused will be able to retain certain 'protected' property, such as ordinary household items, clothing, tools of trade and property used as transport (such as a motor vehicle) under a prescribed value. These items cannot be included in a restraining order, and so will not be subject to automatic forfeiture. This will limit any disruption to a family household arising from the restraint of property.

Existing protections in the Confiscation Act also apply to the serious drug offender forfeiture regime. An accused person may apply to the court for reasonable living and business expenses at any stage throughout the court proceedings,

which may include medical expenses, rental or mortgage payments or school fees (section 14 of the Confiscation Act). Section 26 of the Confiscation Act enables a court, when it makes a restraining order or at any later time, to make such orders in relation to the property to which the restraining order relates as it considers just. Orders can be made under both these powers to ensure that an accused person is able to provide or maintain a reasonable standard of living for his or her dependants.

In my opinion, the right in section 17 of the charter act does not protect the family home from forfeiture where it is reasonable to assume that it has been obtained using the proceeds of serious crime. Even so, the bill specifically mitigates the risk that family dependants will be left without a home as a result of forfeiture of their residence. After forfeiture, dependants are able to apply to the court for the payment of a prescribed amount of money from the sale of the property to secure alternative accommodation. The court has the discretion to order this payment if satisfied that the residence is not tainted property and the dependant does not have sufficient financial resources to purchase or rent alternative accommodation.

Additionally, if a court makes a restraining order, any person claiming an interest in the property other than the accused can apply for an exclusion order, which will exclude certain property from the operation of a serious drug offence restraining order, where the interest was not subject to the effective control of the accused.

These safeguards ensure that the rights of families and children set out in section 17 of the charter act are not limited by the bill.

I also consider that the serious drug offender forfeiture provisions in the bill do not limit the right not to be deprived of property other than in accordance with law (section 20) or the right not to have one's home unlawfully or arbitrarily interfered with (section 13(a)).

The forfeiture of property under the bill will only occur in accordance with the clear statutory procedures set out in the bill after a person has been convicted of a serious drug offence and declared by the court to be a serious drug offender. Consequently, any forfeiture will be in accordance with law.

Further, the new serious drug offender forfeiture regime is not arbitrary, but serves a clear purpose, namely to deprive serious drug offenders of their property in order to ensure that such offenders do not profit from their crimes, and to repay the community for any loss suffered by the commission of such offences.

The bill also contains important safeguards regarding the restraint and forfeiture of property, discussed above, which prevent any arbitrary interference with a person's home.

Civil forfeiture amendments

The changes to the civil forfeiture regime are minor. Only tainted property can be forfeited under this regime and the forfeiture of tainted property in accordance with law and a court order does not limit the rights in sections 13, 17 and 20 of the charter act.

Criminal organisations control amendments

Modified procedure for seeking declarations and control orders

The statement of compatibility for the Criminal Organisations Control Act outlined how control orders may impose restrictions upon several charter act rights including freedom of expression (section 15), freedom of association (section 16(2)), right to privacy (section 13) and freedom of movement (section 12). In that statement, I explained any such limitations were either permitted by internal limits within the relevant rights or were justified under section 7(2) of the charter act. I remain of the view that the powers given to the court to impose conditions under a control order are compatible with the charter act under the amendments to the procedure for seeking declarations and control orders.

The bill modifies the procedure for seeking and obtaining declarations and control orders in two ways. The range of offences that may provide the basis for an application for a declaration will be broadened to include offences punishable by at least 5 years imprisonment (rather than the 10 years currently required). Further, those offences will no longer need to satisfy further criteria, such as involving substantial planning and organisation. The bill also creates two different categories of declarations against organisations: 'prohibitive declarations' and 'restrictive declarations'. The process for obtaining a prohibitive declaration will be the same as is currently provided for declarations against organisations and will retain the criminal standard of proof. However, the civil standard of proof will be applied to the tests for restrictive declarations and declarations against individuals (currently, the criminal standard of proof applies to the first limb in each test).

The amendments are intended to assist the scheme to achieve its stated purpose of preventing and disrupting the activities of organisations involved in serious criminal activity. Therefore, the amendments have at their core the protection of rights, including the right to life and the protection of families and children. These are important objectives that help justify any limitations to charter act rights that may be imposed by the making of a control order.

Appropriately strong tests must still be satisfied before the Supreme Court may make a declaration. The civil standard of proof is not insignificant, and applications for all categories of declarations must also be supported by acceptable and cogent evidence under section 19(4) of the Criminal Organisations Control Act.

Similarly, the new tests for making a control order following a restrictive declaration or in relation to declared individuals still require that the Supreme Court be satisfied a control order is necessary or desirable to restrict or to impose conditions on the activities of the organisation or individual in order to end, prevent or reduce a serious threat to public safety and order. The Supreme Court also retains a broad discretion as to whether to make a control order even where the test is satisfied (a discretion that also applies to the making of declarations).

Further, the most serious conditions that may be imposed on an organisation will only be available where a prohibitive declaration applies. Consequently, control orders which prohibit an organisation from continuing to operate, carry on business or take on new members may only be made where a

prohibitive declaration has been made using the beyond reasonable doubt standard of proof. Any conditions may only be imposed where the court considers such a condition is appropriate.

Lowering the standard of proof for the making of restrictive declarations does not limit the right to a fair hearing in section 24 of the charter act. Applications for declarations are civil in nature. The amendments merely apply the standard of proof that would ordinarily apply in civil proceedings.

Amendments preventing the avoidance of declarations and control orders

The bill provides an alternative test for making a declaration against an organisation where any two or more of its members are also members, former members or prospective members of an organisation to which a control order applies, or who themselves are personally subject to an individual control order. The same issues described in relation to the simplified procedure for making declarations and control orders also arise here. I consider that the powers given to the court to impose conditions under a control order following a declaration made under this new test are permitted by internal limits within the rights or are justified under section 7(2) of the charter act.

These amendments are also justified by the fact that they are required to ensure the act operates as intended. Experience in other Australian jurisdictions suggests that members of organisations may seek to avoid declarations and control orders by joining other similar organisations. This provision ensures that those organisations (and relevant members) may be efficiently and effectively brought within the scheme.

Where the new test is applied, the court will already have been satisfied of the involvement of the persons in question in serious criminal activity. The court will also need to be satisfied that the activities of the new organisation pose a serious threat to public safety and order.

The Criminal Organisations Control Act currently provides that the court may prohibit members, former members or prospective members from participating in the activities of the organisation. It would be open to the court to limit such a condition to just current members or just former members. The bill ensures that in such instances a person who was a member on the day of the initial application but who has since ceased to be a member is considered both a member and a former member for the purposes of that condition. This will ensure a person cannot avoid the condition by quitting the organisation once the application for a declaration is known.

Amendments to the Firearms Act and Major Crime (Investigative Powers) Act

The Major Crime (Investigative Powers) Act currently provides that an application for a coercive powers order may be based on any offence that:

(a) is punishable by 10 years imprisonment or more;

(b) involves two or more offenders;

(c) involves substantial planning and organisation;

(d) forms part of systemic and continuing criminal activity; and

(e) has as a purpose the obtaining of profit, gain, power or influence or of sexual gratification where the victim is a child.

The bill provides that an offence that satisfies (a) and (b) where at least two of the offenders involved are declared individuals or declared organisation members, does not also need to have the characteristics in (c), (d) and (e).

I do not consider that this revised definition of 'organised crime offence' limits the right of a person not to be compelled to testify against himself or herself under section 25(2)(k) of the charter act. The purpose of the latter three characteristics is to limit the coercive powers order scheme to organised crime. This becomes redundant where the suspected offenders include persons who the Supreme Court has already determined, in making a declaration or control order, are involved in organised crime.

The bill also amends the Firearms Act to ensure that any person who is a declared individual or the subject of an individual control order is prohibited from holding a firearms licence, and that other declared organisation members are presumed not to be a fit and proper person for holding a firearms licence. These amendments limit the right to a fair hearing by affecting a person's ability to challenge a decision to cancel, or refuse to grant, a firearms licence.

However, that limitation is reasonably justified when balanced with the protection of other rights including the right to life and the protection of families and children. The Supreme Court will have already found that declared individuals and persons subject to individual control orders are engaged in serious criminal activity. Public safety and order necessitates that they be precluded from holding firearms licences. Similarly, it is appropriate to presume that members of an organisation found to have been engaged, or used, in serious criminal activity and to pose a serious threat to public safety and order should also not hold firearms licences. Nevertheless, given that persons in this latter category have not personally been found to have engaged in serious criminal activity, the bill appropriately affords them the ability to demonstrate that they are a fit and proper person to hold a firearms licence.

Criminal procedure amendments

The bill amends the requirements of the Criminal Procedure Act where an accused seeks leave to cross-examine a witness at a committal hearing. Currently, under section 124 of the Criminal Procedure Act, a witness cannot be cross-examined at a committal hearing unless a magistrate grants leave to do so. Section 124 sets out different tests for the granting of leave, depending on whether the informant consents. If the informant consents to the accused cross-examining a witness, the Magistrates Court must grant leave unless the court considers that it is inappropriate to do so. If the informant does not consent, the court must not grant leave unless satisfied that:

(a) the accused has identified an issue to which the proposed questioning relates and has provided a reason why the evidence of the witness is relevant to that issue; and

(b) cross-examination of the witness on that issue is justified.

The bill amends section 124 so that the latter test will apply to all applications for leave to cross-examine a witness at a committal hearing, whether or not the informant consents. In addition, the amendments will limit the cross-examination of witnesses at a committal hearing to questions that are relevant to an issue for which leave has been granted.

The following charter act rights are relevant to these provisions:

> the right of a person charged with a criminal offence to have the charge decided by a competent, independent and impartial court or tribunal after a fair and public hearing (section 24(1)); and
>
> the right of a person to examine, or have examined, witnesses against him or her, unless otherwise provided for by law (section 25(2)(g)).

However, nothing in the bill limits the rights set out in sections 24(1) and 25(2)(g) of the charter act. Committal proceedings involve a preliminary examination to assess whether the accused should be committed for trial. Importantly, criminal charges are not finally determined at a committal proceeding, and the bill does not alter the accused's ability to question and cross-examine witnesses at a trial. The bill also does not prevent an accused from cross-examining witnesses during a committal hearing where the magistrate is satisfied that the accused's proposed questioning is both relevant and justified having regard to the purposes of a committal proceeding (which includes ensuring a fair trial). The new provisions are designed to ensure that any questioning of witnesses is relevant and justified.

Mental impairment and unfitness to be tried amendments

Jurisdiction of the Children's Court to determine whether a child is fit to stand trial

The bill confers jurisdiction on the Children's Court to determine whether a child is fit to stand trial. The reform will promote the charter act right of accused children to be brought to trial as quickly as possible (section 23(2)).

Currently, fitness to stand trial is determined by the County Court, which involves a lengthy and complex process including two jury hearings. The time frames set out in the bill for determining fitness to plead are shorter than those currently applicable in the County Court, so the majority of cases involving children where fitness to plead issues are raised will be dealt with more quickly. This will ensure that accused children will be brought to trial as quickly as possible as set out in section 23(2) of the charter act.

Procedures for children with mental impairment

The bill also contains special procedures and requirements which are tailored to the needs of children with mental impairment. The bill provides for the Children's Court to declare a child liable to supervision in certain circumstances, and to make custodial or non-custodial supervision orders. If a child is not declared liable to supervision, he or she must be released unconditionally. In order to promote the rehabilitation of children, when considering whether to declare a child liable to supervision or release the child unconditionally the court is required to consider whether the child is receiving appropriate treatment or support for the child's mental health or disability.

These requirements promote the charter act right of a child charged with a criminal offence to a procedure that takes account of his or her age and the desirability of promoting the child's rehabilitation (section 25(3)). The Children's Court must not make an order detaining a child in custody under the bill unless it is satisfied that there is no practicable alternative in the circumstances. The Children's Court must not declare a child liable to supervision unless the court considers that the declaration is necessary in all the circumstances, and must not make a custodial supervision order unless it is required for the protection of the child or the community. Finally, the maximum duration of a supervision order under the bill is 24 months for children aged over 15 years and 12 months for children aged between 10 and 15 years.

Several charter act rights are also relevant to the provisions around the powers afforded to the Children's Court in respect of children with a mental impairment, including:

> the right to liberty and security (section 21);
>
> the right of persons deprived of liberty to be treated with humanity and respect (section 22);
>
> the right of a child who has been convicted of an offence to be treated in a way that is appropriate for the child's age (section 23).

However, the bill does not limit the right set out in section 21 of the charter act because no child will be subject to arbitrary detention, and the bill establishes a clear statutory framework for detention containing special requirements and appeal rights.

The Children's Court may only impose custodial and non-custodial supervision orders on children, or order that a child be detained in a youth justice centre in the absence of a formal finding of guilt where the child is found to have committed the offence charged (but is not fit to stand trial, or is not guilty due to mental impairment). A child found not to have committed the offence charged, or an alternative, will not be subject to any order.

Orders made in relation to a child in a CMIA proceeding, or subject to a CMIA supervision order, will be the least restrictive of liberty possible to protect the community or the child from any likely danger because of the child's mental condition. The bill contains safeguards to ensure children are only placed on custodial supervision orders if they pose a danger to the community. Further, the bill provides for less restrictive means — non-custodial supervision — to be used to achieve the purpose if it is possible to do so.

I also consider that any limits to section 22(1) of the charter act are reasonable and justified. As already noted, the bill will allow the Children's Court to make custodial supervision orders in relation to children who have not been formally convicted of an offence. Where custodial orders are made, the child will be detained in a youth justice centre operated by the Department of Human Services (DHS), which are currently the only secure facilities suitable for children who are a danger to others due to criminal offending. The result is that children subject to custodial supervision orders will be detained with children convicted and sentenced for criminal offences.

The purpose of these orders is to ensure that a child involved in offending conduct who has seriously impaired mental functioning can be prevented from offending and receive any

necessary treatment or support, even if this requires his or her detention. An additional purpose of custodial supervision orders is to protect the child and the community.

These measures involve the least restrictive means available to achieve their purpose and, in any case, serve a legitimate end. The Children's Court must not make an order detaining a child in custody unless it is satisfied that there is no practicable alternative and it must not declare a child liable to supervision unless satisfied that the declaration is necessary in all the circumstances. Prior to making a supervision order, the Children's Court will be required to obtain a certificate from the secretary, DHS or the Secretary of the Department of Health outlining the facilities and services available for the custody, care or treatment of the person. If appropriate treatment cannot be provided in a youth justice centre, the amendments provide for transfer to a mental health facility for acute care.

While section 23(3) of the charter act may not be strictly relevant to this bill because children who are subject to a supervision order will not be convicted of an offence, I nevertheless consider that right would not otherwise be limited. For the reasons given above, the bill ensures that children will be treated in a way that is appropriate for their age.

Major crime (investigative powers) amendments

Concurrent proceedings

The bill amends the Major Crime (Investigative Powers) Act to confirm that the chief examiner may, pursuant to a coercive powers order, examine a person who has been or may be charged with an offence on the subject matter of the offence. This will potentially result in persons being examined in a process that runs prior to, or concurrently with, a separate criminal proceeding. The right of a person charged with a criminal offence to have the charge decided by a competent, independent and impartial court or tribunal after a fair and public hearing (section 24(1)) is, therefore, relevant.

While the answers a person provides to the chief examiner will not be able to be directly used against the person in evidence under section 39 of the Major Crime (Investigative Powers) Act, any other evidence obtained as a consequence of an answer given will be admissible in a criminal proceeding. A majority of the High Court recently held that concurrent coercive questioning and criminal proceedings fundamentally alters the accusatorial system of criminal justice.

Although the effect of these clauses is to require a person to answer questions in a concurrent proceeding following being charged with an offence, and to abrogate a person's privilege against self-incrimination during the coercive questioning in relation to a matter relevant to a pending or imminent criminal charge, I am nevertheless of the view that the amendments regarding concurrent proceedings are compatible with the right to a fair hearing.

The Major Crime (Investigative Powers) Act contains processes and safeguards to ensure that the powers provided under that act are exercised in a fair manner, subject to the supervision of the Supreme Court. A coercive examination may only be undertaken by the chief examiner pursuant to a coercive powers order, which must be made by the Supreme Court. The court also has power to impose conditions on the use of coercive powers under the order. When considering whether to make a coercive powers order, the court's discretion will be exercised in accordance with the judicial processes and procedures which govern the court, thereby diminishing the possibility of injustice in any subsequent examination. Section 8(1)(b)(ii) of the act also provides that the Supreme Court must have regard to the public interest and to the impact of the use of coercive powers on the rights of members of the community when exercising its discretion to make a coercive powers order, and determining the conditions attaching to the use of coercive powers.

Further, the Major Crime (Investigative Powers) Act contains a number of express safeguards to protect against any prejudice to the hearing of any criminal proceedings. Section 29(3) of the act requires the chief examiner to take all reasonable steps to ensure that the conduct of the examination does not prejudice those proceedings, which may include conducting the examination in private. In addition, section 43 of the act requires the chief examiner to give a direction prohibiting the publication or communication of evidence given or document produced in an examination if the failure to do so might prejudice the fair trial of a person who has been, or may be, charged with an offence.

The court hearing the related criminal charge will retain its inherent power to control its own processes and take such steps as are necessary to ensure a fair hearing where any exercise of power under the act may prejudice the fair trial of the accused, including, for example, staying a proceeding in a case where practical unfairness becomes manifest.

Nothing in these amendments therefore limits the ability of the court hearing related criminal proceedings to conduct the trial in a fair manner.

Release of evidence and documents

Section 43 of the Major Crime (Investigative Powers) Act restricts the publication and communication of evidence and documents obtained by the chief examiner. New section 43A safeguards the right to a fair hearing (section 24(1)) by empowering the Supreme Court to order the release of restricted evidence to a person charged with an offence if it is in the interests of justice to do so. Further, while new section 43B permits the release of restricted information, this may only occur upon the order of the Supreme Court, which may exercise its discretion to decline release in order to prevent the misuse of its processes or prejudice to the fair hearing of a person.

Defence of reasonable excuse

The bill inserts a statutory 'reasonable excuse' defence for the offence of failing or refusing to answer a question in an examination. Although this clause places an evidential burden on the accused, it does not limit the right to be presumed innocent in section 25(1) of the charter act because the prosecution retains the legal burden of establishing the elements of the offence beyond reasonable doubt. Further, the creation of this defence is beneficial to a person charged under section 37(2).

Contempt powers

The bill repeals the sunset clause with respect to the provisions for contempt of the chief examiner. These provisions include powers of the chief examiner to charge a person with contempt and to issue a warrant to arrest the

person. A person who is arrested must be brought before the Supreme Court forthwith and may be detained in police custody in the meantime. The chief examiner is also empowered to direct that an arrested person be detained in a prison or a police jail for the purpose of ensuring his or her appearance before the Supreme Court. Express safeguards are provided where it is not practicable for the person to be immediately brought before the Supreme Court (section 49(8) of the Major Crime (Investigative Powers) Act).

Although the provisions authorise the detention of persons, I consider that they are compatible with the right to liberty in section 21 of the charter act. The detention can only occur where a person is charged with contempt and is subject to a range of safeguards that give effect to the protections in the charter act.

Removal of derivative use immunity

The bill amends the Major Crime (Investigative Powers) Act to provide that section 39 does not prevent evidence obtained as a direct or indirect consequence of an answer given in an examination or document or other thing produced at an examination or in answer to a witness summons being admitted in a criminal proceeding or other proceeding for the imposition of a penalty. Any such evidence will be admissible in the proceeding in accordance with the applicable rules of evidence.

As the second-reading speech introducing the Major Crime (Investigative Powers) Act made clear, the legislative intention at the time of enactment was that the immunity set out in section 39 of the act would not extend to information obtained, or evidence derived, as a result of answers provided at an examination. However, a derivative use immunity was subsequently 'read' into the act by the Supreme Court in *In the matter of Major Crimes (Investigative Powers) Act 2004* (2009) 24 VR 415, applying section 32 of the charter act. In that case, the court found that the right to fair hearing and the right to protection against self-incrimination in the charter act included a right to protection against the derivative use of compelled testimony.

The amendments authorising the admission of evidence obtained as a consequence of an answer given in an examination therefore limit the right of a person not to be compelled to testify against himself or herself or to confess guilt (section 25(2)(k) of the charter act) as interpreted at first instance by the Supreme Court, and potentially interferes with the right to a fair hearing (section 24(1)). Nevertheless, for the reasons that follow I consider that the ability to use evidence derived from compulsory questioning under the act is a reasonable and justified limit on the privilege against self-incrimination and is therefore compatible with the right to a fair hearing.

The central aspect of the privilege against self-incrimination is protected by the direct use immunity provided in section 39 of the act and is not affected by the bill. Further, in *In the matter of Major Crimes (Investigative Powers) Act 2004*, the Supreme Court also recognised that the derivative use of answers given in an examination could be justified under the charter act.

There are significant difficulties in detecting and prosecuting organised crime offences. Criminal organisations are well known to engage in serious violence against persons who provide information to police. They use that reputation to ensure that even persons who are not involved in the offences do not assist police with their investigation. This code of silence can operate both within the criminal organisation and outside it. The Major Crime (Investigative Powers) Act aims to assist in the detection and prosecution of such offences and thereby prevent further offences.

The inability to use any evidence derived from answers, against the person who gave them, significantly undermines the effectiveness of the coercive powers scheme in achieving that aim. Because of the code of silence and culture of fear, the chief examiner may examine a person without being aware of the level of criminal activity in which that person is involved or which the person knows about. By providing answers that lead to the discovery of evidence against them, that person can be effectively immunised from prosecution. This undermines the ability to prosecute persons responsible for serious organised criminal offences, which is an important purpose of the act. In addition, the risk of a person immunising themselves from prosecution adversely affects the way in which Victoria Police and the chief examiner use the powers under the act, reducing the scope and value of the chief examiner's powers.

One of the concerns that the privilege against self-incrimination protects against is the risk of unreliable testimony obtained through improper questioning techniques, including torture. These concerns do not arise from the use of evidence derived from compulsory questioning by the chief examiner.

I consider that ensuring that derivative evidence is able to be used is necessary to enable serious organised crime to be investigated and prosecuted. While it may limit the privilege against self-incrimination, the reading in of a derivative use immunity significantly undermines the important purposes of the act and there are no other less restrictive means reasonably available.

I also consider that the admission of derivative evidence obtained as a consequence of answers given under the act would 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 a trial unfair.

Application of Bail Act to persons arrested under the Major Crime (Investigative Powers) Act

The Major Crime (Investigative Powers) Act empowers the Supreme Court to issue an arrest warrant for a person served with a witness summons and who the court considers may abscond. The bill amends these powers to provide that when the person is arrested, he or she may be discharged from custody on bail in accordance with the Bail Act 1977 as if the person had been accused of an offence. This enlivens the provisions of the Bail Act, which provides that when granting bail, a court may order the surrender of the accused's passport, which may limit the person's ability to enter and leave Victoria.

The charter act right of every person lawfully within Victoria to move freely within Victoria and to enter and leave it and has the freedom to choose where to live (section 12). However, in my view, the scope of the right to freedom of movement is subject to a range of limits implicit in a free and democratic society based on the rule of law. One of these implicit limits on the freedom of movement is being required

to obey a witness summons issued by the chief examiner under the act. Requiring the surrender of the passport of a person served with a witness summons in order to prevent that person from absconding to avoid questioning by the chief examiner is a reasonable limit on that right, and is directed to the legitimate end of ensuring that a witness summons served by the chief examiner is not evaded by the person absconding.

Miscellaneous amendments

Mental Health Act amendments

The bill amends section 351 of the Mental Health Act 2014 to provide that a protective services officer (PSO) may apprehend a person if the PSO is satisfied that the person appears to have mental illness and because of the person's apparent mental illness, the person needs to be apprehended to prevent serious and imminent harm to the person or to another person.

The right to liberty and security of a person as described in section 21 of the charter act is relevant to these amendments. Of particular relevance is the section 21(2) right not to be 'arbitrarily' arrested or detained. However, for the reasons that follow I consider that the power to detain is not 'arbitrary' and is, therefore, compatible with section 21 of the charter act.

A PSO must, as soon as practicable after apprehending the person, hand the person into the custody of a police officer or arrange for the person to be taken to a specified health-related professional listed in the Mental Health Act. This is an existing power that applies to police officers. PSOs have also exercised equivalent powers under section 10 of the Mental Health Act 1986 since 2012 for a legitimate public purpose. PSOs only have the power to exercise the power while on duty at a designated place, which is currently defined in regulations by reference to railway premises. The power is for the purpose of protecting the safety of both the person themselves and others in the community. The PSO is required to hand a detained person to a police officer or arrange for the person to be taken to a health-related practitioner or a health service as soon as practicable after the person is detained.

Personal Safety Intervention Orders Act reforms

The bill introduces a new provision into the PSIO act providing that the registrar of the Magistrates Court must refuse to accept an application for a personal safety intervention order if satisfied that:

> the application is frivolous, vexatious, without substance, made in bad faith, has no reasonable prospect of success or is an abuse of process; or
>
> the matter would be more appropriately dealt with by mediation.

Although this provision may have the consequence that in certain cases, the court will not consider an application for a personal safety intervention order, in my opinion this does not limit the charter act right a party to a civil proceeding has to have the proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing (section 24).

Decisions in other jurisdictions have held that the right to a fair hearing includes a right of access to the courts. The Victorian Court of Appeal has held that to the extent that the fair hearing right in section 24 of the charter act does include a right of access to the courts, that right is not absolute but may be subject to reasonable restrictions aimed at achieving legitimate objectives.

In my opinion, this provision is directed to achieving legitimate objectives. It sets out two grounds on which the registrar must refuse to accept an application.

The first ground is aimed at preventing unmeritorious applications and minimising the cost to the community of consuming court time or resources in considering such applications. In my opinion, there is no fair hearing right of access to the courts to make frivolous, vexatious and unmeritorious applications.

The second ground is also where the matter would be more appropriately dealt with by mediation. It is a standard and uncontroversial feature of litigation that the parties are required to mediate to attempt to settle the matter. Where mediation is not successful, a person will be able to apply for a personal safety intervention order. The bill also contains safeguards to prevent inappropriate matters being sent to mediation. The registrar is required to have regard to guidelines issued by the Attorney-General in making his or her decision. A registrar will not be able to refuse the application if the application is made by a police officer on the applicant's behalf. Where mediation appears more appropriate, the court will facilitate contact by the Dispute Settlement Centre of Victoria to encourage mediation.

Further, if a registrar refuses to accept an application, the prospective applicant can apply for a review of this decision. The court will have the power to direct a registrar to accept the application.

In my opinion, requiring an appropriate matter to be referred to mediation before a court hearing can occur is not a limit on a fair hearing right of access, but even if it is, it is a justifiable limit.

Power of protective services officers to require name and address

The bill enables protective services officers (PSOs) to require a person being directed to move on to provide their name and address. The right to privacy set out in section 13 of the charter act is relevant to this power. However, in my view this provision is compatible with the right to privacy as it is lawful and not arbitrary. PSOs will only be able to utilise this power where they intend to direct a person to move on. This new power will enable police to keep track of when a person has been repeatedly moved on for the purposes of applying for a related exclusion order. It will also assist police in determining whether a person contravenes a move-on direction.

The use and disclosure of that information would be subject to the usual protections under the Information Privacy Act 2000.

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:

The Criminal Organisations Control and Other Acts Amendment Bill 2014 includes a range of important sets of reforms to Victoria's justice system. These reforms involve amendments to the Confiscation Act 1997; Criminal Organisations Control Act 2012; Criminal Procedure Act 2009; Crimes (Mental Impairment and Unfitness to be Tried) Act 1997; and Major Crime (Investigative Powers) Act 2004.

The bill also includes miscellaneous amendments to the Evidence (Miscellaneous Provisions) Act 1958, Firearms Act 1996, Fortification Removal Act 2013, Mental Health Act 2014, Open Courts Act 2013, Personal Safety Intervention Orders Act 2010, Sentencing Act 1991, Summary Offences Act 1966, Victoria Police Act 2013, and Victorian Institute of Forensic Medicine Act 1985.

Confiscation

The first set of reforms included in this bill is amendments to the Confiscation Act. The amendments will better enable law enforcement to target the profits generated by very serious drug offences. The bill also contains technical amendments to improve the operation of the existing civil forfeiture scheme contained in that act.

Confiscating the proceeds of criminal activity is one of the most effective methods of targeting and disrupting serious and organised crime. Many serious crimes, in particular the large-scale trafficking of drugs, are motivated purely by profit. In some cases, these profits are reinvested by criminals to pursue further criminal activity. The confiscation of these profits removes the incentive to commit these crimes and prevents their use in supporting further criminal activity.

The bill will establish a regime for the forfeiture of assets of persons declared by the court to be 'serious drug offenders'. The court will make such a declaration when convicting a person of one of several very serious drug offences, including the trafficking or the cultivation of a large commercial quantity of drugs. These offences are the most serious drug offences — punishable by up to life imprisonment — ensuring that serious drug declarations are only targeted at the most serious of offenders.

The effect of a serious drug declaration will be the mandatory forfeiture to the state of almost all of the offender's property. The offender and dependants will be able to retain household goods and clothing, and a modestly priced vehicle. Dependants of the offender will be able to seek relief from hardship caused by the forfeiture, to ensure they are not left homeless.

These laws strengthen existing provisions in the Confiscation Act that target the proceeds of criminals. While there are existing provisions in the Confiscation Act that allow for the confiscation of the assets of offenders, these provisions require the prosecution to prove a link between the offending and the assets. In the case of serious drug offenders, this link is often obscured by the use of sophisticated money-laundering techniques.

The bill contains safeguards to ensure that innocent third parties are not disadvantaged by the forfeiture of a serious drug offender's assets. Third parties with a legitimate interest in the drug offender's assets will be able to seek to have that interest excluded from forfeiture. Dependants will not be left homeless and will be able to retain a reasonably priced family home. More extravagant properties will be sold and a portion of the proceeds will be returned to the dependants to secure alternative accommodation.

These measures reflect the reality that a serious drug offender's lifestyle is funded entirely from the proceeds of crime, and ensure that serious drug offenders are not able to avoid confiscation laws by obscuring the origin of their wealth. The measures confirm that Victoria has a zero tolerance approach to drug trafficking and that offenders will not profit from this crime in Victoria.

The bill will also amend provisions in the Confiscation Act that deal with the civil forfeiture of the proceeds of crime. Civil forfeiture allows for the confiscation of property used in and derived from crime without a requirement that the person be convicted of a crime. While there is no need for the person to be convicted, the scheme requires proof of a connection between the property and the alleged crime.

The legislation currently requires the prosecution to allege a specific offence and prove that the property was derived from or used in that offence. This approach does not adequately address the common scenario where criminally obtained wealth is derived from a number of offences and it is impossible to show which wealth was derived from which offence.

The amendments contained in this bill will seek to address this by clarifying the language of the legislation so that civil forfeiture proceedings can be commenced on the basis that property was derived from one or more offences. It will still be necessary for the prosecution to prove the link between the offending and the property. These amendments will ensure that forfeiture action cannot be frustrated where criminal wealth has been derived from a pattern of offending.

The bill will also amend provisions in the Confiscation Act that allow persons to seek relief from the hardship caused by the forfeiture of property. Currently the Confiscation Act allows a person (such as a dependent spouse or child) who might suffer hardship due to the forfeiture of property to seek a payment out of the forfeited property to relieve such hardship. The amendments will clarify that in considering this question, the court should have regard to the level of undue hardship caused by forfeiture that is hardship above and beyond the ordinary hardship that can be expected to occur as a result of the forfeiture of assets. These amendments will ensure that the provisions operate as intended — that a person is not left destitute as a result of asset forfeiture, rather than restoring a person to the circumstances that existed prior to forfeiture.

The amendments to the Confiscation Act represent significant further improvements to Victoria's criminal assets confiscation regime to better target, prevent and deter serious and organised crime.

Criminal organisations control

The bill also amends the Criminal Organisations Control Act and other related acts. The amendments will add to the powers provided by the Criminal Organisations Control Act to further strengthen the capacity of Victoria Police to tackle criminal organisations, drawing on the experience of other jurisdictions and feedback from Victoria Police about how the scheme can most effectively prevent future criminal activity.

Criminal organisations, including outlaw motorcycle gangs, pose a significant threat to public safety and order in Victoria. The Criminal Organisations Control Act, which commenced on 13 March 2013, allows control orders to be made to curtail the activities of such organisations where they pose a threat to public safety.

The bill will broaden the range of criminal offences that can trigger the making of a declaration against an individual or an organisation. Currently the Criminal Organisations Control Act requires an offence be punishable by at least 10 years' imprisonment or specifically listed in the schedule to the act. The bill will lower this threshold to an offence punishable by five years' imprisonment, ensuring that violent offences such as common assault and affray are captured.

The Criminal Organisations Control Act also currently requires that offences that can trigger the making of a declaration must have several further characteristics, including that the offence involved substantial planning and organisation. These requirements will be removed so that it will be sufficient for the court to be satisfied that organisations, or their members, are engaging in, organising, facilitating or supporting such criminal activity.

The bill will also enable police to obtain orders imposing a range of restrictions on an organisation without needing to prove criminal activity beyond reasonable doubt. Proof on the balance of probabilities will be sufficient.

At present, Victoria Police must prove beyond reasonable doubt that an individual or organisation is involved in 'serious criminal activity' before any control order can be obtained. The criminal standard of proof is the standard applied in criminal prosecutions. It is a high standard, reflecting the severity of consequences that can follow from a criminal conviction. It is therefore appropriate that this standard apply where a control order is to be made that could result in an organisation being banned from continuing to operate. However, the bill will enable a range of other restrictions to be imposed on an organisation where a court is satisfied on the balance of probabilities that the organisation is engaged in relevant criminal activity.

It will often be the case that police have intelligence that an organisation is involved in serious criminal activity that poses a serious threat to public safety, but may not — or not yet — have obtained sufficient evidence that would satisfy a court to the criminal standard of proof. In these circumstances, it is appropriate that a restrictive declaration can be made that will enable a control order to impose a range of restrictions and limitations on an organisation in order to protect the public from future criminal activity.

The bill also applies a new test for when the court may make a control order following a restrictive declaration or in relation to a declared individual. Under the new tests, the Supreme Court will be able to make a control order where such a declaration is in place and:

> for organisations — it is necessary or desirable to restrict, or to impose conditions on, the activities of the organisation or its members, prospective members or former members in order to end, prevent or reduce a serious threat to public safety and order; or
>
> for individuals — it is necessary or desirable to restrict, or to impose conditions on, the activities of the individual in order to end, prevent or reduce a serious threat to public safety and order.

Experience in other jurisdictions has shown that organisations may seek to frustrate control orders by purporting to hand in their club colours or by 'patching over' to organisations with no criminal history in Australia. The bill includes measures to stop members of criminal organisations doing so.

Any person who is a member of an organisation at the time action is commenced against it will be unable to avoid a control order prohibiting members from participating in the activities of the organisation by simply quitting the organisation. This will ensure that the only way for members to avoid the operation of such a condition is by ceasing to be involved in the organisation.

The bill will also provide a simplified mechanism for police to seek a declaration against an organisation that accepts members from a declared organisation. This will ensure that members of a declared organisation cannot take advantage of organisations with no local criminal history, to avoid the operation of the control order scheme.

Stronger consequences will also flow immediately from the making of a declaration. The bill will amend the Firearms Act 1996 so that any individual made subject to an individual declaration or control order is prohibited from possessing a firearm. This is appropriate given that such a declaration or order would only be made on the basis that that individual is engaged in serious criminal activity.

The Firearms Act will also be amended to include a presumption that any member of a declared organisation is not a 'fit and proper' person for the purposes of that act. Any member of a declared organisation who wishes to hold a firearms licence must make submissions as to why he or she is a fit and proper person to hold such a licence.

These amendments will ensure that firearms can be immediately taken out of the hands of dangerous criminals and organisations.

The Major Crime (Investigative Powers) Act 2004 will be amended to ensure that the coercive powers available under that act can be used to investigate the criminal activities of declared organisations. Currently the process required to obtain a coercive powers order under that act duplicates substantially the process required to obtain a declaration under the Criminal Organisations Control Act. These amendments will eliminate this duplication to ensure that coercive powers can be more readily used against organisations found by a court to be engaged in serious criminal activity.

The bill will also introduce provisions into the Criminal Organisations Control Act that specify that parties to proceedings under the act will bear their own legal costs. The

court will retain a discretion to award costs against a party who brings a frivolous or vexatious application. The bill will also allow individuals and organisations to consent to the making of a declaration or a control order.

Criminal procedure

The third set of reforms in this bill involve amendments to the Criminal Procedure Act to further deliver on the government's election commitment to tackle delays and inefficiencies in the justice system.

The bill amends the Criminal Procedure Act to give the Magistrates Court greater flexibility and involvement in determining how a committal hearing should be conducted so that committal hearings can be listed and finalised more quickly. This will avoid court time being wasted on cross-examination that is not central to the issues in the case. The changes will also be beneficial to victims and witnesses of crime.

There are more than 1200 committal hearings in the Magistrates Court each year. One of the primary functions of a committal hearing is to give the parties the opportunity to clarify and explore the issues in dispute by cross-examining important witnesses. While committal hearings can add value to the justice process, an assessment of the depositions from committal hearings shows that a significant amount of the cross-examination during a committal hearing is not necessary to ensure the accused receives a fair trial. Sometimes cross-examination involves witnesses simply being asked about whether each sentence in their statement is correct, or counsel using the committal hearing as a dry run for the cross-examination that will occur at trial.

Committal hearings can be expensive and resource-intensive and add between four to six months delay in the completion of the process (from charge to finalisation). The process of giving evidence can also be stressful for witnesses and, especially, victims. The bill makes key amendments to the Criminal Procedure Act in order to address these problems and make committal hearings more efficient.

Currently, where the informant or the prosecution consents to the cross-examination of a witness, the magistrate must grant leave unless the court considers it inappropriate to do so. The bill introduces a more rigorous test for determining when leave to cross-examine a witness at a committal hearing should be granted.

Clause 4 of the bill provides that the informant or the prosecution's consent or opposition to the witness's cross-examination is no longer the primary consideration in determining leave. Instead, the bill expands the current test where the informant or the prosecution opposes leave, to apply to all witnesses that an accused wishes to cross-examine at a committal hearing. That is, the magistrate will have to be satisfied in all applications for leave that:

> the accused has identified an issue that he or she wants to question the witness about;
>
> the accused has given a reason why the evidence of the witness is relevant to that issue; and
>
> cross-examining the witness about that issue is justified.

By applying this test to all witnesses the accused seeks to cross-examine, the magistrate will be able to ensure that witnesses will only be required for cross-examination at a committal hearing where cross-examination of the witness is justified.

The bill also introduces a requirement that the accused must seek leave for each issue that the accused proposes to cross-examine the witness about, and the magistrate must identify each issue for which leave is granted: for example, identification evidence, self-defence or whether a person was in possession of a drug. Currently, an accused only needs to seek leave to cross-examine a witness in relation to one issue and once leave is granted, cross-examination at the committal hearing is at large. This often results in lengthy cross-examination of witnesses on issues that are not in dispute. This bill makes it clear that in order to ask questions of a witness about an issue at a committal hearing, the accused must have leave to ask questions about that issue. If not, the court must disallow the questions.

The accused will be able to apply for leave to cross-examine a witness on issues both at the committal mention, and at the committal hearing. There will be occasions where an issue only becomes apparent during the committal hearing. The new provision in clause 6 provides that the accused can seek leave to cross-examine a witness on a different issue during the committal hearing. This provides the accused and the court with enough flexibility to ensure a fair and just outcome for the accused whenever the issue arises, while limiting unnecessary cross-examination.

The bill also makes it clear that the credibility rule from the Evidence Act 2008 applies to committal proceedings. This means that the court must not grant leave to cross-examine a witness about his or her credibility unless the accused can satisfy the court that cross-examination on this issue could substantially affect the assessment of the credibility of the witness. Currently, there is significant cross-examination about the credibility of the witness, which does not appear to satisfy this test.

The amendments to the Criminal Procedure Act also address the cumbersome procedural requirements for the traffic camera office when serving summons and paperwork on accused who elect to have their offences heard in court. The bill introduces a definition for 'traffic camera offence' in clause 7, and allows service of documents for these offences to be effected by ordinary service, and to a post office box nominated by the accused.

Mental impairment and unfitness to be tried

This bill also amends the Crimes (Mental Impairment and Unfitness to be Tried) Act (CMIA) to enable the Children's Court to hear and determine children's cases under that act.

The CMIA applies to people charged with criminal offences who may be unfit to stand trial, or who were mentally impaired at the time the offence was allegedly committed. The CMIA applies to adults and children, but makes no particular provision for children.

Prior to 2010, the Children's Court assumed an inherent jurisdiction to determine cases where a child's fitness to plead was in issue. The basis of the assumption was that the legislature could not have intended the lengthy and complex County Court procedure in the CMIA to apply to children. However, after Justice Lasry's decision in *CL (a minor) v. Tim Lee & Ors* in November 2010 that the Children's Court

did not have jurisdiction, all children's cases raising fitness to plead have been committed to the County Court.

The consequence of the CL decision is significant delay in resolution of children's matters, and significant cost in comparison to determination of matters in the Children's Court. The special hearing procedures required under the CMIA require empanelment of two separate juries in the County Court, and generally take a year or more to resolve.

To address these issues, the bill will amend the CMIA to:

enable the Children's Court to determine fitness to plead under the CMIA in relation to all indictable offences that may be heard in the Children's Court;

require offences outside the jurisdiction of the Children's Court (which are offences resulting in death), or offences that the Children's Court considers it cannot adequately deal with, to continue to be committed to the higher courts for fitness to be determined;

require the Children's Court president to determine cases involving the most serious offending (offending with a maximum penalty of 25 years) when fitness to plead or the mental impairment defence are raised, while permitting Children's Court magistrates to determine all other cases, and the president to nominate a magistrate to determine a serious matter if he is unavailable;

maintain the Children's Court's jurisdiction over a 'child', so a person aged under 18 years of age at the time of the alleged commission of the offence will be dealt with in that court (unless the person is 19 years or above when a proceeding for the offence is commenced;

allow the Children's Court to declare a child liable to supervision under the CMIA if required for the protection of the child or the community, and enable the Children's Court to impose custodial and non-custodial supervision orders;

limit Children's Court supervision orders to up to six months duration, with extensions of up to a maximum of two years for children aged 15 and over, and up to a maximum of one year for children aged under 15 to ensure regular supervision of the supervision order by the court (given the major review provisions in the CMIA will not apply to orders made by the Children's Court);

require orders made in the Children's Court to be transferred to the County Court for review and supervision when a child reaches 19 years of age, which is the criminal jurisdictional limit of the Children's Court; and

require children on custodial supervision orders to be held in youth justice centres, supervised by the Department of Human Services (DHS).

In essence, the bill applies the provisions of the CMIA to hearings in the Children's Court, appropriately modified for that jurisdiction. There is strong support for these amendments amongst courts and criminal justice system agencies.

The CMIA currently allows supervision orders to be made for children — both custodial and non-custodial. However, the CMIA requires a person on a custodial order to be held in an 'appropriate place' as defined in the CMIA. These are mental health facilities, such as Thomas Embling, and secure residential facilities for people with intellectual disabilities.

The amendments will allow children to be detained under custodial supervision orders in secure facilities provided by the Secretary of the Department of Human Services (DHS).

In relation to both remand and any order for custodial supervision, the Children's Court will be required to obtain a certificate as to availability of appropriate services for the child from the Department of Human Services or Department of Health. If appropriate treatment cannot be provided in a youth justice centre, the amendments provide for transfer to a mental health facility for acute care.

The express intention of the amendments is that children will only be subject to custodial supervision if necessary, and only for as long as it is necessary. The bill provides for periodic review of supervision orders by the Children's Court.

These proposed amendments to the CMIA are to be implemented as soon as possible so that children's cases within the jurisdiction of the Children's Court will not have to be committed to the County Court due only to issues of fitness to plead or mental impairment. On 15 August 2012, I asked the Victorian Law Reform Commission (VLRC) to review the functioning of the CMIA. Subsequently, on 18 September 2013, the terms of reference were extended to the consideration of whether the Children's Court should be permitted to deal with fitness to plead issues. The VLRC has been asked to report no later than 30 June 2014.

After the VLRC reports, the government will consider possible improvements to the CMIA as a whole including whether any further changes are required to the provision relating to children.

The bill also includes an amendment to the Working with Children Act 2005 to ensure that findings of guilt, for the purposes of that act, include findings of not guilty due to insanity. The CMIA replaced the common law defence of insanity with a statutory defence of mental impairment. The CMIA provides for a verdict of not guilty on account of insanity in relation to a person charged with an offence committed before the commencement day, but sentenced after commencement, to be taken to be a finding of not guilty because of mental impairment under the CMIA. However, this provision does not apply to findings of insanity returned before commencement of the CMIA.

The effect of this is that old findings of not guilty by reason of insanity may not be able to be considered as findings of guilt for the purposes of licensing or accreditation schemes. This was identified as a concern for working-with-children checks. The bill ensures this is no longer the case.

Major crime investigative powers

Part 6 of the bill contains technical amendments to the Major Crime (Investigative Powers) Act 2004 that will improve the operation and effectiveness of the coercive powers scheme for investigating organised crime offences.

The bill amends the purposes of the Major Crime (Investigative Powers) Act to make it clear that the use of coercive powers also extends to the prosecution of organised crime offences, not just their investigation. This reflects more

clearly the functions and purposes of the Office of the Chief Examiner and the operation of the coercive examination scheme. It is also consistent with similar legislative statements in commonwealth and interstate schemes.

The bill also amends the criteria the Supreme Court must consider when giving notices under section 20 of the Major Crime (Investigative Powers) Act. Section 20 provides for the giving of a written notice to a person subject to a witness summons or an order directed to a person in custody to give evidence that the summons or order is confidential and that it is an offence to communicate certain matters to any person. The provision protects witnesses who have been summonsed. However, under the new amendments, the effect on witness' reputation will no longer be a consideration for the court in determining when to make such a notice.

The amendments also clarify the operation of the notice provision. The making of a notice will be mandatory under section 20(2) in two circumstances. First, a notice must be given where the failure to do so would reasonably be expected to prejudice the safety of a person, the fair trial of a person who has been or may be charged with an offence, or the effectiveness of an investigation of the organised crime offence in relation to which the summons was issued or the order was made. A notice or order must also be issued where the failure to do so would otherwise be contrary to the public interest. The court will also have a discretionary power to make a notice or order where the failure to do so might prejudice the effectiveness of an investigation of the organised crime offence in relation to which the summons was issued or the order was made or might otherwise be contrary to the public interest.

The bill also makes it expressly clear that the chief examiner can commence, or continue to conduct, an examination of a person even if court or tribunal proceedings (whether civil or criminal) that relate to the same subject matter of the examination are already on foot or are subsequently commenced. This amendment responds to the recent decision of the High Court in *X7 v. Australian Crime Commission* [2013] HCA 29. The court decided, in the context of considering legislation governing the Australian Crime Commission, that the coercive examination of a person charged with an offence cannot occur where the examination concerns the subject matter of the offence charged, without express language or by necessary implication. The amendment inserts the necessary express language.

Section 31 of the act contains preliminary requirements that must be undertaken prior to a witness being questioned or producing a document. The bill amends the section so that a witness who attends solely to produce documents can elect to dispense with some of those requirements. If the witness does not make that election, the chief examiner need only comply with a narrower range of preliminary requirements. This amendment streamlines and expedites the examination process where a person attends solely for the production of documents.

Section 39 of the act abrogates the privilege against self-incrimination when answering questions put in an examination or producing a document or other thing. The act includes a 'use-immunity' that restricts answers or documents or things being used as evidence against the person in criminal and civil proceedings. However, the use-immunity was never intended to prevent the use of other evidence derived from answers, documents or things in a criminal prosecution against the person, or the use of such material in a prosecution against a third party. Nevertheless, the Supreme Court in *In the Matter of the Major Crime (Investigative Powers) Act 2004* [2009] restricted this use of evidence.

The bill amends section 39 to make it clear that the abrogation of the privilege against self-incrimination applies whether the person has been or may be charged with an offence in respect of the subject-matter of the question, document or thing. It also clarifies that section 39 does not prevent the admission in a criminal proceeding (or proceeding for a penalty) of any evidence obtained as a direct or indirect consequence of an answer, document or thing. Any such evidence is otherwise admissible in accordance with the normal rules of evidence.

The amendment is a direct response to the Supreme Court's decision and is intended to reverse that ruling and restore the original intention of Parliament. Consequently, any witness in an examination under the Major Crime (Investigative Powers) Act cannot claim the privilege. The witness must answer all questions that the chief examiner directs the witness to answer. Any evidence given by a witness is not admissible against them in a criminal proceeding or a proceeding for the imposition of a penalty. It is, however, admissible against other persons. That evidence may also be admissible in relation to offences against the Major Crime (Investigative Powers) Act, confiscation proceedings and the offence of giving false or misleading evidence.

Although answers given by a witness cannot be used against them, police may rely upon the evidence to further investigations into organised crime offences. The answers might lead police to discover new evidence and new lines of enquiry. This is generally known as derivative use. While the act clearly states there can be no direct use of your evidence against you, the amendments will ensure derivative use is available to investigators.

Section 43 of the Major Crime (Investigative Powers) Act confers powers on the chief examiner to restrict the publication and communication of evidence and information that identifies a person who has given evidence. As with the amendments to section 20 of the Major Crime (Investigative Powers) Act, the bill amends section 43(2) so that the effect on witness' reputation will no longer be a consideration for the court in determining when to restrict the publication and communication of evidence and identifying information. Section 20 will also be amended to clarify that the circumstances where such a direction is mandatory apply in relation to a person who has given evidence, or produced a document or thing, before the chief examiner.

The bill creates two new provisions, sections 43A and 43B, which provide mechanisms for the release of restricted evidence respectively where a person has been charged with an offence, and where a person has not yet been charged. These modifications streamline and clarify the current processes under section 43. The bill creates a definition of restricted evidence and inserts a provision clarifying that the operation of the amended sections do not prevent the communication of restricted evidence for the purpose of prosecuting a person charged with an offence under the act itself (such as refusing to answer a question, providing false or misleading evidence and obstructing or hindering the chief examiner).

The process under the new section 43A replaces the old sections 43(4) to (5). This provides for an application to a

court that restricted evidence be made available to a person charged with an offence before the court. The chief commissioner, the Director of Public Prosecutions or the person charged can make the application. The provisions create a process whereby the material is provided to the court, and the chief examiner, the Chief Commissioner of Police and any witness whose interests are affected by the material can then make submissions as to its release.

The new section 43B provides a similar process where a person has not been charged with an offence. Under the new provisions, the chief commissioner may apply to a court for an order that restricted evidence be made available to the Director of Public Prosecutions if the chief commissioner suspects on reasonable grounds that there are reasonable prospects for the conviction of a person for an offence if the evidence is so made available. Again, the provisions create material is first provided to the court, and the chief examiner, the Chief Commissioner of Police, the Director of Public Prosecutions and any witness whose interests are affected by the material may then make submissions as to its release.

After hearing the submissions, the court may make the evidence available to the Director of Public Prosecutions if satisfied there are reasonable grounds for the suspicion founding the application and the interests of justice require the evidence to be made so available. If the evidence is released and a person is subsequently charged with an offence, the Director of Public Prosecutions is not prevented from making the evidence available to the person charged or their legal representative.

The bill removes the sunset period in the provisions dealing with contempt of the chief examiner (section 49) and the rule against a person being charged with both an offence under the act and contempt of the chief examiner in respect of the same set of circumstances (section 50). These provisions have been in operation for some time and it is unnecessary to continue to subject them to a sunset period.

Section 46 of the Major Crime (Investigative Powers) Act provides for the issuing of a warrant for the arrest of a person subject to a summons where they have absconded, are likely to abscond or are otherwise attempting to evade the service of a summons. The provision requires the person to be brought before the court and admitted to bail, detained in police custody, detained in a prison or police gaol or released unconditionally. The purpose is to ensure their attendance to give evidence.

Currently, where the person is detained in police custody, the chief commissioner is required to arrange a standard of accommodation and meals comparable to that generally provided to jurors kept together overnight. The reference to detention in police custody and the provision of a certain standard of accommodation in police custody are unnecessary. The bill amends the section to clarify that when an arrested person is brought before the court, the court may release them on bail in accordance with the Bail Act 1977, order their detention in a prison or police gaol or order their unconditional discharge. The resulting section is easier to understand and apply. The amendment to section 46 will insert a specific reference to the Bail Act 1977 and will therefore incorporate all of the powers in that act.

The bill also makes a minor amendment to the Criminal Procedure Act 2009 to ensure that transcripts of an examination are included in a hand-up brief where that evidence is relevant in a prosecution.

The final amendment in part 6 of the bill addresses an anomaly in section 37 of the Major Crime (Investigative Powers) Act. That section creates an offence where a person refuses to answer a question or produce a document. The offence is punishable by a maximum period of up to five years imprisonment. In section 49 of the Major Crime (Investigative Powers) Act, such conduct can also constitute a contempt of the chief examiner. However, a defence of 'reasonable excuse' applies to the offence in section 49. The bill amends section 37 so that the 'reasonable excuse' defence also applies to the offence of refusing to answer a question or producing a document. The resulting offence provisions will therefore apply in a fairer manner, consistent with other offence provisions in the act.

Variation of alcohol exclusion orders

The bill amends section 89DG of the Sentencing Act to provide that any application to vary an alcohol exclusion order must, in most cases, be made to the Magistrates Court, regardless of which court first made the order. If the Supreme Court imposed the order, then it may direct that any variation application be made to the Magistrates Court, or retain the variation power for itself.

Applications to vary an alcohol exclusion order are minor matters which may be dealt with expeditiously. This amendment will ensure that all applications to vary an alcohol exclusion order can be dealt with by the one court in an efficient manner. It will also ensure that the higher courts need not have a continuous monitoring role in respect of alcohol exclusion orders they impose thereby providing them with more time and resources to perform other functions.

Miscellaneous

Amendments to Criminal Procedure Act 2009

The bill will amend Schedule 3 of the Criminal Procedure Act 2009 to authorise general and specialist inspectors within the meaning of the Prevention of Cruelty to Animals Act 1986 to witness statements for briefs in criminal proceedings. This amendment will enhance the efficiency of the criminal justice system in animal welfare matters.

Amendments to Evidence (Miscellaneous Provisions) Act 1958

The bill makes technical amendments to provisions in the Evidence (Miscellaneous Provisions) Act 1958 that list who may witness a statutory declaration. The amendments will correct references to school principals, veterinary practitioners and accountants in the list of authorised witnesses to statutory declarations. The bill will also clarify that Children's Court registrars can witness statutory declarations and affidavits.

Amendments to the Mental Health Act 2014

The bill amends section 351 of the Mental Health Act 2014 to reinstate protective services officers' powers to detain people who appear to have a mental illness and as a result need to be apprehended to prevent serious and imminent harm.

Amendments to the Open Courts Act 2013

The bill also makes two minor amendments to the Open Courts Act 2013. The first will improve the operation of the notice requirements for suppression order applications by clarifying who must be given notice. The second will align the test for the making of a broad suppression order by the Magistrates Court with the test that applies to the making of a proceeding suppression order on administration of justice grounds.

Amendments to the Personal Safety Intervention Orders Act 2010

Amendments to the Personal Safety Intervention Orders Act (PSIO act) aim to provide increased protection for victims of stalking and serious prohibited behaviour whilst diverting lower level interpersonal disputes to mediation. Protection is afforded by court made intervention orders between people who are not family members.

Under the current law, a magistrate asked to make a personal safety intervention order can formally refer the matter to mediation if a matter may be more suitable for mediation or is not appropriate for a court to determine. However, it is preferable for such cases to be referred to mediation assessment at the earliest opportunity, rather than referral needing to be decided by a magistrate.

Accordingly, the bill will require court registrars to refuse to accept a PSIO application where they are satisfied that the matter would be more appropriately dealt with by mediation; or is frivolous, vexatious, an abuse of process, without substance, has no reasonable prospect of success or is in bad faith.

In those cases where mediation appears more appropriate, the court will facilitate contact by the Dispute Settlement Centre of Victoria (DSCV) to encourage mediation and a sustainable solution to the dispute.

Importantly, the amendments contain safeguards to prevent inappropriate matters being sent to mediation. The Attorney-General's PSIO guidelines recognise that many matters should not be mediated including where there has been violence. In making a decision, a registrar must consider whether the matter would be prohibited from being mediated under these guidelines.

In addition, all matters referred to the DSCV must go through a detailed intake assessment which identifies matters that are inappropriate for mediation. Such matters will be returned to the court if an intervention order could be appropriate.

A prospective applicant will also be able to apply to a magistrate to have a registrar's decision reviewed. The court may then direct a registrar to accept an application so the matter would proceed to a court hearing.

Amendments to Summary Offences Act 1966

The bill amends section 6B of the Summary Offences Act 1966 to ensure that PSOs may request the name and address of a person they intend to give a move-on direction, in the same way police officers can.

Section 6B was recently inserted by the Summary Offences and Sentencing Amendment Act 2014. The provision was intended to ensure that police can identify when someone has been the subject of repeated move-on directions, and determine whether it is appropriate to apply for a longer term exclusion order. While only a police officer may apply for a move-on-related exclusion order, the application could be based on a direction or directions given by a PSO. To give effect to the intended operation of exclusion order provisions, the bill will provide PSOs with a power to record the name and address of persons they have directed to move on.

The amendment also ensures that use of move-on powers by PSOs can be subject to the same degree of oversight as applies to police.

Amendment of Victorian Institute of Forensic Medicine Act 1985

As recommended by the Director of the Victorian Institute of Forensic Medicine (VIFM) an amendment to the Victorian Institute of Forensic Medicine Act 1985 has also been included in this bill. The amendment provides for the appointment of an additional VIFM council member with financial expertise to assist the council in managing VIFM.

Amendments to Victoria Police Act 2013

Finally, the bill makes technical amendments to, and consequential upon, the Victoria Police Act 2013 to clarify the regulation-making power in the act, amend a typographical error, and align police terminology with that used in the Victoria Police Act.

This suite of reforms to Victoria's justice system demonstrates the government's commitment to taking strong action to combat serious and organised crime, and to sensible, streamlined processes in our courts.

I commend the bill to the house.

Debate adjourned on motion of Mr NOONAN (Williamstown).

Debate adjourned until Thursday, 10 July.

POWERS OF ATTORNEY 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 Powers of Attorney Bill 2014 (the bill).

In my opinion, the Powers of Attorney Bill 2014, as introduced in 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 main purpose of the bill is to simplify and consolidate Victoria's powers of attorney (POAs) legislation. In particular, the bill provides for the appointment of an attorney under an enduring POA, which is currently provided for in

the Instruments Act 1958. In broad terms, an enduring POA is a legal instrument by which a person (the principal) empowers another (the attorney) to make decisions and act on their behalf as to the principal's personal and/or financial matters. An enduring POA continues to operate in the event that the principal loses capacity to make decisions about those matters.

The bill also makes provision for a new appointment, a supportive attorney, whose role is to support the principal to make and give effect to their own decisions. Unlike an attorney under an enduring POA, a supportive attorney is not a substitute decision-maker for the principal.

Human rights issues

Charter act rights that are relevant to the bill

The ability for an attorney under an enduring POA to make decisions and act on behalf of the principal is potentially relevant to the following charter act rights:

recognition and equality before the law (section 8)

freedom of movement (section 12)

privacy and reputation (section 13)

property rights (section 20).

In my view the bill does not limit these rights.

Recognition and equality before the law

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 provides that every person is equal before the law and has the right to equal and effective protection against discrimination. The bill, in providing for an enduring POA and a supportive attorney appointment, promotes these rights.

Enduring powers of attorney

A person may suffer discrimination in practice because they cannot manage all of their affairs or protect their rights if they lose legal capacity. This bill reduces the risk of such discrimination by enabling people to voluntarily create an instrument to enable a trusted person to help manage their affairs in that event.

An enduring POA is an entirely voluntary instrument that may be entered into by a person who has decision-making capacity that can assist the person when he or she subsequently loses capacity. The bill provides a legal framework for these instruments which includes giving legal effect to the principal's intentions as expressed in the instrument appointing the attorney. The bill also sets out principles and duties to be adhered to by the attorney that are designed to ensure that the wishes of a principal who has lost capacity are respected. These provisions promote a principal's right to recognition and equality before the law; further, nothing in the bill discriminates against a person on the basis of a relevant attribute.

Supportive attorneys

The provisions of the bill enabling a supportive attorney appointment are designed to support persons with impaired decision-making capacity to make and give effect to their own decisions. The bill recognises that a person has decision-making capacity if he or she can make a decision with appropriate support.

The appointment is intended to promote the autonomy and dignity of people who have a disability. It will assist people whose ability to make decisions is questioned or impaired because of their disability and allow them to continue to exercise legal capacity. As such, the appointment promotes the right to recognition and equality before the law.

Freedom of movement and property rights

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

An attorney may be authorised under an enduring POA to make decisions on behalf of the principal in relation to the principal's personal affairs, which could include where the principal lives and may be authorised to act in relation to the principal's financial or property matters including disposing of the principal's property. However, any limitation on a person's ability to make their own decisions about such matters arises from the person's decision-making incapacity, and attorneys must act within the limits of the authority conferred by the enduring POA. Accordingly, these rights are not limited by the bill in establishing a legal framework for the appointment of an attorney under an enduring POA.

Privacy and reputation

Section 13(a) of the charter act provides that a person has the right not to have his or her privacy, family, home or correspondence unlawfully or arbitrarily interfered with. Section 13(a) is relevant because under the bill an attorney under an enduring POA and a supportive attorney under a supportive attorney appointment are both able to access personal information about the principal as part of their role. The bill provides that a person is authorised to disclose personal information about the principal to a supportive attorney acting under a supportive attorney appointment. Further, access to personal information by attorneys and supportive attorneys is specifically authorised in other acts that regulate the disclosure of and access to personal information (for example, the Disability Act 2006, the Health Records Act 2001 and the Information Privacy Act 2000). However, these powers to access the principal's personal information do not limit the charter act right because they are neither unlawful nor arbitrary.

Any information provided to an attorney or supportive attorney will be lawful because it will be provided under a legal power, namely the enduring POA or the supportive attorney appointment. The powers are designed to serve the purpose of assisting attorneys to properly carry out their roles in acting on the principal's behalf (in the case of an enduring POA) or supporting the principal to make his or her own decisions (in the case of a supportive attorney).

The bill also contains clear limits and safeguards in relation to these powers. An attorney under an enduring POA is subject to a duty not to disclose confidential information gained as an attorney unless authorised by the power or by law.

Where a supportive attorney is authorised to access the principal's personal information under the appointment, the bill provides that the supportive attorney may only access, collect or obtain information that is relevant to a supported decision or that may be lawfully obtained by the principal and may only disclose the information obtained for a purpose that is relevant and necessary to the supportive attorney role or for another lawful reason.

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:

The bill simplifies and consolidates the law relating to powers of attorney, creates the new role of a supportive attorney and improves protections against abuse. By doing so, the bill aims to make the use of powers of attorney more straightforward and effective in both business and personal contexts.

Powers of attorney have their origin under the common law as a means of appointing an agent to carry out specified transactions on behalf of the appointor. Aspects of the use of powers of attorney have for many years been regulated by the Instruments Act 1958 and its predecessors. Over time, common-law powers of attorney became increasingly long and complex in order to ensure that the power authorised as wide a range of transactions as possible. In 1980, the Instruments Act 1958 was amended to provide by statute for a simple form for a general power of attorney that authorised the attorney to do anything that could lawfully be done by an attorney other than to delegate his or her power. This removed the need for a power of attorney to separately list and describe every type of transaction which the power authorised. However, as with purely common-law powers of attorney, these general powers of attorney are automatically revoked if the donor of the power ceases to have the legal capacity to appoint an attorney. In 1981, the Instruments Act was further amended to provide for an enduring power of attorney, being a general power of attorney that is not revoked by the subsequent incapacity of the donor. In 1999, the Guardianship and Administration Act was also amended to provide for persons to appoint enduring guardians, who can exercise the powers of a guardian to the extent that the appointor subsequently becomes unable to make reasonable judgements in respect of matters specified in the instrument of appointment.

As a result of these historical developments, there is often uncertainty and confusion as to the various options currently available for persons to appoint others to act on their behalf, and as to the powers that each form of appointment confers on the appointee. The bill therefore establishes a clear distinction between appointments that a person chooses to make for someone to act on their behalf and appointments that VCAT makes where a person is not capable of making such appointments themselves, with the former being referred to consistently as attorneys, and the latter as guardians. The bill will also allow a person to confer under a single enduring power of attorney powers that may previously have required both an enduring power of attorney and an enduring guardianship, and to specify more clearly which of those powers are being conferred.

The bill implements a majority of the recommendations made in the report by the Victorian parliamentary Law Reform Committee (VPLRC) in its *Inquiry into Powers of Attorney*, which was tabled in Parliament in August 2010. The bill also reflects a number of recommendations from the Victorian Law Reform Commission in its *Guardianship — Final Report*, which was tabled in Parliament in April 2012.

The bill makes only minor amendments to the law regulating non-enduring powers of attorney, including general powers of attorney, which are referred to in the bill as general non-enduring powers of attorney. The current statutory provisions and the common law governing these powers, which are widely used in the commercial sphere, have not been identified as being in need of major reform.

Definition of decision-making capacity

Neither the Instruments Act nor the Guardianship and Administration Act define capacity, which is a key concept in the operation of powers of attorney legislation. The bill addresses this gap by defining decision-making capacity and providing guidance about how it should be assessed. These provisions protect a person's right to make their own decisions whenever possible. They are consistent with the approach taken in the new mental health laws that were recently enacted by Parliament. The bill makes clear that a person is presumed to have decision-making capacity unless there is evidence to the contrary.

The bill provides that a person has decision-making capacity as to a matter if the person is able to: understand the information relevant to the decision and the effect of the decision; retain the information to the extent necessary to make the decision; use or weigh that information as part of the process of making the decision; and communicate the decision and the person's views and needs as to the decision in some way, including by speech, gestures or other means.

The bill provides that, in determining whether a person has decision-making capacity, regard should be had to a range of factors specified in the bill.

Statement of principles

The bill introduces a principles-based approach to exercising a power under an enduring power of attorney. The bill requires a person exercising a power, carrying out a function or performing a duty for a principal under an enduring power of attorney to do so in a way that is as least restrictive of the principal's freedom of decision and action as is possible in the circumstances and ensures that the principal is given practicable and appropriate support to enable them to participate in decisions affecting them as much as possible in the circumstances.

An attorney must give all practicable and appropriate effect to the principal's wishes and take such steps, if any, as are reasonably available to encourage the principal to participate in decision making even though the principal does not have decision-making capacity. An attorney must also act in a way that promotes the personal and social wellbeing of the principal.

Scope of enduring powers of attorney

The bill allows a principal to authorise an attorney to do anything that a principal can lawfully do by an attorney, with that power not being revoked by the person subsequently ceasing to have relevant decision-making capacity. Under the bill, a principal may confer powers on an attorney in relation to financial or personal matters, or both.

Consolidated form for enduring powers of attorney

The bill provides for a consolidated enduring powers of attorney form to cover both financial and personal matters with a separate form for general non-enduring powers of attorney. Plain English forms will be developed, which adopt consistent language and are easy to understand and use.

Making an enduring power of attorney

The bill also provides consistency in the requirements for making, witnessing and accepting an enduring power of attorney, as well as consistent eligibility criteria about who can be appointed as an attorney under an enduring power of attorney. The bill requires an attorney appointed under an enduring power of attorney to formally accept their appointment and for the acceptance to be witnessed.

The bill allows for the appointment of alternative attorneys or multiple attorneys to act jointly, severally, jointly and severally or as majority attorneys. The bill provides that where there is a disagreement between an attorney for personal matters and an attorney for financial matters where they both have power over a matter, the view of the attorney for personal matters will prevail.

The bill implements the VPLRC recommendation to narrow the current list of qualified witnesses to an enduring power of attorney to require one of the two witnesses to be a person authorised to witness affidavits or a medical practitioner. While stricter than current requirements for witnesses, these requirements balance having a witness that is qualified to assess the principal's understanding of the appointment and to identify any evidence of duress with a group of witnesses who can be easily accessed when needed. The bill excludes certain people such as the relative of the principal or an attorney, a care worker or an accommodation provider for the principal from being a witness to avoid the possibility of a conflict of interest.

Commencement of an enduring power of attorney

The bill includes common commencement criteria for an enduring power of attorney whether for personal matters or financial matters. The bill will enable a principal to specify in the enduring power of attorney a time, circumstance or occasion on which the power is exercisable, if not, the power will commence from when the enduring power of attorney is made. If the principal loses decision-making capacity, the enduring power will commence immediately.

The duties of enduring attorneys

The bill more clearly sets out the duties of an attorney under an enduring power of attorney without excluding common-law duties. The bill requires an attorney to: act honestly, diligently and in good faith; exercise reasonable skill and care; not use the position for profit unless authorised; avoid acting where there is or may be a conflict of interest unless authorised by the enduring power of attorney; not disclose confidential information gained as the attorney unless authorised by the power or by law; and to keep accurate records and accounts.

The bill also specifies particular duties for attorneys with financial powers. For example, such attorneys will not be able to enter into conflict transactions unless specifically authorised by the principal or by VCAT and must keep the attorney's property separate from the principal's property. However, such attorneys may provide from the principal's property for the needs of a dependant of the principal if specified in the enduring power of attorney and can make a gift of a principal's property in specified circumstances.

Revocation of enduring powers of attorney

The bill requires the revocation of an enduring power of attorney by a principal or an enduring attorney's appointment to be in writing in the prescribed form and to be witnessed. In addition, the bill requires a principal who revokes the enduring power of attorney or an attorney's appointment to take reasonable steps to notify any attorneys. As is currently the case, the bill also lists the circumstances under which an enduring power of attorney is automatically revoked, such as on the death of the principal.

Protecting principals from abuse

Safeguards against abuse of powers of attorney are contained throughout the bill, from the tightening of the witness requirements to the clearly specified duties of attorneys acting under a power of attorney. In addition, the bill creates two specific new offences to address circumstances of abuse.

The bill provides that a person must not dishonestly obtain an enduring power of attorney to obtain financial advantage or to cause loss to the principal or another person. In addition, the bill prohibits an attorney under an enduring power of attorney from dishonestly using the power to obtain financial advantage or to cause loss to the principal or another person.

Compensation for victims of abuse

As recommended by the VPLRC, the bill gives VCAT power to order an attorney to pay compensation to a principal for a loss caused by the attorney contravening the Powers of Attorney Act when acting under an enduring power of attorney. Currently, this power is only given to the Supreme Court.

Increased powers for VCAT

The bill retains and clarifies existing powers of VCAT in relation to enduring powers of attorney and provides additional powers that will enable VCAT to:

authorise and retrospectively validate a conflict transaction;

declare the making or revocation of an enduring power of attorney that was not validly executed to be valid;

determine that an enduring power of attorney is not valid in certain circumstances, including if it is satisfied that dishonesty or undue influence was used on the principal to make the enduring power of attorney; and

order compensation for any loss caused by the attorney contravening the act relating to enduring powers of attorney.

Supportive attorneys

The bill provides for an adult, described as the 'principal', to appoint a person of their choice to act as their 'supportive attorney' to support them to make and give effect to some or all of their own decisions.

The availability of such appointments will help promote autonomy and dignity for people with a disability who have the capacity to make various decisions for themselves, provided they have support to make and give effect to those decisions. It provides legislative acknowledgement that mechanisms other than substituted decision making can be used to allow people with a disability to engage in activities requiring legal capacity and to make and give effect to decisions that affect their lives.

The bill allows a person to specify whom they want to support them in their decision making, the types of decision they want support to make and the types of support they want in order to make and give effect to those decisions. This will also provide certainty for third parties, allowing them to deal with a supportive attorney more confidently than if the relationship were informal, and thus better enabling principals to have their wishes and decisions respected and implemented.

Power to access information

A principal may authorise a supportive attorney to access, collect or obtain, or assist the principal in accessing, collecting or obtaining from any person any information that is relevant to the decision or decisions.

This power aims to address instances where a person without clear legal authority to do so has difficulty accessing relevant information when assisting someone to make an important decision, such as medical reports, financial statements and other personal information.

A principal may also authorise a supportive attorney to communicate information about the principal and decisions made by the principal to other people. For example, a principal may authorise a supportive attorney to communicate the principal's support needs to an accommodation provider in order to have changes made or to gain information to assist the principal to decide where he or she will live.

A principal may also authorise a supportive attorney to do such things as are necessary to give effect to the principal's decisions. For example, a principal who wishes to receive a home service may authorise the supportive attorney to make arrangements for the service to be provided once the decision has been made to proceed with the service.

This is intended to be a practical power so that a principal's decisions are implemented. This power is not intended to make the supportive attorney a substitute decision-maker for the principal, and a supportive attorney cannot give effect to a supported decision about a significant financial transaction.

Given the nature of the appointment, the witnessing requirements for the supportive attorney appointment are less restrictive than for the appointment of an enduring power of attorney. The appointment must be witnessed by two adult witnesses, one of whom must be a person authorised by law to witness the signing of a statutory declaration. Only one of the witnesses can be a relative of the principal or the proposed supportive attorney, or a care worker or accommodation provider of the principal.

A principal will be able to revoke the appointment of their supportive attorney at any time if they have capacity to do so.

I commend the bill to the house.

Debate adjourned on motion of Mr NOONAN (Williamstown).

Debate adjourned until Thursday, 10 July.

SENTENCING AMENDMENT (EMERGENCY WORKERS) 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 Sentencing Amendment (Emergency Workers) 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 provides for the introduction of statutory minimum sentences for offenders convicted of violent offences against emergency workers on duty, the introduction of a baseline sentence of 30 years for murder of an emergency worker, and the creation of new indictable and summary assault offences against emergency workers on duty.

The bill delivers on the government's commitment to introduce higher sentences for offenders who injure or seriously injure emergency workers on duty, as announced on 12 April 2012. In addition, the changes proposed in the bill partially implement the recommendations of the parliamentary Drugs and Crime Prevention Committee inquiry into violence and security arrangements in Victorian hospitals.

The bill will permit the courts to impose a sentence of imprisonment of up to two years and a community correction order (CCO) as the sentence for an offence. The bill also allows courts to combine a sentence of imprisonment of any length with a CCO when sentencing an offender convicted of an 'arson offence'. The existing definition of that term in the Sentencing Act 1991 will be adopted for this purpose, and will be augmented by the addition of two further serious arson offences.

The provisions of the bill that are relevant to the human rights set out in the charter act are as set out below.

Human rights issues

Protection from cruel, inhuman or degrading punishment and the right to a fair hearing

Section 10 of the charter act relevantly provides that a person must not be punished in a cruel, inhuman or degrading way. Section 24(1) provides that a person charged with a criminal offence has the right to have the charge decided by an independent and impartial court after a fair trial.

In my opinion, the bill does not limit these charter act rights. The proposed amendments introduce appropriate sentences to effectively protect, punish and deter violence against emergency workers performing their professional duties in circumstances where the offender knew or was reckless as to whether the victim was an emergency worker.

Statutory minimum sentences for violence against emergency workers on duty

The bill amends the Sentencing Act to introduce statutory minimum sentences for offenders who cause injury or serious injury to emergency workers in the course of performing their duties. Specifically, the bill requires a term of imprisonment to be imposed and the following minimum non-parole periods to be fixed by a court:

> five years for the offences of intentionally or recklessly causing serious injury in circumstances of gross violence;
>
> three years for the offence of intentionally causing serious injury;
>
> two years for the offence of recklessly causing serious injury.

The bill also introduces a six-month sentence of imprisonment for the offences of intentionally or recklessly causing injury.

These amendments are clearly confined by law to apply to offenders convicted of the violent offences specified in the bill and only in respect of a clearly defined class of victims, namely, emergency workers on duty where the prosecution proves that the offender knew or was reckless as to whether the victim was an emergency worker.

Protection from cruel, inhuman or degrading punishment (section 10)

In my opinion, the statutory minimum sentences introduced by the bill do not limit the protection from cruel, inhuman or degrading punishment, as they do not compel the imposition of a grossly disproportionate sentence. The bill does not compel — and indeed, contains safeguards that protect against — the imposition of a sentence of imprisonment that is inappropriate, unjust or disproportionate.

The safeguards include the availability of full sentencing discretion where a court is satisfied of the existence of a special reason in relation to an offender or the particular circumstances of a case as set out in section 10A of the Sentencing Act. The special reasons are:

> the offender assisted or has undertaken to assist in the investigation or prosecution of an offence;
>
> the offender was aged over 18 but under 21 years of age at the time of the commission of the offence and can prove that due to psychosocial immaturity was unable to regulate his or her behaviour;
>
> the offender can prove he or she has impaired mental functioning;
>
> the court makes a hospital security or residential treatment order; or
>
> there are substantial and compelling reasons that justify a departure from the statutory minimum sentence, having regard to Parliament's intention that the relevant minimum sentence should apply and whether the cumulative impact of the circumstances justify a lesser sentence.

For offences against section 18 of the Crimes Act, the bill broadens the special reasons to encompass young offenders who would otherwise be eligible for a youth justice centre order. The bill adopts the existing criteria in section 32 of the Sentencing Act, which permits a court to sentence an offender aged between 18 and up to 21 (a 'young offender') to detention in a youth justice centre rather than imprisonment in certain cases. This can occur if a court believes:

> that there are reasonable prospects for the rehabilitation of the young offender; or
>
> the young offender is particularly impressionable, immature or likely to be subjected to undesirable influences in an adult prison.

Under the bill, these criteria will operate in the same way as the special reasons, that is, as an exemption from the statutory sentence, for young offenders found guilty of causing injury to an emergency worker on duty. If either of the criteria is met, the court does not have to impose the statutory sentence of six months imprisonment, and may instead impose any sentence within its discretion.

For the more serious offences of intentionally or recklessly causing serious injury to an emergency worker on duty, the court may allow the offender to serve their statutory sentence in youth detention if the court believes the offender has reasonable prospects of rehabilitation or is particularly impressionable, immature or likely to be subjected to undesirable influences in an adult prison. This does not limit the availability of the existing special reasons provisions, which if met, permit the court to impose any available sentence.

These provisions recognise particular issues relevant to the detention of young offenders, apply the threshold criteria currently available in section 32 of the Sentencing Act, and are consistent with the general sentencing principles dealing with youth. In addition, these provisions do not prevent the administrative transfer of prisoners from youth justice to prison or vice versa.

Existing safeguards in the Sentencing Act will also apply to the new provisions including that statutory minimum sentences do not apply to offenders who aid, abet or procure the commission of the offence or to offenders who are under 18 years of age at the time of the commission of the offence.

In my opinion, these amendments do not limit the right set out in section 10.

Right to a fair trial (section 24)

Section 24 of the charter act relevantly provides that a person charged with an offence has the right to have the charge decided by an independent and impartial court after a fair hearing.

While the bill prescribes the minimum sentence for the offences of intentionally or recklessly causing serious injury in a circumstance of gross violence, the court has discretion to impose any sentence within the parameters of the minimum and maximum sentences.

Furthermore, as outlined above, the bill's special reasons provisions allow the courts to take account of factors that reduce an offender's culpability to such a degree that the offender should not be subject to the statutory minimum sentence. I also note that the High Court has consistently held that provisions imposing mandatory minimum sentences, which this bill does not do given the special reasons provisions, do not constitute a usurpation of judicial power and, as such, are not constitutionally objectionable.

The bill applies statutory minimum sentences to several offences for the first time. It also applies the special reasons in section 10A for not applying statutory minimums to these offences.

Section 10A of the Sentencing Act, which outlines an exhaustive list of special reasons for which a judge may depart from the statutory minimum sentence, imposes a legal burden of proof in respect of the special reasons which apply to offenders with impaired mental functioning, and offenders who are aged between 18 and 20 years of age and who possess a diminished ability to regulate their conduct in comparison with the norm for persons their age.

In my opinion, these provisions do not limit the right to a fair trial under section 24 of the charter act. The matters to be proved by an offender who seeks to rely on either special reasons provision are matters which the offender is in the best position to prove. Conversely, it would be difficult and onerous for the Crown to investigate and disprove these matters beyond reasonable doubt. Furthermore, the legal burden imposed by each provision is comparable to the burden of proof which offenders must meet when seeking to prove mitigating circumstances and, from a practical perspective, they relate to matters which would be raised during the normal course of sentencing submissions for offences under the Crimes Act 1958.

For these reasons, I consider that the bill does not limit section 24 of the charter act.

Baseline sentence for murder of emergency workers on duty

The bill amends the Crimes Act 1958 to provide for the introduction of a 30-year baseline sentence for the murder of an emergency worker on duty. This bill builds on the proposed baseline sentencing provisions in the Sentencing Amendment (Baseline Sentences) Bill 2014 by introducing a 30 year baseline sentence for murder of an emergency worker on duty.

This means that, when dealing with one or multiple baseline offences, a sentencing court must sentence consistently with the proposition that the baseline sentence for an offence is the sentence that Parliament intends to be the median sentence for sentences imposed for the relevant offence. The baseline sentence operates as an additional factor in the sentencing process.

In each case, a sentencing court is compelled to provide reasons for why it has imposed a sentence equal to, greater or lesser than the baseline sentence. Further, a sentence imposed by a court in respect of a baseline offence must have a non-parole period fixed in compliance with the minimum ratios proposed in the Sentencing Amendment (Baseline Sentences) Bill 2014.

Section 21 of the charter act relevantly provides that a person must not be deprived of his or her liberty except on grounds, and in accordance with procedures, established by law. Section 24 relevantly provides that a person charged with an offence has the right to have the charge decided by an independent and impartial court after a fair hearing.

These rights are not limited. Any deprivation of liberty will arise, as it does now, from a sentence imposed after conviction for an offence by an independent court after a fair hearing. The bill introduces an additional statutory consideration (the baseline sentence) into the sentencing process. The bill does not otherwise affect judicial discretion. The bill does not introduce mandatory sentences for murder of an emergency worker and the baseline sentencing provisions do not alter the existing instinctive synthesis process for sentencing.

The baseline sentencing scheme contains a number of safeguards to protect the rights provided for in sections 21 and 24. For example, it does not limit the process for appeals against sentence. Also, it requires the provision of reasons for the sentence being greater or lesser than or equal to the baseline which promotes transparency and consistency in sentencing.

Prohibition on retrospective criminal penalties (section 27)

Section 27(2) of the charter act provides that a penalty must not be imposed on any person for a criminal offence that is greater than the penalty that applied to the offence when it was committed. In my opinion, the bill does not limit this right because the amendments do not change the penalty applicable to an offence.

Reforms to CCOs

The bill extends the existing three-month limit on a sentence of imprisonment that may be imposed in addition to a CCO in section 44 of the Sentencing Act to two years. This means that a court may impose a two-year jail sentence and then a CCO of up to the maximum length that court is permitted to impose for a single offence or offences founded on the same facts. The amendments will apply immediately upon commencement and can be used by courts when sentencing an offender found guilty of an offence committed prior to the commencement date. The bill does not limit the right in section 27(2) because it does not increase the maximum penalty that applied to the offence when it was committed. Instead it creates flexibility to combine a CCO with a term of imprisonment between three months and two years. A CCO can only be imposed with the consent of the offender. The amendments facilitate the use of CCOs and provide greater flexibility to the courts to impose an appropriate combination sentence of CCO and imprisonment.

Sentencing for 'arson offences'

In addition, the bill provides sentencing courts with the power to combine a term of imprisonment of any duration with a CCO when sentencing an offender for an 'arson offence'. This power is of course subject to the maximum term of imprisonment applicable to the relevant arson offence.

This amendment will use the existing definition of 'arson offence' in clause 5 of schedule 1 of the Sentencing Act. That definition is relevant to part 2A of that act, which deals with sentencing for 'serious arson offenders'. The bill will also add to that definition by inserting two additional serious arson offences, namely:

> placing inflammable material for the purpose of causing fire contrary to section 66 of the Forests Act 1958; and
>
> causing fire in a country area with intent to cause damage in section 39C of the Country Fire Authority Act 1958.

The amended definition will apply to persons who are sentenced for either of the above offences after the commencement of these amendments, regardless of when the offence was committed or the finding of guilt made. The consequence is that the offender will be sentenced as a 'serious arson offender' in respect of that offence if they have previously been convicted of an arson offence and were sentenced to a term of imprisonment or detention in a youth justice centre. Persons deemed 'serious arson offenders' are subject to special rules on sentencing that may expose them to a heavier sentence. Accordingly, these amendments may be argued to contain an element of retrospectivity that is relevant to section 27(2) of the charter act.

In my opinion, this amendment does not limit section 27(2). The penalty to which section 27(2) refers is the maximum penalty prescribed for the offence (see, for example, *DPP v. Leys* [2012] VSCA 304, [130]). While the application of sections 6D and 6E of the Sentencing Act may result in a heavier sentence being imposed, depending upon how the sentencing discretion is exercised, nothing in part 2A alters the maximum penalty. Therefore, in my opinion, these amendments do not limit section 27(2) of the charter act.

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:

The Sentencing Amendment (Emergency Workers) Bill 2014 introduces a number of reforms that will improve sentencing processes and outcomes in Victoria. Key among these reforms is the introduction of stronger penalties for violent offences against emergency workers in the course of performing their duties.

The reforms recognise the very special role played by Victoria's emergency workers, and the need to ensure they receive the full protection of the law when treating, caring for and protecting Victorians at times of emergency.

In addition to the introduction of statutory minimum sentences for assaults, the bill introduces a baseline sentence of 30 years for murder of an emergency worker who is on duty, and creates new indictable and summary offences that will apply specifically to emergency workers performing their operational duties. The longer sentences reflect the opprobrium that the community attaches to acts of violence against emergency workers who put themselves on the line in emergency situations on behalf of the community. It sends a clear message to perpetrators of these acts that violence against emergency workers will not be tolerated and will be met with strong penalties.

The categories of emergency workers protected under the bill include police and protective services officers, paramedics, persons who provide or support emergency treatment to patients in a hospital, employees of the Department of Environment and Primary Industries, Metropolitan Fire Brigade, Country Fire Authority, the Victorian State Emergency Service, Life Saving Victoria and other agencies who respond to emergencies. The reforms apply to emergency workers who are on duty at the time of the commission of an offence, to ensure that the higher sentences apply to offenders who perpetrate violence against emergency workers in operational settings.

Statutory minimum sentences for violent offences against emergency workers on duty

Part 2 of the bill establishes a statutory minimum sentencing regime for violent offences against emergency workers on duty. The bill amends the Sentencing Act 1991 to introduce provisions that compel a court to impose a statutory term of imprisonment for offenders who are found guilty of causing injury or serious injury to emergency workers in the course of performing their professional duties. The prescribed statutory minimum non-parole periods for violent offences are five years for the offences of intentionally or recklessly causing serious injury in circumstances of gross violence, three years for the offence of intentionally causing serious injury, and two years for the offence of recklessly causing serious injury. The bill also requires a six-month term of imprisonment to be imposed for the offences of intentionally or recklessly causing injury to an emergency worker on duty.

Authorised departures from statutory minimum sentences

The imposition of a statutory minimum sentence is a requirement in all relevant cases unless a sentencing court is satisfied that a special reason as set out in section 10A of the Sentencing Act exists. If a special reason exists in relation to an offender or a particular case, the bill permits a sentencing court to impose any sentencing order available under the Sentencing Act. The special reasons are those that were developed as part of the gross violence reforms.

A court can find that a special reason exists where an offender assisted or has given an undertaking to assist in the investigation or prosecution of an offence and a discounted sentence is warranted; if an offender was aged 18 or over but under 21 at the time of the commission of the offence and due to a particular psychosocial immaturity, the offender's moral culpability for the offending is reduced; a court is satisfied that an offender had impaired mental functioning when the

offence was committed; or where a court makes a hospital security or residential treatment order.

The bill also provides that a special reason exists if substantial and compelling circumstances apply to a particular case or offender that justify a departure from the prescribed statutory minimum sentence for the offence. Before making such a determination, the court must have regard to Parliament's intention that the sentence that should be imposed is the statutory minimum sentence provided in the bill. Additionally, a court must be satisfied that the cumulative impact of the relevant circumstances of the case justify a lesser sentence.

Young offenders and detention in a youth justice facility

The bill establishes a framework for dealing with young adult offenders aged 18 and up to 21 that is consistent with the existing provisions in the Sentencing Act. This framework holds young offenders accountable for their actions while recognising their particular characteristics and prospects for rehabilitation.

Currently, section 32 of the Sentencing Act permits a court to sentence an offender aged between 18 and up to 21 to detention in a youth justice facility if the court believes:

> that there are reasonable prospects for the rehabilitation of the young offender; or
>
> the young offender is particularly impressionable, immature or likely to be subjected to undesirable influences in an adult prison.

These criteria will operate as a new special reason only available to those young offenders found guilty of causing injury to an emergency worker on duty under s18 of the Crimes Act. If a young offender satisfies one of those criteria, the court will not be bound by the statutory minimum sentence and may impose any sentence that it considers appropriate.

For young offenders found guilty of the more serious offences of intentionally or recklessly causing serious injury under section 16 or 17 of the Crimes Act, this special reason will not be available, but a youth justice centre order may be imposed rather than a sentence of imprisonment. Provided the court receives a pre-sentence report from the Secretary of the Department of Human Services, it may impose a sentence of detention in a youth justice centre, rather than imprisonment, for the length specified for the particular offence. The offender will not be eligible to be released on parole by the Youth Parole Board until they have completed the statutory minimum term.

Baseline sentence for murder of an emergency worker on duty

The bill amends the Crimes Act 1958 to introduce a baseline sentence of 30 years for murder of an emergency worker on duty.

This reform augments the baseline sentencing provisions in the Sentencing Amendment (Baseline Sentences) Bill 2014 that propose the introduction of baseline sentences for specified violent offences and include a baseline sentence for the offence of murder of 25 years.

A higher baseline sentence will apply to offenders convicted of murder if the victim is an emergency worker on duty. This reflects the seriousness that the community, through Parliament, attaches to offences of this kind. In these cases, a court must impose a sentence that is consistent with the proposition that 30 years imprisonment is the sentence that the Parliament intends to be the median sentence.

New offences for assaults on emergency workers on duty

The bill will also revise and expand the range of offences applicable to assaults or threats against emergency workers that are of a less serious nature. The proposed changes amend the Crimes Act to introduce a new indictable offence that applies to assaults against emergency workers who are on duty, and consolidates existing assault offences under section 51 and 52 of the Summary Offences Act 1966 into a single offence that proscribes assaulting, resisting, obstructing, hindering or delaying an emergency worker on duty. While these new assault offences apply to less serious offending, they will nonetheless make clear that all offences perpetrated against emergency workers who are on duty are punishable under law.

Purpose and use of community correction orders

The CCO is a flexible community-based order that can be tailored to address a wide range of offending behaviour through the use of optional conditions. Since CCOs became available on 16 January 2012 and up to June 2013 over 11 000 offenders have received a CCO. All of the optional conditions are being successfully utilised across the court system.

The amendments to sections 5 and 36 of the Sentencing Act will facilitate even greater use of CCOs by highlighting their flexibility and suitability as a means of addressing offending in appropriate cases. For example, an offender at risk of serving time in jail but whose rehabilitation is best met by a sentence served in the community could receive a CCO with restrictive conditions such as a curfew, or place or area exclusion. For offences sentenced in the higher courts, their compliance with these conditions can be electronically monitored including through GPS tracking. If the person does not comply, there is a wide range of measures that can be applied such as increased supervision by Corrections, infringement notices, the extension of the restrictive conditions, or taking the person back to court. A breach of a CCO is an offence that is punishable by three months imprisonment.

With a suspended sentence, none of this happens. Suspended sentences are often just a theoretical punishment because a person is not required to comply with any conditions to address their offending. There is no monitoring or supervision. The only time the offender will have any contact with authorities is if they reoffend or complete the order. While a suspended sentence is treated as being more serious than a CCO, the reality is that complying with a CCO with conditions is far more onerous for offenders and better protects the community from further harm. These amendments reinforce the fact that a CCO with stringent conditions can be an alternative to a jail sentence for some offenders.

Imposition of a sentence of imprisonment and CCOs

Under section 44 of the Sentencing Act, courts are able to impose a jail sentence and a CCO in respect of one or more offences. However, there is a three-month limit on the jail term.

To provide greater flexibility to the courts, the existing three-month limit on the jail sentence that can accompany a CCO will be increased to two years. This means a court could impose a 12-month jail sentence with a two-year CCO commencing immediately upon the offender's release from prison. Within two days of leaving prison, the offender will report to Community Correctional Services (CCS) and get started on their CCO. The existing procedures and processes with respect to CCOs will apply.

There is the potential for an offender to serve a jail sentence and parole and then go on to complete a CCO. Under the Sentencing Act, the courts have discretion to fix a non-parole period for sentences of imprisonment of 12 months and up to 2 years, but there is no requirement that a parole period be set. A court using section 44 to impose a jail sentence and a CCO need not fix a non-parole period. It is expected that in many cases the courts will opt for an offender to go straight from jail to a CCO.

However, in some cases, a court may determine that it is appropriate for a person to have a parole period. For example, the court may impose a two-year sentence with the option for the person to be released on parole after 18 months. Once the adult parole board determines whether the person should be released and on what conditions, the offender will be supervised on parole until the completion of their parole period. The person's CCO will start once they have served all parts of their jail sentence, including parole.

Sentencing of offenders who commit arson offences

The bill will also allow courts to combine a sentence of imprisonment of any length with a CCO when sentencing an offender for an arson offence, up to the maximum penalty for the offence.

This amendment will ensure that persons convicted of arson offences can be subject to a CCO with strict conditions after serving a lengthy period of imprisonment. For example, a sentencing judge may decide that an appropriate sentence for intentionally causing a bushfire, for which the maximum penalty is 15 years imprisonment, is 5 years imprisonment with a non-parole period of three years and six months, and 10 years on a CCO.

Like any CCO, a CCO imposed for an arson offence can be tailored to ensure the offender is properly supervised within the community. For example, the CCO component of a sentence imposed for intentionally causing a bushfire may include an electronic monitoring condition to monitor the offender's compliance with a place or area exclusion condition which prevents the offender from entering national parks. This recognises the threat that arson poses to our community, particularly on days of high fire danger, and reduces the risk that convicted arsonists will reoffend upon release.

This provision of the bill employs the existing definition of 'arson offence' in the Sentencing Act. That definition includes serious offences such as arson causing death and intentionally or recklessly causing a bushfire.

The bill also expands upon the existing definition of 'arson offence' to include two further offences — namely, placing inflammable material for the purpose of causing fire, and causing fire in a country area with intent to cause damage. These are serious offences attracting substantial penalties that capture a similar type of conduct to those offences already categorised as 'arson offences'.

This reform will highlight the gravity of arson offences. It will also serve to protect the community by ensuring that sentencing courts can impose a CCO with strict conditions in addition to imposing a significant custodial sentence for an arson offence.

Conclusion

This bill delivers the government's commitment to introduce stronger sentences for offences against emergency workers so that violence against those whom the community relies upon at times of emergency is reduced; and offenders are adequately punished. The bill also makes important reforms to community corrections orders to facilitate their greater and more effective use as a sentencing disposition in Victoria.

I commend the bill to the house.

Debate adjourned on motion of Mr NOONAN (Williamstown).

Debate adjourned until Thursday, 10 July.

JUDICIAL COMMISSION 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 Judicial Commission Bill 2014.

In my opinion, the Judicial Commission 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 creates a process for the investigation and resolution of complaints and referrals involving Victorian judges, associate judges, magistrates, judicial registrars, coroners and Victorian Civil and Administrative Tribunal (VCAT) members.

Human rights issues

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

Right to a fair hearing by a competent, independent and impartial court or tribunal — section 24(1) of the charter act

Independence of courts and VCAT

The bill enhances the independence of courts and VCAT by establishing a formal system for handling both serious and less serious complaints against subject officers. This will decrease:

(a) the risk of legitimate complaints or concerns not being appropriately addressed; and

(b) the risk of an ad hoc process being established only when a serious issue arises, with the consequent risk of inconsistent approaches being taken.

In the most serious cases, a conduct division panel established under the bill may provide a report to Parliament noting that facts exist which may be grounds for removal on the basis of proved misbehaviour or incapacity. Parliament may only vote for the removal of a judicial officer if it has received such a report. This enhances judicial independence by ensuring removal decisions have an objective basis in fact.

Fair hearing rights and the Judicial Commission

It is unlikely that a complainant or a judicial officer or VCAT member against whom a complaint is made to the Judicial Commission is a 'party to a civil proceeding' for the purposes of section 24(1) of the charter act. The commission investigates complaints about judicial performance, not private rights. It makes recommendations on those complaints; it does not have power itself to make a decision to sanction judicial officers or VCAT members.

Article 6 of the European Convention on Human Rights has been held not to apply to the employment and retirement of members of the judiciary — see K Reid, *A Practitioner's Guide to the European Convention on Human Rights* (3rd ed, 2007) IIA-018, 83 and *Lombardo v. Italy* (1992) 21 EHHR 188.

In the unlikely event that the fair hearing right was held to apply to a complaint to the Judicial Commission, the bill is not incompatible with any right to a fair hearing. The bill ensures that the Judicial Commission and the conduct division are independent and impartial and constituted by competent members who will act fairly to assess the complaint and any submissions of the officer concerned. If the fair hearing right did apply, it is reasonably limited in two respects:

(1) The investigation by the commission and conduct division would not be in public (unless otherwise ordered by the conduct division), but that is to achieve the legitimate purpose of not undermining confidence in the judiciary. If a complaint is found to be established, appropriate information can be made available by the commission.

(2) The bill provides that a complaint must be dismissed if it is made by a person declared to be a 'vexatious complainant' by the commission.

If there is a fair hearing right of access to the commission, it is not absolute. The limitation is important to protect the commission from having to spend a disproportionate amount of time on complaints from vexatious complainants. The limitation also ensures subject officers are not harassed by repeated claims that have no reasonable basis.

The bill provides that the commission may revoke or suspend a declaration that a person is a vexatious complainant.

For these reasons, I consider the fair hearing right most likely does not apply to the commission, but even if it does, the bill is compatible with it.

Right to freedom from self-incrimination — section 25(2)(k) of the charter act

The bill provides that a person is not excused from answering a question or producing a document to a conduct division panel appointed by the commission on the grounds that the answer or the document may incriminate that person.

Whilst the bill allows a statement to be compelled and used for the purposes of the proceedings of the conduct division, it imposes limits in relation to the use of that statement in future criminal proceedings. Relevantly, it prohibits the direct use of evidence obtained by the conduct division against the person before any court or person acting judicially, except in proceedings for:

(a) perjury or giving false information;

(b) an offence against the Judicial Commission Bill 2014, the Protected Disclosure Act 2012 or the Independent Broad-based Anti-corruption Act 2011; or

(c) a disciplinary process or action.

The power to compel incriminating material balances the public interest in protecting the administration of justice with the public interest in the right of an accused to a fair trial.

Consistently with the current position adopted in relation to royal commissions, as well as the approach taken in the Independent Broad-based Anti-Corruption Commission Act 2011, the bill prevents the direct but not derivative use of compelled material.

The direct use of evidence obtained by compulsion in criminal proceedings for an offence (but not disciplinary proceedings) limits the right to freedom from self-incrimination in section 25(2)(k) of the charter act.

Derivative use in any criminal proceeding (but not disciplinary proceedings) of any evidence obtained by compulsion also limits the rights in section 25(2)(k) as interpreted by the trial division of the Supreme Court in the matter of Major Crimes (Investigative Powers) Act 2004 (2009) 24 VR 415.

Any such limitation is demonstrably justifiable.

The freedom from self-incrimination seeks to balance the need for accurate fact-finding against the need to maintain a fair state/citizen relationship.

Where incriminating material is elicited through a process that has, as its aim, the broader advancement of the administration of justice, there would be serious ramifications in seeking to require law enforcement bodies to ignore evidence relating to judicial misconduct that came to light.

An indiscriminate prohibition on the use of derivative material may encourage the admission of wrongdoing to 'sterilise' any future criminal investigation concerning disclosed misconduct. Admissions made during formal conduct division hearings will often be the only source available to law enforcement to initiate a criminal investigation, which, having regard to the above factors, is in the public interest to pursue.

The power to compel incriminating material balances the public interest in protecting the administration of justice with the public interest in the right of an accused to a fair trial.

Right not to have privacy unlawfully or arbitrarily interfered with and the right not to have one's reputation unlawfully attacked — section 13

Privacy — Investigation of non-judicial conduct relating to private life

The bill permits the investigation of complaints and referrals that relate to the private life of judicial officers and VCAT members, but only if the matter complained of relates to the grounds on which an officer may be removed from office or could have impacted on the performance of official duties. Accordingly, any interference with privacy will not be arbitrary.

Privacy — Document production, compelled testimony, warrants and search and enter powers

The conduct division may exercise document production powers, which may, in particular circumstances, impact on the right to privacy. The bill specifically provides that the conduct division may exercise coercive powers to obtain documents and compel testimony only in relation to serious allegations that could, if substantiated, justify removal from office.

The power to compel evidence, including oral testimony, is a crucial aspect of the investigatory functions of the investigating panel and is necessary for the appropriate resolution of matters. Any consequent breaches of personal privacy are pursuant to the statutory objective of securing the public interest in the proper administration of justice, and are not arbitrary. The power is clear and authorised by law.

The bill includes a number of privacy safeguards. For example, the bill prohibits the disclosure by the commission and its staff of information obtained in the course of performing their duties, except in accordance with their lawful functions or for other lawful reasons.

The bill places important limitations on when the conduct division can hold a public hearing, to minimise the risk of personal information being made publicly available and the risk of having a person's reputation unreasonably damaged. A conduct division panel can only hold a public hearing if it is satisfied it is in the public interest to do so, having regard to certain specified matters.

Privacy — Requirement to undergo medical examination

The bill specifies that a medical examination can be required and a copy of any report provided to the conduct division only if the officer concerned may be suffering from an impairment, disability, illness or condition that may significantly affect the officer's performance of official functions and the requirement is appropriate in all the circumstances.

These limitations ensure that requiring the provision of any medical report will not be an arbitrary interference with privacy. The officer is also provided with a copy of the medical report and may submit to the conduct division a further medical report addressing the matters set out in the first report.

The privacy safeguards outlined above also apply, as to the disclosure by the commission and its staff of information obtained in the course of performing their duties and the circumstances of when the conduct division can hold a public hearing.

Privacy — Release of information about commission and conduct division decisions

Information may be released by the commission to the complainant, the officer concerned, the head of jurisdiction and the public in certain circumstances, but only after having regard to considerations including the immediate and longer term impacts on public confidence in the judiciary, and privacy considerations.

In appropriate cases, this may include details of substantiated poor conduct by an officer.

The bill reinforces expected standards of behaviour and decreases the likelihood of repeated incidents occurring. Suppression of substantiated incidents of poor judicial behaviour would remove an important democratic safeguard, and risk compromising high judicial standards.

Information about matters involving protected disclosures against judicial officers and VCAT members may not be released, unless certain limited exceptions apply. This reflects the need to provide greater protection for persons making protected disclosures, and to encourage the reporting of wrongdoing, which might not otherwise be brought to light.

The bill also provides for a disclosure regime that ensures that information is released or restricted having regard to legitimate public interest considerations. Where personal information is disclosed, there would need to be a public benefit having regard to such factors as the need to maintain a credible complaints resolution process, and public confidence in the judiciary.

Right to equal and effective protection against discrimination — section 8(3) of the charter act

Under the bill, the conduct division may find that a person with a medical disability which creates an incapacity to carry out the duties of an officer should, on that account, be referred to Parliament or (in relation to VCAT members) the Attorney-General for consideration of removal on the grounds of proved misbehaviour or incapacity.

Similarly, non-judicial members may be removed from the board of the commission, or the pool of people who may be appointed to a conduct division panel, if they are physically or mentally incapable of satisfactorily carrying out their duties.

Discrimination under the charter act must relate to an attribute in section 6 of the Equal Opportunity Act 2010, such as disability.

A disability may or may not create an incapacity to carry out the duties of a judicial officer and incapacity may or may not result from a disability, so investigation and removal on the grounds of incapacity may not be discrimination on the basis of the protected attribute of disability. Even if it does amount to discrimination on the basis of disability, it is a reasonable and justifiable limit on the right in section 8(3) to equal protection against discrimination.

There is a compelling public interest, as with other positions of public trust such as health practitioners, in ensuring that judicial officers and VCAT members are not subject to incapacity (however arising) which would result in the person being unable to perform their duties.

Freedom of movement — section 12 of the charter act

The bill provides that a conduct division may issue a summons to compel a person to attend and give evidence, produce documents or other things. This could limit a person's right under the charter act to move freely within Victoria and to leave Victoria. Any such limitation is reasonable having regard to the purpose of the relevant provisions, which is to ensure a judicial officer or member of VCAT is only removed from office on the best and most complete information which can be obtained.

The bill provides that the conduct division may issue a summons if it is satisfied it is reasonable to do so, having regard to the evidentiary value of the information, document or thing sought to be obtained. This prevents a conduct division from issuing a summons arbitrarily.

The person summonsed is free to leave at the conclusion of the investigation. Any restriction on freedom of movement is the least possible restriction necessary to achieve the purpose of providing important information to the conduct division.

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 will establish a Judicial Commission to investigate complaints about the conduct or capacity of judges, magistrates and members of VCAT.

The Judicial Commission will be the first body of its kind in Victoria and only the second in Australia. The establishment of a formal judicial complaints system will help strengthen confidence in the accountability and transparency of the courts.

Victoria has a highly professional and capable judiciary, but occasionally concerns are raised, and they need to be dealt with appropriately in a way that maintains and upholds public confidence in the courts. This bill will establish a process that will lead to valid concerns being given the attention they deserve, whilst ensuring that the independence of the judicial branch of government is protected from baseless or misguided complaints.

Judges and magistrates are, of course, already subject to various forms of accountability. For example, their work is performed in public and their decisions are usually subject to some type of appeal or review. The public has a right to expect, and does expect, the highest possible standards of behaviour from judicial officers and members of VCAT. The commission will uphold those standards by establishing guidelines for judicial conduct, increasing accountability and implementing a rigorous system for dealing with departures from the high standards the community expects.

Current arrangements for handling complaints about judicial officers have serious deficiencies. While Parliament has the power to recommend removal of judicial officers for proved misbehaviour or incapacity, the mechanisms to bring such a matter before Parliament are subject to inappropriate intervention and control by the executive government.

Past experience in other states shows that the processes for investigating and removing a judicial officer need to be established by legislation well in advance of any serious issue arising, in order to avoid the process itself becoming as controversial as the issue.

The bill establishes a process to hear and respond to both serious and less serious complaints and concerns about poor or inappropriate performance or conduct by judicial officers and VCAT members. Serious issues can result in removal of an officer, whilst less serious complaints can be referred to the relevant head of jurisdiction to respond appropriately.

Existing protections for judicial officers will be maintained. In particular:

- it will remain the case that a judicial officer can only be removed by the Governor in Council, acting upon a vote by a special majority of both houses of Parliament;

- it will be a prerequisite for a valid vote by Parliament that an independent body — the conduct division — has concluded that facts exist which may warrant consideration of removal from office; and

- the only grounds on which a judicial officer can be removed are proved misbehaviour or incapacity.

The bill will also strengthen the independence of judicial registrars by providing that these officers can only be removed on the same basis as other judicial officers. Currently, a judicial registrar can be removed by the Governor in Council on the recommendation of the Attorney-General, following a report from an independent person.

It is important to emphasise that it is expected that the vast majority of the matters that the commission will deal with will be matters relating to performance, such as allegations of delay or inappropriate or insensitive remarks. We are fortunate in Victoria that credible allegations of corruption or criminal conduct against judicial or VCAT officers have been rare indeed. The investigation of alleged corruption will primarily be the responsibility of the IBAC or Victoria Police. However, any removal of a judicial or VCAT officer, consequent upon an IBAC investigation, will only occur under the mechanisms set out in this bill.

The Judicial Commission

The bill sets up a process to ensure that the commission will handle complaints in a robust and transparent manner.

The commission will operate under a dual structure, whereby the commission is headed by a board comprising the six heads of jurisdiction and four other people of high standing in the community who will be appointed by the Governor in Council on the recommendation of the Attorney-General, but the investigations will be conducted by an independent conduct division.

This structure will ensure that the commission enjoys the trust and confidence of the judiciary, while making certain that any investigation into the conduct of a judicial officer is conducted by an independent and impartial panel.

The commission will be supported by a small office comprising a director and staff and will be administratively linked to Court Services Victoria. The director of the commission will be chosen by the board of the commission. Sharing staff with Court Services Victoria will ensure the commission has flexibility to respond to the peaks and troughs which are likely in any complaints-handling organisation. It also removes the commission from potential interference from executive government, which would be inappropriate for a body that investigates the judiciary.

The commission's other functions include making guidelines for ethical and professional standards for judicial officers and members of VCAT. However, the commission will not perform a judicial education function and the Judicial College of Victoria will be retained as a separate institution, in accordance with the Government's election commitment.

Complaints process

Any member of the public will be able to make a complaint to the commission about a judicial officer or member of VCAT. A head of jurisdiction and the Attorney-General may also make referrals to the commission.

The establishment of independent conduct division panels to investigate the conduct and capacity of judicial officers will protect judicial independence and ensure that conflicts of interest, real or perceived, are avoided in the investigation process.

Members of the conduct division will not be subject to direction or control by the commission. This will ensure that the investigation of complaints is truly independent.

A complaint or referral can relate to behaviour or incapacity, and will not be limited to behaviour that occurs inside the courtroom. However, the complaints process cannot be used as a means of attacking the independent decisions of officers. The commission is not a substitute for the appellate process. Safeguards in the bill ensure the commission cannot be used to harass or interfere with judicial officers or members of VCAT.

Currently, complaints are handled without any involvement by a non-legal community member. The involvement of respected community members will bring a valuable non-judicial perspective to the complaints process. At the same time, the involvement of the heads of jurisdiction will ensure judicial independence is protected.

The conduct division will be able to take one of the following actions in relation to a complaint or referral:

> matters must be dismissed if they fall into certain categories, for example, if they are frivolous, vexatious, or relate directly to the merits or lawfulness of a decision or procedural ruling made by the officer;
>
> if the matter is serious, the conduct division may report to Parliament its findings that facts exist which may be grounds for removal on the basis of proved misbehaviour or incapacity;
>
> less serious matters that have not been dismissed, and have been investigated by the conduct division, will be referred to the head of jurisdiction for follow-up action.

If a matter is referred to the head of jurisdiction by the conduct division, the head of jurisdiction will be able to take steps including counselling and directing the officer concerned to attend education or training.

Conduct division

A conduct division panel will have three members, chosen by the commission. Each panel must include a member who is a retired judicial officer and a member who is a community member. The third member must be either a serving judicial officer or a (second) retired judicial officer. The commission must choose the members of the conduct division panel from a pool of people of high standing in the community who have been appointed to the pool by the Governor in Council.

The commission may appoint a standing conduct division panel, or may convene a new panel as required. There may be more than one conduct division panel in operation at any time.

The conduct division will have powers to enable it to conduct a thorough investigation. It may decide to hold a hearing, and can receive written or oral submissions from the officer under investigation. A conduct division panel is bound by the rules of natural justice, but is otherwise able to determine its own procedures.

The conduct division will be the independent body that will play the role currently played by the investigating committee under Part IIIAA of the Constitution Act 1975. A judicial officer cannot be removed from office unless the conduct division has concluded that facts exist which could amount to proved misbehaviour or incapacity that would warrant removal from office.

Following an adverse report by the conduct division, Parliament can vote on whether or not the judicial officer should be removed. Both Houses of Parliament must agree, by a 60 per cent majority, before an officer can be removed by the Governor in Council.

If the conduct division finds that there are grounds for the removal of a VCAT member on the basis of proved misbehaviour or incapacity, the Governor in Council may, on the recommendation of the Attorney-General, dismiss the officer.

Standing down

On rare occasions, a situation may arise where, because of the need to maintain public confidence in the courts and VCAT,

it would be inappropriate for an officer to continue to perform his or her functions while an investigation is under way. The bill provides a process for a judicial officer or VCAT member to be stood down from some or all of his or her duties. Standing down will not affect payment of salary or entitlements.

An officer who is not the head of a court or the President of VCAT, may be stood down by his or her head of jurisdiction where the conduct division has recommended that this should occur.

The heads of jurisdiction may be stood down by the relevant council of judges or magistrates for the court of which they are a member.

Standing down is only permitted if the officer is subject to serious allegations.

Health issues

In certain limited circumstances, the conduct division will be able to request an officer to undergo a medical examination, in order to determine whether the officer may be suffering from an impairment, disability, illness or condition that may significantly affect that officer's functions. These provisions will ensure that health problems that could have a real impact on official duties are addressed. Health issues that do not have a direct and real bearing on the performance of official duties are private matters and will be beyond the purview of the commission and the conduct division.

The bill also provides that a judicial officer who is removed from office on grounds of incapacity will receive the same pension, if any, that he or she would have received if he or she had resigned on grounds of ill-health under the current provisions for early retirement in the Constitution Act and the court acts. This avoids the potentially harsh outcome of a judicial officer losing their pension when they have been removed from office on grounds of incapacity, and not on grounds of misbehaviour.

Integrity system

The bill provides for interaction between IBAC and the commission, including in relation to protected disclosures about judicial officers or members of VCAT, which may be made to either the commission or IBAC. Complaints made to the commission which relate to alleged corruption by a judicial officer or VCAT member will be able to be referred to the IBAC. IBAC has jurisdiction over judicial officers and members of VCAT, but is not empowered to remove a judicial officer or member of VCAT from office. Only the commission can set in train the process to have a judicial officer removed from office.

Constitution Act

The bill amends part IIIAA of the Constitution Act to replace the investigating committee with the conduct division and make other consequential amendments. The provisions in the bill relating to the functions, powers and composition of the commission and the conduct division will be placed in the Constitution Act and any future amendments to those provisions will require a special majority.

Reporting

The commission will be required to provide an annual report to Parliament.

The commission will inform complainants of the outcome of their complaint and the actions taken in response. Information released publicly will be limited by considerations such as the need to protect the privacy of an officer in relation to matters such as health issues. However, the bill will increase the transparency of the complaints process.

Conclusion

The bill will enhance the accountability of our judicial system, whilst ensuring judicial independence is not compromised.

The bill is a key component of the government's commitment to build an effective accountability framework in Victoria.

I commend the bill to the house.

Debate adjourned on motion of Mr NOONAN (Williamstown).

Debate adjourned until Thursday, 10 July.

ROAD SAFETY AMENDMENT BILL 2014

Second reading

Debate resumed from 24 June; motion of Mr MULDER (Minister for Public Transport).

Motion agreed to.

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

Third reading

Motion agreed to.

Read third time.

NATIVE VEGETATION CREDIT MARKET BILL 2014

Second reading

Debate resumed from 28 May; motion of Mr R. SMITH (Minister for Environment and Climate Change).

Ms NEVILLE (Bellarine) — I rise to speak on the Native Vegetation Credit Market Bill 2014. I begin by thanking the departmental representatives for the briefing they provided. It was very comprehensive, and I appreciated their time.

This bill cannot be viewed in isolation from other changes that this government has made in relation to native vegetation requirements. In fact this bill very much entrenches the worst elements of those changes. The government's reforms to Victoria's native vegetation permitted clearing regulations were introduced last year, and the minister made a big deal of it in his second-reading speech on this bill. At the time the regulations were before the Parliament opposition members in the other place expressed their concern about some of the regulatory changes that were being introduced. I will come back to some of those later.

Before us we have a bill that builds on and cements some of what we see as very flawed changes to the native vegetation regulations. In addition this bill, as I understand from the departmental briefing we received and from the discussions I had with a wide range of stakeholders and interested parties, has been subject to zero consultation, or if there has been any, it is a well-kept secret. The government might say the bill codifies current policy framework, but it goes beyond that, and although a legislative framework for a native vegetation credit system has credit, we have significant concerns about whether this is the right model and about the fact that there was no consultation. Unlike in New South Wales, where the government is currently reviewing what is called its BioBanking system and there is a public submission process, this bill has not been subject to any consultation. It is for these reasons, as well as the more detailed reasons I will address during my contribution to the debate, that I move a reasoned amendment to the bill. I move:

> That all words after 'That' be omitted with the view of inserting in their place the words 'this house refuses to read this bill a second time until the bill has been referred to, and considered by, the Environment and Natural Resources Committee'.

If the reasoned amendment is not supported, Labor will be opposing the bill.

I need to put this bill into context. Victoria is the most cleared state in Australia. About half of our original vegetation cover has been cleared, including about 80 per cent of the original cover that existed on private land. Nowhere in Australia is it more important to ensure private land conservation, as Victoria has the highest proportion of private land — 60 per cent of our land is privately owned, which is greater than in any other state or territory. In addition it is also the most altered of any private land in terms of vegetation loss and natural values.

Each year about 4000 hectares is lost or degraded in Victoria, and this is greater than what is currently being replaced or gained. I refer to the report of the independent Commissioner for Environmental Sustainability, *Victoria — State of the Environment*, which was released in 2013. The main findings on the conservation of Victoria' s ecosystems and species include: firstly, that there is an overall decline in threatened species and populations because of habitat loss, fragmentation and ongoing degradation of remaining habitat; and, secondly, that with some 62 per cent of Victoria's land under private ownership a significant conservation effort is required outside public land reserves to protect native ecosystems and species. The most common threatening process for Victorian species is habitat loss. The report made some specific recommendations which I will also come back to.

Victoria has a number of mechanisms to protect vegetation on private land. We have a very long history of trying to protect Victoria's native vegetation. I will run through a bit of that history because it shows that Victoria has for many decades sought to drive changes and improvements in the way it attempts to preserve our native vegetation. It started under the Bolte government with the establishment of the Victorian Environmental Assessment Council (VEAC), the predecessor to the Land Conservation Council. In 1972 the Hamer government established the Trust for Nature. It also established the Garden State Committee and introduced the first revegetation grants in Australia. In 1988 the Cain government established the Flora and Fauna Guarantee Act 1988. The Cain government also introduced the first of our native vegetation retention control guidelines into the planning scheme and made it a requirement to offset the clearing of native vegetation.

In 1992 the Kirner government established an interdepartmental agreement on the environment. The native vegetation retention control guidelines established by the Cain government enabled the management and regulation of native vegetation by councils through section 173. Those native vegetation controls were later strengthened under the Kennett government, which developed Victoria's first biodiversity strategy, Our Living Wealth. This included the strengthening of the assessment process, and it also introduced to Victoria the concept of net gain. That was back in 1997. In 2002 the Bracks government introduced *Victoria's Native Vegetation Management — A Framework for Action*, which set out more clearly the method of achieving net gain of our native vegetation. In addition the Bracks government introduced the BushBroker program in 2006 to help landowners generate native vegetation credits and to assist permit-holders clearing native vegetation to find matching third-party offsets.

Going through the history since the 1970s and across a number of governments, both Labor and conservative, Victoria has a strong history of trying to move forward when it comes to the protection of native vegetation. Since 1989 Victoria has had a system that allows for the creation and trading of native vegetation credits, which is the subject of the bill before us.

In addition to the native vegetation requirements that have been set through the planning scheme in Victoria, we have also had, particularly when the Trust for Nature was established, the ability for voluntary protections on private land. This is largely done through the Trust for Nature and the use of covenants. In fact thousands of these arrangements are in place in Victoria, and they have played a significant role in protecting large areas of private land, vegetation and habitat. That gives an indication of Victoria's history across different governments of strengthening the protection of native vegetation, until now unfortunately.

In the second-reading speech for the bill the Minister for Environment and Climate Change talks about how proud he is, 25 years on from the introduction of the credit system, to be bringing forward this legislation. But the reality is that this is the first time in 25 years that Victoria is taking significant steps backwards. That is not a surprise to many of us in this house or in the community, as backwards is the direction this government has gone in relation to the environment since it came to office. The Liberal Party, a party that has until this government, particularly since the Hamer government, supported improvements in environmental protection, has basically subcontracted the issue of the environment to The Nationals.

That is why we have before us these native vegetation changes and guidelines which will put in real jeopardy our capacity to protect and enhance our native vegetation in the future. That is why cows have been brought back into the Alpine National Park. That is why we have a botched free-for-all firewood collection system, and that is why the Department of Environment and Primary Industries (DEPI), especially the environment side, has seen some of the largest funding and staffing cuts of all the departments across government. Yet the government expects all of us to think that under this bill DEPI is going to take on a greater workload as a regulator and a land manager.

As I indicated at the start on my contribution, this legislation is built on flawed new arrangements for native vegetation clearing in Victoria. It legislates for a credit trading system but in doing so locks in many of those flawed arrangements. Let us be clear: Victoria has moved away from the concept of 'net gain', which was introduced by the Kennett government, and has adopted a 'no net loss' policy. Basically it is locking in a continued, long-term decline of our native vegetation. Even using the no net loss principle that this government has established, even using that lower standard, there are serious questions about whether the flaws that exist in the new regulations and this bill will reduce the capacity of the government to even achieve that lower standard of no net loss.

The Bass Coast Shire Council, one of many stakeholders and interest groups that contacted me once they realised there was such a bill before the Parliament, in a letter to me dated 17 June indicated:

> … writing in response to the Native Vegetation Credit Market Bill that is currently being debated in the Victorian Parliament. I feel there are several fundamental flaws in the bill that will greatly reduce the capability of the Victorian government meeting their 'no net loss' policy.

One of the biggest flaws relates to the reliance on highly flawed mapping that replaces the previous system of using trained ecologists. Basically, as the Bass Coast shire pointed out in its letter to me:

> The … mapping, the backbone of the native vegetation regulations, does not accurately reflect what is located on site in relation to flora and fauna.

To review where we were previously, previously all applications for the clearing of land required on-site assessments by consultants. Now only those that are deemed a moderate or high risk will require comprehensive assessment and the matching of clearing to offsets if rare or threatened species are affected. Victoria has been mapped into basically three categories which reflect the likelihood that removing a small amount of native vegetation at a location could have a significant impact on the habitat of a rare or threatened species. There are three categories, A, B and C, which supposedly reflect that if you remove a small amount of vegetation, that will have an impact on the habitat of a rare or threatened species. The focus of this mapping system on the potential impacts to just rare or threatened species means that 91 per cent of Victoria, in this mapping system, ends up in the lowest risk category, A.

Putting aside that that is contrary to a whole range of government documents and definitions on biodiversity et cetera, some of the results we have seen on the ground from that mapping are ridiculous. We have seen a system that has identified some low-risk areas as high-risk areas and an overestimation of low-risk areas, putting some high-risk areas at real risk of being lost into the low-risk area. For example, we have seen the car park and construction areas within the

grounds of Melbourne Airport and the in-field parking and viewing areas of the Calder Park raceway being classified in the higher risk categories, yet some other areas — like the Dandenong Ranges National Park — have been inexplicably classed as low risk and are in risk category A.

Anyone on the ground dealing with this knows there are significant issues. I am not sure if the minister is closing his eyes and ears to these problems, but stakeholders — landowners, developers, the Minerals Council of Australia through to environmental groups — have certainly raised these flaws. The minister is asking us to entrench that flawed model by supporting the bill, and we cannot do that. The bill entrenches that flawed model in that it employs the same metrics and is intended to complement the planning scheme. For example, part 4 of the bill, which provides for the method by which gain will be calculated, references both the biodiversity assessment guidelines and the references in the Planning and Environment Act 1987. The link between the two is critical.

I have alluded to the fact that so far the experience of those who have worked with the new system of regulations is not good. Those who currently work with developers on assessments and provide advice suggest that the new system is significantly more expensive for developers. Combined with that ridiculous situation, the regulations are also bad for the environment. I will give the house a couple of examples. In my electorate of Bellarine there is an application to clear Bellarine yellow gums at Ocean Grove. This is a good example of the failure of the mapping system. The Bellarine yellow gum is a threatened species listed in the Flora and Fauna Guarantee Act 1988. An application is on foot to approve the removal of around a dozen individual trees. The location in which the removal has been sought is classified as low risk, even though the entire ridge line at this point contains remnant Bellarine yellow gums. This example clearly shows the flaws that exist in the regulations.

There are a couple of other examples where the regulations are impacting on land-holders. A land-holder in Eltham received an estimate last year of $20 000 in cost offsets for building a house under the old system. However, he delayed the planning permit, and under the new system the offset will cost $90 000. The government trumpeted the idea that it was making native vegetation regulations easier for everyone. In fact we find the regulations are more complex and bureaucratic, have poorer outcomes for the environment and are costing developers and landowners more money.

Another example comes out of Bendigo, where under the old system the council calculated offsets for its airport at $300 000, but under the new system it is estimated to cost $3 million-plus. I am yet to find out who is benefiting from this new system. It is an ideological push from The Nationals, who have captured the environment debate in Victoria. Its members are not worried about the science or the actual outcome. They are out there saying, ‘We don’t like native vegetation’. Their constituents have been very important contributors to private land management and conservation, particularly through the Trust for Nature. Nationals constituents understand the importance of native vegetation, but The Nationals are happy to knock it all down in Victoria. As I said, many suggest that the process is less simple than previously experienced, yet this is the goal of the government. The regulations are bad for the environment because they lead to poor environmental outcomes, and they are combined with a system that is more expensive and harder to navigate.

The opposition has other concerns with the bill. It appears that it requires all the offsets to be registered via the native vegetation credit register. Currently in Victoria some third-party offset credits are registered, but many are not. Often a lot of offset requirements are met on the same site, so they are not third-party offsets. At the moment these only need to be approved by councils through a permit system, and there is a further onus on councils to follow them up. If the bill requires all offsets to be registered through the credit register, there are potentially huge extra costs and bureaucracy — and we have already seen costs go up for a lot of landowners — which again undermine the so-called stated aims of the government to make the regulations easier and simpler.

The bill also concentrates the decision making with the minister and the secretary and sees all the bureaucratic processing and decision making sitting with DEPI. This includes giving powers to the secretary to seek enforcement, including over DEPI’s own land, which it manages. This is of major concern because this small unit in DEPI is already under massive pressure — for example, DEPI management of the BushBroker program and the current native vegetation credit register has resulted in huge delays for many landowners in getting offsets. Given the funding and staff cuts to DEPI it is almost unimaginable to think it is positioned to take these things over and do so efficiently or more simply.

Another area of concern is the provision in the bill to enable offsets for philanthropic purposes. As I indicated earlier, Trust for Nature plays a huge role with private landowners wanting to protect significant vegetation

through a covenant scheme. More than that, it also gives significant support to those who manage the land by providing a stewardship arrangement with landowners who partner with Trust for Nature in their conservation covenants. It is unclear whether the outcome of the bill will be to displace the use of Trust for Nature conservation covenants, and this is of great concern.

As I said, at the moment Trust for Nature provides not only the legal protections but also on-the-ground stewardship services. Experience from across the world suggests that the best possible outcomes are achieved not just by the legal instrument you use to provide protection for native vegetation but where you provide that legal protection with on-ground support for rehabilitation, protection and enhancement of native vegetation. One of the few agencies we have in Victoria that combines legal requirements and legal protections with those on-ground extension services could be under threat, and that is of serious concern to the opposition.

The bill also provides for the creation of native vegetation credits for Crown land, and we will explore some of this a little bit more during the consideration-in-detail stage, particularly in relation to issues of inequality between Crown and private land arrangements. There are some other concerns in relation to these provisions; for example, when we are talking about credits for reserved Crown land, it is unclear what is meant by 'compatible uses'. Could you include land that is being used for carbon sequestration via vegetation or soil? Those are critical points, and as I said, the bill does not provide a clear outline of what is meant by compatible uses.

The bill allows already reserved land to be used for offset purposes. Potentially this means that private land clearing could then be used to maintain or provide funding for existing Crown reserves. We could say to a private landowner, 'You can knock down a whole lot of native vegetation over here if you pay for some management of existing reserves on Crown land that are already protected to some extent'. There are issues in relation to what that might mean, and that is a real question: is private land clearing going to be used to maintain Crown land?

Again we come back to the role of DEPI in relation to Crown land. Basically we have a situation where the department will administer Crown land offsets. It will be the land manager, regulator and enforcer, and it will be the recipient or manager of the credit fund. The potential for a conflict of interest there is real and especially acute at times when we have the sort of severe funding cuts that have been overseen by this government and this minister. Although the bill also establishes a monitoring framework, it is unclear where responsibility for monitoring will lie. Will it fall on local government, which will actually have less resources to play that role?

Many of the issues raised today have come from stakeholders ranging from the minerals council to the Housing Industry Association, through to environment groups, ecologists and consultants who work in the native vegetation area. Perhaps some of these issues could have been resolved if the minister had spent some time going through a public submission process on a credit market system like this. Most people think there is some merit in a legislative framework for the native vegetation credit market, but we need to make sure the model we establish is the model that is going to work best to get the best outcomes for both the environment and our landowners in Victoria. We are a long way from achieving that, and it is made worse by the fact that we have such a flawed underlying model in relation to permitted clearing regulations and guidelines that have been established by this government.

It is this government's form, particularly in relation to the environment, to try to introduce all of these negative changes that have a poor environmental outcome. I can understand. If you are the Minister for Environment and Climate Change, you do not really want to be out there selling some of these anti-environment measures to your stakeholders, because they are not really going to like that. When you are the voice of The Nationals, you do it all under the radar and try to do it quietly. But what we have here, and where I started my contribution today, is the fact that Victoria has a serious and significant issue in relation to native vegetation coverage on private land. Just as every government until this one has done, we need to take that seriously. Every single government since the Bolte government — the Hamer government, the Cain government, the Kirner government, the Kennett government, the Bracks government and the Brumby government — has taken seriously the need to protect and enhance our native vegetation.

This government has subcontracted the environment to The Nationals and it is taking us backwards for the first time in decades. It is also the only government since the Hamer government not to have established a national park. What we see is cows in national parks, a free for all in national parks, and I am sure if The Nationals had their way, we would open up national parks to logging and wind back the protections that have been provided in national parks.

There are too many risks in this legislation. There are too many unanswered questions. We are not willing to allow some of our most significant native vegetation to be lost forever. We know that we have some of the most extraordinary, large, old trees in Victoria that have been here for over 200 years and provide important habitat for our native animals. It has taken a long time for our native animals to build those homes. Once you lose them, it is 200 years before they get another home, and for many of our native species that will be too long. We think there needs to be real consultation, a real look at this model. As I said, New South Wales is going through an extensive process at the moment. There are other alternatives to this model, but they require reflection and a review of the regulations that underpin this.

As I said, every government since the 1970s has set out to improve Victoria's protection and enhancement of native vegetation. The government's own environment commissioner made some strong recommendations in the 2013 state of environment report and said the Victorian government should protect our native vegetation on public and private land by amending the permitted clearing regulations. It did that, but unfortunately it did not do it in a way that was about protecting native vegetation.

Mr BATTIN (Gembrook) — I start by saying that I support the Native Vegetation Credit Market Bill 2014 and the work that has gone into it to ensure that all questions about it have been answered. There were not a lot of questions coming from the other side. I also put on the record that I do not support the opposition's reasoned amendment. It is irresponsible. The market already exists. The bill puts in place a legislative framework for the future to ensure the market continues.

I also note the utter contempt shown by those opposite for the expertise of staff from the Department of Environment and Primary Industries. Departmental staff have unbelievable expertise, and we work very closely with them. I have had discussions with departmental officers, many of whom have a history of working within the market with both councils and private enterprise organisations. They have applied that expertise to the bill before us. Never before have I heard an attack on the public sector like the one I just heard. That was a disgraceful attack on the expertise of the public sector by the lead speaker for the opposition.

Another thing the lead speaker for the opposition mentioned related to the decline in vegetation throughout Victoria. It was interesting because not once did those opposite bring up that fact during their 11 years in government. They failed to bring in a policy to change it. They supported the current system for 11 years and brought nothing new to the table. If they were really so interested in this, why did they not bring in something over the last 11 years to ensure that the market would go forward? I also note that the points the member made about on-site assessments were incorrect. The bill requires an on-site assessment for every credit proposal. The bill uses some model data to establish the relative importance of these assessments. This data is used to assist in accurately determining the relative biodiversity values and will result in a more consistent, accurate and objective assessment than would result from relying solely on subjective opinions. The bill puts in place a legislative framework for something that has existed for a long time. It ensures that Victorians know exactly who the regulator is. It is very important that we set up a regulator who can oversee the program as it goes forward and that the regulator is separated from the broker.

Another issue raised by members opposite related to consultation. Opposition members have said there was no consultation at all. I put it to them that public consultation was undertaken in 2012 as part of reforms to the native vegetation committee clearing regulations. This bill puts in place a framework around that. Many respondents raised concerns at the time about the level of compliance with offset obligations and the integrity of the security arrangements within the current system. Consultation began in 2012. Feedback received included the need to require that security agreements for credits met a single standard and were regulated by the government. We went back to the department and used its expertise to draft the bill before us today, which ensures that credits will be regulated. It effectively guarantees the integrity of the credits and enhances investor confidence, which is very important.

The bill is also based on other government research dating back to 2009, when the Victorian Competition and Efficiency Commission released a report entitled *A Sustainable Future for Victoria — Getting Environmental Regulation Right*, which talked about putting regulation in place. It is interesting that that was in 2009, when those opposite were in government. They obviously ignored that report, as they did nothing about it even though the community and those working within the market were already looking for a way forward and for regulations to be put in place.

In 2011 the Victorian Environmental Assessment Council released a report entitled *Remnant Native Vegetation Investigation — Final Report*, which recommended that the government continue to support and expand existing programs that encourage and assist

private land-holders to contribute to biodiversity enhancement on private land. That is very important. The consultation began in 2009 and continued throughout 2011 and 2012. We then went back to the department and worked with its expert staff.

The bill is the result of the government's commitment to introduce legislation to support the function of a native vegetation offset market. As I said before, the market already exists, and this is why the opposition's reasoned amendment is nothing more than a political stunt. Those opposite stand up and talk about net gains and net losses, but the market already exists. The arguments being put forward by those opposite could have been put forward during the planning stage; they do not form part of this bill. This bill makes sure we have a regulated credit market so that private investors out there can be confident in the regulation going forward. The bill demonstrates the government's commitment to balancing economic and environmental considerations. This balance has been taken into consideration throughout the entire process not only by the Minister for Environment and Climate Change, who I note is sitting at the table, but also by the department.

I note that the lead speaker on the other side seemed not to be so interested in this bill. She did not have enough questions to ask about it. Instead she chose to refer to all the other environmental issues that have arisen throughout the state since 2010. Since 2010 the Minister for Environment and Climate Change has begun investigations — and I am speaking specifically about my electorate — some of which we have supported, particularly around Yellingbo, to ensure that we are protecting our environmental areas now and into the future.

Mr Angus — A good local member.

Mr BATTIN — Thank you very much for that; I am a very good local member. The bill also means that when you are looking for an offset credit, you cannot just look at a credit for now; you have to put in place a plan for the future. It may be an improvement management plan or an ongoing management plan. We are talking about anything you are going to protect in perpetuity. We want to make sure that when we do an offset, the offset is there in perpetuity.

In my discussions with the department — and I thank the department for the consultation and discussion around this — one of the questions raised was about offsets for something that is already offset. The bill allows for that. The bill provides that with your offsetting you must offset an offset. That is going to sound really bad now, is it not? In terms of a future offset, if you are going to get rid of one offset you have to go to a future offset to offset an offset.

Mr Noonan — Clear as mud.

Mr BATTIN — It is as clear as mud on that one. The offsetting is very important. Should we want to change an offset in the future, it is important that it is offset with another offset. In the absence of the underpinning framework, the process of creating trading and managing credits relies entirely on policy-based tools and tri-party contractual agreements. This is where the system is falling down at the moment. The current system has no regulation around it, and we are relying on contractual agreements that can be discussed at the local level with separate policies that do not all align with the end being the best outcome for the environment in the particular scenario. We need to make sure that any person who wants to get involved with the credit market is running under the one set of regulations. We do not have the policy frameworks out there — at the moment they can be set separately by councils et cetera — in terms of their arrangements going forward.

This is a highly complex discussion and a highly complex bill. The biggest problem prior to the bill coming forward has been the lack of transparency. This bill creates transparency. It creates an opportunity for anybody to see what is happening within the credit market to ensure that when they are looking at any offsets for the future there is no net loss. That is one of the biggest things put forward — that there will be no net loss. This is putting confidence back in the market, and it is very important to go forward from there.

The opposition has referred to net gain versus net loss. That is an argument opposition members can make when we are talking about planning amendments or planning bills. This bill is not about net loss and net gain. This bill is to ensure that the system has the correct regulations and transparency and provides confidence so that anybody who has to get involved in the system, whether it be an expert from the department or someone out in the private sector who is looking to develop, has an understanding of exactly what is required of them going forward. That is where the confidence comes into the market. We must ensure that across the entire market through the state people are on the one framework and operating under the one set of regulations going forward.

Ms GARRETT (Brunswick) — It is with pleasure that I rise to make a contribution on the Native Vegetation Credit Market Bill 2014. I would like to pay tribute to our lead speaker and shadow Minister for

Environment and Climate Change, the member for Bellarine, not only for her very significant and comprehensive words today, which reflect the amount of work she has done on this issue, but also because she has done more work than the government has. When I consider what is coming forward — —

Honourable members interjecting.

Ms GARRETT — Absolutely she has. She has set out in a very clear and detailed manner the major concerns the Labor opposition has with this flawed legislation. I agree with the previous speaker, the member for Gembrook, that this is a very complex area. The protection, enhancement and management of our native vegetation is a complicated and difficult area that needs to be navigated well. Clearly the government is making changes to how the system operates — it is creating a legislative underpinning — but once again this government has failed to seize the opportunity to comprehensively look at these issues to work with the community and key stakeholders and come up with plans and proposals that take us forward. As the lead speaker pointed out, this government is taking us backwards in the environment space for the first time in 25 years.

While the focus of this debate is clearly on the terms of this legislation — and the shadow minister and member for Gembrook pointed to some other issues — I note that this is an area where the government really has been a wolf in sheep's clothing. This government came to power in 2010 with a bipartisan commitment to a reduction in emissions in this state and with backing for continuing to support our extraordinary solar and wind industries. There was no mention of what the coalition was going to do in terms of slashing feed-in tariffs — —

Mr R. Smith — On a point of order, Speaker, I would appreciate it if you could bring the member for Brunswick back to the bill.

The ACTING SPEAKER (**Ms Ryall**) — Order! I uphold the point of order, and I ask the member for Brunswick to come back to the substance of the bill.

Ms GARRETT — I return to the bill, which is another step in a long line of disasters of this government in the environment space. This bill needs to be looked at in that broader context, because quite frankly the community has very little confidence in anything this coalition is serving up in this space. We have an approach here, a legislative underpinning, about which there has been no consultation with stakeholders. There is a very stark contrast to be made here with what New South Wales is doing in this space. New South Wales is approaching this in a methodical manner in which the views of people who are directly affected in this very complicated area are being listened to and taken on board. When the legislative program ultimately emerges in a state such as New South Wales, you will have buy-in from all the key people. In Victoria, however, what we have is no consultation, no buy-in and some shoddy work.

The opposition's reasoned amendment is an attempt at addressing this fundamental failing of this government; it proposes that we refuse to read the bill a second time until it has been referred to and considered by the Environment and Natural Resources Committee. The reasoned amendment is absolutely designed to ensure the steps this government should have taken in developing this legislation are properly taken. The concerns we have in relation to the bill include that it entrenches the new native vegetation system, which is flawed and which raises really significant issues for local government. Would members believe that local government has not been properly consulted about this legislation? There are also a range of changes regarding offsets.

The opposition lead speaker made an important point — and it is not an attack on the public service, because some of the finest public servants we have are in the Department of Environment and Primary Industries — that the problem for the public servants is that they are stretched beyond measure. That department has absolutely borne the brunt of Liberal-Nationals cuts. Hundreds and hundreds of staff have been removed from the department. Yet this legislation seeks to place all of this responsibility on a department that is absolutely falling apart at the seams. There are empty hallways, computers not working and the staff are simply not there to administer the scheme.

There has been no consultation with stakeholders. Stakeholders have had some concerns about how the scheme would be administered and about the removal of the role of local government, yet there has been no consultation whatsoever, just a blanket inclusion in this piece of legislation. We have real concerns around the extension of the offsets regarding Crown land that the department would administer, as it would become the regulator, land manager and recipient of offset money. This has the potential to create conflict of interest. If there had been a thorough analysis done or if there had been proper consultation, these issues could have been identified, addressed and ironed out. This is exactly what this reasoned amendment is designed to do. The reasoned amendment is designed to do the work the government has failed to do.

Then there is the policy issue of whether it is appropriate to allow Crown land that is already protected to be an offset. A full discussion with all the key stakeholders and the community about this scheme, this legislation and the impacts it will have is absolutely and fundamentally critical. The bill further cements a reliance on a biodiversity mapping system that has been viewed as flawed and inaccurate by stakeholders. The bill does not specify what proportions of offset payments will be paid over the 10 years of land management, which means entities like local councils and community organisations may need to operate at a loss in certain years. There are concerns around the potential inconsistencies around the scoring system. The list goes on and on and on.

The protection, enhancement and management of our native vegetation should be taken very seriously, but this government has done this all behind closed doors. It has done it all without the benefit of the input of experts and stakeholders and has served this legislation up to this house and the people of Victoria. We are deeply concerned about it. When you look at the issue around our national parks — the cows in the parks, the hotels in the parks — you realise that the record of this government does not give the community faith that what is being proposed will actually make positive changes or will protect the environment. In fact, this government has been disastrous in respect of the environment. It has wound the clock back. It reminds me of the antidiscrimination legislation — —

The ACTING SPEAKER (**Ms Ryall**) — Order!

Ms GARRETT — I am back on the bill, Acting Speaker. Victorians were not aware that fundamentally this government was going to take the state backwards. This area was a huge opportunity for the government to work with the community and to design and create something that would take the state forward and deliver some protections for the environment. It could have given the community some confidence. Yet again, as we have seen time and again, the government has not only failed to seize the opportunity but it has squandered the opportunity, as it has done with so many issues, not just in this portfolio but in many other portfolios. It has squandered the opportunity of government, and it has failed to deliver real benefits and outcomes for the community in this space.

We are concerned that this bill will undo the years and years of great work done by local councils and small businesses to become viable under the existing scheme. If you are not speaking to people about what those impacts are, you do not know what they might be. When you introduce something like this, the repercussions can ripple through the community in a very serious way. We are deeply concerned, stakeholders are deeply concerned and the community is deeply concerned. That is why we are proposing an amendment that would see these issues addressed in a transparent, open and serious fashion. It would ensure that a scheme that is as important as this is for the future of this state and the future of those who would rely on a strong and robust scheme to enjoy environmental benefits and protections in the future would be fully explored and fully met. We should create a scheme that is actually going to improve things, rather than one which turns the clock back.

Dr SYKES (Benalla) — It gives me great pleasure to rise to contribute to the debate on the Native Vegetation Credit Market Bill 2014, which I strongly support. In my presentation I will outline the bill briefly, I will outline the circumstances in Victoria in relation to the processes that go on and I will respond to the ill-informed, unfounded rhetoric of the members for Brunswick and Bellarine. This bill is part of a continuing commitment by the Liberal-Nationals coalition government to protect and enhance our environment and native vegetation, and of course the fauna that live in the areas of native vegetation This bill further enables the removal in some cases of existing legislation but requires and facilitates the provision of adequate offsets to ensure that there is no net loss of native vegetation. Native vegetation has value and beauty in its own right — the flora and fauna — but it is also important in providing habitat for our native animals.

The offsets for native vegetation that is removed can be put in place on-farm or off-farm. This bill relates to improving mechanisms for the provision of off-farm offsets. As the member for Gembrook indicated, the bill provides for clarification and simplification of the process, and it enhances the integrity of the offset credits and will thereby provide certainty for purchasers and vendors of offsets. The government will be the regulator; it will no longer be in the market as a broker. It is a simplification and a step forward in the process of ensuring that there will be no overall net loss of our native vegetation.

I turn now to the process involved in clearing native vegetation. A land-holder may wish to clear native vegetation to free up land for agricultural purposes. For example, they may wish to put in centre pivot irrigation, which can be best practice agriculture and occasionally may require the removal of some trees in the area covered by the centre pivot. In Benalla that can be done locally and you can put in place offsets around the edge of the area that is irrigated by the pivot. A

land-holder may also wish to clear native vegetation to build farm buildings or houses.

The process will now involve going online and checking the area status. An area can be considered to have low, medium or high conservation value. The maps will need refinement. There is nothing wrong with acknowledging that there is an opportunity to refine, but the fact is that this government has taken the first step. It has taken the initiative and it is using technology to move towards the reduction of green and red tape while also enabling the protection of our high conservation value native vegetation.

The other thing we look at is the amount of clearance. Is it one tree, two trees or more? If there are less than 15 trees and if the area has low conservation value — about 80 per cent of the native vegetation clearance applications that currently come to government are for areas that have been determined to have low conservation value — the application can proceed with minimal additional inconvenience or red or green tape. The government's energy is then put into dealing with the 20 per cent of clearance applications that relate to areas with high conservation value. That makes sense: you put your energy into where you get the best bang for your buck. It is about outcomes. Our government focuses on outcomes, and this approach protects our high-value native vegetation from high-impact activities.

The process then involves establishing the level of offsets, and these offsets are generally referred to in terms of habitat hectares or general biodiversity units. These offsets can be delivered on farm or off farm. If you go on farm, the process involves looking at whether there has been prior activity, and many land-holders have planted trees on their farms over the years. There is often a site inspection to look at what is required to protect either the remnant vegetation that is there or the planted vegetation and to look at plans for the planting of new vegetation, and there are fencing requirements to protect areas from livestock. There is also a requirement to provide legal security by having that land covered by a section 73 on the title.

Given that there are costs and work involved, there is the proposition that if you are going into offsets and looking at native vegetation removal, you should have a whole-farm approach. You do that so you have your plan mapped out over 10 or 15 years rather than proceeding with a series of ad hoc clearances. That then spreads the costs over a larger project. As we have said, this bill covers circumstances where applicants go off farm.

I will pick up and respond to the unfounded and ill-informed attacks by members of the Labor Party. First of all they launched an attack on land-holders. The inference was that Victorian farmers rape and pillage their land. I reject that as an outrageous, ill-informed, unfounded and unbelievable comment. If the members for Bellarine and Brunswick came to north-east Victoria, they could see projects such as the regent honeyeater project, driven by Ray Thomas with an enormous amount of cooperation from land-holders in north-east Victoria. That project is re-establishing the regent honeyeater's habitat, often at the expense of land-holders and with the help of many volunteers who have come up from Melbourne. It is delivering fantastic outcomes and demonstrating a commitment to the environment — to both the flora and fauna.

Similarly there is a lot of fantastic work going on in the Longwood-Nagambie area under the leadership of Susan Sleigh. The community there is looking at fencing off the waterways, protecting the quality of the water and recreating habitat, and this work is being supported by the Landmate program. This government has ensured continued funding of this program to allow low-security prisoners to work on farms to help farmers, to help the environment and to help the prisoners. Only a week or so ago I caught up with some of the Landmate fellows having a break in the middle of doing some great work up at Bright. It is a great program, and it is part of what this government is doing in an overall commitment to protecting and enhancing the environment.

There is also the pasture cropping program that a good friend of mine, Jacki Campbell, oversees. That is about land-holders looking at utilising the land, thinking laterally and selling their crops into pastures. It is often native pastures, so they are retaining native pastures, but they are looking to enhance productivity by putting in place cropping.

I turn to some of the criticisms of The Nationals we have heard in relation to this bill. They have been outrageous and I reject them. The Nationals represent all people in country Victoria, and we have ensured that we have an overall approach to the protection of native vegetation and the environment.

The member for Brunswick made a comment about a wolf in sheep's clothing. The closest thing we have to wolves in Australia are wild dogs, and The Nationals and the coalition government are addressing the problem of wild dogs. We are doing our bit to protect native fauna in the bush. Time and again the previous federal Labor government rejected aerial baiting, which is a key tool. Where were members of the Victorian

Labor Party on wild dog control? They were silent. There was not even a whimper. There was not even a little yelp from the member for Ivanhoe. Members opposite were silent.

The coalition government has introduced the independent Game Management Authority and a game management plan. The game management plan addresses management of the habitat, because we know that you need a habitat for the benefit of game and our native fauna. We are doing a number of things, and we are working closely with the other users of our wonderful native vegetation, whether it be on public or private land. We are working with Field and Game Australia and the hunters, who do an enormous amount of work to protect the environment. If members want an example of that, they can go down to Heart Morass in Gippsland and see what has been done in the restoration program there. Field and Game Australia and the hunters have worked with the full spectrum of the community, and they have had a fantastic outcome in terms of protecting native vegetation.

In the remaining few seconds available to me, I want to make it very clear that this bill is a further show of commitment by this government to protecting native vegetation, enhancing native vegetation and enhancing the environment for our native fauna. This bill is an example of a responsible government getting the balance right and doing a great job for the environment.

Mr HOWARD (Ballarat East) — I am pleased to add my contribution to the debate on the Native Vegetation Credit Market Bill 2014. As has been noted by the members for Bellarine and Brunswick, we on this side of the house generally accept that the concept of this legislation is good and that we should move towards putting in place the legislative framework necessary to protect native vegetation and establish a native vegetation credits scheme. However, members on this side have been pointing out that with this bill this government has missed a great opportunity. A couple of speakers on the other side of the house have made comment on the bill. I do not take great exception to what even the member for Benalla had to say.

Honourable members interjecting.

Mr HOWARD — It is quite odd. We on this side want to see our native vegetation protected. Over a number of years we have had, in effect, a form of bipartisan support for this issue. We have gone from the position of allowing vegetation to be cleared to the Cain government putting in place the first processes to recognise that we need to protect our native vegetation and put controls in place. That work continued from then under the Kennett, Bracks and Brumby governments to this government.

In a sense this government wants to keep moving in the right direction, which is a good thing. A native vegetation credits system has its merits. However, there must be consultation. So many questions are left unanswered by this legislation. Members know that a lot of farmers and other land-holders want to do the right thing with their properties. They want to hand them on in a better form than when they took them over. Members also know that in the past the logic was that a good farmer had to clear all the vegetation from his property — that is, if they left trees and did not clear their paddocks, they were not doing a good job.

Ms McLeish interjected.

Mr HOWARD — The member for Seymour is not listening.

The ACTING SPEAKER (**Ms Ryall**) — Order! The member for Ballarat East will not respond to interjections.

Mr HOWARD — Members need to remember what happened through the early part of the 20th century. We know that when people were given soldier settler land they were required to clear that land. That was the ethic back in the early part of the last century. We know that now a lot of our farmers want to protect the land and that through the Trust for Nature many of them have taken the step of putting covenants on their land, which is a great step to have taken. I know covenants have been put on a number of properties in my electorate and other properties in western Victoria. What we do not know are the effects of this legislation on those covenants. Now we are not quite sure whether the Trust for Nature is to be taken out of the picture or how it is to fit into the picture, because the Department of Environment and Primary Industries (DEPI) is to take over all the regulation and management of the land to be used as offsets.

We on this side are certainly concerned about how the new system will operate. The fact that there has not been consultation with members of the key groups, whether they be the Trust for Nature, councils or other bodies that have been involved in offsets, means that how the management of the land will operate is still unclear. Opportunities have been lost in the introduction of this legislation. Members on this side want to ensure that the land set aside for offsets is managed appropriately. Given the staffing cuts in the Department of Environment and Primary Industries, putting the management of all the land under the

control of DEPI raises questions about whether DEPI can be the regulator as well as being the Crown land manager and the recipient of the offsets credits.

The concern is how those separate responsibilities can be undertaken by DEPI in a sound and effective way. Members know DEPI has been very slow in its administration of the BushBroker scheme. Putting more responsibility on DEPI so that it will be dealing with the entire system of offsets will clearly put a whole lot more stress on DEPI staff and will result in a lot more people waiting to work through the process, so there are ongoing concerns. We on this side of the house consider that the legislation has been brought forward prematurely. A lot more consultation needs to be undertaken so that when the legislation comes forward in the future the concept will be dealt with correctly. People will then be assured that land set aside for offsets is the right sort of land — that is, land that matches the land that might be being cleared for one reason or land from which trees are being removed for one reason or another and that that offset land is being managed appropriately.

Members on this side of the house are committed to the concept of native vegetation protection — of net gain, not net loss. If we are to move forward with a legislated program in the form proposed by the bill, it needs to be done correctly so that people understand the answers, the safeguards are in place, there is the capacity to ensure that the offsets are managed in a timely manner and people are not kept waiting because of a backlog in DEPI that we are confident will develop. With those words, I will leave my contribution and welcome contributions to the debate on this legislation by others.

Mr NEWTON-BROWN (Prahran) — Victoria owes much to our agricultural roots and also to the continuing contribution that agriculture makes to our state economy. For evidence of that, members need only look at the various areas around the state — the dairy farms of Gippsland and the Goulburn Valley, south-western Wimmera where sheep farming is the predominant activity, beef farming in south-western Gippsland and cropping in the north-west and the Mallee.

Three months after the arrival of the First Fleet in 1788 the livestock in the colony amounted to 7 horses, 7 cows, 29 sheep and 74 pigs. By 1860 we had 1.2 million acres under crops and our livestock amounted to 25 million. As the squatter runs spread across the country trees were ringbarked and burnt to clear the land, and we even invented the stump-jump plough in the 1870s to assist with that. In the mid-1900s, when soldier settlement schemes were introduced across the country, it was a caveat and part of the lease requirements that clearing continue.

Yes, we have become the Lucky Country over 200 years of settlement, based in large part on the great wealth generated through agriculture, particularly through wheat and wool. This has come at a cost to our environment. You only need to look at an aerial shot of Victoria on Google Maps to see that much of the state has been cleared for agriculture and that proportionately there is not a huge amount of native vegetation left. It is encouraging that in recent times, and certainly in the past 25 years, successive Victorian governments have been dedicated to reversing the decline of native vegetation, protecting what is left, revegetating and increasing our native vegetation. On behalf of my country cousins in The Nationals, I take offence at members of the opposition suggesting that The Nationals would be happy to see the whole country cleared. It is very clear that farmers themselves are great environmentalists, with many involved in projects at their own expense to create shelterbelts and to increase native vegetation for aesthetic values and to attract fauna. Indeed best practice farming recognises that native vegetation can assist with things such as salinity, water quality and in protecting watercourses from erosion.

There is certainly a desire to reverse the decline in native vegetation and to increase its stock. That is part of what this bill is about. The objects of the bill are to facilitate an efficient and effective native vegetation offset market by creating clear native vegetation credits in a streamlined manner so that they can be traded. The ultimate aim is the retention of and an increase in native vegetation. This bill will provide a guaranteed basis for the provision of these credits and will provide much greater certainty and confidence to rural land-holders, who have been participating in a fledgling market which has now matured. It is time for government to take a step back and become the regulator rather than an active participant.

The bill will also reduce complexity, which will encourage more land-holders to participate and will improve transaction times. The ultimate aim is to have no net loss of and hopefully an increase in native vegetation. As far as the practicality of the system goes, the bill requires a skilled vegetation assessor to come out to a property and assess a proposal to create native vegetation credits under the bill. The assessor will assess the condition of the existing vegetation on the site and propose management actions that could be set out in a management plan, which will be done in consultation with the land-holder. This information is then used to create a plan for potential gain, using

methods and formulas prescribed in the regulations under this bill.

The landowner then applies to the Secretary of the Department of Environment and Primary Industries to create native vegetation credits. If this application is accepted, the secretary and the landowner will enter into a native vegetation management agreement, which will be a legally binding requirement for the landowner to protect and improve the land and to deliver the obligations set out in the management plan developed with the accredited assessor. This agreement will then be recorded on the title and will bind future owners. The land may be sold, but if it has been locked up for revegetation credits, that status will remain in perpetuity. By this process the native vegetation credits are created.

As far as the kinds of protections and improvements that would be typically required are concerned, the management plan will generally set out details for the practical management of land, including such things as forgoing uses of the land which are incompatible with protection — for example, you cannot get your credits and then go out and collect firewood or start grazing cattle or allow four-wheel driving on the property. You may have to forgo development rights for the site, or part of the site. You may need to fence the land to exclude external threats. Depending on the state of the land when you seek to put it into the system, you may need to undertake targeted weed and pest control. Revegetation may be required. You will also be required to protect remnant and fallen vegetation.

One of the concerns that many people have is what the effect will be if fire or flood impacts the vegetation on your locked-up land. This is accounted for in the bill. The evidence says that fire and flood are not necessarily detrimental to native vegetation as they are naturally occurring events. It is not necessarily the case that it will be of detriment to the value of the vegetation on the land. Should that be the case the bill allows that the funds available under the scheme to the landowner will continue, or are able to be continued, despite any damage due to forces outside the landowner's control. The annual payments can still be made even if, for the above reasons, the site management requirements may not be able to be met.

In summary, the bill plays a very important role in implementing the key environmental reforms of the government. It will drive best practice environmental regulation and support innovative market approaches in a market which has now matured. It is an appropriate time for the government to take this step and allow the market to flourish. The bill provides a legislative basis for the scheme, which will increase the transparency and the rigour with which the scheme is required to operate; it will be able to operate with greater rigour and transparency if the bill is passed.

The bill establishes credits as a right which can be earnt or traded. It streamlines the processes and provides certainty for all participants in the market so the market can develop to provide the ultimate aim we all want to achieve — that is, the protection of remnant native vegetation and the improvement and creation of more native vegetation. The future is bright for native vegetation in this state. The government is focused on facilitating vegetation protection.

It is disappointing that the bill is not being supported by the opposition, because through it the systems for protection will be streamlined, confidence and certainty will be provided to land-holders and complexity will be reduced, with the ultimate aim being to protect and enhance native vegetation in Victoria.

Ms DUNCAN (Macedon) — I rise to contribute to the debate on the Native Vegetation Credit Market Bill 2014. The opposition has moved a reasoned amendment because we have some serious reservations about the bill. Left to its own devices the opposition would oppose the legislation. That is unusual for the opposition; we have not opposed many bills. But the native vegetation regulations the legislation is based on were opposed by the opposition because they are fundamentally flawed, and this bill builds on that flawed model, which is why no-one in good conscience could support it in its current form.

If anyone was listening to the member for Prahran, and I hope the people of Prahran listen to the contributions made by their member, he gave us the exact reason we are opposing the fundamental methodology that underpins the legislation. The member for Prahran gave us a fairly puerile but nonetheless interesting history of vegetation clearing in this country, and he pointed out very strongly how much clearing has gone on. If anyone was to look at a map of vegetation pre-white settlement in Australia and then look at a map of vegetation across Australia today, they would have no hesitation in suggesting that anything less than a net gain is a flawed policy. If we do not try to undo some of the damage that has been done, then we are not taking seriously our role as legislators in this state.

The member for Prahran talked very eloquently about the fact that the previous 25 years have been dedicated to reversing the impact we have made on this country over the 200 years since white settlement. But all of a sudden having reversed it we are now not only not

continuing to try to reverse the damage but we are going backwards and again will be contributing to the problems we face in this country and in fact on this planet. This legislation reverses the previous 25 years during which we have tried to fix the problems and repair the damage. This government has been big on fixing the problem, but it has now become the problem when it comes to native vegetation in this state.

The member for Prahran also talked about best practice market reform and referred to the rigour in the system. That is our major concern with this legislation — that is, that there is no rigour to it. In fact, as we heard earlier, it is based on flawed methodology which is based on flawed mapping.

The bill talks about high value and low value, with 91 per cent of the state of Victoria being considered to be of low value. Members should think about that. The bill says that 91 per cent of the vegetation in the state is of low value, and the state will pay a price for that, because the rules that will apply to that low-value vegetation will ensure that we will lose more vegetation while this government and its policies are being practised. For example, the Melbourne Airport car park is considered at high risk of loss while the Dandenong Ranges are considered to be low risk. Members should consider that. The Calder Raceway is considered to contain high-value vegetation. The mapping is so flawed that it is a complete joke.

I have been a member of the Environment and Natural Resources Committee for 15 years. It is the appropriate bipartisan committee to look at this admittedly complex area of policy. This is so important not just to us but to future generations that it must be a key priority for the environment committee to look at. The committee is set up to do exactly that. I commend the sentiments expressed by the shadow Minister for Environment and Climate Change, the member for Bellarine, and all of the work she has done in preparing our response to this flawed bill, and I look forward to continuing the debate in the consideration-in-detail stage.

Ms McLEISH (Seymour) — I rise to make a contribution to the debate on the Native Vegetation Credit Market Bill 2014. The government is supporting the bill, and I am disappointed with the opposition's response and with a number of the things its members have highlighted.

The bill establishes native vegetation credits as a right that can be owned and traded. These credits can also be used to satisfy a planning permit condition to offset the clearing of vegetation. This bill is part of the government's continuing commitment to environmental reform. This government is very keen on driving best practice, and here it is looking at best practice in environmental regulation. Another area we in the government are very keen on is supporting innovative market approaches, because this will help systems flourish. The underlying philosophy here, as we have heard in the debate, is that there is no net loss of vegetation. I am happy to support that philosophy because I believe our agricultural land in particular needs to be maintained.

Australia has extremely reputable food production methods, and everybody wants to eat Australian product, but if we continue to lock everything up and make gains all the time, we may reduce production capacity and have to import food from overseas — from countries like China. People want strong food production in this country, and we need to work to maintain that. I certainly support the philosophy of no net loss of vegetation. I want to put on the record the wonderful conservation work we have done in the Yellingbo area recently in terms of the lowland Leadbeater's possum and the helmeted honeyeater. I know some of that work has been done with one of the largest land-holders, who has a big Angus stud.

The native vegetation offset market was created some 25 years ago. As you would expect, since that time the market has grown considerably. It has increased in size and value. Because of the movements in the market over that time, we would term it a mature market. If we look at the life cycle of a mature product market, we see that things happen at a slower rate. Initially development and growth happened at a fairly rapid rate, and over 25 years the native vegetation offset market has moved into maturity. Now is the right time to take action so that there is no decline in the area. The maturity of the market gives us time to look, reflect and make appropriate adjustments, and that is what we are doing with this legislation. The bill and the scheme aim to increase growth and innovation.

Maturity in this area has not just happened. I would have thought that maturity was reached well and truly in the middle of the former government's 11 years in power, but it elected to do nothing and ignored this whole area. It perhaps put the market at risk without looking at any innovations or gains that could have been made.

There are benefits to a streamlined process. There are clear rules and processes for establishing credit sites, which will provide greater certainty. There are benefits for developers and rural Victorians who wish to secure and manage or generate and sell the credits. Native vegetation credits are created and traded under an

existing policy-based framework, not a legislative framework. With this policy-based framework there is uncertainty around the legal nature of a credit and whether a credit is a tradeable right. We want to provide greater confidence, certainty and transparency in this area. One of the ways we are doing that is by moving the government from the role of broker to the role of regulator.

This bill will create growth and innovation in the area, and it will also reduce both red and green tape. I think the member for Benalla pointed out that 80 per cent of the applications for clearances are in low conservation areas. The application process will be streamlined so that our focus will be on the 20 per cent of applications in the high conservation areas. A lot of work has been put into this bill, and I commend the minister and the department for the work they have done and for dealing with an area that needed to be dealt with some time ago. The previous government certainly neglected to do anything in this area. I commend the bill to the house.

Mr CARBINES (Ivanhoe) — I am pleased to make a brief contribution to the second-reading debate on the Native Vegetation Credit Market Bill 2014. In particular I will touch on the history of the work that has been done on these policy issues across different administrations in Victoria. Back in 1989 the Cain Labor government introduced the native vegetation retention controls. In 1997 the Kennett government introduced Victoria's Biodiversity — Our Living Wealth, which was Victoria's first biodiversity strategy. In 2002 the Bracks government introduced Victoria's Native Vegetation Management — A Framework for Action, which set out how to achieve a net gain of native vegetation. In 2006 the Bracks government introduced the BushBroker program to help those clearing native vegetation to find offsets. These bipartisan and collaborative approaches from Labor and Liberal administrations over many decades have helped to protect and strengthen native vegetation and native vegetation controls in Victoria. This has been clearly enunciated and explained by Labor's lead speaker on this bill, the shadow Minister for Environment and Climate Change.

The legislative framework for native vegetation credit that the government has introduced and that the Labor Party opposes, bearing in mind the consideration of our reasoned amendment, does have some value. We should look to have a legislative framework for native vegetation credits. However, as has become common under the Baillieu and Napthine governments, there has been no consultation with stakeholders. In standing up for the environment and protecting our native vegetation, Labor will oppose this bill pending consideration of and negotiations on our reasoned amendment.

I note in particular that because of the government's failure in this bill to protect native vegetation and ecosystems we need a system in Victoria of net gain rather than a system of no net loss, which is essentially what this legislation is underpinning. We need a legislative framework that seeks to protect, strengthen and enhance native vegetation controls in Victoria. I support the reasoned amendment the Labor Party is putting forward to provide that:

> this house refuses to read this bill a second time until the bill has been referred to, and considered by, the Environment and Natural Resources Committee.

Further, I ask: why has this government refused to consider other models for the native vegetation control scheme? Perhaps it is in part because of its refusal to have appropriate serious and meaningful consultation with stakeholders on these matters. Perhaps it is because the Department of Environment and Primary Industries (DEPI) as the responsible authority has borne the brunt of so many job cuts and budget cuts under this government that I suspect it lacks the capacity to implement the will of this Parliament. How can Victorians have confidence that DEPI has the staff and resources to implement the will of this Parliament given the savage cuts inflicted by the Baillieu and Napthine governments on the public service in Victoria?

The government's actions go to the heart of issues of conflict of interest. The foxes were put very much back in the henhouse when in 2013 the Department of Sustainability and Environment was swallowed up by the department responsible for the mining of natural resources — a very serious conflict of interest. Touching on that particular conflict, I also note the introduction of offsets on Crown land that DEPI will administer. It will become the regulator, land manager and recipient of offset money, creating a further potential conflict of interest.

Several Labor speakers have noted that the appointment of an independent regulator is worthy of consideration by the government. I note that the policy issue of whether it is appropriate to allow Crown land, which is already protected, to be used as an offset is another debatable point in relation to the government's proposed legislation. In fact it is really about double counting. It is smoke-and-mirrors dishonesty. The government is using trickery in seeking to include Crown land that has already been protected as an offset. This is a mean and tricky deception by the government. It certainly does not fool Victorians, it has not fooled

stakeholders and it will not fool the Labor Party in its views on this bill.

What underpins Labor's policy and framework on these matters is clearly enunciated in the *Victorian Labor Platform 2014* under the heading 'Climate change', a term that the public service has been banned from using by this government since last year. For the record I will quote from that document. It states that Labor will:

> Better manage Victoria's vegetation cover, including working with land-holders and federal and local governments to reduce native vegetation clearance rates and promote revegetation and carbon farming as a means of absorbing carbon dioxide.

Under the heading 'Preserving biodiversity', the document states that Labor will:

> Ensure a net gain in Victoria's native vegetation cover which is measurable and reportable.

These are the key values that underpin Labor's policy framework in relation to these matters. Labor believes that this bill will undo the years of work undertaken by local government and small business to become viable under existing native vegetation system controls.

I conclude my remarks on these matters to allow us to move on to further debate this bill. The bill goes back to what underpins all the government's motives for its work and its legislative proposals around the environment, and that is that this government has contracted out the environment to The Nationals. It cannot form government without The Nationals, and the Victorian environment and future generations of Victorians are paying the price for the dirty deal done by the Liberal Party to maintain government in this state. It has paid a very high price to The Nationals, and that price is being paid by Victorians and by our environment every day. Labor will fight it to the death.

Mr R. SMITH (Minister for Environment and Climate Change) — I thank members for their contribution to the debate on this very important reforming bill. The hypocrisy of the Labor Party is on show here today. The purpose of going into a consideration-in-detail stage and looking at a bill in detail is really to gain a deeper understanding of the bill, to work through issues and to pose questions of the minister and the government about various issues in an effort to understand how the bill actually works. Yet by announcing that they are going to oppose the bill, members opposite have clearly shown that they have no interest in gaining a deeper understanding of the bill because they have already formed an opinion about what they are going to do with it.

The purpose of the reasoned amendment is very clear. I will quote from the ALP platform document. It states:

> Labor will:
>
> …
>
> Establish the framework for market-based instruments through which ecosystem services, which are fundamental to all communities, can be recognised, and farmers/land managers can receive financial reward for the production of these services, creating benefits for rural communities and the environment.

It is clear that someone in the ALP came up with this great idea, but when it came down to putting some flesh around the bones, Labor found itself bereft of ideas and unable to move forward on it. The reasoned amendment has clearly been put forward to postpone the passage of this bill so that Labor can take the ideas contained in the bill that have been introduced to this Parliament and use them as a basis to make the bones of its very meagre policy platform statement. The members opposite want to take the bill into a consideration-in-detail stage so that they have the time to do the work that they have not done to date. Let us be very clear about the reason. Labor is not motivated by concern for the environment in Victoria; rather this is simply a means to delay the passage of good legislation designed to regulate a system that is already in place.

I accept that opposition members have a different opinion with regard to how native vegetation offsets should be applied. I accept that. However, those issues are not present in this bill. They are included in the planning schemes. Members opposite spent a bit of time during the debate talking about those offsets and how we need to have the net gain regime. I hasten to add that while the no net loss regime is apparent within the permitted native vegetation clearing regulations, the policy position of having net gain in the overarching environment policy is well in place. It is apparent in the programs we run, such as the 2 Million Trees and Communities for Nature programs, and the support we have given to Landcare, just to name a few issues. Of course across the whole of the estate we are going to have a net gain, but within the permitted native vegetation clearing regulations the policy we have is one of no net loss.

This is quite reforming legislation, and I am very proud of it. I am proud of the work the department has done. I am disappointed, I have to say, because in seven and a half years I have never seen such an attack on the expertise of the public service. It is interesting that the member for Brunswick was wheeled out to apologise and explain the attack by the member for Bellarine. It was just appalling. In fact the department's — —

Mr Nardella interjected.

The ACTING SPEAKER (**Ms Ryall**) — Order! The member for Melton!

Mr R. SMITH — It was very clear that the expertise of the department was being besmirched in the contribution of the member for Bellarine, and I found that quite appalling.

The bill streamlines what is currently in place. It provides more opportunities for philanthropy, but most importantly it puts in a regime of reporting around the work that is done on the offset sites. At the moment we have offset sites, and currently they are not monitored to a great degree in terms of ensuring that the environmental values are maintained in the short, medium and long term. This bill will put more protections around those offset sites, and that is something the opposition appears to have missed.

This is reforming policy, as I said. Before I came to this place I was a participant in the financial markets, working in currency and bullion in the capital markets, and I have a great appreciation for a well-regulated, market-based framework, and that is what this policy is trying to introduce. It is a good policy which is in keeping with Liberal philosophy, which allows market forces to drive the sorts of outcomes we want. The details of this sort of approach would never have been conceived under the ALP. It would never have been put together in the method it has been. It certainly would not have been introduced to this house. This regime would not have commenced under the ALP because its members just do not understand market forces.

The fact is this bill addresses a number of issues that the current regime has difficulty managing. Of course landowners and developers can offset native vegetation clearance by purchasing offsets or credits on other properties, and going forward these credits will have the protection of a management regime and be subject to a binding agreement. A number of disparate groups currently allow for offsets to be made — be they councils, the Trust for Nature or the department — but through this bill we are looking to put a standard around the various aspects of that regime so that in future we have a single, consistent set of rules which give certainty for participants. Fundamentally we will be able to guarantee the value of credits going forward.

Under the current system credits that are offered can be rejected by local councils and credits which do not bring the environmental outcomes we are looking for can be accepted. There is certainly a need for change. The bill will streamline the scheme, streamline the processes, provide more transparency and provide for monitoring systems to be put in place to ensure that land-holders are fulfilling the obligations they have committed to. It will also clarify the responsibilities of landowners, permit applicants, assessors, Crown land managers and the department.

I move to some of the issues raised by the member for Bellarine. When I learnt that we were going to be examining the bill in detail I had hoped that we would be having a serious debate about this. I had hoped that the member would have read the bill. Going on the issues that have been raised, clearly she has not. Issues have been raised that are outlined very clearly in the bill. Issues have been raised that clearly demonstrate that the bill has not been read by the member for Bellarine. I refer to one of the issues that has been raised, about consultation. The member for Gembrook raised that there have been a number of occasions during the process when consultation has taken place. The member referred to a Victorian Competition and Efficiency Commission report as well as a Victorian Environmental Assessment Council report which said in its recommendations on page 42 that the government should:

> … continue to support and expand existing programs to encourage and assist private land-holders to contribute to landscape connectivity and biodiversity enhancement on private land and adjacent public land.

That is exactly what this bill does. In addition to that, we had a lengthy process when we were introducing the permitted native vegetation clearing regulations. During that process it was clearly pointed out to us that people had issues with the lack of standardisation in the scheme. It was also pointed out that a monitoring regime needed to be put in place. The bill covers those two things.

The opposition is clearly disregarding, or is unaware, that the key aspects of the regime will be defined in regulation — the day-to-day operation and the way the formulas are worked out. Of course this will go through a public consultation process as part of the regular regulation process and through the regulatory impact statement process.

Honourable members interjecting.

Mr R. SMITH — For opposition members it is clear that when it comes to matters that are raised by the community on these issues, their go-to response is more investigation, more looking at it. There is no action and no movement. It is just them continuing to talk about what could be done and flapping around and talking

about their ideology but not actually getting anything done.

As I said, issues were raised about the offsets with regard to their being registered by councils. The member for Bellarine specifically referred to first-party offsets. This is but one example of it being obvious that the member has not read the bill. First-party offsets are not regulated by this bill. To say it is the case that councils are going to have more onus put on them is an absolute misinterpretation or a misleading of the house, or a clear demonstration that the member has not read the bill.

Mr Wynne interjected.

Mr R. SMITH — Well, I am.

The ACTING SPEAKER (**Ms Ryall**) — Order! The member for Richmond is out of his seat and is being disorderly.

Mr R. SMITH — The member for Richmond clearly has no idea either because — —

An honourable member interjected.

Mr R. SMITH — I am clarifying that it is not in the bill. The member seems to think that is funny. Clearly he has not read the bill either.

Some issues have been raised about Crown land management and the fact that private money that has been put towards offsets on private land will be used to do work on Crown land. Again, the member clearly has not read the bill. There is a clear test of additionality in the bill, which says that if offsets are going to be reserved on Crown land, the funds have to be used to manage the land over and above what is currently being done — over and above what is currently expected of the land manager. It is very clear in the bill that that is the case.

In fact this is a very positive aspect of the bill, because it allows any group, any organisation or any corporate organisation to take a philanthropic approach and identify Crown land that they can add value to and actually put in a vegetation improvement plan under an overarching native vegetation management agreement to sustain that land more fully than it was the government or Crown land manager's intention to do. This is an important aspect of the bill and one that will only have benefits for the environment around our state.

I also refer to some issues raised by the member for Brunswick. I am always keen to listen to inner city ALP members lecture us on how the broader estate should be managed. I get it from many different quarters. The member for Brunswick and those of her ilk have usually not travelled past the tram lines, and we usually do not see much common sense from those people. Having said that, the member talked about the lack of consultation, which I have already covered. As I said, she apologised for the member for Bellarine's scathing comments about the Victorian public service, which I thought were just appalling; I cannot say that enough.

The member for Brunswick said there were inconsistencies in the scoring system but failed to articulate what those inconsistencies were. We find this a lot with those opposite when it comes to this portfolio: a lot of comments are thrown around about how appalling this is or how appalling that is but there are never any specific examples. For the member for Brunswick to comment on inconsistencies in the scoring system and not be able to articulate what those inconsistencies are clearly shows that she has not done the work she needs to do. She just took speaking notes from the member for Bellarine, who said, 'Raise this, raise that', and did not actually do any work herself.

I listened intently to the contribution from the member for Ballarat East. For the life of me I could not work out what he was trying to raise that was any different to — —

Honourable members interjecting.

The ACTING SPEAKER (**Ms Ryall**) — Order! The member for Melton and members on my left!

Mr R. SMITH — I am feeling very bullied by those opposite. This is what the ALP is like.

The ACTING SPEAKER (**Ms Ryall**) — Order! The minister has the call.

Mr Pakula interjected.

The ACTING SPEAKER (**Ms Ryall**) — Order! The member for Lyndhurst!

Mr R. SMITH — The member for Ballarat East did not raise anything new.

Mr Pakula interjected.

The ACTING SPEAKER (**Ms Ryall**) — Order! The member for Lyndhurst will desist.

Mr R. SMITH — He talked about the capability of the department.

Mr Pakula interjected.

The ACTING SPEAKER (**Ms Ryall**) — Order! If the member for Lyndhurst wishes to raise a point of order, he should raise one.

Mr Pakula — On a point of order, Acting Speaker, you continue to call the opposition to order — —

Mr Foley — Endlessly.

Mr Pakula — Endlessly, despite the fact that at no stage has there been any endeavour by you in the chair to call the minister to order for ongoing reflections — —

The ACTING SPEAKER (**Ms Ryall**) — Order! The member for Lyndhurst will resume his seat. I have heard enough. The member knows how to raise a point of order. To date the member has not raised a point of order. The minister has been responding to and summing up the debate. If the member is not raising a point of order, I ask him to desist from interjecting. I do not uphold the point of order. That is my ruling.

Mr Wynne — On a point of order, Acting Speaker, on the question of relevance, in his contribution the minister made more than passing reference to the contribution made by my colleague the member for Brunswick. He indicated — —

The ACTING SPEAKER (**Ms Ryall**) — Order! What is the point of order?

Mr Wynne — I said what my point of order was, Acting Speaker. It is a question of relevance. I invite you to ask the minister to come back to summing up the bill in his contribution and not to reflect on — —

The ACTING SPEAKER (**Ms Ryall**) — Order! The member for Richmond will resume his seat, and I will rule on the point of order.

Mr Baillieu — On the point of order, Acting Speaker, the minister is summing up the debate and he is perfectly entitled to reflect on the contributions of all those who participated in the debate. I have been sitting here listening to the minister and that is exactly what he has been doing, and he is perfectly entitled to do it.

Mr Herbert — On the point of order, Acting Speaker, in relation to relevance, I have been listening quite intently to the minister's barrage on personal matters about members on this side of the house. He is not reflecting — —

The ACTING SPEAKER (**Ms Ryall**) — Order! The member for Eltham will resume his seat. I have heard enough to be able to rule on the point of order. It is correct that when a minister is summing up a debate he or she is able to reflect on the contributions made by others in the chamber. I have been in the chamber for the majority of contributions during this debate, and that is exactly what has been happening. The fact that those on my left have interjected very loudly on many occasions — —

Mr Foley interjected.

The ACTING SPEAKER (**Ms Ryall**) — Order! The member for Albert Park! The minister is quite able to reflect on the contributions of members in this chamber. He is doing so. I do not uphold the point of order.

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

Ayes, 42

Angus, Mr
Asher, Ms
Baillieu, Mr
Battin, Mr
Blackwood, Mr
Bull, Mr
Burgess, Mr
Clark, Mr
Crisp, Mr
Delahunty, Mr
Dixon, Mr
Gidley, Mr
Hodgett, Mr
Katos, Mr
Kotsiras, Mr
McCurdy, Mr
McIntosh, Mr
McLeish, Ms
Miller, Ms
Morris, Mr
Mulder, Mr
Napthine, Dr
Newton-Brown, Mr
Northe, Mr
O'Brien, Mr
Powell, Mrs
Ryall, Ms
Ryan, Mr
Smith, Mr K.
Smith, Mr R.
Southwick, Mr
Sykes, Dr
Thompson, Mr
Tilley, Mr
Victoria, Ms
Wakeling, Mr
Walsh, Mr
Watt, Mr
Weller, Mr
Wells, Mr
Wooldridge, Ms
Wreford, Ms

Noes, 42

Allan, Ms
Andrews, Mr
Barker, Ms
Beattie, Ms
Brooks, Mr
Campbell, Ms
Carbines, Mr
Carroll, Mr
D'Ambrosio, Ms
Donnellan, Mr
Duncan, Ms
Edwards, Ms
Eren, Mr
Foley, Mr
Garrett, Ms
Graley, Ms
Green, Ms
Halfpenny, Ms
Helper, Mr
Hennessy, Ms
Herbert, Mr
Howard, Mr
Hutchins, Ms
Kairouz, Ms
Kanis, Ms
Knight, Ms
Languiller, Mr
McGuire, Mr
Madden, Mr
Merlino, Mr
Nardella, Mr
Neville, Ms
Noonan, Mr
Pakula, Mr
Pallas, Mr
Pandazopoulos, Mr
Perera, Mr
Richardson, Ms
Scott, Mr
Thomson, Ms
Trezise, Mr
Wynne, Mr

The SPEAKER — Order! The result of the division is ayes 42, noes 42. To allow the house to consider the motion in its original form, I cast my vote for the ayes.

Amendment defeated.

Motion agreed to.

Read second time.

Consideration in detail

Clause 1

Ms NEVILLE (Bellarine) — Firstly, I acknowledge and thank the government for providing the opportunity to consider the bill in detail. I also remind the house of my comments at the start of my contribution to the second-reading debate, in which I acknowledged the department's great work in providing a briefing to me.

We are looking at clause 1 in relation to the purposes of the bill, and it is interesting that we heard from the minister in his summing up today that this is a reforming policy. We heard that from speakers on the opposite side as well. The government has moved on 25 years and is reforming the policy in relation to native vegetation. It is really clear that we are reforming the way we deal with native legislation in Victoria, but we are reforming it in a way that takes us backwards. I made some of these points during my contribution earlier, but to move from a net gain system to a no net loss system is absolutely taking Victoria backwards.

Mr R. Smith — On a point of order, Deputy Speaker, clause 1 does not talk about net gain or no net loss. That is something that is in the planning schemes or in the native vegetation permitted clearing regulations. This bill is about regulating those issues; it is not about those issues themselves. Debate in a consideration-in-detail stage is very narrow and is around aspects of the clauses in a bill, so if we are to discuss the issues in clause 1, we should do it properly. That is all I am asking. The issues currently being raised by the member for Bellarine are not contained in clause 1, and I ask you to bring her back to the clause.

Mr Pakula — On the point of order — —

Mr R. Smith — Can I finish?

Honourable members interjecting.

The DEPUTY SPEAKER — Order! Points of order will be heard in silence, and the person taking a point of order will have the call until I say otherwise or they choose to resume their seat.

Mr R. Smith — I have finished my point of order. I will allow the Crouching Tiger to leap.

The DEPUTY SPEAKER — Order! I advise the minister that comments like that are not helpful, and neither are comments from the opposition side of the chamber. We will do this in an orderly fashion.

Mr Pakula — On the point of order, Deputy Speaker, to deal with the point of order most simply, it is my experience as someone who has been involved in many committee stages in the Legislative Council that the purposes clause is always treated as the coverall clause. It is in debate on that clause that questions can be asked about any matter relating to the purposes of the bill, and in those circumstances the questioner has a very wide remit. If the question relates to the purpose of the bill in any manner, then it is generally allowed in debate on clause 1. For the minister to say these matters are not contained in clause 1 is really irrelevant because the fact is that clause 1 is about the general purposes of the bill. The question ought therefore to be allowed.

The DEPUTY SPEAKER — Order! I do not uphold the point of order at this stage, but I ask the member for Bellarine to contain her statements to the purposes of the bill.

Ms NEVILLE (Bellarine) — Given the time left for debate on this question, I will be a little bit narrow. I point out that the minister was very clear during his contribution that there was no consultation on the bill. That is why we are where we are today. I ask the minister: given what we have heard today, what exactly is the goal he is trying to achieve in relation to the native vegetation reforms contained in this bill?

Mr R. SMITH (Minister for Environment and Climate Change) — The purposes of this bill are many and varied. In the year I became minister I had a number of conversations with stakeholders who were very concerned about the application of the native vegetation committee clearing regulations and the framework under which they sat. Other governments may not have responded to those concerns and issues, but I certainly felt it was my responsibility to respond to them, so we undertook extensive consultation around the native vegetation committee clearing regulations. During that consultation we found, in conjunction with comments made in the Victorian Competition and Efficiency Commission and the Victorian Environmental Assessment Council reports that have been highlighted by previous speakers, that there were issues around the standardisation of the various aspects of establishing what an offset should be.

Concerns were raised about how the ongoing monitoring of these offset sites was being maintained. People were raising issues about whether the environmental values were being maintained in perpetuity when an offset site was established. People wanted certainty around the protection of those sites. There needed to be an ability to report in a transparent, consistent and ongoing way about how those high-value sites were being maintained. During the embryonic stages of the bill we were focused around these issues. It was about making sure that we had opportunities for the ongoing monitoring of these sites and that there was a standardised approach to measuring their value. As we put the bill together we found there was an ability to add philanthropic contributions to both public and private land.

Very simply the purpose of the bill is to streamline the current process. I need to stress that the process of establishing native vegetation offsets is not new, but it is disparate and not particularly well monitored and has not been for some time. The roles of each of the players in the offset market are not defined. This reforming bill is about streamlining those processes. It is about putting protections in place and making transparently clear what native vegetation management plans are going to be in place. It is about putting agreements in place that are binding and ensuring that there are penalties for those who do not look after their offset sites as they are obliged to do.

If I can hark back to the debate, far from reducing protections on the environment, the legislation actually increases them. It makes it abundantly clear that the works that have been undertaken on these sites are reportable.

Ms NEVILLE (Bellarine) — The minister in his answer talked about the issue of permitted clearing regulations and the process of consultation that was undertaken then instead of during the development of the goals and the purposes of the bill. It is interesting that he was not able to outline any specific consultation that occurred in relation to this bill; instead he referred to the regulations.

In fact a lot of the consultation that was undertaken in relation to the permitted clearing regulations was ignored. Approximately 182 submissions were posted on the department's website in relation to those consultations from a range of organisations, including the Victorian Farmers Federation, local landowners, water authorities and catchment management authorities. Sixty four per cent of those submissions were supportive of the concept of net gain, yet with this bill we have ended up with an underlying framework that supports no net loss.

One of the interesting things in the minister's contribution when asked about the goal of the legislation is that he talked a lot about standardisation, certainty, reporting and monitoring arrangements but not very much about the fact that Victoria faces an incredible challenge in relation to its native vegetation. Out of all the states in the country the importance of protecting native legislation on private land is no more important than in Victoria. We are losing about 4000 hectares a year. We are already unable to replace the loss at the moment. The problem with the bill before us and the methodology on which it is based is that we will get nowhere near replacing it, nor will we get anywhere near meeting the new standard that has been set of no net loss.

The reason private land protection of our native vegetation is so important is that we know that nearly 90 per cent of all underrepresented ecosystems occur on private land in Victoria. We already know that Victorian private land is more altered in terms of ecological health and vegetation loss compared to anywhere in Australia.

We heard the member for Seymour say we do not want to lock up any more land and that is why we have no more net loss. Despite the minister saying in his contribution that this is about the state having more native vegetation, the reality is that this will result in less native vegetation in Victoria as well as put at risk a number of threatened species and important habitat.

Following up on my previous question to the minister in relation to the goal of the bill, could the minister outline to the house exactly how this bill will enhance and protect Victoria's biodiversity values?

Mr BATTIN (Gembrook) — I would like to speak on clause 1 and some of the issues that have been raised around consultation. It is important to again put on the record that external consultation started back in 2009 and that reports were published in 2011 and 2012. At that time the community and some departments were pushing for a regulatory system — which is what we are putting in place now — so people are all playing on the same field and can understand where they are going and what program is in place.

Another key point is enforcement. Those opposite say there is nothing in place to prevent a net loss or net gain, but the bill puts in place enforcement measures, which are part of any good regulatory system. Enforcement strengthens the reason for regulatory

measures around the credit market that already exists. It is very important to put on the record the fact that the credit market already exists.

As the minister said, the bill streamlines the overall regulatory system. Currently the system is fragmented. There has been a lot of commentary in the past about that. I know those opposite think the department does not have the necessary expertise, but I reiterate what the minister has said about this. The department did not put this bill together without expertise. Its officers sat down, studied the situation and made sure that they put in a system that is best practice and can stand with the best in the future so that everybody coming into the system understands it and has one place to go to gain knowledge about offsets. In that way they can have confidence in the system going forward.

The bill creates a record for the future relating to native vegetation credits. Currently the records in relation to native vegetation are fragmented and held in various locations. This will ensure that all information is held by the department and that it has an understanding of what is there.

That will increase transparency, enabling people to know exactly what they are looking at and know where things are going. Currently the system is set up with brokers and regulators who can all be working as one. The new system will set up the Department of Environment and Primary Industries as the regulator and therefore remove the need to have regulators who are also brokers, and it will put in place that enforcement. That is very important. The department's aim is to remove itself as a broker and to create a fair system and to support the system in place. The department, as I said, will become the regulator.

We have been talking about putting in improvement plans and management plans, and the big thing is that now there will be monitoring for this. There will be monitoring in place for the credits that come on board and that are registered, and we will ensure that they are overseen by the department. Whilst the department is overseeing those it can ensure that people are following those management plans and living up to what is expected in relation to the improvement plans linked to the vegetation offsets. That will offer more protection overall. Currently we do not have that oversight. We do not have the oversight in a central location, but this gives the opportunity for that.

Another part relates to Crown land, a matter that has been raised a few times in the debate. In relation to anything on Crown land, this legislation is opening up the opportunity for philanthropic and private investment in terms of the credit aspect. I note that a member mentioned Trust for Nature. Trust for Nature has no compliance powers. I am not sure whether or not anyone has read something about that, but I repeat it currently has no compliance powers — —

Ms Neville — On a point of order, Deputy Speaker, the member needs to be relevant to the question that was asked, and the question was about how this bill will achieve improved biodiversity values.

The DEPUTY SPEAKER — Order! I think I have heard enough to rule.

Mr R. Smith — On the point of order, Deputy Speaker, it has already been pointed out in your previous ruling that clause 1 is wide ranging and that members are allowed to speak to what degree they would like. While making her point of order the member for Bellarine said the member should be talking about the question she had posed. In fact, under the forms of the house relating to considering a bill in detail, the member should speak on the clause and not on aspects of debate raised by another member.

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

Mr PAKULA (Lyndhurst) — I am surprised that neither the minister nor the member for Gembrook saw fit to respond to the question asked by the member for Bellarine; nevertheless perhaps they will respond to my question. The bill effectively establishes a system whereby the department will regulate the credit market; it will have a range of powers to determine how various aspects of it are implemented; it can participate in the market; it is the land manager in relation to Crown land; and it is the administrator of the credit fund. In those circumstances I wonder whether the minister could explain to the house why an independent regulator was not considered given that the Department of Environment and Primary Industries will be regulating bodies it will be potentially competing against?

Mr BATTIN (Gembrook) — I just thought I would be relevant if I were to finish off the point I was making before in relation to Trust for Nature when I was cut off and somebody decided that was not the way to go. Those opposite would have us believe that Trust for Nature is a body out there in a position to do the compliance for this. However, it is very important to put on the record that Trust for Nature has no compliance powers. More importantly it has publicly stated it does not want the compliance powers on this. Whilst members opposite are saying that that is the position, I can say that they are incorrect. Trust for

Nature has come out publicly and said it does not want those powers.

I will reiterate what I said before, because it is very important, particularly in relation to this clause. The whole idea of this bill is to establish that central register. It is to establish the transparency. It is to make sure we have the information relating to vegetation credits in one location. It will ensure that the regulatory system that is set up and that goes forward is something community members can rely on and that for those involved, whether they be a land-holder, someone investing or a philanthropic stakeholder, or whether Crown land is involved, a regulator is in place — —

Mr Pakula — On a point of order, Deputy Speaker, on the question of relevance, it is incumbent on members of the opposition to be relevant to the clause, but it is also incumbent on those responding to the question to be relevant to the question that was asked. My question — —

The DEPUTY SPEAKER — Order! I have heard enough on the point of order.

Mr Pakula — Can I — —

The DEPUTY SPEAKER — Order! I say to the member for Lyndhurst that I have heard enough. The minister is the person who replies. During the consideration-in-detail stage members on both sides are entitled to put their views on the clause. The member for Gembrook is therefore not responding; he is making his contribution.

Mr BATTIN — I am referring to clause 1, the purposes clause, and in particular I was referring to clause 1(c), which outlines the purpose of enabling vegetation improvement plans to be prepared for certain Crown land. What I was saying was precisely that we are ensuring that Crown land also has protections under regulations. In the future, anybody who is looking at investing, whether they be a land-holder or a philanthropic stakeholder, will understand that once the investment is made not only will the money be spent wisely but also the credits can be correctly offset.

The bill will also make consequential amendments to the Conservation, Forests and Lands Act 1987, the Crown Land (Reserves) Act 1978, the National Parks Act 1975, the Planning and Environment Act 1987 and the Traditional Owner Settlement Act 2010. Those opposite were talking about credits and offsets going forward, but I think it is very important that we put on the record that this is not about those particular offsets; it is about creating the relevant market.

Mr PAKULA (Lyndhurst) — Just before the minister responds and so that he has the full suite of questions before him — and I know that given the time that is permitted to him he will be able to provide fulsome responses to the question raised by the member for Bellarine about biodiversity values and the question I asked about whether there was consideration of an independent regulator — I would also seek the minister's response on another matter.

The bill talks about native vegetation credits, which relate to the system of metrics in scoring that is used for setting native vegetation credits, and there is a link to the requirements that are now part of the permitted clearing regime in Victoria. I am wondering if the minister can provide the house with some details about how many permits to clear native vegetation have been granted under the permitted clearing regime.

Mr R. SMITH (Minister for Environment and Climate Change) — In response to the issues that have been raised during this part of the debate, first of all, the member for Bellarine initially raised consultation. I again refer to the native vegetation permitted clearing regulations review, the Victorian Competition and Efficiency Commission report and the Victorian Environmental Assessment Council report. But I also think it is worth noting — and it goes to the member for Lyndhurst's question as well — that DEPI and its earlier iteration, the Department of Sustainability and Environment, have had over eight years experience in running a credit scheme. Formalising this in the bill did not need added consultation — the department has been doing this role already for a number of years. It has been the regulator of native vegetation sites. In answer to the question 'Was an independent regulator considered?', the answer would be no, because quite simply DEPI and DSE have been doing this for some time already. We do not need to have further consultation to get feedback on a job the department has already been doing.

The member for Bellarine asked about how the bill would add protections to the current system. That is very clearly laid out in the bill. There are protections around establishing new offences with regard to degrading or destroying offset sites, there are protections that come as a result of the mandatory reporting that is required and there are protections that come as a result of the vegetation management agreements that sit over the top of the vegetation improvement plans and the vegetation management plans that are very clearly in place. These become an encumbrance on the land, so in perpetuity there will be responsibility on the land-holder to continue to maintain the sites as they are.

Very clearly there are a number of protections within the scheme that do not currently exist. Added to that are the credits that are currently being put together by the various disparate groups that I talked about earlier, which will not in all cases be to the standard that we intend to put in with this bill. Some of the credits that have been put together now may not provide for the high environmental values that we are looking to maintain. They are the suite of protections that will be in place that are not currently in place. The system that is in place now does not have those protections, and this bill is seeking to bring them in. So when those opposite say this is a degradation of what is currently in place, it is actually quite the opposite. This bill brings it altogether, streamlines it and makes sure that we have that reporting framework in place so it is transparent and obvious that the high environmental values we are seeking to maintain in perpetuity actually are maintained.

Ms DUNCAN (Macedon) — The minister has responded in regard to biodiversity values, and much has been made about compliance and enforcement that exists in the scheme, but my concern is that this compliance and enforcement is based on a flawed system. It is a bit like putting lipstick on a pig: it is still a pig. Given that this is so reliant on online mapping, I ask the minister whether the online mapping tools are accurate. Specifically, do they identify all locations in which rare or threatened species exist or are likely to exist?

Mr FOLEY (Albert Park) — In the context of clause 1, I want to raise the general provisions relating to the credit system and the permit system. I was wondering how many applications the minister saw applied in relation to the online mapping tools that would adequately reflect specifically the locations of the rare and threatened species, how that is likely to work in practice and how that is likely to deliver the outcomes and purposes that clause 1 identifies in this bill.

Mr BAILLIEU (Hawthorn) — I am certainly of the view that the vast majority of Victorians are firmly in favour of native vegetation controls. They want them to be in place, they want them to be simple, they want them to be understandable and they want them to be long term. I had the option last week of visiting the Mornmoot Stud property north of Whittlesea, the old Chirnside property, where the Chirnside library is in place. We were there for reasons of the Anzac centenary. It is a property that has been there for a long time. As part of the examination of that area of land there are some photographs of the old homestead taken not long after it was built, nearly 100 years ago. The surrounding land is virtually empty of vegetation. There are no substantial trees. We have seen over the course of 100 years — quite contrary to some of the thoughts of some people who look at native vegetation — farmers doing their absolute best to maintain native vegetation. They recognise its values, and contemporary farming practices in particular are very much in tune with the need to maintain native vegetation and to maintain native vegetation values.

Many other groups have fixed on this as well. I think, among others, of the Trust for Nature. Trust for Nature has done a magnificent job in difficult circumstances over the years, with few resources, and has relied on philanthropic responses. Obviously it has an interest in the outcomes here. I too invite the minister to reflect for the benefit of the house on the views of Trust for Nature on vegetation credits, on the regulation and whether Trust for Nature wishes to be part of the regulation system itself.

Mr CRISP (Mildura) — I rise to support the purposes of the bill, and from The Nationals perspective to very much support what the previous speaker said. We are looking for a simple and long-term solution. Those who deal with native vegetation on private land from day to day are seeking something they can understand, something they can use, something they can access to model and use to work out the impacts of some of the decisions they must make on their private land. That is very much the purpose of this bill. It will lay down a legislative framework that will deliver a way forward for those people on private land.

I very much agree with the previous speaker, the member for Hawthorn, that we need something that is stable. When you are dealing with native vegetation on your private land, you do not want the law to be changed all that often. This is change for the good. Through the credit scheme the bill establishes various ways and means of dealing with native vegetation. Clause 1 should stand part of the bill.

Clause agreed to; clause 2 agreed to.

Clause 3

Ms NEVILLE (Bellarine) — I refer the minister to the definition of 'reservation gain' in the bill. Will the minister explain how the size of the gain will be decided?

Mr R. SMITH (Minister for Environment and Climate Change) — The size would depend on a range of aspects according to the environmental assessment that was done. That would make clear what was on the

site and what environmental values were there to be protected and it would go to what specific species of flora and fauna and their habitat were there, so it is a variable.

Ms NEVILLE (Bellarine) — Following up on the minister's answer, the question went to the size. Can the minister be more specific and explain how the reservation gain will actually be calculated?

Mr BATTIN (Gembrook) — In clause 3 a 'biodiversity class area' is defined as part of a site that is less than the entire area of the site and in which there is the same number of habitat importance scores that relate to the same species. It is a very important part of the definitions clause and will ensure that any area for habitat is equivalent, to make sure that we protect Victorian species going forward. It is essential that we make sure that we are in a position to protect our species going forward and we know where we are going to go forward with them. The definition of 'biodiversity class area' is very relevant and something that people need to make sure of. The whole purpose of this bill is to ensure that we have the correct definitions going forward for our offsets, making sure that we have the right protections in place and that people understand what offset is equal to another offset.

One of the conditions of the bill is that we need to be satisfied that the developer is either providing an offset on his or her own land or, by acquiring the allocated native vegetation credits, they have looked through the amendments to the Planning and Environment Act 1987. If they are using their own land, we are putting in place a regulator to oversee that and ensure that we have enforcement in place.

Clause 3 includes definitions in relation to native vegetation. That will ensure that we have in place the correct regulations and people will have the opportunity to look at the regulations to know where they need to go in the future. The bill shows exactly the differences between flora and fauna and what we are protecting, ensuring that the offsets are correct when an area is being offset, particularly around our species — that is, to make sure, if we are offsetting an area for a particular species, that the area being offset for that is equivalent and we have no net loss in relation to that species.

Mr FOLEY (Albert Park) — On the important definitions in clause 3, tucked away in there is the definition of 'reservation gain', as has been highlighted. My question goes to the application of that definition in a practical sense. Can the minister enlighten the house as to the set of propositions that could arise under that 'reservation gain' definition? If the state prepares a management plan for a particular area covered by the reservation gain, does the state get the gain to be created through this management process as well?

Mr R. SMITH (Minister for Environment and Climate Change) — Just to follow up on the question by the member for Bellarine with regard to being more specific, it is difficult to be specific around different sites. The gain will be calculated based on the gain scoring manual that will be part of the regulations. Again, on the scrutiny and consideration around this particular aspect of the regulations, obviously there will be consultation during the regulation process and through the regulatory impact statement as well. That is when the scoring process and the issues that pertain to the reservation gain will be put in place.

Referring to the member for Albert Park's issue about 'reservation gain' being tucked into the definitions, the list of definitions is in alphabetical order. Just so that he is aware of it, the definition is not tucked in; the definitions are listed alphabetically.

A native vegetation management agreement will sit over the top of offsets on Crown land. Underneath that will be the vegetation improvement plan, not the vegetation management plan. The management plan is for private land, as can be seen if the bill is read accurately. The vegetation improvement plan will be in place to allow for works to be done over and above works that would ordinarily be expected to be done by the Crown land manager.

For the information of the member for Albert Park, that is there to promote the opportunity for philanthropic use. As I said earlier, corporations or organisations can put money towards ensuring that the native vegetation management agreement and the native vegetation improvement plan are actually abided by. They can put funding towards them to enhance those particular environments to ensure that we get the very best outcomes we possibly can in that regard.

Sitting suspended 1.00 p.m. until 2.03 p.m.

Business interrupted under standing orders.

QUESTIONS WITHOUT NOTICE

Ambulance services

Mr ANDREWS (Leader of the Opposition) — My question is to the Premier. I refer to the case of a psychiatric patient in Tullamarine for whom an ambulance was called at 5.00 p.m. on Tuesday. An ambulance did not arrive until 2.15. a.m. on Wednesday, which is a wait of more than 9 hours. To

make matters worse, no mental health bed could be found for this patient. I ask: will the Premier now finally acknowledge that Victoria's ambulance system is in crisis?

The SPEAKER — Order! Before I call the Premier, I advise the house that we had some trouble with the sound system this morning. Members in the second and third rows had difficulty with distortion of the sound. I ask anyone using a microphone not to raise their voice and I ask members not to interject so that people will not have to talk over them.

Dr NAPTHINE (Premier) — I thank the honourable member for his question. His question related to ambulance services and mental health beds. I will answer with respect to mental health beds initially. I can advise that under this government and under this Minister for Mental Health we have made a concerted effort to significantly increase funding for mental health services. Indeed the number of beds has been increased significantly. Indeed I am advised that there are an extra 280 mental health beds during the term of this government. This is a significant increase in mental health beds, a significant increase in funding for mental health services and a significant increase in support for our community mental health teams, who are out there helping patients with mental health issues and other problems.

With regard to ambulance services, I can advise the house that under this government we have increased funding for Ambulance Victoria with a record $696.5 million in funding for ambulance services. There is a significant increase in the number of paramedics — 465 additional paramedics — —

Honourable members interjecting.

The SPEAKER — Order! I am having difficulty hearing. I ask the house to come to order.

Dr NAPTHINE — There are 465 additional highly skilled, highly trained paramedics. That equates to over 28 000 additional shifts for Ambulance Victoria. With respect to the particular case raised, I am happy to take that up with Ambulance Victoria and get advice for the member who raised the question. I can reiterate that under this government there has been a significant and massive increase in funding for mental health services, be they bed-based services — —

Honourable members interjecting.

The SPEAKER — Order! That was a serious request I made about the sound system. I ask the house to come to order.

Dr NAPTHINE — I advise the house that under this government there has been a significant increase in mental health services. There are 280 additional beds and improved community-based mental health services. There has also been a significant increase in resources provided to Ambulance Victoria, whether that be funding, additional staff, additional ambulance stations or additional ambulance vehicles. All of those have been increased under this government. With respect to the particular case, I will get the details of that case and get back to the Leader of the Opposition.

Employment

Mr BATTIN (Gembrook) — My question is to the Premier. How is the coalition government building a better Victoria for families and businesses by growing jobs and economic opportunities across the state?

Dr NAPTHINE (Premier) — I thank the honourable member for Gembrook for his question and for his interest in jobs in Victoria. The recent Australian Bureau of Statistics employment data shows that 19 500 new jobs were created in Victoria in May. That is the highest growth rate in jobs across all states and territories — 19 500 new jobs in May alone. There are 77 200 more Victorians employed now than when we came to government three and a half years ago. That is 77 200 more Victorians in employment. In addition — —

Ms Graley interjected.

Questions interrupted.

SUSPENSION OF MEMBER

Member for Narre Warren South

The SPEAKER — Order! I was on my feet, and the member for Narre Warren South was talking. I ask her to leave the house for 30 minutes.

Honourable member for Narre Warren South withdrew from chamber.

QUESTIONS WITHOUT NOTICE

Employment

Questions resumed.

Dr NAPTHINE (Premier) — In addition, the 2014–15 budget delivered a further massive boost for jobs in this state with a $27 billion investment in key infrastructure including the full east–west link, the Melbourne rail link, the airport rail link, the

Tullamarine widening, the Cranbourne-Pakenham rail corridor upgrade, the Murray Basin rail project, the duplication of the highway from Winchelsea to Colac and the continued duplication of the Western Highway. These projects will deliver 26 000 new jobs. However, we know that when you build these significant projects you create new jobs and opportunities across the whole of the economy.

Recently an independent analysis by SGS Economics and Planning showed the wider and longer lasting jobs and economic benefits from this massive infrastructure program. Its analysis showed that in addition to the 26 000 jobs in the construction phase of these projects, there will be an additional 60 000 jobs by 2031. These projects will boost the Victorian economy by about $10 billion each and every year. For example, SGS Economics and Planning advise that its analysis shows that the east–west link and the Melbourne rail link will increase Victoria's gross domestic product by $6 billion a year and create 34 500 new jobs.

The main benefits of these major projects — the east–west link, particularly the western section with the second river crossing, and the Melbourne rail link — are that they will be delivered for Melbourne's western and northern suburbs. Under the coalition government we have a growing population, a growing economy and increasing job opportunities for all Victorians. These projects are vital to deliver increased capacity and efficiency in public transport, to reduce congestion on our road network, to improve transport productivity and efficiency, to improve safety across our transport network and to deliver an improved quality of life for all Victorians. They will generate 26 000 new jobs during construction and 60 000 additional jobs over the long term.

It absolutely beggars belief that any responsible Victorian would oppose this massive infrastructure project. Who would oppose such a massive infrastructure project that creates jobs, drives the economy forward and makes a real difference to Melbourne and Victoria? The only people who would oppose it are the Leader of the Opposition and the Labor Party. They are against jobs, they are against economic growth and they are against development in this state.

Ambulance services

Ms ALLAN (Bendigo East) — My question is to the Premier. Can the Premier confirm that between 10.00 p.m. last night and 1.30 a.m. this morning there was not a single ambulance available to the community of Sale?

Dr NAPTHINE (Premier) — I thank the honourable member for her question. I advise the house that the government is providing additional resources for Ambulance Victoria. The government is fixing a problem it inherited from the botched merger of the Metropolitan Ambulance Service (MAS) and Rural Ambulance Victoria under the previous health minister. He failed Victorians, particularly those in regional and rural Victoria, when he botched the merger of Rural Ambulance Victoria and MAS.

Since coming to office we have put additional resources into our ambulance system across Victoria — in metropolitan Victoria and in regional and rural Victoria. We have put $696 million in the budget for Ambulance Victoria, which is a massive increase from when we came to office following the Labor government. We have put on an additional 465 paramedics, including an additional 77 paramedics in the Gippsland region. There are 77 more paramedics to service Gippsland. We have introduced for the first time 10 mobile intensive care ambulance (MICA) single-responder units across regional and rural Victoria. For regional and rural Victoria we have introduced a $550 million upgrade to the air ambulance contract, which will provide new, better quality and larger air ambulances across the state. We are providing $22 million for the cardiac initiative, and I know personally that is a major advantage for regional and rural Victoria.

The government is rolling out RefCom across regional and rural Victoria. It was trialled and found to be most effective in improving ambulance services and services to the public, especially in regional and rural Victoria. I refer back to the 10 — —

Mr Andrews — On a point of order, Speaker, there was no preamble to the question. It related to a complete lack of any ambulance cover last night for the Sale community. I think the people of Sale are entitled to a relevant answer to this question that deals with the failure last night, and I ask you to remind the Premier of his obligations under standing orders.

The SPEAKER — Order! I believe the Premier was outlining the background to the answer to the question. I do not uphold the point of order.

Dr NAPTHINE — I did refer earlier to the 10 new *mobile intensive care ambulance* single-responder ambulances that for the first time were placed across regional and rural Victoria, including Mildura, Wonthaggi, Horsham, Warrnambool, Shepparton, Wangaratta, Wodonga, Bairnsdale, Swan Hill and Sale. They were not provided under the Labor government. I advise the house that under this government we have

fixed the botched merger between the Metropolitan Ambulance Service and — —

Mr Andrews — It's fixed, is it?

Dr NAPTHINE — Well, it certainly was not fixed under your watch! When we came to government we had to take over an ambulance service that was still suffering from the botched merger between MAS and Rural Ambulance Victoria under the Labor government. What we have done is increase resources right across the board, including 77 additional paramedics in the Gippsland region, including a MICA single-responder unit at Sale. These are additional resources available for Ambulance Victoria across the state.

Regional and rural initiatives

Mr CRISP (Mildura) — My question is to the Minister for Regional and Rural Development. How is the Victorian government building a better Victoria through the Regional Growth Fund and the Murray Basin rail project, and is the minister aware of any other policies?

Mr RYAN (Minister for Regional and Rural Development) — I thank the member for his question. In this year's budget we were able to announce a fully funded figure of up to $220 million to be spent on the Murray Basin rail project. This is a wonderful project which has been sought by the communities of the north-west in particular for many decades, and now they are going to have it delivered. It was a thrill this year to be part of a government delivering a budget which has up to $220 million allocated to this important task.

I might say that it is not the first time that this important announcement has featured, and indeed it was said by Mr Brumby in his then role as part of the former government that this initiative was going to receive plenty of treatment at another point in time. He said in part:

> … this was a project —

that is, the standardisation —

> that has been talked about for many years. Those on the other side — —

Honourable members interjecting.

The SPEAKER — Order! I am trying to assist members of the opposition on the back bench who are having great difficulty with the vibration coming from the sound system. If members continue the conversations they are having, which seem to me to be a tactic, I ask them to consider their colleagues.

Mr RYAN — Of course it is a tactic. And, yes, they should be considering their colleagues in a parliamentary sense, not their own members. In any event, Mr Brumby said:

> Those on the other side could never find the funding and could never get the budget decision to support it, but the Bracks government did in its second budget.

That is what Mr Brumby had to say. The reality is that not 1 metre of track was laid. The Labor government completely abandoned this initiative, and now we are proud to be able to have it fully funded in our budget to make sure it is able to be delivered.

In addition to that, through the operations of the Regional Growth Fund, about which I have had the opportunity to speak many times, we have been able to invest just over $400 million. It has resulted in leveraged investments of just over $1.6 billion throughout regional and rural Victoria. It has created thousands of jobs, and other jobs will be created as the realisation of these programs materialises. It has generated about 1450 projects throughout the regions of our great state.

I was asked about alternative policies. One would have thought that as a matter of general course everybody would welcome initiatives of this order. The whole of the state of Victoria would surely applaud initiatives of this order, but it ain't necessarily so, I am afraid to say. There are some in the community who simply refuse to endorse the notion of building the Murray Basin rail project. There are some in the community who, although we have funded this great project to the tune of $220 million, will not — even when offered the opportunity by the *Weekly Times* in an article printed on 14 May — commit to supporting this great project. There are others derived from exactly the same geographical area who will not endorse — —

Honourable members interjecting.

The SPEAKER — Order! If this level of noise continues and I cannot hear the minister, I will be forced to ask the minister to repeat his answer.

Mr RYAN — Indeed! There are some who in the face of these massive investments in regional Victoria will not endorse the Regional Growth Fund. There are those who say we should go back to the Regional Infrastructure Development Fund, the failed, pale imitation of our current Regional Growth Fund. We need the Labor Party in Victoria — the would-be

kings — to endorse these two great initiatives of the current coalition government. They are great initiatives for rural and regional Victoria.

Ambulance services

Ms NEVILLE (Bellarine) — My question is to the Premier. I refer the Premier to the fact that at 10.15 a.m. yesterday there was just one ambulance available to communities between Melbourne and Geelong, and I ask: when will the Premier stop boasting, stop making excuses and finally acknowledge that Victoria's ambulance system is in crisis?

Dr NAPTHINE (Premier) — I thank the honourable member for her question. Can I advise the house that upon coming to government we realised that our ambulance service needed more resources and more paramedics on the ground. That is why we have committed in this year's budget $696.5 million — a record level of funding — to Ambulance Victoria, a 23.4 per cent increase on the Labor government's funding for Ambulance Victoria.

We have increased the number of ambulance paramedics across the state by 465 — there are 465 additional paramedics. In response to the question asked, with regard to the metropolitan area, included in that number are 193 metropolitan paramedics, and with regard to the Barwon south-western region — because the member referred to both Melbourne and Geelong — there are 50 additional paramedics.

We know when it comes to additional shifts in the Melbourne's metropolitan west that there are 2190 additional shifts and 53 additional paramedics. In the Barwon south-western region there are 2555 additional shifts and an additional 50 paramedics. There are additional ambulance vehicles, there are additional paramedics and there are additional resources on board the ambulances to provide better outcomes for patients, whether they be cardiac patients, whether they be patients suffering from severe respiratory distress or whether they be patients in motor vehicle accidents.

All the ambulances have more equipment and better trained staff on board, and I pay credit to the hardworking, qualified and skilled paramedics. There may be some people — —

Honourable members interjecting.

The SPEAKER — Order! The house will come to order.

Dr NAPTHINE — I certainly stand shoulder to shoulder with the paramedics. I stand with the paramedics and pay great credit — —

Honourable members interjecting.

The SPEAKER — Order! This level of interjection is disorderly. I do not know how many times I have to tell members we are having a problem with the sound system. I ask members to be considerate.

Dr NAPTHINE — I recognise the great skill, experience and qualifications of our paramedics. Indeed as you would be aware, Speaker, only recently I saw firsthand that experience of our paramedics as they assisted an 80-year-old woman who was injured in a car accident. I recognise the great skill and the work of the paramedics. Therefore I am pleased to advise that we as a government have provided additional funding, additional paramedics, additional equipment and additional ambulances. We are providing Ambulance Victoria with the additional resources it needs to ensure that our paramedics and the people of Victoria are looked after.

Police and protective services officers

Mr NEWTON-BROWN (Prahran) — My question is to the Minister for Police and Emergency Services. How is the coalition government building a safer and better Victoria for families and communities by recruiting more front-line police and protective services officers, and are there any threats to this?

Mr WELLS (Minister for Police and Emergency Services) — I thank the member for Prahran for his question. The coalition government came to power with a tough law and order policy, and we had little choice because of the disastrous record of the previous state government. We made a number of significant police commitments. One of them was to increase the police force by 1700, and I am very pleased to announce that as at today we have 1633 extra police protecting our community. This is a significant investment in law and order. I note that on 16 June this year Victoria Police marked the largest number of recruits at the academy in its 161-year history.

In addition to this massive investment in recruitment, we promised 940 protective services officers (PSOs), and I am very pleased to announce that as at today we have 781 PSOs on our rail network. This significant investment in law and order is making a difference. More police mean more Victorians are feeling safer on the street. More police mean we are detecting more drug dealers and getting them off the streets. More

police mean we are detecting more drug manufacturers and shutting down labs across the state. More police mean we have more programs to allow more women to come forward to report family violence. More police mean a significant crackdown on people, mainly men, breaching intervention orders.

What an outstanding success the PSOs have been! They have now issued 29 000 infringement notices for offences in relation to antisocial behaviour, graffiti, weapon offences, outstanding warrants and breach of bail. What are the papers saying? The Ballarat *Courier* reports:

> It's been one month since … (PSOs) began patrolling the Ballarat train station.
>
> If public feedback is anything to go by, they are doing one hell of a job.
>
> The *Courier* spoke to a range of commuters on Wednesday, most of whom said the PSOs were making them feel safer and happier.

Steph from Ballarat is quoted as saying:

> It definitely makes you feel safer, at times there are some pretty dodgy-looking people around.

Honourable members interjecting.

Mr WELLS — An article in the *Bendigo Advertiser* of 5 June says:

> Bendigo police are thrilled with the success of protective services officers at Bendigo railway station.
>
> The officers have helped … catch criminals, helped curb antisocial behaviour and enforced station rules since they started in Bendigo five weeks ago.

A *Geelong Advertiser* article was headed 'PSOs to ease fears for night travellers'.

I was also asked about alternative policies. We must remember that the previous government had a soft-on-crime approach. We had a state Attorney-General who wanted to decriminalise public drunkenness, which would have stopped Victoria Police from cleaning up the streets. We remember the attack by the member for Monbulk on the PSOs — that they are plastic police. This government will maintain a tough law and order policy.

Ambulance services

Ms NEVILLE (Bellarine) — My question is again to the Premier. I refer the Premier to the fact that just this afternoon two elderly patients waited ramped in ambulances at the Geelong Hospital emergency department for more than an hour — one with a serious head injury. This is the ninth question that I have asked the Premier about ambulance failures in Geelong, and I ask again: when will the Premier stop boasting, stop making excuses and acknowledge that Victoria's ambulance system is in crisis?

Dr NAPTHINE (Premier) — I thank the honourable member for her question. As I have outlined previously, we on this side of the house support our ambulance officers. We understand that Ambulance Victoria deals with over 725 000 calls a year. We understand that the call-takers and the ambulance officers respond to those 725 000 calls, and that is why we as a government have provided record funding of nearly $700 million for Ambulance Victoria. That is why we have provided 465 additional highly skilled, highly trained, dedicated paramedics — including an additional 50 paramedics in the Barwon south-western region. In the Barwon south-western region there are an additional 2555 shifts, which is a significant increase in the time that we have been in office.

We understand that transfer times are an important issue, and with regard to the transfers we had a question yesterday about transfer times in Geelong where a patient who was triaged as a category 3 on arrival remained in the emergency department for a few hours and was discharged and went home. We understand that when patients arrive at Geelong Hospital it is important that they be triaged and access services appropriate to their triage category as quickly as possible. In such instances we also understand that you need to have the appropriate facilitiesin the hospital network to cope with that. That is why we recognised when we came to government that the Geelong area and Geelong Hospital had been neglected and ignored by the Labor government.

Ms D'Ambrosio interjected.

The SPEAKER — Order! The member for Mill Park!

Dr NAPTHINE — That was very much in need of additional capital expenditure. That is why we have invested, in three and a half years, over $200 million in capital works to upgrade facilities at Geelong Hospital.

That includes the new 24-bed intensive care unit that I opened recently.

Ms D'Ambrosio interjected.

The SPEAKER — Order! The member for Mill Park!

Dr NAPTHINE — It includes an additional 64 new surgical and acute beds — more beds to cater for more patients. This was ignored for 11 years under the Labor government. That is why in this year's budget we have provided $28 million for Barwon Health North, to cater for the emergency needs and the health needs of the growing areas of Corio, Norlane and Lara, which were ignored for 11 years under the previous government. That is why we provided in the previous budget $50 million for Waurn Ponds community hospital —

Ms D'Ambrosio interjected.

The SPEAKER — Order! The member for Mill Park!

Dr NAPTHINE — In an area of growth — the Armstrong Creek and Surf Coast areas — we have invested money in those capital works to increase the number of beds.

Mr Eren interjected.

Questions interrupted.

SUSPENSION OF MEMBER

Member for Lara

The SPEAKER — Order! The member for Lara will leave the chamber for half an hour.

Honourable member for Lara withdrew from chamber.

QUESTIONS WITHOUT NOTICE

Ambulance services

Questions resumed.

Dr NAPTHINE (Premier) — In summary, we have provided more resources to Ambulance Victoria and more staff to Ambulance Victoria — 465 additional paramedics, additional staff in the Barwon south-western region — and we have also provided over $200 million to fix the problems with regard to the capital infrastructure for health services in Victoria so that patients who are transported to Geelong Hospital can get into a bed as quickly as possible.

Trade missions

Ms WREFORD (Mordialloc) — My question is to the Minister for Employment and Trade. How is the coalition government building a better Victoria by growing jobs and economic opportunities through enhanced trade relationships with the South-East Asian region?

Ms ASHER (Minister for Employment and Trade) — I thank the member for Mordialloc for her question and for her interest in export opportunities for businesses in her electorate. I was delighted and honoured recently to lead Victoria's second super trade mission to South-East Asia, and I was accompanied by the Minister for Agriculture and Food Security. We were delighted to lead 180 delegates from over 130 organisations. I was also delighted that 120 of these organisations were small to medium enterprises, which is again part of the rationale of the government's trade mission program, which allows many of our smaller players to pursue export opportunities.

South-East Asia is an extremely important market for the state of Victoria, with our goods and services exports to Association of South East Asian Nations worth around $5.7 billion annually, with significant potential for further growth. In fact the first super trade mission to South-East Asia last year, led by the Premier, has to date generated anticipated export sales of more than $230 million for the 24-month period post mission — an outstanding result.

In the trade mission last week there were a number of important activities. I announced that Singapore's microbrewery RedDot will open the company's first brewery outside Singapore in Melbourne's western suburbs, and that will see 25 new jobs created. I also announced that the global online education provider, EdTrin Group, will open its Australian education development and operational headquarters in Melbourne, which it is estimated will create over 100 jobs within three years. A number of Victorian ICT companies were successful in gaining new ventures while on the trade mission, which will see exports and jobs created.

I opened the third National Association of Private Educational Institutions international skills conference in Kuala Lumpur, with many of our vocational education and training providers participating and showcasing the high-quality product that we have in Victoria. Of course international education is our no. 1 export, being worth about $4.5 billion to the state of Victoria, and it is one that we must protect and pursue. We also announced that Federation Training, a Gippsland-based public vocational educational and training provider, has formalised a range of partnerships within Malaysia.

The Minister for Agriculture and Food Security announced that food and beverage trade specialists will

be placed in key Asian markets to help Victorian producers increase exports, and again this is a direct flow-on of the coalition government's Food for Asia strategy, which we released in last year's budget. A range of tourism activities were held with me in both Malaysia and Singapore, and I launched a new cooperative venture between Tourism Victoria, Tourism Australia and AirAsia X.

In conclusion, the coalition government has supported 75 trade missions to 32 countries. We have taken 3000 businesses offshore, and these companies have reported $4.4 billion of sales and export opportunities as a direct result of these trade missions.

Ambulance services

Mr ANDREWS (Leader of the Opposition) — My question is to the Premier. I refer the Premier to the fact that at 10.15 a.m. yesterday there were just two available ambulances between Melbourne, Bundoora and Lilydale, and further at 1.00 p.m. today there was just one ambulance available for communities between Melbourne, Ringwood and Chelsea, and I ask: when will the Premier stop boasting, stop making excuses and finally acknowledge that there is a crisis in our ambulance service and that Victorians are dying because of it?

Dr NAPTHINE (Premier) — I reject the particular final comments of the Leader of the Opposition. I think they are totally inappropriate. They are an insult.

Mr Andrews interjected.

The SPEAKER — Order! The Leader of the Opposition has asked his question. I ask him to be silent.

Dr NAPTHINE — That is an insult to the hardworking paramedics — —

Mr Andrews interjected.

The SPEAKER — Order! If the Leader of the Opposition continues, I will ask him to leave the chamber.

Dr NAPTHINE — It is an insult to the hardworking, dedicated and highly skilled paramedics across Victoria. It is an insult to the hardworking and qualified — —

Honourable members interjecting.

Dr NAPTHINE — It is an insult to the hardworking staff at the Emergency Services Telecommunications Authority who are the call-takers, who deal with over 725 000 calls each and every year. They respond to those calls professionally, efficiently and to the very best of their ability, and they do not deserve the insults of the Leader of the Opposition. Under this government we have provided Ambulance Victoria (AV) with funding worth nearly $700 million — a record level of funding. We provided it with 23 per cent more funding than it received under the previous Minister for Health and the Labor government. We provided it with an additional 465 paramedics, and there are over 28 000 additional shifts.

With regard to outcomes, I refer to a letter of November last year from Professor Jeffrey Rosenfeld, head of division of clinical sciences and department of surgery at Monash University. In the letter he highlights that the outcomes being achieved by Ambulance Victoria are above what has been achieved previously in the history of ambulance services in this state. He particularly highlights the improved performance in regard to response to cardiac arrest. He also highlights the significantly improved performance in relation to trauma management achieved by Ambulance Victoria. The letter states:

> Another highlight of AV's performance is the improved outcomes for patients who experience a stroke …

He also says that 'another key measure' is AV's performance in monitoring:

> … the effectiveness of treatment of patients with moderate to severe respiratory distress.

So what we are seeing from Professor Rosenfeld — a person who knows about emergency medicine and is an expert in emergency medicine — is that he pays appropriate tribute to the skills, ability and additional resources being made available to Ambulance Victoria to make sure our paramedics who are out on the road have got the appropriate training, skills and equipment to respond to those 725 000 calls and deliver better outcomes for Victorians, better outcomes for people affected by cardiac arrest, better outcomes for those affected by stroke, better outcomes for those who suffer trauma and better outcomes for those who suffer respiratory distress.

Professor Rosenfeld, who is an expert in this area, says quite clearly that Ambulance Victoria — and I pay credit to Ambulance Victoria; I pay credit to those hardworking paramedics; I pay credit to the Emergency Services Telecommunications Authority call-takers who are dealing with 725 000-plus calls each and every year — is responding as positively, professionally and efficiently as it can. It is being backed up with the resources we provide it to improve our ambulances.

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

Ms D'Ambrosio interjected.

Questions interrupted.

SUSPENSION OF MEMBER

Member for Mill Park

The SPEAKER — Order! The member for Mill Park has been interjecting constantly for the last 10 minutes. I ask that she leave the chamber for an hour.

Honourable member for Mill Park withdrew from chamber.

QUESTIONS WITHOUT NOTICE

Questions resumed.

Government financial management

Mr TILLEY (Benambra) — My question is to the Treasurer. How is the coalition government building a better Victoria by delivering strong state finances, and is the Treasurer aware of any threats to this?

Mr O'BRIEN (Treasurer) — I thank the member for Benambra for his question and for his interest in strong state finances. In five days time 39 000 Victorian businesses will get the benefit of a payroll tax cut under the coalition government. In five days time hundreds and thousands of individuals and families who take out life insurance products will see the stamp duty on those life insurance products abolished entirely. In five days time all those homeowners, business owners and property owners who pay the fire services levy to fund the Country Fire Authority and Metropolitan Fire Brigade will see their rates slashed.

These financial benefits will be delivered to Victorian families, Victorian communities and Victorian businesses in five days time because of the strong economic and financial management of this coalition government. When you look around the country you see other states bringing down their budgets in recent days and weeks, and it demonstrates that Victoria is the standout. We have seen Queensland bring down a budget significantly in deficit, New South Wales bring down a budget in deficit, and the South Australian government — the only Labor administration standing — has a massive deficit in its budget. We are getting on with the job, and through strong state finances we can build the infrastructure that Victorians need.

Just this week as part of the tender process for the east–west link stage 1, we short-listed the bidders from three down to two. We are getting to the point where we are making final assessments of those bids, and this will deliver a fantastic project for Victoria. Not everyone has been supportive of all the aspects of east–west link, although some members are. In this year's budget we announced stage 2, the western section of east–west link. On 16 October 2012 one commentator said:

> I think a second river crossing; an important redundancy for the West Gate Bridge and a link direct into the port is a stronger project.
>
> …
>
> A back-up for the West Gate, which currently handles more than 165 000 vehicles a day as well as the significant commercial and residential growth in the west, makes the case compelling.
>
> West–east is the way this project should be viewed.

That was the Leader of the Opposition. Of course under a coalition government you do not have to choose between east and west, you get both, because we are building both.

There is other strong support for the western element, and I refer to a press release of 11 December 2012, which says:

> A second river crossing is essential because when the West Gate Bridge comes to a standstill the entire road network comes to a halt.

This press release goes on to say:

> … get on with the job of building the second river crossing as a priority project, not in 10 years time.

This was the member for Tarneit. We have taken his advice, and we are getting on with it. We are building it. I was asked about threats. It makes you wonder, and here is a comment from 9 May, which says:

> Shadow Treasurer Tim Pallas said the western section of the 18 kilometre cross-city road project was not part of the transport proposal Labor would take to the state election.

The member for Tarneit then said:

> We have a clear agenda in respect of transport.

The only thing that is clear is that east–west link will only be built under a coalition government.

NATIVE VEGETATION CREDIT MARKET BILL 2014

Consideration in detail

Debate resumed.

Clause 3 agreed to; clauses 4 and 5 agreed to.

Clause 6

Ms NEVILLE (Bellarine) — Clause 6 talks about potential gain and how it relates to the creation of native vegetation credits. As I understand it, a gain on private land is based on the potential for improvement through the quality and extent of native vegetation. In contrast, potential gain on Crown land comprises the potential for improvement or reservation gain. Is it the case that the state, for example, could use a smaller area of land at a lower cost than a private owner to provide a tradeable credit?

Mr R. SMITH (Minister for Environment and Climate Change) — The answer is simply no.

Ms NEVILLE (Bellarine) — Further to the minister's answer, could he be a little clearer about the provision of potential gain? The bill creates a difference in the way potential gain relates to private land and how it relates to Crown land. It appears pretty clear that there is a difference in how that is established. I will allow the minister to talk to people from the department in order to get an answer on that. Could the minister outline in a little bit more detail the difference between how potential gain is applied to private land and how it is applied to Crown land and what the implication of that difference is?

Mr BATTIN (Gembrook) — In relation to clause 6 of the native vegetation bill, we are talking about potential gain. We note the importance of the ongoing management and the improvement management plans. That is one of the relevant parts of the bill, particularly in relation to management of the site. The landowner must comply with the management actions of that plan and in future will forgo any use of that land for any other allowance. When taking into consideration that potential gain clause and any credits a native vegetation credit bill might put in place, it is important that the landowner takes into consideration the future use of that land and what they are sacrificing to use it as a credit. It could be important in the future as they will not be allowed to do any farming or other agricultural activity on the land. They cannot do anything further on that land — they definitely cannot clear it — once that land is to be used as an offset for something else in another area.

The gain is generated by landowners agreeing to an increase in the protection of native vegetation on their land. That can be an increase via an improvement plan, or it could also be in relation to an ongoing management plan to make sure that native vegetation is protected in perpetuity. As I said, the land-holder forgoes the allowable land use that would result in the decline and condition of native vegetation if continued. If they are actively farming or doing anything on that land — it does not matter whether it is cattle or agriculture — it is important they understand that they may be forgoing the future use of that land.

Land-holders must perform management actions that maintain or improve the current condition of the native vegetation on a specific site. Some will have management plans put in place as part of the native vegetation credit that is registered. Once it is registered it is very important that land-holders have an understanding of what they can and cannot do on that land in the future.

In this bill the potential gain in relation to a site or biodiversity class area means, if the site or biodiversity class area is on private land, the improvement in the quality or extent or both of the native vegetation on that site or biodiversity class area, calculated by a qualified assessor, is very important. A lot of it is around making sure we have qualified assessors doing this in the prescribed manner and taking into account criteria prescribed for the purpose of this definition, that is predicted to result from the requirements specified in the site management plan. It is about putting that site management plan in place and ensuring that we have qualified assessors coming in. We have the regulator, being the department, having the opportunity to oversee that plan. Having a regulator who can oversee site management plans is a very important part of the bill.

The bill also makes provision where the site or biodiversity class area on Crown land is either or both of the following: any reservation area or the improvement in the quality or extent or both of the native vegetation on that site or biodiversity class area calculated by the qualified assessor in the prescribed manner. I note we are also talking about Crown land. It is very important that we prescribe what is going to happen on Crown land as well as private land. Private land is where a lot of it will come back.

Gain is measured by biodiversity equivalence units. That is calculated by a qualified assessor. The loss in the contribution made by the native vegetation to Victoria's biodiversity at the clearing site is also measured in a biodiversity equivalence unit. This enables the comparison of losses and gains in order to

achieve no net loss. That is stated in the bill. Comparing what may be cleared from the development obviously means comparing it to the area that will be used as an offset in the future.

Mr FOLEY (Albert Park) — My question to the Minister for Environment and Climate Change is in regard to clause 6, which defines potential gain for the purposes of this bill. We have heard from the very eloquent member for Gembrook around the notions of potential gain and the calculation of native vegetation credits. The question I have for the minister goes to another iteration of the last question, which he did not quite get around to answering.

If potential gain in relation to Crown land, as the explanatory memorandum states, means reservation gain, my question is: how does the minister see this playing out with regard to vegetation improvement plans on Crown land, and in the case of both private and Crown land, the quantum of the potential gain? Given that he has already had the opportunity to answer this question once, if he is not in a position to answer it this time, perhaps he could ask the minister in waiting, the honourable member for Gembrook, to answer the question for him, given that he is so good at the job — —

The DEPUTY SPEAKER — Order! The member for Albert Park!

Mr R. SMITH (Minister for Environment and Climate Change) — It is worth defining the term 'gain' — —

Mr Foley — You are the worst environment minister.

The DEPUTY SPEAKER — Order! The member for Albert Park is warned.

Mr Foley interjected.

Debate interrupted.

SUSPENSION OF MEMBER

Member for Albert Park

The DEPUTY SPEAKER — Order! The member for Albert Park can leave the chamber for an hour.

Honourable member for Albert Park withdrew from chamber.

NATIVE VEGETATION CREDIT MARKET BILL 2014

Consideration in detail

Debate resumed.

Mr R. SMITH (Minister for Environment and Climate Change) — It is worth defining the concept of 'gain' in these circumstances. 'Gain' is generated by landowners who agree to increase the protection of native vegetation on their land, forgo allowable land uses that would result in a decline in the condition of the native land or to perform management actions which maintain and improve the current condition of native vegetation on their land.

In this particular case, for a long time native vegetation policy has recognised that an increase in protection for vegetation on land is a gain. For this reason the bill includes a separate concept of reservation gain for Crown land arising from it being placed in a higher conservation management framework.

In technical terms the bill does not include a separate concept of reservation gain for private land; however, the same conceptual concept is embodied in the bill under the native vegetation management agreements — under part 5. The agreement must be created over private land before credits are created and provides ongoing protection for the land's vegetation.

Ms DUNCAN (Macedon) — Can I ask the minister to clarify whether the definition of 'gain' is simply that it has not been lost? It sounds as if that is the case — that if land is protected, it is considered to represent a gain, perhaps on the assumption that otherwise the land-holder could have cleared the land. In addition to asking whether the definition of 'gain' is simply that what is there is not removed, I ask: could the state, as an example, use a smaller area of land to provide a tradeable credit at a lower cost than could a private landowner?

Mr R. SMITH (Minister for Environment and Climate Change) — The member for Macedon was asking whether it was possible that an area could be smaller. In answer, I note that it depends on the environmental values of the site.

Clause agreed to; clauses 7 and 8 agreed to.

Clause 9

Ms NEVILLE (Bellarine) — Clause 9 goes to the issue of the creation of native vegetation credits for private land and the application for those credits in

particular. It is my understanding that these are some of the provisions that enable or allow credits to be allocated for philanthropic purposes. Despite some of the commentary made earlier to the effect that we on this side are somehow advocating that Trust for Nature would become the compliance organisation, that was never the point we were making. The point is the uncertainty about the status of Trust for Nature agreements going forward. My question in relation to this clause is: what assessments have been made or what understanding does the minister have about the impact these new arrangements would have on the Trust for Nature legal arrangements?

Mr R. SMITH (Minister for Environment and Climate Change) — I will put on the record up-front that Trust for Nature supports aspects of this bill, including the creation of credits. Trust for Nature also supports the concept of having a single regulator of these credit markets and has gone on from that to say it should not be the regulator — that it does not have the resources or the wherewithal to be the regulator. Trust for Nature will take a role going forward as an assessor or as a broker in identifying offsets that would be useful in terms of allocation for various purposes.

From memory I think clause 136, which makes consequential amendments to the Planning and Environment Act 1987, will clarify the status of any agreements that have been made with Trust for Nature.

Ms NEVILLE (Bellarine) — I am not quite sure whether that answers the question, but given the issue of time I will move on to clause 9(3)(d), which provides that a landowner must provide an estimate prepared by a qualified assessor. Could the minister outline what qualifications would be required in order to be approved as a qualified assessor?

Mr BATTIN (Gembrook) — We are talking about clause 9, and I just want to refer back to one of the questions that came up in relation to Trust for Nature and its specific role. Obviously we understand it has spoken about becoming an assessor in this context. I note the member for Bellarine stated that no-one had said Trust for Nature would be involved as a regulator — and we have noted Trust for Nature has publicly said it would not be so involved; that contention originally came from one of the members on the other side, who spoke about Trust for Nature becoming a regulator. That should be considered. At that time we put on the record that Trust for Nature has publicly said it does not want to be a regulator.

Supporting what the minister has said, I note Trust for Nature could be used as an assessor in the future. As we have said, any application may be made via the secretary for the creation of a native credit on all or part of some land. The important part, as is indicated by the bill, relates to assessment, and the bill refers to potential gain in an area. It is really about the biodiversity values in the area. It is not just about the size of an area, to which the member for Macedon referred. It is about the potential gain within that area in terms of biodiversity values and the assurance that there is a future and a strong management plan. It is about the importance of having an improvement plan, should the area require it, to get its biodiversity values up to the levels required in terms of the land being proposed as a native vegetation credit.

In relation to this, on a few occasions here I have referred to the strategic biodiversity score. There is the issue of how that is going to be assessed, and there are also habitat scores. I note that the habitat score and the biodiversity score are so important to the assessment of the area that is going to be set aside for the offset in relation to the area that is either going to be cleared or have infrastructure or what have you put there. It is also therefore important to have an independent qualified assessor and to put in place a forward management plan that can be registered and handed across to the department. The department will have the ability, using its expertise and staff, to have in place and enforce the regulations around that going forward. There are subclauses in here that specifically relate to having that assessment, making sure it is all registered and putting it forward with those correct plans, with the regulator surrounding it.

The guiding questions behind this are: how are they going to assess the area? And how are they going to assess the size? I think it is very important to note that not everything is going to come back into this. I sat down with the department and the ministerial staff to get my head around how the assessment physically works and how we look at this in terms of size. At first it was very much acre for acre in my mind, but the explanation has come back in relation to the importance of the biodiversity value and how that biodiversity value is assessed, which comes back to the relationship to size. I think that is really important. To be honest, it took a while for me to understand it; I needed to have a few diagrams drawn to totally understand how it will work in particular habitats and with the biodiversity value going forward, compared to just factoring in the size of the parcel of land that is going to be set aside for the offset.

Mr CARBINES (Ivanhoe) — In relation to clause 9 and the application for native vegetation credits, I draw the minister's attention to subclause (3)(d), which refers

to 'an estimate, prepared by a qualified assessor'. My question relates to what criteria will be used by the assessor to determine what are reasonable costs.

Mr R. SMITH (Minister for Environment and Climate Change) — Just on the issue of qualified assessors: obviously qualified assessors are going to be needed to complete the applications in relation to the sites land-holders want to use in order to establish the value of the native vegetation credits. If we just go back to clause 3, the bill defines a qualified assessor as someone who meets the criteria prescribed for the purposes of this definition. The question was asked, 'What criteria will need to be met in order for the assessor to be qualified as an assessor?'. That, again, will be part of the regulation-making process, and the various aspects will need to be tested. The manner in which an assessor will need to be trained will be part of that process and will be defined as the regulations are put in place.

Mr CARBINES (Ivanhoe) — Further to the minister's comments in relation to clause 9(3)(d), what happens if the department ticks off on the price but landowners later find that it is not enough to deliver the plan? Who is responsible for covering those extra costs?

Mr R. SMITH (Minister for Environment and Climate Change) — The monetary consideration of the native vegetation credits is defined between the landowner and the purchaser of the credit, so it does not necessarily go to the fact that the monetary consideration will be of equal value to the implementation of the native vegetation management plan. The funds will go into the Native Vegetation Credit Fund as defined in the bill, so as far as covering the cost goes it is not a like for like. Depending on the value of the environmental values, the monetary consideration will vary and the management plan will still have to be enacted in accordance with the agreement.

Clause agreed to; clauses 10 to 15 agreed to.

Clause 16

Ms NEVILLE (Bellarine) — Clause 16 is the area of the bill that talks about the creation of native vegetation credits for Crown land, and particularly about when native vegetation can be created for Crown land. It introduces the idea of a reservation gain. The member for Macedon talked a little bit about the broader question around gain earlier, but the bill introduces this new term 'reservation gain'. This clause of the bill also makes reference to regulations in regard to this, so I suppose there are linked questions. What is reservation gain in relation to Crown land? What is proposed in relation to reservation gain? And is it going to be using the native vegetation gain scoring manual as a basis for setting that criteria?

Mr R. SMITH (Minister for Environment and Climate Change) — The purpose of creating credits on Crown land is, amongst other things, to create philanthropic opportunities for investment in Crown land. The point that needs to be made is that under the native vegetation improvement plan there must be additionality to the work that is already being done and that is already expected to be done. The land manager, who has specific responsibilities when it comes to Crown land, will have to be responsible for additional work that is done. There is an additionality test within the bill.

We also have a situation where the Crown land that the credits are being created for is a compatible reserve. If I can define that, a compatible reserve is an area of Crown land where we can have the sort of added protections and management that will be required under the creation of the credits. For example, a state forest which currently can have logging done in it would not be a compatible reserve; it would have to be a reserve in which the appropriate arrangements would apply. Does that go to answering the member for Bellarine's question?

Ms NEVILLE (Bellarine) — The first element of the question is in relation to what is proposed in regard to reservation gain for Crown land. How does the native vegetation gain scoring manual — because it talks about regulations — relate to that?

Mr R. SMITH (Minister for Environment and Climate Change) — I thank the member for clarifying that. The answer is yes, the same scorecard will be used for both private land and Crown land.

Ms NEVILLE (Bellarine) — Further to the issue of reservation gain, as I understand it when we are talking about reservation gain for public or private land being transferred to public ownership, it can only be considered if the land is changed under the Crown Land (Reserves) Act 1978. For example, what would happen in a situation where there is private land that sits outside of a national park or in the middle of a national park — which is not necessarily unusual; we have chunks of that sort of land — and there is a proposal for this land, under this legislation, to be reserved and be part of a gain? The way I read the bill is that that land could only become a Crown land reserve, not a national park, even though it might sit in the middle of a national park and

it may appropriately be considered a national park. Why would you not enable or allow a change in the tenure for it to become a national park? As I read the bill, it does not allow that, and it does not have the flexibility to enable that.

Mr BATTIN (Gembrook) — In relation to clause 16 of the Native Vegetation Credit Market Bill, which refers specifically to that question of what can and cannot be used as an offset on Crown land, the bill states:

> Native vegetation credits may be created for Crown land if —
>
> (a) the land is permanently reserved under the Crown Land (Reserves) Act 1978 for a compatible purpose and the land was unreserved immediately before that reservation; or
>
> (b) a vegetation improvement plan is approved for a compatible reserve; or
>
> (c) the land is purchased under this Act and permanently reserved under the Crown Land (Reserves) Act 1978 for a compatible purpose.

I reiterate what the minister said before: the reasoning around this provision is to encourage and create an opportunity for further philanthropic investment within these Crown land reserves. We all know that those people who are looking at investing in Crown land reserves are generally doing so to create a better biodiversity area and improve those offsets. We have spoken about the Trust for Nature, which will come in and work within those areas within offsets and ensure that they have a vast range of improvement. The funding must be additional — it cannot be based on Crown funding. That is why we are looking at having the philanthropic opportunities coming back in there. It must be a compatible reserve.

It is important to get on the record what the minister said before. In relation to something like a state forest, if you have a state forest in an area where you can now or in the future do logging, it would not be seen as compatible to have an offset in that particular area. However, it is important that we have the tools in place and we have that same scorecard for private and Crown land, and it is important that we retain that regulation because if the offset is to be effective, it must create an improvement or have a management plan or both. When the application goes through, the applicant must have in place an improvement plan or a management plan to ensure for the future that it is going to be at or above what is required for the biodiversity or habitat requirements for which it is being used as an offset.

Mr McGUIRE (Broadmeadows) — The minister and the member for Gembrook have given partial answers to this. I would just like to ask the minister if he could give as much detail as possible on the definition of 'compatible', and if he could just explain for the public record in as much detail as he can possibly provide what would be ruled in or ruled out.

Mr R. SMITH (Minister for Environment and Climate Change) — Initially in response to the member for Broadmeadows I say that a compatible reserve would be simply that: it is reserved Crown land the uses of which would allow for the management plan to be enacted. With regard to the member for Bellarine's question about whether private land that adjoins or is encompassed by Crown land can be made into a national park, the bill does not allow for it to be made into a national park, but of course in every circumstance where a national park is created or added to a separate bill needs to be brought into the Parliament. It would be quite possible, if the government of the day were so inclined, to make that area a national park, but it would require separate legislation. However, if separate legislation were brought into the Parliament and accepted by both houses, then of course an area that was previously reserved as a compatible reserve for the purpose of establishing native vegetation credits could be made part of a national park.

Ms DUNCAN (Macedon) — I am not sure the member for Broadmeadows got the level of detail in that response that he might have been looking for. I am seeking clarification. The minister said earlier that there could be improvements or additional protection, which seems to be an offset. I am just wondering if the minister could provide an example of the sorts of improvements or additional protections that could be provided on Crown land that would fulfil the criteria of an offset? I think that is what the minister was implying, that you can add additional protections to an existing Crown land reserve. What sort of extra protections or improvements would be an example of that?

Mr R. SMITH (Minister for Environment and Climate Change) — Just to refer to the first part of the member's contribution in relation to my response to the member for Broadmeadows about the definition of a compatible reserve, the information is in the definitions clause of the bill. Members can look at the bill. The definition refers to other acts and other sections. If members do their homework and have a look through — —

An honourable member interjected.

Mr R. SMITH — Sorry, that may be a big ask! I apologise. If members look at the bill, they will see the

definition of a compatible reserve and what the uses are. If members do their homework, they will see the uses of these compatible reserves and how they are defined as being compatible.

In response to the member for Macedon's question about which protections would be additional protections, it is protections and improvements. It is not one answer fits all; it depends on the extent of the vegetation, the quality of the vegetation, the habitat, the species and things of that nature. A whole range of different things would be incorporated into the vegetation improvement plan based on the actual habitat and the site that has been considered.

Ms DUNCAN (Macedon) — Just to clarify, would that be like planting more trees within the Crown reserve? Would it be adding more endangered species? Again, getting back to the whole purpose of this, which is to improve biodiversity — and I am thinking of my own local forest, the Wombat State Forest — what sorts of works could be done in a forest like that that you would argue would result in an improvement in its biodiversity class area?

Mr R. SMITH (Minister for Environment and Climate Change) — The examples the member gave are exactly right, but in the bill there is a test of additionality. There have to be works additional to existing requirements. It might be a range of different things depending on the habitat, the extent, the flora and fauna proliferation and the size — a whole range of different things — but you would have to pass the additionality test within the bill.

Mr BATTIN (Gembrook) — I will just reiterate what the minister said about additionality. It is actually in relation to what you are going to add to the area. However, one of the other biggest protections is ensuring we have regulation around those management improvement plans as well. We have gone through that a few times. I know we are on clause 16, but one question came up in relation to compatible reserves; the minister referred to this quickly. The bill states:

> compatible reserve means Crown land —
>
> (a) described in Schedule Two (National Parks), Schedule Two A (Wilderness Parks), Schedule Two B (State Parks) and Parts 1A, 2A, 3, 6, 9 and 15 of Schedule Three (Other Parks) to the National Parks Act 1975; or
>
> (b) permanently reserved under the Crown Land (Reserves) Act 1978 for a compatible purpose; or
>
> (c) described in section 44 of the Crown Land (Reserves) Act 1978 …

That definition is in clause 3, and we are at clause 16. I wonder why these questions were not raised when we were discussing clause 3. I am not sure if the member for Broadmeadows is a Johnny-come-lately and has only just thought of one of the questions he wanted to ask, but I refer him back to the bill — it is all there for him in the definitions section.

Mr R. SMITH (Minister for Environment and Climate Change) — I also pick up on something that the member for Gembrook said about the member for Macedon saying that this bill, in her words, is supposed to be about protecting the environment. It is important to note that the management plans we are putting in place are being monitored. There is constant reporting, with an annual report over the initial 10-year period and periodic reporting that can be asked for subsequent to that 10-year period. The bill is about enhancing our environment. It is about protecting the important environmental values that we agree we should protect, but this bill adds a layer of accountability on it to make sure not only that the aspects of the management plan are being adhered to but also, if they are not being adhered to, that there is a penalty related to that. It will be very clear that the land manager, whether it be of Crown land or private land, is doing the right thing, and in regard to Crown land that the Crown land manager is actually delivering the additionality that is proposed in the native vegetation improvement plan at the outset.

Clause agreed to; clause 17 agreed to.

Clause 18

Ms NEVILLE (Bellarine) — This clause also goes to the issues around compatible reserves and compatible purposes. Putting aside the member for Gembrook's trying to have a bit of a hit at the member for Broadmeadows, it is completely appropriate, if members look at all the clauses, that we explore this issue of compatible reserves and what that actually means. We can all go back and look at whatever schedule to each of these acts, but perhaps the minister can give some examples. That is what the member for Macedon was also trying to explore. Rather than the member for Gembrook being able to describe the member for Broadmeadows as a Johnny-come-lately, I point out that the member for Broadmeadows has sat through all the debate so far and has appropriately raised some of the issues while we have been debating the clauses so that members can move through the bill.

I am particularly keen for the minister to take us to a little bit of the additionality work. I refer to one of the things raised in the second-reading speech in which the minister talked about improvement plans or

management plans. I hope the Department of Environment and Primary Industries representatives do not take this as some terrible slap to them, because it is not intended as that. Is there not an issue about the fact that the people doing the oversighting and the monitoring of the compliance of the management plans are the same people who are also responsible as the regulator or organisation that would say, 'You're not meeting the requirements under the management or improvement plan'?

One of the comments I made in my second-reading contribution was that particularly with a scenario where the department is under pressure and losing funding, at what point will the department be in a position to say, 'That management plan that has been put in place for that Crown land reserve is appropriate and being met' by the department, which is the land manager? I know that Parks Victoria does some of that work, but certainly at the moment in the end it is pretty much one organisation. In one organisation where different roles can be played it is important to understand how we can provide assurance to the community and to private land-holders, who want to see equality in how the process works. They need assurances that the regulator or monitor will be able to ensure that the management improvement plans for Crown land are being properly oversighted by the land manager and regulator.

Mr R. SMITH (Minister for Environment and Climate Change) — Firstly, I want to make the point that I do not find my department staff to be under pressure or unable to handle the pressure. I have very much enjoyed working with them over the past three and half years and I do not find that the member for Bellarine's assertion of them losing funding is causing them to be under pressure. That is just not the case at all. In fact, with the merger of the Department of Sustainability and Environment and the Department of Primary Industries, I am finding that the commonalities between the work that people in those two areas previously did is making a more efficient and leaner organisation that is very well suited to handling the work of government, and I am sure that will continue into the future. I think it is important to make that point.

On clause 18, the member for Bellarine said that there is some uncertainty around the regulator being the Crown land manager as well. If members look at part 11 of the bill, they will see that it makes it very clear that the department will have to report regularly — annually — to Parliament on the native vegetation improvement plans. It will be in the department's annual report how requirements of aspects of the vegetation improvement plans are being fulfilled. While I can understand that there might be some concern about the regulator regulating itself, the transparent reporting as detailed in part 11 of the bill actually accommodates that. So it is very transparent and very clear that the obligations of the Crown land manager, be it Parks Victoria or the Department of Environment and Primary Industries, are being met and that will be very obvious to everyone through the reporting regime.

Mr BATTIN (Gembrook) — Again, I would like to reinforce some of the things the minister has said. I have been in the parliamentary secretary's role for only 14 months and have had opportunities to go and work with the department. I agree that the people I have met in the department do not appear to be under pressure. The message that I have been getting from a few of them is that they are pleased to have a minister who works with them and actually does some work. They have been very pleased to have a minister on board who gets involved and does his work and does not just pass everything back to the department to finish it for him. He gets it done.

Mr Madden — Name him.

Mr BATTIN — I will name him. It is Minister Ryan Smith, who does a wonderful job.

In relation to native vegetation and testing of it, it is very important to note that the test is the same on private land as it is on Crown land. Members were also talking about the regulator. I know that the minister raised this, but it is around the reporting as well and the concerns raised about the regulator being the monitor. If members look at many other sections of departments, particularly within the Department of Environment and Primary Industries, they will see that a lot of the time they do have positions where they are regulating and monitoring at the same time, but it is important that you have the transparency around it. I think we are very lucky to have a department that does that. Departmental officers have the transparency and they make sure the reporting is done. There are various reports — there is not just one — and they are very regular with their reporting.

In relation to clause 18 — I will go back to it — there is a philanthropic focus as well. The government is creating an opportunity here for either fundraising or philanthropic funding to come into our nature reserves to improve and potentially gain within our biodiversity and our environment. We continuously talk about and hear about what we want to see in our Crown reserves, and we talk about areas on private land where we would like to see improvements in our biodiversity. What the government is doing here, particularly around

the Crown reserves, is providing an opportunity via the native vegetation credits market for people, through philanthropic organisations, to invest in that as an offset. I think that is very important.

The bill puts those regulations in place and gives the department an opportunity to work with those external groups to make sure that we can put in a strategic biodiversity growth plan so that we can have a fantastic opportunity to improve our Crown reserves, not always, obviously, just using our state money. It gives us an opportunity to do it from outside. I look forward to the bill going through and to seeing the opportunity for the department to work within that and become the regulator and ensure that we can have all credits centralised in one reporting mechanism, which I think is a positive for the future.

Ms NEVILLE (Bellarine) — I thank the Parliamentary Secretary for the Environment, the member for Gembrook, for his comments. He spoke about the issue of gains. We are still slightly unclear about what is meant by that. The minister spoke earlier about the requirement for additionality of works. Can the minister give some examples of how that might apply to existing areas? What does he mean by additionality, and what are the standards or benchmarks that are going to be set in relation to additionality? These are really critical questions when it comes to gains, particularly when you are talking about reserved Crown land — that is, land that is already protected. A lot of stakeholders have raised a concern about the meaning of additionality, as well as what benchmarks are going to be set for anyone to meet.

Mr R. SMITH (Minister for Environment and Climate Change) — I have already made the point that the additionality test applies, but it will depend on the site, the extent and quality of the vegetation, the size of the site and a whole range of different issues. That will be determined according to the assessment.

I want to go back to an issue that was raised in regard to the department regulating itself. As the member for Gembrook pointed out, there are a number of functions that the department currently undertakes that it also regulates. It is also not uncommon for the Environment Protection Authority to both educate and regulate — it is not uncommon across government in any shape or form that this happens. The member also raised issues about concerns of private land-holders that there is a standard level of expectation across Crown and private land. Within the bill the same standard applies to both. It is very clear in the bill that the standard that applies to private land is the same standard that applies to Crown land. The bill absolutely provides legal assurances about that.

Clause agreed to; clauses 19 to 32 agreed to.

Clause 33

Ms NEVILLE (Bellarine) — This clause goes to the section of the bill that deals with the calculation of native vegetation credits. As I understand this clause and how the calculations are made, they rely on what the bill talks about as biodiversity class areas, which are elements of the permitted clearing guidelines and which we have talked a little bit about when we talked about the purposes of the act. These are guidelines which I and other members have described earlier as being quite flawed. What assurances can the minister give that we can rely upon those calculations to deliver the desired outcomes for no net loss in the biodiversity values of Victoria?

We know there were some issues with the mapping. The member for Benalla in his contribution earlier admitted there were some issues with the mapping, and I think there is some work that is being hurriedly done. There are issues with how we are calculating native vegetation credits. It is my view that unless you fix some of those flaws at the base of the calculations, you will not get positive outcomes nor meet your own new lower standard of no net loss. I am seeking further assurances or information from the minister as to exactly how he is going to be able to rely on this sort of flawed methodology and achieve the no net loss provisions that he has ticked off on.

Mr R. SMITH (Minister for Environment and Climate Change) — The use of the term 'flawed' methodology is wrong. There has been a lot of work done around the mapping. It is reviewed periodically and consistently. The mapping tackles a problem that was raised at length with me, particularly in the first 12 months of my appointment as minister, that there was no certainty for land users, developers, agriculturalists and people who wish to clear native vegetation. On many occasions I was told there were was a continuous moving of the goalposts under the previous government and that it was very difficult to ascertain what environmental values were put on particular sites.

There were expensive assessments that needed to be made — in many cases on a continual basis — which added significant cost to land users. The request from me was to put a layer of certainty around land use, certainty around environmental values and certainty around money that needed to be spent on various

assessments. The mapping came as a result of stakeholders wanting to see some certainty. The mapping has been done. It is time stamped at a particular point, and it is continually reviewed to make sure that we remain up to date with the various aspects of why the land has been classified as such.

The other issue that was raised was about the formula. Let us make it very clear that a formula to ascertain biodiversity value is not a new concept. Under the current regime councils and the department are already using these formulas to establish the value of an offset site. The point of clauses 33 to 35 is to standardise that to make sure that across local government areas any other groups that are using the formula to calculate biodiversity value are using a single standard one.

Let me again make the point that the bill is about the regulation and standardisation of the current regime. The regime is in place, but in a disparate way, with the various stakeholders having undefined responsibilities. The formula being used will have more rigour around it through the regulation process, and that is something we want to see standardised. To be frank, as I said, all the information we have received over the last few years through the various investigations — the Victorian Competition and Efficiency Commission, the Victorian Environmental Assessment Council investigations, and the public consultation we had around the changing of the permitted native vegetation clearing regulations — has been incorporated into the bill.

The bill is about regulating the current regime. We can talk about the differences of opinion around net gain and no net gain, but that is not what the bill is about. It is about putting a standard formulaic structure around what is currently in place to make sure that we standardise these things. It is about the regulation and standardisation of these things.

Ms HUTCHINS (Keilor) — The Minister for Environment and Climate Change said that the core of the bill is not about net gain or no net gain. The previous question he was asked was about the assurances he could give that there would be no net loss. I do not think the minister has addressed that issue in the discussion around clause 33.

Mr BATTIN (Gembrook) — In relation to net loss and the calculations for it, it is important to note that all the evidence at the moment gathered by the department is based on the best available science. All the calculations are based on that. I will reiterate what the minister has said. This bill is creating certainty for any stakeholder. It is creating certainty in the market, it is creating certainty about offsets, and it is making sure that the goals that are set — and I think the words used were 'the goalposts keep moving' — do not get moved in the future.

The bill requires the protection and improvement of credit sites by requiring the establishment of obligations to protect and improve vegetation depending on what management plan is in place as a precursor to the creation of native vegetation credits. That is part of the plan that has to be submitted with an application for an offset. On private land it is achieved by the requirement in the bill for a native vegetation management agreement to be entered into over the land. The agreement may result in a potential gain within the meaning of the bill, which means there must be an obligation to protect and improve the vegetation on the land. It is about putting in place a management plan to either improve or just manage what is there.

On Crown land the protection can be achieved by placing the land under a higher conservation management framework such as a nature conservation reserves or a wildlife reserve. We are lucky in the Gembrook electorate, because a Victorian Environmental Assessment Council report has just been released recommending the creation of a reserve at Yellingbo. That is not being used as an offset, but the biodiversity values in the Gembrook electorate have been recognised, and that is fantastic.

Improvements can be achieved in these areas and existing high conservation areas, such as national parks, by the creation of a binding vegetation improvement plan. An assessor will look at the plan using the best available science to establish the best improvement plan before anything goes through to be used as an offset, and that is important. Our assessors will go through the plan to ensure either improvement in the area or that the offset uses the best available science. The environmental value of the protection or improvements will be measured using a formula to be prescribed in the regulations, which in turn will guide how many native vegetation credits will be created. Again, that will use the science. It is not just based on science; it is based on the biodiversity values and on the habitat values within an area or what is required to be offset.

The number of general biodiversity credits that may be credited in relation to a site is to be calculated in accordance with the formula outlined in the bill. The regulator, together with the secretary of the department, will oversee that to ensure that before anything is signed off in relation to Crown land it complies with the bill, that the best available opportunities have been used

and that an improvement management plan surrounds the area to be used for a native offset.

Ms DUNCAN (Macedon) — The more I hear from the member for Gembrook, the more concerned I am about the legislation. To get back to the broader question about biodiversity class, I understand that part of the purpose of the bill is to simplify what was previously a quite complex process, involving how calculations are made about comparing biodiversity values with like things. But, as I understand it, the bill removes the criteria of like-for-like for offsets. In many of the minister's answers he has said, I suspect quite rightly, that you cannot give a blanket answer, because it all depends on the values and the comparison of like values, that it is hard to make comparisons and it is not a one-size-fits-all, which I support. I wonder how it simplifies the process when so much of it still seems to be up in the air and there still seems to be quite a process that a land-holder will have to go through.

The member for Gembrook talked about the science. I think the science is fairly clear on this. What is unclear is the mapping and how we can have confidence in that mapping; and if it is wrong, how we can be confident that the biodiversity values in the state will be not just maintained but hopefully improved.

Mr R. SMITH (Minister for Environment and Climate Change) — I will make a quick comment on the member for Macedon's contribution. The bill does not remove like-for-like; that is in the planning scheme. It is a different thing altogether. The bill regulates issues that pertain to the planning scheme, but the like-for-like is not removed by the bill.

The member for Keilor raised issues around how we can be sure that we are seeing a potential gain. I refer the member to clauses 34 and 35. She will see that 'potential gain' is mentioned in clause 34(1) and (2) and in clause 35(1), (2) and (3). Potential gain is an integral part of the formula that pertains to establishing the value of the credit. It is simple maths. I will not make the obvious comments around various members of the opposition not being great with numbers, but if — —

Mr Merlino interjected.

The DEPUTY SPEAKER — Order! The Deputy Leader of the Opposition is warned. We have been having a reasonable debate, and we will keep it that way. I ask for the cooperation of all members in the chamber to have an orderly consideration-in-detail stage.

Mr R. SMITH — As I was saying, with the issue of potential gain being an important metric in the whole formula, it stands to reason that people can have confidence that there is potential gain, because it is simple maths to say that if the potential gain metric is not satisfied, then there is no credit. It is logical to say that potential gain is included in the formula and therefore it is included in the credit itself.

Mr BATTIN (Gembrook) — As we approach the end of this debate it is very important to note that this clause is all about creating stability within this market. I think that is probably the most important message to get out there. The stakeholders have been asking for stability. They want confidence in the market, and they need confidence in the market. It would be very sad if members opposite voted against the clause.

The DEPUTY SPEAKER — Order! The time set down for consideration of items on the government business program has expired, and I am required to interrupt business.

Clause agreed to.

The SPEAKER — Order! The question is:

> That clauses 34 to 139 inclusive stand part of the bill, the bill be agreed to without amendment and that the bill be now read a third time.

House divided on question:

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	Knight, Ms

Campbell, Ms	Languiller, 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. As the motion should be supported by the majority of the house and not determined on a casting vote, I cast my vote with the noes.

Question defeated.

SENTENCING AMENDMENT (BASELINE SENTENCES) BILL 2014

Second reading

Debate resumed from 25 June; motion of Mr CLARK (Attorney-General).

Motion agreed to.

Read second time.

Third reading

Motion agreed to.

Read third time.

WATER AMENDMENT (FLOOD MITIGATION) BILL 2014

Second reading

Debate resumed from 24 June; motion of Mr WALSH (Minister for Water).

Motion agreed to.

Read second time.

Third reading

Motion agreed to.

Read third time.

CORRECTIONS AMENDMENT (SMOKE-FREE PRISONS) BILL 2014

Second reading

Debate resumed from 25 June; motion of Mr WELLS (Minister for Police and Emergency Services).

Motion agreed to.

Read second time.

Third reading

Motion agreed to.

Read third time.

ENERGY LEGISLATION AMENDMENT (CUSTOMER METERING PROTECTIONS AND OTHER MATTERS) BILL 2014

Second reading

Debate resumed from 25 June; motion of Mr NORTHE (Minister for Energy and Resources).

Motion agreed to.

Read second time.

Third reading

Motion agreed to.

Read third time.

LOCAL GOVERNMENT (BRIMBANK CITY COUNCIL) AMENDMENT BILL 2014

Second reading

Debate resumed from 25 June; motion of Mr BULL (Minister for Local Government).

Motion agreed to.

Read second time.

Third reading

Motion agreed to.

Read third time.

CRIME STATISTICS BILL 2014

Second reading

Debate resumed from 12 June; motion of Mr WELLS (Minister for Police and Emergency Services).

Motion agreed to.

Read second time.

Third reading

Motion agreed to.

Read third time.

Business interrupted under sessional orders.

ADJOURNMENT

The SPEAKER — Order! The question is:

That the house now adjourns.

New Gisborne Primary School

Ms DUNCAN (Macedon) — The matter I wish to raise is for the attention of the Minister for Education, and the action I seek is for the minister to commit funding to replace the art room at New Gisborne Primary School, which burnt down in 2011 due to an electrical fault near a kiln. The damage was estimated at $500 000, and three years on it seems the school is no closer to getting the art room permanently replaced.

I have previously written to the minister about this, and the response from the minister and his department has been that it is not a priority despite the fact that a permanent room is within the school's building entitlement. It is also despite a meeting of the principal, the architects and a representative of the Department of Education and Early Childhood Development in 2011, all of whom believed the project would be done fairly quickly following the fire.

The New Gisborne Primary School council has identified this project as its no. 1 priority, and it has been on the council's agenda since the art room was destroyed in 2011. The school is currently circulating a petition which I will be happy to table in the spring session. Amongst other things, the petitioners seek:

> … an assurance from the Minister for Education that rebuilding the art room at New Gisborne Primary School is a priority and calls on the minister to provide the New Gisborne school council with a detailed time line of when works will commence and be completed. Given the length of time that has elapsed since the fire, petitioners also request that these works commence no later than the end of the 2014 calendar year.

In an article published in the *Sunbury & Macedon Ranges Star Weekly* school council president Chris Caldwell is reported to have said that the community's patience was wearing thin and that the school has already raised money to replace art supplies and equipment. He was quoted as having said:

> The local community banded together, raised significant funds, and gave donations to ensure the arts program continued, with an expectation that the art room would be replaced by an equivalent, purpose-built one.
>
> Instead, students are to have their fourth winter in a temporary transportable site.

New Gisborne Primary School is a growing school with growing enrolments. It has a very significant arts program, and the absence of a permanent art room is impacting on that arts program. The school had to create a lean-to for the kiln, so while the kiln has some housing, the art room is still to be replaced. The minister said that he would work with the school to explore shelter options for the recently purchased kiln. What I would like to see is the minister working with the school to replace the permanent art room.

One of the concerns of schools in my electorate is that there does not appear to be any realistic or transparent waiting list for funding, whether the funding is to rebuild a permanent art room, as is the case for New Gisborne, or whether it is for significant maintenance works. Schools have no idea if a list exists or where they might sit on that. We heard, for example, the member for Frankston, talking about schools in his electorate being given money that they had not asked for or sums of money above what was needed. It would seem that if a list does exist, it is more closely related to the electoral pendulum than to any needs-based list. It appears to depend on what seat your school is in rather than the condition or needs of that school. I ask the minister to address this as a matter of urgency.

Forest Hill electorate small business

Mr ANGUS (Forest Hill) — I raise a matter of importance for the attention of the Minister for Small Business. The action I seek is for the minister to visit the seat of Forest Hill and meet with the local small business operators. The seat of Forest Hill is home to a large number and wide range of businesses, including many small businesses. The small businesses provide a livelihood for many residents in the eastern suburbs, including in the seat of Forest Hill.

The recent Victorian budget is good news for Victorian businesses, as it contains a range of initiatives to assist businesses — for example, the cut in payroll tax will benefit approximately 39 000 businesses in Victoria. Most importantly the strong economic management and financial stability exhibited in the state budget are good news for Victorian businesses as they provide an economic environment that is conducive to growing businesses.

The record level of infrastructure expenditure, some $27 billion, in the state budget is also good news for all Victorian businesses, both large and small. The flow-on effects of this investment will be felt throughout the business community in Victoria as many downstream businesses benefit from the opportunities generated by the larger businesses and contractors as a result of these major infrastructure projects. Forest Hill businesses have also welcomed the range of initiatives implemented by the coalition government to assist in relieving cost of living pressures on families — for example, the $400 reduction in water bills for Victorian households over the next four years.

Small business operators in Forest Hill welcomed the election of the coalition government in November 2010 and the resultant strong economic management. Small business operators know that the coalition team includes many small business operators who understand small business and can consequently empathise with the challenges they face. I would welcome the opportunity for the Minister for Small Business, who I note is at the table, to meet with me and a range of small business operators in Forest Hill to discuss the coalition government's initiatives to assist small businesses.

Essendon level crossing

Mr MADDEN (Essendon) — The issue I raise tonight is for the Minister for Public Transport, and my request is for the minister to consider a report by the City of Moonee Valley in relation to a grade separation at Buckley Street as part of the Essendon Junction redevelopment around the Essendon railway station. I understand that the current preference of the Department of Transport, Planning and Local Infrastructure, VicRoads and VicTrack is to leave the rail at grade and run Buckley Street under the track.

However, there are a lot of complications in relation to traffic signalling around that intersection, an issue which has been raised previously by me and by the member for Niddrie. A number of streets have been incorporated into the traffic signalling: Buckley, Russell, Rose and Sherbourne streets. In addition, there is an upgraded pedestrian crossing which is used predominantly by schoolchildren during peak hours. The synchronisation of the signalling has not only created a great degree of complexity at the intersections but also holds up traffic in peak hours, in particular on Buckley Street. That has an impact on public transport services, particularly the bus services that need to reach either Russell Street or Rose Street.

I understand that the preference of the agencies is, as I have mentioned, to run Buckley Street under the railway track. The preference of the council, based on the GHD report — which is quite a comprehensive report; the council invested a significant amount of money in it — is to see the grade separation done in a way whereby the railway tracks and station are placed underground and the land in and around that area is considered for redevelopment. I understand that VicTrack is conscious of the opportunity to sell or lease the land at significant financial benefit to the government. I do not necessarily believe community members are opposed to that. However, I think what they are all seeking, which I would encourage the government to consider, is that this all be done at once and be done properly, rather than having to go back and do it again. If the land is sold without the grade separation or if the grade separation, is not done comprehensively, there will be a significant number of complications.

There is also a great chance to incorporate the reinstatement of the Mount Alexander Road boulevard as well as some palm trees which were incorporated into the existing boulevard and to put in the new tram super-stop which will be needed along that line sometime in the future. I encourage the minister to look at this, to make himself aware of the report and to seek advice from the department. I would appreciate it if he were able to provide to me in writing his response to these matters and the advice he receives. I hope for a positive response.

Monash Children's

Ms MILLER (Bentleigh) — I direct my request to the Minister for Health. The action I seek is that the minister come to the Bentleigh electorate and provide information to Bentleigh residents about the progress of the construction of the Monash Children's hospital. Demand for a new children's hospital in the south-east has been growing for over a decade, and the Labor government's inaction over its 11 years in office has been to the detriment of young families residing in the Bentleigh electorate and surrounding suburbs.

Already Australia's third busiest children's hospital, the new Monash Children's hospital will be built in Clayton and will accommodate 230 beds. The hospital will allow Monash Health to provide expanded services in a child and family-centred environment, deliver an extra 60 000 outpatient treatments every year and provide purpose-built day facilities for children. The Monash Children's hospital, when completed, will take pressure off the Royal Children's Hospital and accommodate scores of children in the south-east. The purpose-built children's hospital will ensure that many more children in the Bentleigh electorate and surrounding suburbs will be able to benefit from the same world-class tertiary services provided by the newly redeveloped Royal Children's Hospital, albeit much closer to home.

The Victorian government is proud to have delivered full funding for the construction of the Monash Children's hospital as it recognises the great need for a facility of this standard in this rapidly growing corridor of Melbourne. Delivering the Monash Children's hospital will deliver for the residents of the south-east, where Labor has failed. Residents of the Bentleigh electorate and surrounding electorates deserve a world-class facility for their families and for future generations.

The new hospital is the next chapter in helping to meet the needs of young families moving into the south-east and outer metropolitan Melbourne. Bentleigh residents will truly be the beneficiaries of the new Monash Children's hospital, and information regarding the progress of this project will be welcomed by all. The action I seek is for the minister to come to the Bentleigh electorate and provide an update to Bentleigh residents about the construction of the Monash Children's hospital and the benefits the new facility will provide.

Wallan ambulance station

Ms GREEN (Yan Yean) — The matter I raise is for the Minister for Health. The action I seek is for him to explain how it could be possible that, four years on from the vacant promise of the coalition to build it, a new Wallan ambulance station has not been built. I say to the minister that the community does not understand how a gazettal of land can mean that an ambulance station will be built, staffed and operational by the end of this term of office, which was the commitment that was made. I read from a press release of 28 June 2010, which come Saturday will be four years ago. It says:

> Wallan is a growing fast community …

Even back then, four years ago, the coalition knew that it was a fast-growing community. It further says:

> The coalition will allocate $2 million capital for the purchase of land and construction of a modern 24-hour ambulance station.
>
> The coalition will also fully staff the new ambulance station.
>
> The new ambulance station will be built and operational by the end of the first term of a Baillieu government.

We did not make that milestone, and it does not seem we will make it with the Napthine government. The press release further says:

> 'Not only will Wallan be better serviced and safer but the whole of Seymour and the Hume region will benefit by the coalition's commitment and support for regional Victoria', Mr Baillieu said.

Four years on the Wallan community — which the 2011 census said had 8504 people — has certainly grown. It is a young community and, as everyone knows and many people have spoken about, earlier this year it was ringed by fires and a number of people lost their homes. There was only one road in and one road out. Schools and other community facilities were threatened, and there was no ambulance station to support that community. The government has tried to pull the wool over the community's eyes by saying, 'We have a Wallan crew'. That crew is 17 kilometres away in Kilmore. That is not providing a service to the Wallan community.

This week we have seen, with question after question, that this Premier refuses to acknowledge that there is a crisis in ambulance services in Victoria. Only this week the government walked away from the benchmarks it set for ambulance response times in regional Victoria.

When we were in government we made several commitments to emergency services in Wallan. We committed to build a police station, and we built it. We committed to build a fire station, and we built it. We committed to build an ambulance station in Whittlesea, and we built it in double-quick time. We made a commitment to build an ambulance station in Kinglake; we secured the land, but we had not quite finished it when this lot got in. The coalition government tried to claim the station was built when it was just foundations in the ground. This government has got form. It needs to build an ambulance station in Wallan.

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

Lowan electorate funding

Mr DELAHUNTY (Lowan) — I raise a matter for the attention of the Deputy Premier and Minister for Regional and Rural Development. The action I seek is

for the minister to consider providing support under the coalition government's $1 billion Regional Growth Fund for projects being championed by communities in my electorate of Lowan. An example of these projects is one being driven by the Hindmarsh shire and local town committees to improve open space, streetscapes and pathways in four of the shire's important town communities. I understand from talking to the shire that it has submitted an application to the Regional Growth Fund for support to provide better local amenities and assets in the communities of Dimboola, Nhill, Rainbow and Jeparit.

In Nhill, for example, there is a proposal to make appealing improvements to Nelson and Victoria streets by installing energy-efficient lights under significant gum trees to light them up at night, and in Rainbow the funding would be used to complete a key community initiative that has transformed the beautiful Federal Street memorial garden into a wonderful retreat in the main business district. Building better community and lifestyle infrastructure encourages local tourism and flow-on economic benefits to local communities and businesses.

Another example I bring to the minister's attention is a project being driven by the West Wimmera shire to improve aged and dated signage across its communities. The shire's towns include Harrow, Edenhope, Apsley, Goroke and Kaniva. I was in Kaniva last Friday night for the Lions Club debutante ball, where 13 debs and their partners put on a beautiful night. Congratulations to all involved. The shire is keen to create modern and uniform signage relating to town entrances, boundary signs and places of interest. Improving key signage plays an important role in developing and maintaining local community pride, as well as making communities more welcoming and appealing to visitors. These things in turn help strengthen the local economy, with the shire branded as united and 'open for business'. They will be very important projects for these communities.

The projects I have outlined this evening, I believe, are excellent candidates for support under the coalition government's $1 billion Regional Growth Fund. I strongly support both the Hindmarsh and West Wimmera shires in their applications for funding and call on the minister to also support these projects.

Keysborough school sites

Mr PAKULA (Lyndhurst) — The matter I raise is for the Minister for Education. It concerns former school sites located in Keysborough in my electorate of Lyndhurst. I have recently been contacted by constituents about a number of former school sites that have gone from wrack to ruin on the government's watch.

Coomoora Secondary College in Coomoora Road was closed in late 2011 following a merger with Keysborough Secondary College. Right next door is the former site of Coomoora Primary School, which in 2010 merged with Keysborough Park Primary School to become Keysborough Primary School. In early 2012 the school relocated to a new set of buildings adjacent to the old site. The old Coomoora Road school site is unmistakably derelict; the grounds are littered with weeds and rubbish, graffiti covers the walls and many of the windows are broken. These disused buildings act as a magnet for vandalism and antisocial behaviour, posing a risk to local residents.

Only a short walk away from Coomoora Road is the former Keysborough Park Primary School in Loxwood Avenue. Not only is the site similarly dilapidated, but the Dandenong Leader online reported in February this year that the site hosts a rabbit infestation of 'plague proportions'. Members of the community have reported damage to telephone and data cables and fear that the rabbits may attract foxes and other pests. The destruction and decay at these old school sites has to be seen to be believed, and local residents are right to be appalled. I imagine that, if those derelict sites were located in the middle of Malvern, Hawthorn, the seat of Brighton or indeed in the minister's electorate of Nepean, something would have been done by now.

As I have requested before in relation to the Southvale Primary School site, my request to the minister is that he indicate to me and the local community why these former school sites have been allowed to go to ruin and why more has not been done to address community safety issues caused by the abandonment of these sites. I ask the minister: what is planned for those sites, and when will the Department of Education and Early Childhood Development make a decision about their future?

My constituents and I would appreciate a direct response to the matters I raise rather than having to read about them in the local paper. Ultimately actions speak louder than words. The minister should back whatever tentative commitments he has made to date by acting without further delay to protect the safety and wellbeing of residents of Keysborough and surrounding neighbourhoods near these abandoned school sites. Residents are waiting for the Napthine government to make up for its neglect of this matter; they are waiting for those sites to be remediated as a matter of urgency.

WorkCover premiums

Mr GIDLEY (Mount Waverley) — My adjournment matter is for the attention of the Assistant Treasurer. The action I seek is for the minister to outline to my electorate the benefits of the changes the Victorian government is making to WorkCover premiums from 1 July this year.

The responsibilities of the Victorian WorkCover Authority include helping to avoid workplace injuries. On that issue, according to a recent comparison of work health and safety schemes across the country, I note that Victoria remains one of the safest states in Australia in which to work. Recent national benchmarking data released by Safe Work Australia confirms that Victoria is the safest state in terms of the rate of serious injury and disease for every million hours worked. According to Safe Work Australia, Victoria had 5.5 claims per million hours worked, well below the Australian average of 7.2 claims per million hours worked. It was lower than Western Australia, with 6.9 claims per million hours worked; South Australia, with 7.7 claims per million hours worked; New South Wales, with 8 claims per million hours worked; Queensland, with 8.8 claims per million hours worked; and Tasmania, with 9.6 claims per million hours worked.

I say that in the context of the significant work the government has done across the board to put downward pressure on business costs wherever it can. With that in mind, changes to reduce the average Victorian WorkCover premium by 2 per cent from 1 July represent a saving of $40 million for employers in Mount Waverley, Glen Waverley and other areas of the state. It builds on the 3 per cent premium cut delivered in the 2012–13 state budget. The current average premium rate of 1.298 per cent of payroll will fall to an average of 1.272 per cent. The cut will assist the profitability and cash flow of local businesses in my electorate.

More than 75 per cent of employers will benefit from stable or lower premiums as a result of the cut, with 115 883 businesses paying less for their premiums in 2014–15. That is a significant milestone, particularly when we look at the figures I mentioned earlier in terms of Victoria being the safest state to work in. Those safety figures and the downward pressures on premiums are incredible.

I note that from 1 July for the first time an additional premium discount of 5 per cent will be offered to employers who pay their annual premium by 1 August 2014, and this discount has been extended to smaller employers who pay the minimum premium. In my electorate that will not only help with profitability in terms of a reduction in the direct cost to employers but will also assist with cash flow. In turn that will assist local small businesses to be more secure and stable, to employ more local people and to ensure that our economy can continue to grow and build on the 77 200 more people employed in the state of Victoria than when Labor left office.

Sunvale Primary School site

Ms THOMSON (Footscray) — My adjournment matter is for the Assistant Treasurer, the Honourable Gordon Rich-Phillips, and the action I seek is that he halt the sale of the Sunvale Primary School land site, for which a tender has been awarded.

I have spoken before in the house about the site of the former Sunvale Primary School, 1.1 hectares of which has been bought by the council and 0.84 hectares of which has been put out to tender by the state government, even though the coalition promised prior to the 2010 election that all of the school site would be allocated for parkland. The government has reneged on that promise. It is planning to sell the site and has awarded a tender for that process.

I am seeking that the minister halt that tender process while the local Save Sunvale association investigates the tendering process. Its members have written to the Ombudsman and the Auditor-General seeking that investigations take place into the sale of the site. Questions have been raised about the environmental study done on the site to ensure its suitability for sale for residential purposes. The association also questions the tender process and its rapidity.

The action I seek from the minister is that given that a promise and commitment was made prior to the 2010 election that this site would be made available for parkland for the community of Sunshine, it is only appropriate that the process be halted and the Ombudsman and the Auditor-General undertake the investigations they need to do to ensure that there has been a proper process and not a sham. The government also needs to honour its promise.

I ask that the minister halt the process and honour the promise made to the community of Sunshine to ensure that the land the coalition promised would be open space will be open space and to ensure that we avoid getting into a situation again where promises are made by this government and then reneged upon. I can tell government members that if those things are not done, the people of Sunshine will no longer believe anything this Liberal government has to say because they will

know firsthand the consequences of listening to someone promising them something in the days or weeks before an election and then after an election seeing the total opposite occur. I ask that the Assistant Treasurer halt that process now, sign no contracts before the election and let the people of Sunshine have the land he promised them.

International phone cards

Mr McINTOSH (Kew) — I raise a matter for the attention of the Minister for Consumer Affairs relating to the sale of expired international phone cards. The action I am seeking from the minister is that she investigate this matter to ensure that customers or consumers purchasing these cards are able to use them for the advertised time.

Recently a constituent with relatives living overseas came into my office to request assistance. She was experienced in the use of international phone cards to call her daughter who has lived overseas for some time, but when she attempted to use a newly purchased phone card she kept getting a 'call barred' message. The card had only been purchased a few days before and had never been used. International phone cards enable long-distance phone calls to be made at a significantly discounted rate compared to a normal long-distance call. One buys a card for, say, $10, dials an access number, puts in a PIN and gets an overseas call for a significantly cheaper rate than using one of the regular telco services.

On behalf of the constituent my office contacted the customer service department of the card manufacturer and was informed that the cards purchased by my constituent were not valid. When they asked how this could be, my office staff was informed that stores sometimes buy many cards which sit on the shelf and may already have expired by the time of purchase, notwithstanding that the cards in question had not been used before and had only recently been purchased. This inbuilt limitation is called timeout and gives a whole new meaning to the term 'use it or lose it'.

In the case of my constituent, the cards she bought had already been timed out, so she could not use them at all. There was no expiry date written on the cards; however, the manufacturer was able to identify the expiry date from the PIN for the cards. It is quite possible the shops selling these cards might not realise they are selling expired cards for the same reason. Products and services are supposed to be fit for the purpose for which they are bought. I therefore ask the minister to investigate this matter to ensure that customers purchasing these phone cards are able to use them for the full advertised time.

Responses

Mr DIXON (Minister for Education) — The member for Macedon raised an issue regarding replacement of the art room at New Gisborne Primary School. I have received correspondence from the school community and I am aware of a petition from that school community, so I will certainly be following up the matter and giving the community an answer as to what the way forward might be. I can assure the member and members of that community that the capital funds allocations announced in this year's budget are not decided on a political basis. In fact 55 per cent of the $500 million that was announced in this year's budget is going to Labor electorates, so we are very fair.

Honourable members interjecting.

Mr DIXON — I am just that sort of person. Funding is actually based on a combination of three things. The first is the condition of the building or separate buildings in question. The second thing is the funding history. Frankston High School is a good example. The school had carried the can and spent only its own money for decades on renewing its buildings. Therefore, in terms of funding history, if it has not received funding, that is part of the equation. The third thing is enrolments — the sustainability and enrolment trends of the school. All those issues are put together to ascertain where funding is going. I thank the member for raising that issue with me and her community will hear from me.

The member for Lyndhurst raised with me an issue regarding two school sites in his electorate, and I was asked to give him and those communities some clarification regarding the future of those sites and when the buildings would be demolished or what their future might be. The normal process for the disposal of land is that, if it is declared excess to our educational uses, it is then offered for sale to other government departments, and if not to the local council. If neither of those two entities is interested, it is then put up for public tender and is usually rezoned. That is a government land monitor process that has been in train for many years. It is not our process; it is a whole-of-government process and one that we inherited. That is the normal process.

Some buildings are to be demolished, and we are working our way through those. The Building the Education Revolution (BER) program was bungled by

the previous Labor state and federal governments because of the massive cost overruns. Under BER every school had to take a template building that was just put in the school playground and was meant to replace other buildings. The buildings that were to be replaced were meant to be demolished because everyone had to take this one-size-fits-all proposal — you could not actually have a design that fit in with your existing buildings — or very rarely existing buildings were refurbished.

We have had a lot of excess buildings throughout the state and because of the massive cost overruns, the first thing to go was demolition, so a lot of schools have been left with their buildings. We are working our way through that. About 140 schools were closed by the previous government and some of those are excess to requirements, so we are working our way through that. We are aware of the issues, and I ask that community to be patient. In the meantime, we are trying to maintain the buildings to the best of our ability.

Mr RYAN (Minister for Regional and Rural Development) — I wish to respond to a matter raised with me by the member for Lowan regarding two very important initiatives for which he seeks funding under the Regional Growth Fund. The first of these is an initiative at the Hindmarsh Shire Council and the town committees of Nhill, Dimboola, Rainbow and Jeparit. The initiative packages a range of community infrastructure improvements, including streetscaping, revitalisation of gardens, open space and improved lighting in pathways in the respective communities.

As the member has outlined to the house, it is very important to have attractive and welcoming community infrastructure in these regional communities. It is a matter of great pride for these towns to present themselves in a way that is best calculated to attract more visitors. The project has strong community support. It is designed to help local communities to deliver on their local priorities, and I can assure the member that it will be very carefully considered.

The other project outlined by the member for Lowan was to seek funding for the Shire of West Wimmera to upgrade dated signage across the communities in the municipality. This is an initiative we recently undertook with great success in the lovely community of Buninyong. It is a very simple and effective way of flagging entry to the town. I understand why these matters are important for those communities, and we will certainly consider the applications of the two municipalities.

In closing, I note from the material in front of me that in the West Wimmera and Hindmarsh shires the Regional Growth Fund has now supported a total of 36 local projects, with contributions of $5.2 million in funding. That funding has no doubt leveraged additional millions. I will certainly give these matters the very careful consideration they deserve.

Mr NORTHE (Minister for Small Business) — I rise to address a matter raised by the member for Forest Hill. I commend the member on his strong interest in the small business sector. He has firsthand experience in it and knows not only its challenges but also its opportunities.

The member for Forest Hill believes in the importance of governments delivering very strong budgets, which was the case with our most recent budget. Investment in infrastructure is critical to the small business sector. Through the small business portfolio I was pleased to announce $18 million over a four-year period — —

An honourable member — Hear, hear!

Mr NORTHE — Hear, hear, all right. This will not only help our mentoring services, which are very important, to continue, but will also ensure that the events and programs that support the small business sector will be enhanced over the next period of time. There are 530 000 small businesses in Victoria, which is a large number. It is important that our government provides the best services, information and support to those businesses.

We have undertaken a number of key initiatives that might be of interest to the member. On 31 March we relaunched the Small Business Victoria website. It has been vastly improved and is most accessible and very easy to understand. The feedback we have received thus far from the business sector has been very positive. We anticipate that over the course of the next financial year we will have around 70 000 to 75 000 interactions on that website, which is an important vehicle from which the small business sector can elicit information.

As I mentioned earlier, the mentoring services are very important. They now go further and wider than ever before. The popularity of these mentoring services is well known, particularly in regional areas, and we are continuing to support them through our budget.

In August this year we will hold the Small Business Festival, during which over 300 events will be held across Victoria. We will make sure that these events are relevant to the particular areas and regions. We anticipate that in excess of 30 000 businesses will

participate in the festival, which has been a great success over many years.

The inaugural Support Small Business Day, which was hosted last year by the previous Minister for Small Business, was a modest success. We are very keen to ensure that this year we really target the event, which is to be held on 4 October. We seek the support of all businesses and consumers to ensure we make it a real attraction, because at the end of the day our small business sector not only provides employment but also supports our schools, community organisations and sporting and recreation clubs. This is an opportunity for the community and consumers to give back that support to the small business sector.

We are also operating a number of different programs, whether it is the Success Mat, Grow Your Business, the Streetlife program or the small business bus. I also want to mention the small business ministerial council and the multicultural councils, which do great work in providing feedback to me and also the department. The councils are made up of small business owners who are at the coalface and who understand the challenges and opportunities. I relish their feedback.

John Lloyd is doing a great job as the red tape commissioner. It is important for the small business sector to be able to liaise with the commissioner and to address some of the red tape challenges we have.

In closing I commend the member for Forest Hill on his work and efforts. I look forward to visiting the Forest Hill electorate and joining with the member to visit some of the small businesses there.

Ms VICTORIA (Minister for Consumer Affairs) — The member for Kew spoke to me about his matter a little while ago. I see it is ongoing, so I am very happy to take the matter back to the department and ask it to investigate further. When people are doing the right thing and contacting family overseas, we want them to be able to do that without encountering too many hiccups.

Those businesses that are selling phone cards that have expired but have no expiry date marked on them may be doing so unwittingly. We need to find out from the source whether that is due to an issue with the way the cards are programmed or the numbers associated with them or whether it is something they have done deliberately. I will certainly follow up on this. Before we conduct that investigation I would ask the member for Kew to forward me the contact details of the constituent so we can talk to her at some length.

Ms ASHER (Minister for Innovation) — The member for Essendon raised an issue for the Minister for Public Transport asking him to consider a report compiled by the City of Moonee Valley in relation to the possible outcomes of a grade separation at Essendon Junction near Buckley Street, and I will pass that matter on to the minister.

The member for Bentleigh raised a matter for the Minister for Health requesting him to visit Bentleigh and provide information to her residents regarding the Monash Children's hospital, and I will pass that matter on to the minister.

The member for Yan Yean raised an issue with me for the Minister for Health in relation to the Wallan ambulance station, and I will refer that matter to the minister.

The member for Mount Waverley raised an issue with me for the Assistant Treasurer requesting him to outline the benefits in relation to the government's reduction in WorkCover premiums. This is a particularly important issue, which I know is of enormous interest to the member for Mount Waverley, given his business perspective, and I will refer that matter to the Assistant Treasurer.

The member for Footscray raised a matter with me for the Assistant Treasurer regarding a tendering process for the Sunvale Primary School site, and I will pass that matter on to the Assistant Treasurer.

The SPEAKER — Order! The house is adjourned until the next day of sitting.

House adjourned 4.47 p.m. until Tuesday, 5 August.