PARLIAMENT OF VICTORIA

PARLIAMENTARY DEBATES (HANSARD)

LEGISLATIVE COUNCIL

FIFTY-SEVENTH PARLIAMENT

FIRST SESSION

Thursday, 15 November 2012

(Extract from book 18)

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By authority of the Victorian Government Printer

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The Lieutenant-Governor

The Honourable Justice MARILYN WARREN, AC

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Legislative Council committees

Privileges Committee — Ms Darveniza, Mr D. Davis, Mr P. Davis, Mr Hall, Ms Lovell, Ms Pennicuik and Mr Scheffer.

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

Legislative Council standing committees

Economy and Infrastructure Legislation Committee — Mr Barber, Ms Broad, Mrs Coote, #Ms Crozier, Mr Drum, Mr Finn, #Ms Hartland, #Mr Leane, #Mr Lenders, #Mr Ondarchie, Ms Pulford, Mr Ramsay and Mr Somyurek.

Economy and Infrastructure References Committee — Mr Barber, Ms Broad, Mrs Coote, #Ms Crozier, Mr Drum, Mr Finn, #Mr Leane, #Mr Lenders, #Mr Ondarchie, Ms Pulford, Mr Ramsay and Mr Somyurek.

Environment and Planning Legislation Committee — Mr Elsbury, #Mr Finn, #Ms Hartland, Mrs Kronberg, #Mr Leane, Mr Ondarchie, Ms Pennicuik, #Mrs Petrovich, Mrs Peulich, Mr Scheffer, #Mr Tarlamis, Mr Tee and Ms Tierney.

Environment and Planning References Committee — Mr Elsbury, #Mr Finn, #Ms Hartland, Mrs Kronberg, #Mr Leane, Mr Ondarchie, Ms Pennicuik, #Mrs Petrovich, Mrs Peulich, Mr Scheffer, #Mr Tarlamis, Mr Tee and Ms Tierney.

Legal and Social Issues Legislation Committee — Ms Crozier, Mr Elasmar, #Mr Elsbury, Ms Hartland, Ms Mikakos, Mr O'Brien, Mr O'Donohue, Mrs Petrovich, #Mr Ramsay and Mr Viney.

Legal and Social Issues References Committee — Ms Crozier, Mr Elasmar, #Mr Elsbury, Ms Hartland, Ms Mikakos, Mr O'Brien, Mr O'Donohue, Mrs Petrovich, #Mr Ramsay and Mr Viney.

 # Participating member

Joint committees

Dispute Resolution Committee — (*Council*): Mr D. Davis, Mr Hall, Mr Lenders, Ms Lovell and Ms Pennicuik. (*Assembly*): Mr Clark, Ms Hennessy, Mr Holding, Mr McIntosh, Mr Merlino, Dr Napthine and Mr Walsh.

Drugs and Crime Prevention Committee — (*Council*): Mr Leane, Mr Ramsay and Mr Scheffer. (*Assembly*): Mr Battin and Mr McCurdy.

Economic Development and Infrastructure Committee — (*Council*): Mrs Peulich. (*Assembly*): Mr Burgess, Mr Carroll, Mr Foley and Mr Shaw.

Education and Training Committee — (*Council*): Mr Elasmar and Ms Tierney. (*Assembly*): Mr Crisp, Ms Miller and Mr Southwick.

Electoral Matters Committee — (*Council*): Mr Finn, Mr Somyurek and Mr Tarlamis. (*Assembly*): Ms Ryall and Mrs Victoria.

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

Family and Community Development Committee — (*Council*): Mrs Coote, Ms Crozier and Mr O'Brien. (*Assembly*): Ms Halfpenny, Mr McGuire and Mr Wakeling.

House Committee — (*Council*): The President (*ex officio*) Mr Drum, Mr Eideh, Mr Finn, Ms Hartland, and Mr P. Davis. (*Assembly*): The Speaker (*ex officio*), Ms Beattie, Ms Campbell, Mrs Fyffe, Ms Graley, Mr Wakeling and Mr Weller.

Law Reform Committee — (*Council*): Mrs Petrovich. (*Assembly*): Mr Carbines, Ms Garrett, Mr Newton-Brown and Mr Northe.

Outer Suburban/Interface Services and Development Committee — (*Council*): Mrs Kronberg and Mr Ondarchie. (*Assembly*): Ms Graley, Ms Hutchins and Ms McLeish.

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

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

Rural and Regional Committee — (*Council*): Mr Drum. (*Assembly*): Mr Howard, Mr Katos, Mr Trezise and Mr Weller.

Scrutiny of Acts and Regulations Committee — (*Council*): Mr O'Donohue. (*Assembly*): Mr Brooks, Ms Campbell, Mr Gidley, Mr Nardella, Dr Sykes and Mr Watt.

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

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FIFTY-SEVENTH PARLIAMENT — FIRST SESSION

President: The Hon. B. N. ATKINSON

Deputy President: Mr M. VINEY

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Leader of the Opposition:
Mr J. LENDERS

Deputy Leader of the Opposition:
Mr G. JENNINGS

Leader of The Nationals:
The Hon. P. R. HALL

Deputy Leader of The Nationals:
Mr D. DRUM

Member	Region	Party	Member	Region	Party
Atkinson, Hon. Bruce Norman	Eastern Metropolitan	LP	Leane, Mr Shaun Leo	Eastern Metropolitan	ALP
Barber, Mr Gregory John	Northern Metropolitan	Greens	Lenders, Mr John	Southern Metropolitan	ALP
Broad, Ms Candy Celeste	Northern Victoria	ALP	Lovell, Hon. Wendy Ann	Northern Victoria	LP
Coote, Mrs Andrea	Southern Metropolitan	LP	Mikakos, Ms Jenny	Northern Metropolitan	ALP
Crozier, Ms Georgina Mary	Southern Metropolitan	LP	O'Brien, Mr David Roland Joseph	Western Victoria	Nats
Dalla-Riva, Hon. Richard Alex Gordon	Eastern Metropolitan	LP	O'Donohue, Mr Edward John	Eastern Victoria	LP
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Guy, Hon. Matthew Jason	Northern Metropolitan	LP	Scheffer, Mr Johan Emiel	Eastern Victoria	ALP
Hall, Hon. Peter Ronald	Eastern Victoria	Nats	Somyurek, Mr Adem	South Eastern Metropolitan	ALP
Hartland, Ms Colleen Mildred	Western Metropolitan	Greens	Tarlamis, Mr Lee Reginald	South Eastern Metropolitan	ALP
Jennings, Mr Gavin Wayne	South Eastern Metropolitan	ALP	Tee, Mr Brian Lennox	Eastern Metropolitan	ALP
Koch, Mr David Frank	Western Victoria	LP	Tierney, Ms Gayle Anne	Western Victoria	ALP
Kronberg, Mrs Janice Susan	Eastern Metropolitan	LP	Viney, Mr Matthew Shaw	Eastern Victoria	ALP

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THURSDAY, 15 NOVEMBER 2012

Thursday, 15 November 2012

The PRESIDENT (Hon. B. N. Atkinson) took the chair at 9.34 a.m. and read the prayer.

PAPERS

Laid on table by Clerk:

Budget Sector — Quarterly Financial Report No. 1 for the period ended 30 September 2012.

Office of Police Integrity — Report on Policing people who appear to be mentally ill, November 2012.

Parliamentary Committees Act 2003 — Government Response to the Electoral Matters Committee's Report on the conduct of the 2010 Victorian state election and matters related thereto.

Professional Standards Act 2003 — Association of Taxation and Management Accountants Scheme, 26 October 2012.

NOTICES OF MOTION

Notices of motion given.

Mr LEANE having given notice of motion:

Mr Drum — On a point of order, President, can I just have a clarification? When a member quotes an authority such as a local government whilst giving notice of a motion, are we expected to be able to see where that quote comes from?

The PRESIDENT — Order! I think it is a courtesy for the house that there be attribution of a quote so that members are aware of the validity of the quote, who made it and where it was sourced from. Is Mr Leane able to — —

Mr Leane — On the point of order, President, the start of the notice of motion says the document is a submission made to the Economic Development and Infrastructure Committee.

The PRESIDENT — Order! By?

Mr Leane — By the Surf Coast Shire Council.

The PRESIDENT — Order! That is adequate for me.

Mr Drum — It is a submission made by the Surf Coast Shire Council to whom?

The PRESIDENT — Order! To the economic development committee.

BUSINESS OF THE HOUSE

Adjournment

Hon. D. M. DAVIS (Minister for Health) — I move:

That the Council, at its rising, adjourn until Tuesday, 27 November 2012.

Motion agreed to.

MEMBERS STATEMENTS

National Safe Schools Symposium

Ms MIKAKOS (Northern Metropolitan) — On 20 October the member for Yan Yean in the Assembly, Danielle Green, and I attended the inaugural National Safe Schools Symposium. I was pleased that the Victorian Minister for Education, Martin Dixon, and the South Australian Minister for Communities and Social Inclusion, Youth Social Housing, Disabilities and Volunteers, Ian Hunter, MLC, were also in attendance, therefore extending a bipartisan nature to the event.

The Foundation for Young Australians and the Safe Schools Coalition Network are to be congratulated on organising this symposium to promote schools that are safe environments for all students, free of homophobia and transphobia. I hope the Baillieu government will take further steps to encourage more Victorian schools to sign up as safe schools.

Centre for Excellence in Child and Family Welfare: 100th annual meeting

Ms MIKAKOS — On 22 October I attended the Centre for Excellence in Child and Family Welfare's 100th annual general meeting, which is an incredible achievement in the organisation's history. I congratulate the chair of the board, Angela Forbes, and other board members on their dedication and commitment to child and family welfare.

Kindergarten Parents Victoria: annual meeting

Ms MIKAKOS — On 1 November I attended the annual general meeting of Kindergarten Parents Victoria. I congratulate them in particular on their change of name from 1 January next year to the Early Learning Association Australia and wish them well in their future endeavours. I particularly congratulate CEO Emma King, the staff, volunteers and board members, including the president, Danny Pearson, on their

passionate advocacy for Victoria's preschools and kindergartens.

Local government: elections

Mr FINN (Western Metropolitan) — I congratulate the Minister for Local Government, the Honourable Jeanette Powell, on her campaign to introduce more women into local government. It is clearly working. Five of the seven councils in Western Metropolitan Region this year have women mayors. For those who believe that women show more common sense than men, that may well be the case, because each and every one of those women mayors is a non-Labor mayor. It gives me unbridled joy to congratulate Cr Catherine Cumming in Maribyrnong, Cr Heather Marcus in Wyndham, Cr Narelle Sharpe in Moonee Valley, Cr Kathy Majdlik in Melton and in particular Cr Angela Altair in Hobsons Bay. At the risk of being accused of being a misogynist, I should also mention Cr Geoff Porter in Hume and Cr Oscar Yildiz in Moreland, who are Labor mayors.

I particularly congratulate Cr Angela Altair and her deputy, Luba Grigorovitch, in Hobsons Bay because they have introduced, I believe, a new era of respect, cooperation and working for the benefit of all residents of Hobsons Bay. This is somewhat of a change for the people of that municipality. There has been a great time of darkness throughout that region, but it is a delight to report to this house today that the sun is finally shining again in Hobsons Bay.

Greens: council elections

Ms PENNICUIK (Southern Metropolitan) — I congratulate all local government councillors who were elected across Victoria on 27 October. Local government is closest to the community and plays a critical role in people's lives. Although I have not done so myself, I am told that serving as a local councillor is demanding, challenging and very rewarding. I especially thank those who stood for election as endorsed Greens candidates in local government areas around the state and all those who worked so hard on their campaigns. The Greens have always been open and transparent by standing endorsed candidates for local government.

In particular I congratulate Neil Pilling for his re-election to Glen Eira City Council, where he has been an energetic and respected councillor. Neil has been joined by a second Greens councillor, Thomas Sounness. Congratulations also to Erin Davie and Sam Hibbins as the first Greens candidates to be elected to Stonnington City Council. Helen Harris has been re-elected to Whitehorse City Council, although Bill Pemberton narrowly missed out on re-election, and I extend thanks to him for the excellent work he has done over the last four years. Matthew Kirwan is the first Greens candidate to be elected to the Greater Dandenong City Council, and the indefatigable Cr Samantha Dunn has been re-elected in Yarra Ranges with 59 per cent of the primary vote.

Finally, I mention John Middleton, who missed out on re-election to Port Phillip City Council by 28 votes, despite increasing his vote by 50 per cent. I thank John for his professionalism and integrity as a Greens councillor on Port Phillip council.

Remembrance Day: Eltham

Mrs KRONBERG (Eastern Metropolitan) — Last Sunday, 11 November, was the first time a Remembrance Day commemoration had been held at Eltham's newly installed cenotaph. The Montmorency-Eltham RSL toiled for years to secure the relocation and proper siting of its cenotaph alongside the Eltham War Memorial gates on Main Road, Eltham. The moving service was well attended, with the crowd overflowing from the site. My congratulations go to Montmorency-Eltham RSL president Bill McKenna, vice-president Neil Mays, secretary Hans Van Zwol, coordinator Alex Smith and the committee on bringing Remembrance Day to the heart of Eltham.

Chinese Community Society of Victoria: centenary

Mrs KRONBERG — On another matter, my heartfelt congratulations go to the Chinese Community Society of Victoria on the celebration of its centenary on Sunday evening. The president, Mr Jack Wu, has provided splendid leadership of the society and is ably supported by his executive committee. The former president, Ms Marion Lau, and the immediate past president, Mr Vincent Liu, are to be applauded for their work serving Melbourne's Chinese community, particularly the elderly, their outreach to Melbourne's wider community and their generosity towards the Royal Children's Hospital. A comprehensive history of the society and its work over the grand sweep of the past century was eloquently delivered by Mr Bruce Liu, who celebrated his 90th birthday with us.

Lions Club of Nunawading: Melbourne Cup Carnival breakfast

Mr LEANE (Eastern Metropolitan) — I pay tribute to the Lions Club of Nunawading, the good work of which I am sure that the President is well aware. A

couple of Fridays ago I attended one of its fundraisers, the proceeds from which go to its excellent community projects. At its annual cup carnival breakfast the guest speakers were Tim Lane and former Racing Victoria chief steward Des Gleeson. Both were magnificently interviewed by the former member for Mitcham in the Assembly, the great Tony Robinson, who did a fantastic job.

However, as this was the day before Emirates Stakes Day, the former steward mentioned some horses that may be successful the following day. But I have to say, having tested the water, they were not any good. It was great to see Tony Robinson back in fine form and speaking to a number of people there. He has been sadly missed.

Gene Davis

Mr KOCH (Western Victoria) — I pay tribute to Gene Davis, who is retiring this week after 15 years in his very important role of managing the parliamentary vehicle fleet and, in doing so, keeping members on the road. I have personally known Gene for 10 years since coming to Parliament and have come to appreciate how critical it is to have someone as dependable as Gene managing all aspects of the fleet with a friendly, can-do approach. He has indeed become one of our most valued staff members.

Gene commenced work with the Department of Treasury and Finance in 1997 to manage the department's fleets. This involved all facets of executive vehicle management from arranging new purchases to regular maintenance, accident repairs and the final disposal of vehicles. Gene also became responsible for managing ministers' vehicles and then the vehicles of all members. It has been calculated that in his role Gene has been involved in the purchases of some 1500 vehicles with a total value in excess of $52 million. I congratulate and thank Gene for his commitment to so diligently looking after the vehicle needs of members. I wish him and his wife well in a long and enjoyable retirement. Unfortunately, like many members, I was unable to join Gene at his farewell earlier in the week due to the sitting of Parliament, but his smiling face and jovial nature will be missed by many.

The PRESIDENT — Order! Just before Mrs Petrovich leaves, can I indicate to the house that today Mrs Petrovich is celebrating her birthday. Also Ms Crozier has a birthday this week, not on a sitting day. Happy birthday for tomorrow, Ms Crozier.

Youth: community service and citizenship

Mr LENDERS (Southern Metropolitan) — I, like many people, was inspired by United States President Barack Obama's acceptance speech the other day. What inspired me most was his description of citizenship, his statement that cynicism is not as strong among young people as the media make out and his explanation of the benefits of people offering service.

He used the example of a young organiser going to a county in the back of beyond because he or she believed. What inspired me about President Obama was that he was almost like President Kennedy, who back in the 1960s said, 'Ask not what your country can do for you; ask what you can do for your country'. Locally what has inspired me is two very young people who have been elected to councils within my electorate of Southern Metropolitan Region. Cr Jami Klisaris got elected in Stonnington. It was the first time she had voted in a council election, and she has been inspired to make a difference in her community, much like President Obama described, and it is fantastic. Also elected was Cr David Eden in the City of Kingston, who is doing year 12. While swotting for exams he took the time to campaign for council and got elected.

I take my hat off to these young people who are enthused, but I particularly ask people to listen to the message of President Obama: community service and citizenship are great. It is great that young people are involved and that these young people defy the cynics who say young people do not care.

eMotion21

Mrs COOTE (Southern Metropolitan) — I would like to share with the chamber a wonderful organisation. It is called eMotion21, and it is run by a woman called Cate Sayers. Cate Sayers has four gorgeous daughters, and one of them has Down syndrome. This young girl watched her sisters going off to ballet, and she too wanted to go to ballet. There were no facilities for anyone with Down syndrome to go to ballet classes, so Cate Sayers created eMotion21.

The organisation has gone from strength to strength. It is absolutely terrific. Research is being done by La Trobe University because the outcomes have proven to be very good. It is giving children with Down syndrome a great deal of confidence. It is improving their speech, movement and cognitive skills. La Trobe University is doing very good research to support this. The ballet program is so popular that it is in demand across Victoria.

It is so exciting to see videos of these children really enjoying themselves, getting into their ballet movements and making a great contribution. The skill improvements are tangible, and there is international recognition of this group. Its representatives have been invited to go to India in a couple of years time, and they have been to a South African conference. It is being heralded around the world.

I would like to also put on the record my commendation of Josh Frydenberg, the federal member for Kooyong, who is a great supporter of eMotion21.

Former government: financial management

Mr O'DONOHUE (Eastern Victoria) — I listened with interest to Mr Lenders's adjournment matter last night and to his notice of motion this morning. When considering the Auditor-General's reports that have come forward it is worth putting in context the financial position this government inherited. In particular I would like to direct the house's attention to an Auditor-General's report of June 2011 regarding the allocation of electronic gaming machine (EGM) entitlements. On page 10 of the audit summary the Auditor-General says:

> The industry paid $980 million for the right to operate EGMs over a 10-year period. This is equivalent to around a third of the total revenue generated by EGMs in a single year and a quarter of the estimated fair market values of the entitlements.
>
> We valued the EGM entitlements in the range of $3.7 billion to $4.5 billion, with a mid-point of $4.1 billion.

The Auditor-General also says:

> DPC and DTF appropriately raised concerns on the merits of proceeding with the auction with their respective ministers. However, no formal review was undertaken.

When the Labor Party comes in here and seeks money for infrastructure or complains and moans about financial management, it should always consider that John Lenders, as Treasurer of Victoria, let $3 billion go through his fingers in the allocation of the electronic gaming machine entitlements. That is not my claim; it is the Auditor-General's. Labor cannot manage money. Mr Lenders's negligence is up there with that of Rob Jolly, Tony Sheehan and the guilty party of the Cain and Kirner governments. It is a disgrace, and he should be ashamed.

TOBACCO AMENDMENT (SMOKING AT PATROLLED BEACHES) BILL 2012

Second reading

Debate resumed from 25 October; motion of Hon. G. K. RICH-PHILLIPS (Assistant Treasurer).

Mr JENNINGS (South Eastern Metropolitan) — Thank you, President, and thank you for your support of me in making sure that my contribution is fulsome and that I do not fall short of breath in acquitting some of the arguments that are relevant to this important piece of legislation.

I have said that this is an important piece of legislation. Any ongoing reform is important in terms of the restriction of tobacco, the regulation of tobacco, reducing the incidence of smoking and passive smoking that occurs within our community, and community education as to the desirability of people resisting taking up smoking or quitting smoking. However, this piece of legislation, whilst it is an incremental step, is a very small incremental step. Obviously there is a long way to go in terms of the consideration, reflection and reform that will be required to make a lasting difference to the incidence of smoking.

Mr Barber — What did Daniel do?

Mr JENNINGS — In fact Daniel Andrews, the current Leader of the Opposition and member for Mulgrave in the Assembly, did a lot of things when he was the Minister for Health, Mr Barber. I will remind the chamber of many of them.

Mr Finn — I think we should list them. All the things that he did while he was minister — I think we should list them.

Mr JENNINGS — If Mr Finn is waiting with bated breath, he will not have to wait much longer. Before I sit down the chamber will be reminded of the reforms of the Labor administration. The Labor administration is very fondly remembered by the Cancer Council Victoria, practitioners in the field and the AMA (Australian Medical Association) in relation to this area. The cumulative reforms undertaken by the Labor Party between 2000 and 2010 were considered to be leading legislative reforms.

The precarious position of the degree of regulation and the degree of support for these programs was identified by various stakeholders in the days after the change of administration and again during the term of this current administration. A press release issued by the Cancer Council Victoria brings together a range of responses

from organisations such as Quit Victoria, the AMA and the Heart Foundation of Victoria. Whilst they praise the government for undertaking the initiative provided for in this bill, the press release somewhat damns with faint praise the degree of incremental change being adopted by this legislation, the intention of which is to restrict smoking within a 50-metre radius of the flags on protected and controlled beaches.

Those organisations voiced their concern that whilst this is a positive step, it perhaps does not go as far as what they consider to be important. The president of the AMA, Dr Stephen Parnis, is quoted in the press release as indicating that his organisation continues to have concerns about the commitment of the current Victorian government to ongoing reform. In fact the AMA awarded a most undesirable award to the Victorian government this year, the 2012 Dirty Ashtray award for the worst performing government in tobacco control in the last 12 months. That is an indication of the degree of concern that these organisations were expressing prior to this legislative reform.

It is interesting to note that on the day this reform was introduced those organisations continued to be unmoved in calling on the government to introduce a range of other reform initiatives, including a further statewide ban on smoking in outdoor dining and drinking areas, and restrictions that would apply to children's playgrounds and to the entrances of public buildings, public transport stops and sporting grounds and facilities.

Interestingly enough, even though this reform deals with patrolled beaches in the area that falls between lifesavers flags, that is still an ongoing claim. That issue has been satisfied by the government in this reform, so perhaps the press release could have been updated to accommodate a recognition that that claim has been satisfied. Beyond that, these organisations still seek remedies in relation to restrictions in pedestrian malls and at public events — for example, food and wine festivals, and music festivals.

It is clear that organisations such as Cancer Council Victoria, the Australian Medical Association and the Heart Foundation congratulate the government on taking this initiative but continue to voice ongoing concerns about the regulation and controls that are required. They have responded to the legislation by reminding us of the latest statistical analysis, which indicates that, in terms of the journey that has been undertaken by successive governments in Victoria and by those organisations, supported by community education programs and high-profile publicity campaigns, there has been some success in reducing the incidence of smoking in our community, but still the journey continues.

Cancer Council Victoria reminds us in the 2011 report *Smoking Prevalence and Consumption in Victoria 1998 to 2011* that only one in seven Victorian adults is a regular smoker. It reminds us that males are more likely than females to be regular smokers — that is, 16 per cent, or about 1 in 6, males smoke compared to 12.6 per cent, or 1 in 8, females who continue to smoke. Older Victorians aged 50 or more are less likely to be regular smokers than younger Victorians, reflecting their cumulative lifelong knowledge and experience, as well as perhaps consideration of health matters and a recognition of a crossover point between what might be considered a lifestyle attraction to smoking and the cost to quality of life expectations in terms of good health.

Older smokers are showing that they recognise this phenomenon. Whilst about 1 in 10 Victorians over the age of 50 are likely to be smokers, around 1 in 6 young people aged between 18 and 29 may be regular smokers. However, people in the 30 to 49 age group clearly have not learnt sufficiently about quality of life decisions — that is, from my vantage point and from the vantage point of these organisations. In this age group the incidence of smoking is as high as 18 per cent, which is the highest cohort identified in the 2011 study.

These organisations also identify in this report that whilst the number of smokers has reduced over time due to the cumulative effect of better health information being available to them, there has also been a reduction in the mean number of cigarettes a smoker smokes per day. This has dropped from 18 a day in 1998 to 14 a day in 2011. Although it is not posited here, I suggest one reason why that has occurred is that price is a determinant of smoking behaviour, and over the years governments have used pricing mechanisms on a number of occasions as, yes, a revenue-raiser but also, very importantly, to send a signal to smokers that this is very costly and high-risk behaviour in terms of quality of life and life expectancy. Price signals have been set by a number of governments to try to reduce the incidence of smoking, and in many ways that mechanism has been as successful as all the many other educative and public health-based programs.

Members on the government benches and the crossbenches have challenged me during the course of my contribution to list some of the reforms undertaken by the previous Labor administration between 2000 and 2010. In Victoria the Labor government increased penalties for selling cigarettes to minors in November 2000, introduced smoke-free dining laws in 2001 and

introduced laws for smoke-free shopping centres in November 2001. Further restrictions on tobacco advertising and displays within tobacco retail outlets were introduced in 2001. Further restrictions on smoking in licensed premises, gaming and bingo venues, and the casino were introduced in September 2002. Smoking bans in enclosed working places, at under-age music and dance events, and covered areas of train stations and platforms, tram shelters and bus shelters were introduced in March 2006.

Bans on 'buzz marketing' campaigns and non-branded tobacco advertising were introduced in March 2006. Also in March 2006 there was a strengthening of laws enforcing the ban on cigarette sales to young people, and in July 2007 bans on smoking in enclosed licensed premises were introduced. In 2009 the Labor government introduced legislation to take effect from 1 January 2010 to ban smoking in motor vehicles carrying children under the age of 18, and it also banned the sale of tobacco from temporary outlets.

The legislation provided for a power for the Minister for Health to ban tobacco products and packaging that appealed to young people, non-tobacco products that resemble tobacco products or any other product the nature or advertising of which might encourage young people to smoke. That legislation also introduced a ban on the display of tobacco products in retail outlets, with the provision of an exemption for specialist tobacconists and airport duty-free shops.

The chamber and the community would also be aware that after these reforms were passed by the Labor administration in Victoria a high-profile commitment was made by the federal Labor government to introduce plain packaging for cigarettes. The alarming nature of the packaging, in relation to both its graphic and text-based health warnings, is designed to try to reinforce the public health message of the risks associated with tobacco smoke. This reform was fiercely resisted by the tobacco industry, and it had a torturous passage through the federal Parliament.

With the passage of the legislation the federal government reminded the federal opposition of its perceived duplicity in relation to its public policy position on these matters — that is, the financial benefit that derives to the Liberal Party from the tobacco industry. That was an element of the debate that occurred in the federal jurisdiction. At the very least the Liberal Party continues to have a perceived conflict of interest in public policy terms, and I would encourage it to resolve that at the earliest opportunity. In terms of its conflict of interest, the Labor Party recognised the value of resolving this issue some time ago by refusing to accept donations and contributions from the tobacco industry, and I would encourage other parties to join with it in that.

The tobacco industry was very unhappy with the introduction of these federal reforms and took the decision to the High Court of Australia. The High Court found in favour of the federal Labor government maintaining plain packaging with health warnings being provided on the packaging and did not defend the right of the industry to overturn federal law. That has now become the law of this nation, and it is subsequently being supported by other ongoing reforms such as restrictions within particular locations, which this bill adds to.

As I have indicated, this bill plays an incremental role in the journey of placing restrictions on smoking. On many occasions in this chamber in a previous role within government, I have commented on the undesirability of smoking as a personal behaviour and the risk that passive smoking poses to innocent people who are adjacent to smoking behaviour. I have also commented on the high environmental costs associated with smoking in public places — the number of cigarette butts that pollute our beaches and waterways — which put at risk the quality of our environment in addition to personal health matters.

Smoking is a large impost on our health budgets, our environmental outcomes and our environmental and waste management efforts across Victoria to maintain clean beaches, clean public spaces and clean waterways. A huge resource allocation is required to keep our environment clean of cigarette butts and to remove them as an environmental pollutant. At every turn of public policy, whether it be through health expenditure or environmental expenditure, a huge burden is carried by our community in relation to the cost of smoking. For me those cumulative reasons mean that it is highly desirable to continue this journey of regulatory reform with restrictions being placed on this activity, both at the level of personal health and at the level of public policy more broadly, along with introducing community empowerment programs associated with people's decision not to smoke for the benefit of their own health and also as a contribution to the wellbeing of others. That is significant, and it is a journey this opposition will continue to support.

We note — and we have reminded the government today — the continuing nature of the expectation of major stakeholders and professional health bodies, who are saying that the journey needs to continue. In the press release I referred to earlier we have recognition by Dr Stephen Parnis on behalf of the Australian Medical

Association Victoria. We have recognition by the executive director of Quit Victoria, Fiona Sharkie. We have recognition by the Heart Foundation CEO, Kellie-Ann Jolley, and we have commentary made by the Cancer Council Victoria chief executive, Todd Harper. They all congratulate the government but say that the journey needs to continue. That is a message the Victorian opposition will echo today and from here on out in terms of the public discussion on this bill, enforcement and what might be required in the future.

One of the great challenges this government has already had to come to terms with and will continue to confront is not only the nature of regulatory reform and establishing a legislative framework for dealing with these matters but also how to enforce them adequately. The enforcement effort is something that cannot be taken for granted. It is incumbent on the government to make sure that there is an enforcement capability.

The inspectors who will be charged with enforcing this legislation in public spaces will by and large be associated with lifesaving organisations, which are voluntary organisations, although in some instances local government officers or officers from other government agencies may be given those inspectorial powers. The inspectors need to be backed up on location to make sure that these laws are enforced so that there is a benefit to the community. Otherwise there will not be community acceptance and recognition of the value of this legislation and it will not be embedded in our beach culture that this is the appropriate way to behave on Victorian beaches in the future.

We have to have confidence that if people breach the law, there will be some follow-through. At the moment I do not know if we have great confidence that that will be the case. The government has not spent much time outlining what that program of enforcement may be and how it will work, including the details of resource allocation, training and backup and how it will flow through the court system. Over the last couple of years the government has announced reforms dealing with public health matters, such as restrictions on bongs and similar devices and on synthetic cannabinoids, as if it is going to crackdown on these products, but we have not seen much enforcement effort. In over a year we have not seen one prosecution come forward as a result of those reforms. The community must be fairly sceptical about the ability of the government to act.

It might seem easy to pass a small piece of legislation through the Parliament — there are only about two or three pages in this bill, just as there were only two or three pages in the legislation I referred to before — but it is in the enforcement of these laws where the resources, effort and follow-through need to be forthcoming. In those instances we have not seen that. We challenge the government today to identify where its enforcement effort will be.

Mrs Peulich interjected.

Mr JENNINGS — Despite the member's desire to interject and interrupt my train of thought, her volume was not sufficient for me to know what that contribution was.

Mrs Peulich — Never mind, I will speak later.

Mr JENNINGS — Excellent. My point was and continues to be that legislation is a small part of this equation. Legislation that provides powers has to be followed through with resources, public education and a commitment to take the necessary steps to embed the desired cultural practice within the community. One of what I would trust are the unintended consequences of this bill, which by any measure is modest because we are talking about placing a restriction on smoking on a beach within a radius of 50 metres around a flag — —

Mr Barber interjected.

Mr JENNINGS — Under normal circumstances if you are being terribly provocative, you might understand interjections. I think I am being relatively constrained in my contribution at the moment, but it is not stopping the interjections. One way or another, we will deal with this.

Even that radius of 50 metres around a flag on a patrolled beach does not apply if the sand runs out within 50 metres, so 50 metres is the outer limit of the effect of this bill. In practice, if the sand does not extend for 50 metres, the restriction does not even apply for 50 metres. That is how wholehearted this piece of legislation is.

Hon. D. M. Davis — It does not apply if there is no beach, that is correct.

Mr JENNINGS — It does not apply if there is no beach — exactly! The extraordinary thing about it is when we are talking about the precious nature of this 50 metres from the flag — —

Mrs Peulich — You did not do it.

Mr JENNINGS — I do not know whether the member was asleep or out of the chamber, but I went through at least 20 reforms to show the cumulative effect of the efforts of the Labor administration from

2000 to 2010, and I acknowledged that ongoing reform is required. I acknowledged that the major reform that has happened since 2010 is the introduction of federal legislation which the member's party resisted for a very long time in the federal jurisdiction. I do not know that I should be lectured on my bona fides or my party's bona fides in relation to reform in this area.

My point is that it would be an adverse outcome if the message to Victorian citizens was that it is quite okay to smoke on the beach outside a 50-metre radius. If that is the outcome, then that is a most undesirable outcome, because anybody who goes to a beach, anybody who has ever been to a beach in Victoria, knows that the vast majority of people, when they take their little picnic basket, umbrella and towels or rugs and lay them out on the beach, are outside the 50-metre radius. There are relatively few people, comparatively a small element of beach consumers, who set up within the flags. It is a most inconvenient place to set up a picnic because that is where the action is meant to be in terms of swimming behaviour. Why on earth would you set yourself up there?

We have to be honest with ourselves that the only way this will be successful is if it is rigorously enforced and complemented by a residual message, a public education campaign, which says that you should not be smoking on the beach, full stop! You should not think that there is a safe haven and feel encouraged to smoke outside the 50-metre radius of the flag. Get with the program, do yourself a favour in relation to your personal health, do your family a favour in relation to their health, do the health of the people on the beach around you a favour by not smoking in their presence. You should do the environment a favour by not putting your cigarette butts out in the beach and prevent butts being on the beach or ending up in our waterways.

We have to understand that the great challenge for the government is to enforce this properly and to make sure that the organisations that are charged with responsibility for producing public education campaigns are supported. They are recognised authorities in this area and their views should be respected, and the government should act with vigour to try to provide for better outcomes. This government does not know much about vigour. In fact it does not know much about implementing the legislative reform that is required or showing the dash necessary to make anything happen in the state of Victoria.

If that is what the members on the government benches blithely believe to be the case at this moment, then they will be bitterly disappointed by the response they increasingly get from people who reflect on their effectiveness, because their effectiveness at this point in time is very much up in the air in terms of being popularly embraced by the community. People want follow through, and that is the message. The organisations I have referred to in my contribution congratulated the government. They said, 'A small step — make sure that you do this properly and make sure that you know you have to go the distance with a number of other steps in the future'. That is the message they gave, and that is the message I echo today.

I understand that in this debate there will be consideration of whether this small, modest piece of legislation should be amended to preserve the ability of local government bodies to pass by-laws that may restrict smoking in a broader area along our beaches and waterways, and that amendment would be supported by the Labor Party if we believed it was required to preserve the ability of local government to act in this way. However, subject to confirmation by the government that its firm legal advice is that that amendment would not have the effect that is being sought and that it is not required to achieve that clarity in law, we will not be mindful to support the amendment, because in the Labor Party we do not believe that it is required. We will be seeking confirmation of that from the government because in our view it is important to make sure that this legislation does not have an adverse impact on such by-laws. If we are satisfied of that, we will not be supporting the amendment.

We certainly support the intent of making sure that there is no adverse impact on the ability of councils to make by-laws that would affect a larger area of beach than is provided for in the legislation. Having clarified that in-principle position to support the outcome, we do not believe that the method proposed in this amendment is required. I foreshadow that, but I am happy for that issue to be teased out in the committee stage. I am happy for the government to provide us with any information about the way it will enforce this legislation, the way it will embed public health education and its contribution to the public health debate in the future. I look forward to that information being shared with us either during the course of the second-reading debate or in the committee stage that will follow it. At this moment that is the limit of my contribution to this reform.

Ms HARTLAND (Western Metropolitan) — While this is a bill that the Greens will support and vote for, we must stress that we believe the legislation is incomplete and inadequate, which is why I have been put in the position of having to draft a private member's

bill that will come to the Parliament in the next few weeks and which addresses a number of issues.

The minister and the government have missed an opportunity to draft legislation that would have truly protected the community from second-hand smoke. The minister should note that it is not just the Greens saying this; it is a number of organisations such as the Australian Medical Association, the Heart Foundation, Cancer Council Victoria and Quit Victoria. While these organisations say that this is a first step, they talk about the many areas that have been left out of this legislation. We question when, where and how this will occur.

In a press release of 10 October Quit Victoria states:

> In addition to a statewide ban on smoking in outdoor dining and drinking areas, the organisations also recommend bans in other outdoor areas including:
>
> within 10 metres of children's playground equipment;
>
> within 4 metres of entrances to public buildings;
>
> within 4 metres of public transport stops;
>
> sporting grounds and facilities;
>
> patrolled beaches —

those organisations like the idea that the smoking ban is on patrolled beaches, but they also want these other areas to be covered —

> pedestrian malls (e.g. Bourke Street mall);
>
> public events (e.g. food and wine or music festivals).

Those things are all quite reasonable, so I do not understand why the government was not able to bring forth legislation that included them.

The second problem the Greens have with this legislation is that we believe it could undermine or override existing council by-laws, so I will be interested to hear the government's reasons for believing that will not occur. We are particularly concerned about places such as Surf Coast Shire Council and Hobsons Bay City Council, which have quite extensive areas covered by no-smoking by-laws and not just on patrolled beaches.

I will read into the record the by-law for Surf Coast Shire Council:

> A person must not on the sand area of any beach within the municipal district, smoke a cigarette, cigar, pipe or like tobacco substance at any time.
>
> Infringement notice penalty: 1 penalty unit.

Anybody who has been along the Surf Coast will be aware that there are dozens of unpatrolled beaches, which means the council's by-law covers a huge amount of land. We understand from section 111(2) of the Local Government Act 1989:

> A local law must not be inconsistent with any act or regulation.

How is it that those councils with far more restrictive by-laws will not be overridden by this legislation?

I have two maps from the Hobsons Bay City Council website that clearly demonstrate there is a much larger area patrolled area than 50 metres on each side of the flags. How will this bill affect Hobsons Bay City Council? That is why we will put forward an amendment. We will be interested to hear the government explain how this will not have the effect we believe it will. We have also identified some issues around case law that we will talk about during the debate.

I am going to finish my contribution by saying that this legislation is a missed opportunity. I do not understand why it is that this government is not prepared to protect the community from second-hand smoke. In the last two days there has been a lot of debate around the economics of health and funding. We all know what tobacco-related illnesses do to this community, we all know how the health budget is affected by them and we all know how many beds are taken up each year by tobacco-related illnesses. This legislation could provide a huge saving to the health budget, yet this government does not seem to be prepared to do anything that looks remotely like preventive work.

Ms CROZIER (Southern Metropolitan) — I am pleased to rise to speak on the debate on the Tobacco Amendment (Smoking at Patrolled Beaches) Bill 2012. As we come into the summer period, this is a very timely bill. Should this bill be passed today, its enforcement on 1 December this year will take into consideration the very busy summer period when many Victorians will holiday on our beaches. We have many significant and wonderful beaches along our coastline, baysides and rivers. This bill encapsulates another public health message to people spending time on beaches; this message is about the effects of smoking. I commend the minister and the government for bringing it forward.

This is just another legislative measure in the government's commitment to reduce smoking and its uptake by Victorians. It again sends the message that smoking poses a significant risk to personal health and

also highlights the consequent ongoing health costs that smoking-related diseases cause.

The purpose of the bill is to prohibit smoking between the flags at patrolled beaches and within a 50-metre radius of each of those flags. It is intended that this smoking ban will further limit the exposure of children and families to second-hand smoke, minimise the littering of cigarette butts and improve public amenity at patrolled beaches in Victoria. There are multifaceted benefits, including denormalising smoking and sending that message out to future generations of children.

The edges of some rivers do not have huge beaches, but along our surf coasts and baysides there are very extensive beaches where a lot of patrolling is undertaken. That area encapsulates where many children participate in activities on our waterways, and their presence reinforces the appropriateness of this measure to ban smoking.

Statewide smoking bans have been introduced in some other states, as has been highlighted, which goes to the point that these measures are essentially self-enforcing. Mrs Peulich made that point by way of interjection, and I have to agree. It sends the public a message, and the measure is relatively self-enforcing over time. We are doing a lot to get the message out that the ban will be enforced through local government inspectors, who already patrol beaches in relation to a number of issues, including certain activities undertaken on beaches and dogs being on leashes. This is just another measure they will be able to enforce.

Smokers who ignore the ban will face on-the-spot fines of $141. As the minister highlighted in his second-reading speech, if a fine is ignored, the penalty will increase to $700, which is not an insignificant amount of money, if the matter goes to court. Hopefully this will send the message that smoking is unacceptable in popular waterway spots.

We all know smoking has significant health effects. Around 4000 deaths are caused by smoking-related illness each year in this state. That is a significant number. It has a high economic cost in terms of health bills, and it also has high personal costs. It is well known that the chemicals in cigarettes, to say the least, will do you a great deal of harm. There are more than 4000 chemicals in tobacco smoke, 60 of which are known to cause cancer. That is a significant public health risk. As has been highlighted by Mr Jennings, the Australian Medical Association, Quit Victoria and Cancer Council Victoria have applauded the government for sending this message. As the government and all parties recognise, we need to do more to get that message out about smoking.

Another aspect of this bill is that it reinforces the message to children. On many beaches most children, with their families, will be swimming between or just outside the flags. As Mr Jennings said, people may picnic or congregate outside the flags, but as the majority of Victorians attend the beaches through our high summer months, the ban will be enforced on patrolled beaches. The message we will be sending, particularly to children, is that banning cigarette smoking in these areas will limit exposure to second-hand smoke and that smoking is unhealthy. We are doing a great deal about getting that message out to children. There is an element of self-enforcement, but there will be an ongoing campaign in relation to sending that message, and there will be signs to indicate that smoking is banned between the flags.

I note some councils in my electorate of Southern Metropolitan Region have already introduced this measure. I am fortunate that a number of areas in my electorate have beautiful bayside beaches. Many constituents of mine in Southern Metropolitan Region attend those bayside beaches during and outside the summer months. I note that the City of Port Phillip has undertaken to extend a smoking ban in its area, and I commend it for doing that and note there has been significant environmental impact in terms of the reduction of butts on the beaches that it patrols. In an article from an edition of the *Age* earlier this year one of the councillors, Frank O'Connor, was reported as saying:

> Data from last summer shows cigarette butt litter on Port Melbourne Beach is down 28 per cent, St Kilda Beach is down 24 per cent and Elwood Beach is down 15 per cent …

The more this message gets out, the further reduction there will be in the environmental impact of butts littering our beaches. It needs to be a very strong message, because those butts are not biodegradable — they do not break down — and they cause significant littering and environmental problems on our beaches. We all like to go to the beach — over the summer months many Victorians flock to our beaches — and there is nothing worse than putting your towel down to lie on the beach and seeing a few cigarette butts right there.

Mr Jennings made reference to a limited 50-metre radius, but as I said at the outset this legislation applies to riverside beaches as well as bayside and surf beaches. On riverside beaches the measure will be limited — we have the Murray River, of course. Those beaches do not have the widespread sand or exposure

that surf coast or bayside beaches have, and they might not extend to the 50-metre limit. That 50-metre radius will, however, certainly encapsulate a lot of patrolled beaches.

I would also like to say that I am pleased the bill has been recognised and supported by various other states. This bill sends a good message to all Victorians. It provides uniformity across Victoria's beaches. I note that there are 16 beaches throughout the state that have smoking bans thanks to council by-laws. This bill will reinforce those initiatives that have been undertaken. As I said, the City of Port Phillip in my area of Southern Metropolitan Region has already seen the benefits of what it has done.

In conclusion, the bill will ensure that our beaches are kept clean, discourage everyone from smoking, particularly children, to whom we are sending this public health message, and reduce the presence of second-hand smoke in the areas that are being patrolled. I commend the bill to the house.

Mr SCHEFFER (Eastern Victoria) — This is a straightforward bill that takes another step in the very long and incremental march towards protecting the community from the dangers of tobacco smoking. In his contribution to the debate Mr Jennings reminded us of the many important reforms the previous Labor government made over its 11 years in office to reduce the devastating effects of tobacco smoking. Mr Jennings took us through an extensive list of reforms by the Bracks and Brumby Labor governments.

The second-reading speech for this bill runs through some of the appalling statistics that tell the story of the harms arising from tobacco smoking. Each year some 4000 Victorians die from the many serious conditions that can be traced back to tobacco smoking. In the speech the minister reminds us that half of all long-term smokers will die of these conditions and that the cost to Victoria is around $6 billion per annum. I think nationally the figure is over $30 billion.

The 2009–10 *Victorian Drug Statistics Handbook* provides figures that illustrate drug use for Victorians. In 2001, 25 per cent of Victorians aged 14 years and over used tobacco. By 2004 this figure had fallen to 21 per cent, and by 2007 to 20 per cent. By contrast, alcohol use by Victorians aged 14 years and over stood at an astonishing 82 per cent in 2001, remained constant in 2004 and rose to 83 per cent by 2007. Alcohol and tobacco, as I have said in previous contributions, are far and away the two most frequently used drugs, and alcohol is the single most used drug, which is of course why most people in the community do not even think of alcohol as being a drug. But the figures show there has been, nonetheless, a 5 per cent fall in tobacco use over the six-year period between 2001 and 2007, and hopefully future figures will show further falls.

The good thing is that the battle against tobacco smoking is gradually moving in the right direction, at least in this country, after decades of campaigning. The achievements have been, as I said earlier, incremental. The second-reading speech notes that bipartisan support for the Tobacco Act 1987 push against tobacco smoking has led to a range of important reforms and that this coincided with a profound rise in community understanding of the harm associated with tobacco smoking.

In his contribution to the debate Mr Jennings also took time to point out that the Cancer Council Victoria, the Australian Medical Association, Quit and other bodies of that type have expressed concerns that notwithstanding the positive and incremental changes contained in this bill, the government needs to keep up the good work and that there should be no let-up in the face of this scourge.

The prohibition of smoking in all enclosed work spaces, which is a significant and very important measure, is another example of the positive impact of incremental change. For many, prohibiting smoking in music venues and bars, for example, seemed as ridiculous as prohibiting alcohol, striking — as a lot of people said — at the very fabric of our night culture. But it happened, and I think most people now welcome the smoke-free atmosphere of Victoria's venues.

The bill takes a further step by banning smoking on certain sections of beaches, with the objective of removing the modelling that people smoking have on others. It is important to remove modelling because it takes away or diminishes the view that smoking is a positive and even healthy activity. We all remember the Peter Stuyvesant advertisements on commercial television in the 1960s and 1970s which promoted a view of smoking as associated with vigour, sport, activity and health, and probably the Marlboro ads were the same.

It is pretty clear that cigarette butts left on beaches are an environmental problem. The City of Port Phillip reported earlier this year that a 10-week study that it conducted found about 25 000 cigarette butts over a 20-metre section of St Kilda beach. The report says cigarette butts are highly toxic and are not biodegradable. Of course this says nothing about whether smoking on a beach harms other people. There

is a case of course that smoking in public and on the beach in this instance harms others, especially children, because people smoking models the behaviour by naturalising it, and that can cause harm in the sense that other people take up a habit that kills.

While banning smoking on beaches may not be earth shattering, it will not hurt, and it will probably do some good. I expect that, as usual, there will be those who will say and believe this is yet another example of the nanny state and that, as tobacco smoking is a legal activity, the state should keep its nose out of people's private right to do as they wish provided that they do not harm anyone else. These critics will say that smoking in the open air or on a beach where it is usually windy could not possibly cause unreasonable harm to others.

The fundamental issue here of course is that very many so-called private behaviours do have social consequences, and through government and public agencies the community has the right and indeed the obligation to take steps to limit the negative impact of these behaviours. The negative impacts of private behaviour can involve increased public health costs and trauma, and as the second-reading speech indicates, in the case of tobacco we are talking about a $6 billion annual price tag in Victoria alone that citizens have to fund because some people want to exercise a so-called right to smoke tobacco.

In his contribution Mr Jennings also made the point, and it is worth repeating, that passing what is in the end a very slight piece of legislation for a small part of a beach does not really take into account the plans and resources needed to put the measures contained in the bill into effect. The policing and implementation of measures like this need follow-through, and none of that appears in the second-reading speech or in the remarks made on the bill by government members.

If banning smoking on beaches is a small, incremental change, by contrast the commonwealth's introduction of plain cigarette packaging laws and the subsequent upholding of those laws by the High Court of Australia earlier this year was a landmark step that deservedly attracted global interest. What makes it a remarkable achievement is that this is the first time the idea of plain packaging has been successful. I understand that previous attempts in other jurisdictions were thwarted by the power of the tobacco industry. The profound shift in this country is that the High Court found against British America Tobacco Australasia Ltd, Philip Morris Ltd, Imperial Tobacco Australia Ltd, Van Nelle Tabak Nederland BV and Japan Tobacco International, which argued that the legislation is unconstitutional. The federal Labor government deserves very high praise for what is another major step in the struggle to reduce tobacco smoking in this country.

With all the effort being put into this task, including the measures contained in the bill before us today, it was disappointing to read last week that the Victorian Funds Management Corporation continues to invest in the tobacco industry. I think we all understand that we are still — as slow as it sometimes feels — in a transition from a time when tobacco was seen as a product like all others which was bought and sold in the market and in which investors put their capital in order to make a legitimate profit. Ethical investment was considered to be a fringe activity, and serious investors uncritically believed that investment should be made on the basis of commercial objectives.

As I understand it, legislation requires that the Victorian Funds Management Corporation base its investment decisions on what will be of commercial benefit. This is reflective of a way of thinking that isolates commercial decisions from the context in which products are produced and traded. While it is fair to say that investment decisions have always been influenced to some extent by non-commercial decisions — for example, we do not think it unreasonable that investors should factor in national or state interests — there is a growing community expectation that values or ethics have a place in making investment decisions, and the appropriateness of investing in products that harm the environment and public health is under increasing scrutiny.

The Baillieu government should heed the calls to change the legislation so that entities such as the Victorian Funds Management Corporation can take ethical factors into consideration when making investment decisions. An article published last week in the *Age* stated that the New South Wales government will be reviewing its investment in tobacco companies. The Victorian government cannot continue not commenting on matters of this importance to public health. It needs to take positive action, because in the end people's lives depend upon it. With those comments, I support the bill.

Mr RAMSAY (Western Victoria) — I am pleased to be able to speak on the Tobacco Amendment (Smoking at Patrolled Beaches) Bill 2012. I do so because, on a personal note, my father died from a smoking-related disease at the age of 45 and left three children under 17 with their mother. Since that time I have been a strong advocate for any program, policy or legislation that reduces the health impact of smoking, which I find totally insidious. It is true that this is a

small reform; nevertheless, it is an important one. I look forward to it being expanded over time with the support of the community. Speaking personally, I would support legislation that totally banned smoking in public spaces. Nevertheless, this is a piece of legislation in relation to smoking at patrolled beaches, and I fully support that.

I note that there are 4000 deaths annually in Victoria due to smoking, which is a disgrace. But the good news is that only one in seven people in Victoria smoke, so obviously many of the programs, both federal and state based, are working. We should continue to work towards a goal where our children are not exposed to cigarette smoke and the health impacts of that smoke and also try to reduce the incidence of smoking by adults to as minimal a number as possible.

The cost of smoke-related illnesses is over $6 billion not only to the Victorian health system but to families, the community and the economy. However, what is good news is that even in this chamber there is bipartisan support for a range of reforms to reduce smoking prevalence in Victoria. I am somewhat heartened by the fact that those on the opposition benches, while long in some of their contributions and rhetoric, are supportive of the bill.

Smoking is banned in all enclosed workplaces in Victoria and on the grounds of all Victorian government schools, and that is a good thing. An amount of $8 million has been allocated through the Department of Health for tobacco control in Victoria, and many good advertising campaigns, through the Minister for Health, Mr David Davis, have been instigated and have continued over time. Again, I am strongly encouraged by the fact that the federal government has changed the labelling laws.

Breaking the link between smoking and everyday family activities is vital to changing social norms around smoking. I think this small step is particularly important given that the focus of this bill is on beaches where flags are placed for safety, particularly that of our children, and where the community generally congregates for social swimming. To identify where there is a congregation of people, which is where the impact of smoking is at its worst, is a good initiative, and it is I understand well supported by a number of groups, including Life Saving Victoria, Quit Victoria, Cancer Council Victoria, the Municipal Association of Victoria, the Australian Medical Association, and through a number of local government recommendations. I am also pleased to see that through its by-laws the Surf Coast Shire Council, which is part of the region I represent, has been a leading advocate of banning smoking on beaches. I encourage other councils to take the lead of the Surf Coast shire in relation to being an advocate in that manner.

I take up Mr Scheffer's point, and I agree with him: I cannot understand why the small minority of those who choose to smoke have the right in public spaces to impose on those who do not. While I have always been a strong advocate for the rights of the individual, I believe that when those rights cause damage to others those rights should not be seen as sacrosanct. I take the point that there will be a few in our society who will scream that their rights are being infringed upon by this legislation. Nevertheless, where there is significant damage to others by the activities of a few, those rights should be questioned. I certainly would support those in the majority who have their health impacted upon by the minority who demand that it be their right to smoke in public places.

This is a short contribution. Working towards banning smoking in public places is an important personal issue for me. I understand this is a small step. I congratulate the Baillieu government on taking this step, and I look forward to further legislation through which we significantly reduce the impact of smoking, particularly on our young but also on the community as a whole. I commend the bill to the house.

Mr LEANE (Eastern Metropolitan) — While the opposition supports this bill and any initiatives in this area, this piece of legislation, I have to say, exists simply for the Baillieu government to be seen to be doing something in this place. When members read the legislation and see what it actually does they will see that it is a very half-hearted attempt to be seen to be doing something in this area. A lot of government members have said, 'It may be a small initiative, but it is all about the message coming up to summer'.

I remember that coming up to last summer the Baillieu government's major road safety initiative — an urgent initiative — was to bring in a law banning people from having one drink while they were driving. That was all important, and it was all about the message. If that was all about the message — great! I was expecting there would be ads on the television reinforcing the government's special road safety message. I expected we would be bombarded by the road safety message in every newspaper and that every news article would be about it. I expected to see road safety ads, paid for by the Victorian government, saying, 'We have banned people from drinking while driving. This is our message'.

If this message is all about people being conscious of smoking around others, I am expecting there will be ads on TV and billboards everywhere, paid for by the Baillieu government, saying, 'We have banned smoking within 50 metres of the flags in patrolled areas'. There are probably about a dozen patrolled beaches on Port Phillip Bay. A lot of people go to beaches and there are a lot of beaches on Port Phillip Bay, but they are not all patrolled. Lifeguards do a great job on surf beaches, and part of their job is to monitor rips. As anyone who has been surfing will understand, the flags are constantly moving at surf beaches. If I get out my tape measure and set up my blanket 50 metres from the flag, pull out my Cuban cigar, start smoking and all of a sudden a rip comes up to the right of where I have set up, the flags will be moved across 10 metres and I will be breaking the law. What I have to do is keep that tape measure moving each way the flags go, making sure I am outside that 50-metre buffer.

What will happen is that if you are across the bay or in a boat across from a surf beach, you will be able to see where the 50-metre radius is on either side of the flags because you will see the smoke on either side constantly moving left and right all day. But that will not happen, because this legislation is bogus. Those opposite will not pay for it to be monitored. They will not have people out there giving fines. They will not pay for an advertising regime to get out their special message in summer about it being important not to smoke around people.

I do not know whether it was a focus group that said, 'We don't think you've said anything about smoking or enough about smoking', but what the government has done is sit down and say, 'Oh, no, what do we do? I've got it: 50 metres from the flags'. There are only 12 patrolled beaches in the metropolitan area. A lot of people go to the beach, and they do not all go to those beaches. It is not going to solve anything. This is a half-baked initiative. If the government were fair dinkum about its message, it would be paying for advertising, but it will not, and it would be paying for people to enforce this legislation, but it will not.

Mr Finn — You just want to spend money.

Mr LEANE — Mr Finn says, 'You just want to spend money'. What is the point of your legislation if you are not going to fund it?

Mr Finn interjected.

The ACTING PRESIDENT (**Mr Ramsay**) — Order! I remind Mr Finn that this is not a shouting match, and I ask Mr Leane to speak through the Chair.

Mr LEANE — To take up Mr Finn's interjection, although I know interjections are unruly and should not be taken up, he says that all I want to do is spend money. What is the point of this policy if the government will not pay to enforce it and advertise it? This is just a token to show and say, 'We have done something in this space, people'.

I know the Liberal Party has conflicting stakeholders in this area. If the party took up Mr Ramsay's courageous suggestion that smoking should be banned in all public areas, it might have a problem with one of its donors. Congratulations to Mr Ramsay for having the courage to suggest that, but he might be getting a phone call from Mr Nutt soon saying, 'Hey, Simon, you're not doing us any favours by being honest; you're actually doing us a disservice. We know you're a brave man, but think of the collective. I know we're Liberals so we're individuals, but for once, Simon, think of the collective. You are doing us a huge disservice by being honest and brave'.

As I said, this is a half-hearted measure. It will not be funded and it will not be enforced. At surf beaches people will be constantly moving from where they have set up if they want to adhere to the new rule — assuming they know about it, and I bet they will not. Congratulations to the Baillieu government: it has done something in this space!

Mr ELSBURY (Western Metropolitan) — What a performance we have seen from Mr Leane. I am not sure whether he supports the bill or not. He basically belittled what the bill will achieve, which is to ensure that families can go to a patrolled beach to enjoy the sun and the sand without having to deal with smokers being right next to them. There is nothing like taking the family down to the beach, setting yourself up with a towel and a brolly or sunshade, and watching the kids splashing around in the water. Nothing ruins it more than copping a whiff of cigarette smoke whilst you are trying to enjoy that bit of leisure with your family.

This ban on smoking on patrolled beaches will be between the flags from the waterline to the edge of the sand and 50 metres in circumference around where the flags have been placed. That extends out into the water as well, because I have seen people smoking standing almost waist-deep in the water. I would think they could deal with it for just a few more minutes, but no, I have seen people standing in the water smoking. It shows what an uncontrollable habit smoking can be for people.

There are 16 beaches in Victoria that have a total ban on smoking under the local laws. Some of those

beaches are in the city of Hobsons Bay within the Western Metropolitan Region. One of those beaches, Altona beach, is one of my family's favourites, because there is a smoking ban in place, and it is for the whole beach. For people in other areas to be able to have a small sanctuary on a beach between the flags and 50 metres either side of them gives me great hope that they will be able to enjoy the beach as much as we do. Altona beach offers a great advantage for families, because it is a shallow beach almost all the way out to the end of the pier, and the kids can splash around and go crazy. If you want to do any proper swimming, though, I suggest you find another beach, as you tend to run aground rather quickly.

A further 51 patrolled beaches have no such ban, and this is where the additional state legislation comes into play. Where local government legislation is in place, that will continue to work. We are not saying it will be down to just the patrolled section of those beaches. If the local government has said the whole beach is out of bounds, the whole beach is out of bounds. If it is not in the local laws that the beaches are smoke-free, then it will be prohibited between the flags and within a 50-metre radius around those flags from the waterline to the edge of the sand.

Lifesavers will be responsible for erecting the flags, as that is what they are professionally supposed to do. They will be watching the swimmers; they will not be enforcing this legislation. That will be for council environmental health officers and local laws officers. The Department of Health is currently working on developing training materials to allow them to adequately monitor this legislation.

Victoria is not the first state to bring in such laws. Tasmania, Queensland and Western Australia have all banned smoking between the flags on their beaches. We have not used the Tasmanian or the Western Australian model because of concerns about how we would enforce those particular laws. We do not believe the way the laws have been drafted in those states is adequate. Queensland has gone to the other extreme, and its legislation is ultra-complex, which means that it is difficult for anyone to understand what is meant by the law. We have reached a nice medium between the two different jurisdictions — the underregulated and the overregulated. We have a nice bit in the middle that clearly spells out what the intention is and where we are going with it.

There will be $140.84 fines for people who breach this law. A public education campaign will use the media, the internet, brochures and signs installed at beaches. As a family man and as someone who is not a smoker, I support this bill.

Mr FINN (Western Metropolitan) — It is a great pity that Mr Leane is not in the chamber at the moment. I have had the opportunity to follow Mr Leane in debate on a number of occasions over the last six years, but I have to say that on this occasion he has outdone himself. I was quite astounded by his performance today. I am not at all sure what it was about.

Honourable members interjecting.

Mr FINN — He talked about the message, but I have no idea what his message was — I have not the first idea. He did mention he was going to get out his Cuban cigar at the beach, and I can only suggest that if he does get out his Cuban cigar, he is going to have to worry about more than the lifesavers. I am sure there will be people who will take strong objection to that on a whole range of fronts.

In my view the beaches of this state are some of the best in Australia. I grew up near Colac. Each summer Lorne became Colac-by-the-sea; we all packed up and went down to Lorne. I am told there is a fair chance that that may still happen to a very large degree. So I grew up there, and I love the west coast beaches of this state. I live now in the north-western suburbs of Melbourne, and when a day reaches 30 degrees it is mandatory at our place to pack the kids in the car and head to the beach. I appreciate Mr Elsbury's love of Altona beach — it is an exceptionally good beach, and I quite enjoy going to Altona — but my preference is surf beaches.

I love to get down to Anglesea, and I love to get down to Torquay or Lorne if I feel like driving that far. All of these beaches are sensational places for anybody and particularly for families, so it is a matter of extreme annoyance when you have set up your little camping area on the beach, the kids are there and have got their — —

Mrs Coote — Buckets and spades.

Mr FINN — Buckets and spades — that is exactly what I was trying to think of. I thank Mrs Coote. They have got out their buckets and spades and are burying the person next door, and it becomes a matter of extreme annoyance when the person next door lights up a gasper and the smoke drifts over into the family area. On a hot day these beaches are very tightly populated. There are thousands of people on these beaches, and you do not need too many smokers to make it a pretty miserable day for a lot of people. So I believe this bill is

a very positive move, and I congratulate and commend the government for bringing it forward.

I have to admit that I used to be a smoker. I smoked for many years, and I remember when I first took up smoking back when I left school, when I was first working in radio. Back then in radio if you did not smoke, there was something wrong with you. That was the late 1970s, and if you did not smoke, people would look at you and wonder if you might have some strange condition that should be treated. I did what everybody else did: I took up smoking and of course became addicted, because as we know tobacco addiction is one of the strongest addictions there is. There was a period some years ago during which I gave up for four years, but unfortunately I took it up again. I learnt something from that — that is, that I should never even have one cigarette. Not that I am counting, but a little over four years ago, at 11.15 on 15 August 2008, I had my last cigarette. I will never touch another cigarette — never.

I would not say that I was a strong supporter, but I used to have some recognition of what I would have described then as the rights of smokers. The reason I am so strong on this now and what changed my mind was a very tragic event where just a few months before I gave up smoking a very dear and close friend of mine died of lung cancer at the age of 48. She was diagnosed with lung cancer in September 2007, and we buried her in April 2008. I have to say that one of the most difficult tasks I have ever taken on was to deliver the eulogy at her funeral. Even with the knowledge of what smoking cigarettes had done to her, with her death at that very early age — as I say, at 48 — even then I had enormous trouble giving the things up. I must have tried at least a dozen times before actually succeeding, and that was actually after she died. Some members might find this slightly amusing, but it took hypnosis to get me off the dreaded weed.

Mrs Peulich — And the cigarettes!

Mr FINN — Thank you, Mrs Peulich. I appreciate very well just how strong the dreadful addiction of tobacco is. Something that has concerned me for quite some time is the professional anti-tobacco lobby — if we can call it that — and what I would describe as its seeming lack of understanding of just how tough it is to give this away and what is needed for people who are hard-core smokers. Let us face facts: anybody who is still smoking in this day and age is a hard-core smoker. They do not need persecution; they need help — they need our support.

It just seems to me that some people are living in another world. Perhaps they are people who have never smoked. Quite often they have never smoked but have become quite zealous on this particular subject, and they have no understanding and perhaps no desire to understand what smokers go through in an effort to give up what I describe as and what I know to be a dreadful addiction. I hope some of them will read this and have a think about what it actually takes for some people to give up tobacco. It takes more than somebody yelling or wagging the finger at them and telling them how naughty they are.

It is a real problem. I am sure we all know people who have told us that they would dearly love to give up smoking but have been unable to do so. There are some who hide behind the bravado of saying, 'I don't want to give up'. They say, 'I am not a quitter', when we know only too well that given half a chance they would dearly love, as I have done, to give up the smokes. I hope professionals in the antismoking lobby will take note of my comments and perhaps readjust their thinking.

This bill is about continuing down the path of progress to make it nigh impossible to smoke just about anywhere in public. I do not think that is a bad thing. Back in the days when the ban was introduced in hotels, I well remember that I was quite stunned. The prospect of having a pot without a cigarette was something I could not quite comprehend or come to terms with, but I was amazed how quickly I did come to terms with it. Now I am very pleased the ban was introduced because, looking back on those days, it must have been hell on earth on a Friday or Saturday night for a non-smoker to go to a pub or a venue where people gathered to have a drink. As I said, for those of us who were drinkers back in those days, it was inevitable that we would have a cigarette as well. I am pleased that the ban was introduced, just as I am pleased that this particular ban is in the process of being introduced at the moment.

As I mentioned earlier, there will be some people who will try to make objectionable noises about this legislation. A little bit earlier Mr Leane made noises. I am not sure entirely whether he was opposing or supporting the legislation, though the noise may well have been objectionable. I am not entirely sure where he was coming from on this bill, but it was fascinating to hear him. It seems Mr Leane has not recovered from losing his traveller. I can understand the psychological trauma he must experience as a result of a stubby being ripped from his hand as he climbs behind the wheel of a car on a Friday night — I am trying to show empathy to Mr Leane in this regard.

As I said earlier, smokers do not need to be persecuted; smokers need help — and Mr Leane needs help as well. He does not need our condemnation of his psychological affliction. He clearly needs help, because here we are now, close to 18 months after the introduction of the ban on the traveller, and he is still getting up in the house bemoaning the fact that he cannot get behind the wheel of his Statesman, or whatever vehicle he has got, and open a Victoria Bitter. Those of us who care about people's lives and safety do not have a problem with that, but clearly Mr Leane does. I assure him that he will not have the same problem with this smoking ban as he has had with the traveller ban. It is a pity he was not in the house earlier. I strongly urge him to keep his Cuban cigar to himself, and then he will have no problems. That is something he should very much take to heart.

I support this legislation. It is a very good move because it will make Victoria a better place. It will make Victorian beaches better places, and it will make this summer and future summers better for us all. I urge the house to pass this bill in a speedy manner.

Mrs COOTE (Southern Metropolitan) — I thoroughly enjoyed the contribution from Mr Finn, who explained what smoking at beaches means in local terms. The picture of Mr Finn and his family having a picnic at the beach is pleasing to contemplate, and I hope they have many happy days there this summer. As a consequence of this excellent bill they will not have smoke blown in their faces. I am particularly sad that I did not get a chance to listen to Mr Leane's contribution in the chamber; however, I was in Queen's Hall, and we could all hear Mr Leane's contribution. We were not too sure what was happening, but the walls were shaking. He obviously had a lot of pent-up anger. I hope he has managed to release it and now feels better.

On a far more serious note, as we are all aware, this is not a complex bill, but it is very important. It will have several very important and direct effects, which I will elaborate upon further. The members who spoke before me, including Mr Elsbury, put their views on the record. I too would like to mention some of these things in my contribution. The bill bans smoking between the flags, including while in the water, or within a 50-metre radius of the flags at any patrolled beach in Victoria, including all bayside beaches, surf beaches and river beaches.

Southern Metropolitan Region is fortunate to have many bayside beaches on its border. It is particularly pleasing that Melburnians can enjoy so many beaches close to the city. Smoking has already been banned at several beaches in Southern Metropolitan Region, including beaches in the city of Port Phillip. Not so long ago I can remember seeing the clean-up patrol team from the City of Port Phillip on the beaches very early in the morning raking up the debris of the previous day with big rakes. Most of that, when you had a good look at it, was cigarette butts. It was really quite horrifying to see, and considering that these are such busy beaches and therefore there are families there, it was absolutely a shocking scene. There is nothing as dead as a dead butt, I assure you. It looks absolutely shocking, and a soggy dead butt is even worse, so I commend the City of Port Phillip for taking the initiative on this in the past.

By passing this bill we will be adopting a consistent approach across the state. As I said, this is going to include river beaches. It is going to include surf beaches and bayside beaches as well, so everybody in the state will be aware that there is not going to be smoking in these areas. There can be no confusion for smokers and none for other people either, who can remind smokers who are remiss that it is not the place and that it will be against the law once this bill is passed. This bill will remove the potential for confusion and leave all Victorians with absolutely no excuse.

There are many things that are bipartisan or tripartisan in this Parliament and in Victoria, and this is one of them. An amendment has been proposed, and that will tease out some details in committee. That is probably a good thing. I would have to suggest that the thrust of all the speeches today supports the fact that everybody is against smoking in public places and in particular on beaches.

It is important to reiterate and remember some of the statistics about smoking, which, considering the number of people who continue to smoke, are extremely disappointing. Quit Victoria, which is a joint initiative of the Cancer Council Victoria, the Department of Health, the National Heart Foundation and the Victorian Health Promotion Foundation, has come up with some quite disturbing statistics. The one that tops them all is that tobacco causes more illness and death than any other drug. Each year 3940 Victorians die from smoking-related diseases, and this compares with illicit drug deaths at an average of 2 Victorians a week. Road accidents kill an average of 8 Victorians a week, and alcohol kills an average of 15 Victorians a week. Tobacco and tobacco-related illnesses kill 76 Victorians each and every week. That is an indictment, considering the amount of money that has been spent and the health promotion and advertising that has gone on for many years. To find out that this is still happening in this state and at this time is just appalling.

Quit also points out the many areas in which you can contract cancer from smoking — lungs, throat, mouth, tongue, nose, sinuses, voice box, oesophagus, pancreas, stomach, liver, kidney, bladder, uterus, bowels, ovaries, cervix and bone marrow. It also causes heart disease, stroke, emphysema, respiratory problems and so forth. It is absolutely all encompassing, and it is important for us all to continue to remember this message and to know what the consequences are.

There are some encouraging statistics, and it is important to get some balance and to have a look at the success of some of the programs Quit and the other agencies have been presiding over. The trend is showing a decline, which is very good, and though the overall smoking rates both in Australia and Victoria are still too high, this decrease in the number of smokers both nationally and within the state is very pleasing. There has been a very slight change in classifying smokers. In 1945, 72 per cent of Australian men and 26 per cent of Australian women smoked. That is absolutely enormous. It is always interesting to have a look at the old television footage, where you see people smoking in places where we would never ever dream of it today. In fact I think if you go back to those days, there was a theory that smoking was good for your health. I can remember them telling women that smoking was very good to calm their nerves. How absolutely extraordinary! I suppose killing them off killed their nerves forever.

By 1983 smoking rates in Australia had dropped to 40 per cent for men, but for women they had risen to 29 per cent. That was a disappointing trend. In 2007, the most recent year recorded in the background brief from Quit Victoria, 21 per cent of Australian men and 18 per cent of Australian women were smoking. This is a huge improvement from what the former statistics showed, but it is still extremely high given what we know today and given that we understand the depth of the cancer issue and the direct ramifications of smoking. In 1983, 36 per cent of Victorian men and 28 per cent of Victorian women were smokers. It is encouraging to see that Victorians were underrepresented in smoking at that time.

Between 1984 and 2008 smoking rates for Victorian secondary school students more than halved, from 30 to 34 per cent of senior school students down to 12 to 15 per cent. Much of the advertising has been pitched at young people, so it is still very disappointing to see how high the number is, but it has come down by almost 20 percentage points over that time. It is pleasing to see that there is a downhill trend, but we still have a long way to go, and bills such as this one are going to help the focus and make people think that smoking is inappropriate and is not going to be allowed in yet another area where people congregate.

Cigarette butts cause a huge amount of litter. In a media release last year from the Minister for Environment and Climate Change, Ryan Smith, he said that cigarette butts were the most littered item across Australia, making up 58 per cent of all littered articles. An *Age* article of 7 January this year said that beaches were becoming toxic ashtrays. It referred to a 10-week study of a 200-metre section of St Kilda Beach that turned up an astonishing 25 000 cigarette butts. That is enormous. As I said before, St Kilda Beach is such an approachable beach. It is so close to the city. Families go there; I see them all the time. My office is in Port Melbourne. I see families of all ages and stages in life enjoying the beach, so that is just extraordinary.

On many occasions I have been involved in Clean Up Australia Day and have been out there collecting rubbish. From my personal experience on Clean Up Australia Day I know the number of cigarette butts is absolutely enormous; there are just so many of them. I will just repeat that figure because I am sure any young people who might be listening would be extremely interested to know that in a 10-week period a 200-metre section of St Kilda Beach turned up an astonishing 25 000 cigarette butts, which is just extraordinary. These butts are not just from people who are on St Kilda Beach; they have also been thrown out of car windows and washed down gutters and drains into our creeks and rivers and then into our bay. This is something to reflect upon, and how terrible it is — —

Mr Jennings — So put up a flag.

Mrs COOTE — Next time I go to St Kilda Beach, which I know Mr Jennings visits, I will look for him holding up that flag and enforcing the law, as I know how much he agrees with this initiative, and he is a very good local member in his electorate.

The bill will not completely solve the problem of cigarette butt litter on our beaches, and it will not stop people from smoking — no bill could accomplish these things — but it is an important bill. The people who visit our beaches to enjoy what is such a marvellous attribute for Victoria, our wonderful beaches and coastline, will realise that smoking is not allowed between the flags and within a 50-metre radius of them. They will be able to focus, stop and think, 'No, we're not going to litter these wonderful beaches. We are so lucky to have them'. The bill will go a long way towards cutting out smoking in more areas in Victoria.

I commend the bill to the house. I hope we can get the message through to young people in our state so that smoking rates in Victoria will go down even further, because our future is in the hands of young people. We need them to be healthy, vital and viable, and we want them to give up smoking.

Mrs PEULICH (South Eastern Metropolitan) — I also rise to support this bill. It is a small but very good bill; it strikes a good balance and has great prospects for success because it makes a lot of sense. Legislation that is common sense is accepted and easy to enforce. It is a positive move.

While the overall smoking figures seem to be trending in the right direction, sending the antismoking message will continue to pose challenges for our community. Effecting a change in attitudes to smoking will not have a linear progression. Getting the message across to young people will continue to be a challenge because they will invariably be attracted to risk-taking behaviours from time to time. Many of them may see smoking, despite its harmful effects on health, as a little less risky than dropping ecstasy, using other illegal drugs or perhaps binge drinking, although binge drinking and smoking may well go hand in hand. Smoking is seen as the lesser of two evils despite the fact that its cumulative economic effect and its effect on the health budget is a significant social concern because it is more prevalent.

The other area where conveying the antismoking message will continue to be a challenge is in our multicultural communities. Australia is a great immigrant nation. We have a vigorous program of immigration from all sorts of places in the world, and in many of them the attitudes to smoking are very different from those here. Some of Australia's past practices, which Mrs Coote described — people not being circumspect about where they smoked, few limitations being placed on smoking and so forth — are still common practices in quite a few countries from which we derive our immigrants. Getting the message across to new and emerging multicultural communities will continue to be a challenge. People like Mr Jennings need to understand that changing the statistics and attitudes will not necessarily have a trajectory of linear progression. There will always be substantial challenges in progressing that message.

The call for the banning of smoking in all public places assumes that everyone has access to private places in which to smoke, yet we have rightly discouraged smoking around babies and children — that is absolutely something to be discouraged — and we have banned smoking in cars containing minors. Who would think of smoking in the family home? I would imagine it is very rare, although we cannot see what everyone does in their own home. The call to ban smoking in public spaces assumes that everyone has access to private spaces. Of course everyone can walk the streets, but I am not sure whether that is a preferred alternative.

My approach to this is that there can be civilised accommodation of a behaviour, smoking, that is the result of an addiction to a legal product, which does not need to harm the health and wellbeing of others who choose not to smoke. Respecting the rights of people is possible. It is possible to find civilised solutions to some of these difficult health issues. This bill is one example of this, and I commend the minister for bringing it to the chamber.

The purpose of the Tobacco Amendment (Smoking at Patrolled Beaches) Bill 2012 is to prohibit smoking between the flags at patrolled beaches and within a 50-metre radius of each of those flags. Notwithstanding the comedic contribution of Mr Leane in the style of Kramer from *Seinfeld*, this makes a lot of sense. People who want or need to smoke can still be accommodated, and people who are in between or nearby the flags will be protected from passive smoking.

This legislation will limit the exposure of children and families to second-hand smoke, further denormalise smoking within the community — notwithstanding the challenges I mentioned before in relation to young people and multicultural communities — and minimise the littering of cigarette butts along our coastline, which is a substantial issue. Even if you are an addicted smoker, there is no reason to litter cigarette butts and clutter up our coastline and waterways. The bill will also improve public amenity at patrolled beaches in Victoria.

The Baillieu government has made significant contributions to enhancing the wellbeing of our communities, and as I said, I commend this government for introducing this bill which will have effect from 1 December 2012 and apply to 2000 kilometres of the Victorian coastline and 36 beaches in Port Phillip Bay, a number of which I represent. There are more than 65 beaches across the state that are patrolled by lifesavers in the summer months, and 70 million visits are made to Victoria's beaches each year, so it is essential that our beaches are kept clean and smoke free for the benefit of visitors to these areas. Many of those visitors come to the beaches of Frankston, Kingston and all those areas I represent.

With beaches in the south-east of Melbourne being very popular with children and families and the fact that we

obviously like to emphasise healthy outdoor activities, there is some irony that we encourage people to put on a hat, slap on sunscreen and take precautions against skin cancer but there is still a percentage of people who light up cigarettes in the proximity of children in particular and others around them, and their right not to inhale passive smoke is important.

Despite making significant inroads into decreasing smoking rates in Victoria, tobacco remains a leading avoidable cause of cancer and clearly a leading cause of cardiovascular disease for, as has been mentioned, 4000 Victorians per year. I place on record that my father died of lung cancer on 16 February 1996, after having been an addicted smoker. He developed that addiction in the former Yugoslavia, particularly during his periods of imprisonment by the government. It was something he would like to have shaken but was never able to do. People need to understand that these are addictions to a legal product, and in many instances the practices and enlightened views we white Anglo-Saxons may have about cigarette smoking are not necessarily shared by all those who emigrate to this country.

This measure, however, has widespread community support. Some 77 per cent of Victorian adults disapprove of smoking in outdoor areas where children are present, and 74 per cent of Victorians disapprove of smoking between flags at patrolled beaches. That augurs well for this law. Smoke-free areas are even highly supported by a majority of Victoria's smokers, with 62 per cent of Victoria's smokers also disapproving of smoking in outdoor areas where children are present and 58 per cent disapproving of smoking between flags at beaches.

I am pleased that the Department of Health will be providing local governments with funding for a communication strategy, but given the statistics I have just referred to, I believe this law will be largely self-enforced. However, the public needs to be alerted. Evidence from other states suggests that very few penalties are typically imposed but the laws have great prospects for success. Enforcement of the ban will be the responsibility of local government, and a breach will incur a fine of 1 penalty unit, which is currently $141. The ban will be in place for the summer with a fully funded communications campaign; notwithstanding Mr Leane's cynicism, we cannot implement a new law without communicating it to the public.

I commend the government on this initiative, and I also point to some very extensive support for various anti-cancer campaigns across other areas. Obviously no-one wants to see a needless death from a scourge such as cancer, and if this legislation is a step toward reducing the numbers of those who take up smoking, it is a good law.

Motion agreed to.

Read second time.

Committed.

Committee

Clause 1

Mr JENNINGS (South Eastern Metropolitan) — Could the Minister for Health outline for us how many beaches he thinks will be subject to the provisions of this legislation in the coming summer?

Hon. D. M. DAVIS (Minister for Health) — A total of 69 beaches.

Mr JENNINGS (South Eastern Metropolitan) — Regarding the action that is required to prepare for the implementation of this legislation, can the minister outline what resources have been allocated to empower inspectors, to train and support them, and to educate the public in relation to the introduction of this legislation?

Hon. D. M. DAVIS (Minister for Health) — I inform the member that there has been consultation with the Municipal Association of Victoria and individual councils. A training regime will be put in place and there will be public announcements and support for that to explain the rules to the broader community.

Ms HARTLAND (Western Metropolitan) — To follow up on that question: have all councils that will be affected been consulted?

Hon. D. M. DAVIS (Minister for Health) — Yes.

Ms HARTLAND (Western Metropolitan) — I have been in contact with Surf Coast Shire Council, which sent me a package of information it had received, but when I spoke to the City of Hobsons Bay it indicated it had not received any information, and therefore I ask for clarification.

Hon. D. M. DAVIS (Minister for Health) — My information is that all councils have been contacted.

Mr JENNINGS (South Eastern Metropolitan) — We have lost a little bit of continuity because that was a specific question about council consultations and involvement in decision making. My previous question

to the minister was related to the activities associated with the introduction of this scheme and also the resources allocated. The minister's answer to me indicated a range of activities, but did not respond to the invitation to outline the resources that have been allocated and the funding that is available either to councils, lifesaving organisations or to the community in terms of public education. What are the resources that are being allocated to this?

Hon. D. M. DAVIS (Minister for Health) — Approximately $150 000 for community information and $50 000 for the implementation at council level. In addition there is departmental support in terms of information and other flow-on assistance.

Mr LEANE (Eastern Metropolitan) — I just want that outlined. What form will the message that is being sent out take? What media will the government be using? Will it be television ads? Will it be newspapers? How will the general public learn about this important message, as the minister has termed it?

Hon. D. M. DAVIS (Minister for Health) — There will be a range of simple advertisements and also what you might call unpaid media. It is a simple announcement that will quite clearly be of interest to the community, particularly leading into summer.

Mr LEANE (Eastern Metropolitan) — To follow up on that, is the minister saying there will be government-paid advertising in both electronic and print media?

Hon. D. M. DAVIS (Minister for Health) — Simple print media ads, but also earned media, if you want to call it that — media that will reflect the general community interest. So we will make announcements and put out statements, and that will assist.

Mr LEANE (Eastern Metropolitan) — Just to confirm what the minister said: the government is not actually going to pay media outlets to get this message out?

Hon. D. M. DAVIS (Minister for Health) — As I indicated, there will be paid print announcements and also some small paid radio announcements.

The DEPUTY PRESIDENT — Order! Is there anything further on clause 1?

Mr BARBER (Northern Metropolitan) — The Greens would like to explore the issue of any legal contradictions between this law and any by-laws that have already been promulgated by local government, or that could be in the future. As the minister would be aware, Surf Coast Shire Council and Hobsons Bay City Council already have by-laws in this area. Hobsons Bay City Council works by proclaiming certain areas, and it is clear from its maps that those areas are much wider than the area the minister's law would cover. Surf Coast Shire Council has gone very wide. Its by-law says:

> A person must not on the sand area of any beach within the municipal district smoke a cigarette, cigar, pipe or like tobacco substance at any time.

The infringement is 10 penalty units, which is more than the penalty in this bill.

Business interrupted pursuant to standing orders.

QUESTIONS WITHOUT NOTICE

Liberal Party: fundraising events

Mr TEE (Eastern Metropolitan) — My question is to the Minister for Planning. On 30 October 2012 was the minister a keynote guest at a $2000-per-plate Enterprise 500 Victoria fundraiser?

Hon. M. J. GUY (Minister for Planning) — I cannot confirm the cost of the event, but I believe I was at an Enterprise 500 event on that date.

Supplementary question

Mr TEE (Eastern Metropolitan) — I thank the minister for finally getting back to me, following his undertaking. My supplementary question is: were there any developers present amongst the 30 guests and, if yes, was there a departmental note taker present in line with the minister's previous commitments in relation to these matters?

Hon. M. J. GUY (Minister for Planning) — This is interesting, because Mr Tee is now saying that departmental officials should be present at a political party fundraiser. This is interesting. This is coming from the same political party that had no code of conduct and whose Premier, John Brumby, was used for 'professional services' to the wind industry.

Mr Lenders — On a point of order, President, the question to the minister was about his administration and his commitment to take a departmental note taker to meetings he has with developers. The minister is now seeking to debate the question and not answer Mr Tee's question on government administration. I ask you to bring him back to government administration.

The PRESIDENT — Order! I thank the member for his point of order. It is a rather difficult one for me in some respects because I think there is a distinction

between a fundraiser and a meeting in terms of the nature of those events. The question is certainly about a fundraising function rather than a meeting, so I think the minister is entitled to discuss the issue of fundraising. Whilst I would not want him to continue to discuss at length the activities of or make comparisons with previous parties — and I think he has put it on record that he sees a distinction between the basis of the question and past practice, particularly with regard to a fundraising function as distinct from a meeting and the policy of the government in relation to meetings — I think what he said is fair enough in that context. I would hope, however, he would come back to the substance of the question and indicate a response on that.

Hon. M. J. GUY — The one thing the government's code of conduct — which is one more code of conduct than existed under governments in the past — does indeed state, where it is listed: the receipt was provided for professional services to coordinate a dinner with a past Premier, John Brumby, attended by representatives from the clean energy industry. It was $33 000, and then Labor moved a rescission of the government's wind farm changes. That is what our code of conduct does not apply to.

Hospitals: federal funding

Mrs PETROVICH (Northern Victoria) — My question is to the Minister for Health. Can the minister inform the house of the potential impact of federal government funding cuts on rural hospitals, including Ballarat, Bendigo, Barwon, Albury-Wodonga, Goulburn Valley, Wangaratta, Mildura, Portland, Latrobe and Warrnambool?

Mr Jennings — What is on the notice paper? What is on the notice paper today?

The PRESIDENT — Order! I call the Minister for Health, Mr Davis.

Mr Jennings — On a point of order, President, I have been raising my point of order by way of interjection and encouraging the minister to reflect on the fact that he has a motion on the notice paper today, and the opposition understands that it is the intention of the government to debate that motion as part of government business today.

The PRESIDENT — Order! On the grounds of anticipation, I will rule the question out of order.

Planning: zoning reform

Mr BARBER (Northern Metropolitan) — My question is to the Minister for Planning, Mr Guy. Yesterday in response to my question about the missing submissions to the minister's planning zone review, the minister said those submissions were under peer review. Peer review normally refers to someone who has prepared an academic publication and then has that reviewed, whereas in this case it is really the minister's work that is being reviewed by the committee in the form of submissions. Can the minister explain to me what this peer review process consists of and what outcomes it is meant to deliver?

Hon. M. J. GUY (Minister for Planning) — I do not want to get into academic debate with the Australian Greens about the terminology of peer review. Suffice to say, what we want the peer review group to do and to find is well explained in the terms of reference. The government has asked for the submissions, however many there may be, to be peer reviewed in line with the terms of reference and for those involved to come back to us with a recommendation.

Supplementary question

Mr BARBER (Northern Metropolitan) — Do I take it from that that until they make their recommendation to the Minister for Planning, no-one will see these hundreds and possibly thousands of submissions, some of which may be very critical of the minister's planning zones approach?

Hon. M. J. GUY (Minister for Planning) — I think this is exactly the same question the member asked me yesterday. I am not sure it is in order to ask exactly the same question, but I think it was answered when he asked me the same supplementary question yesterday.

Manufacturing: defence industries

Mr KOCH (Western Victoria) — My question without notice is to my colleague the Honourable Richard Dalla-Riva, the Minister for Manufacturing, Exports and Trade. Can the minister inform the house of how the Victorian government is working to promote and secure Victoria's defence industries into the future?

Hon. R. A. DALLA-RIVA (Minister for Manufacturing, Exports and Trade) — I thank the member for his question. We know Victoria's defence industry has a highly skilled workforce and provides economic benefit to Victoria. We also know we have proven capability across all aspects of the defence industry, be it military vehicles, be it naval

shipbuilding, the joint strike fighter F-35, munitions or defence research — and the list goes on. We also understand that we need to be at the forefront of promoting that industry and improving its competitiveness moving forward. We have also seen that we need to be a strong advocate for Victoria's capability.

The federal government's white paper has indicated there will be a significant amount, in the vicinity of $150 billion, of available procurement for the defence industry over the next 10 years. Of course we need to recognise that we are in competition not only with other states but with other countries.

In that respect I was very pleased two weeks ago to host the Land Warfare Conference that was held here in Melbourne, where we saw on display the Thales Hawkei vehicle. This has been listed as being the preferred manufactured and supported in Australia option for the $1.5 billion LAND 121 phase 4 program. This is designed to pick up 1300 protected and unprotected light vehicles. We — both this government and the former state government, I must say — have advocated securing as much as we can because of its importance to manufacturing and the supply chain.

On 30 October we hosted the dinner for the key stakeholders, and at that stage I launched the Victorian defence industry strategy. This works in collaboration with Defence Council Victoria, which — with Richard Smith as chair, Ken Loughnan and the various council members, of whom many members would be aware — has a significant involvement in the defence industry.

What we have decided as a government and what I have indicated through the department is that we need to set a very clear strategic direction for the defence industry. Opportunities have arisen with the recent arrival of the landing helicopter dock, the development of Australian defence apparel and the developments occurring across the munitions area, and we have seen BAE Systems, Chemring and a range of other military companies setting up here.

What we are aiming for in our defence strategy is to target the opportunities. We do that through not only targeting companies in the supply stream but, as I have said, by ensuring that manufacturing companies are given an opportunity to be involved in the defence industry. I have always said I would like to have every company involved at some level in defence.

Mr Somyurek interjected.

Hon. R. A. DALLA-RIVA — My Somyurek says, 'Do something'. Here it is: I have the defence strategy. The strategy clearly lays out our agenda. This is what I find fascinating. We have our agenda for the manufacturing strategy, and opposition members do not get it, they do not understand — and all we hear are interjections.

Honourable members interjecting.

Hon. R. A. DALLA-RIVA — I can say that we have a very clear, coherent direction about how we want to engage the defence industry, how we will advocate for Victoria's industry capabilities in national and global markets, how we are going to assist small and medium enterprises — which make up a huge component of the manufacturing base which was sorely forgotten by those opposite — how we are going to be internationally connected, and we have raised that time and again through our international engagement strategy, and how we are going to support collaboration. I was very pleased to — —

The PRESIDENT — Time!

Planning: land supply

Mr TEE (Eastern Metropolitan) — My question is to the Minister for Planning. I refer to the discussion paper released by the ministerial advisory committee on 26 October. The committee says at page 6:

> There is now sufficient land currently identified for future urban development to cater for about 30 years of suburban growth …

Does the minister agree with that assessment?

Hon. M. J. GUY (Minister for Planning) — I am disappointed. I was just waiting to make references to Eddie Obeid or Eric Roosendaal. I was just waiting for some more questions.

The committee does refer to land supply needs, and that is why this government went through a process of logical inclusions, which I might say was opposed by the members opposite. We went through a process of logical inclusions which identified just under 6000 hectares to add to the urban growth boundary, which we have now done. It has been gazetted and — astoundingly — was not opposed by the Labor opposition in the lower house but was opposed in the upper house. The committee's belief is that there is sufficient land supply, and that is one point that is out there for discussion. It is one that the government, post the logical inclusions advisory committee, is happy to take the committee's advice on until a final strategy is released.

Supplementary question

Mr TEE (Eastern Metropolitan) — I take it from the minister's answer that he is prepared to take its advice. The Liberal Party election commitment was to have 20 to 25 years worth of land supply in growth areas of Melbourne, and it promised to conduct a biennial audit of land supply in Melbourne's growth areas to ensure that adequate supply exists. The minister has a biennial audit which is due in November. In view of the findings of the ministerial advisory committee that there is 30 years of land supply existing, will the government be conducting that audit?

Hon. M. J. GUY (Minister for Planning) — At the outset, let us get one thing right: a biennial audit is not due in November; that is just factually not correct. We have only just gazetted the logical inclusions two or so months ago in the year 2012, so there is no biennial audit due in November. The government has said that the metropolitan planning strategy needs to be in place first before a biennial audit is proceeded with. The metropolitan planning strategy will come into place next year, and that will precede any proposed dates that Mr Tee may wish to pick up in relation to two years on from the logical inclusions process, and the government is on track to do both.

Housing: South Melbourne development

Ms CROZIER (Southern Metropolitan) — My question is to the Minister for Housing, Wendy Lovell. Can the minister provide details of any innovative social housing developments recently completed in the South Melbourne area?

Hon. W. A. LOVELL (Minister for Housing) — Last week I was delighted to open the recently completed social housing development at 330 Bank Street in South Melbourne. I was joined at that event by the federal Minister for Housing and Homelessness, Brendan O'Connor, and also my colleague Georgie Crozier. The development was the vision of the Roman Catholic Trust Corporation for the diocese of Melbourne, and it partnered with South Port Community Housing and the federal and state governments to deliver this project. South Port Community Housing Group will support the 40 tenants and it will manage the property. It will provide a much-needed alternative to the ageing bed-sits and rooming houses in the area.

South Port is a registered housing provider and it manages more than 250 tenancies. It is an independent community-based organisation that is committed to assisting disadvantaged people to avoid social exclusion. This project was funded through the Nation Building program. There was an $11.9 million contribution through Nation Building. A further $1.05 million was contributed by South Port Community Housing, which has also committed to providing a further $2.08 million to fund other social housing properties in the area. That was part of a leverage from this particular development.

The development is made extra special in that it will house one of the major advocates for the project, Father Bob Maguire. As members will be aware, Father Bob is an institution in the South Melbourne area and has recently retired from his full-time role as the priest of the Catholic parish of Sts Peter and Paul. Father Bob commented that after 150 years of the parish's service to the community, this development continues the long tradition of caring for inadequately housed neighbours. It is only fitting that, after a lifetime of caring for others, Father Bob Maguire is now being given the opportunity of having a safe and affordable home in his retirement.

I wish Father Bob and all the tenants of the Bank Street development well in their new homes. I hope they make a really sound community of these units and that they enjoy the rest of the community that is there on offer to them in the South Melbourne region.

Minister for Health: Mildura press conference

Ms BROAD (Northern Victoria) — My question is to the Minister for Health, and I ask: can the minister explain to the house why Mildura's only local daily newspaper, the *Sunraysia Daily*, was not informed of his press conference at Mildura hospital last Thursday morning?

Hon. D. M. DAVIS (Minister for Health) — I can begin by explaining to the house the government's very strong commitment to Mildura hospital and its determination to see the expansion at Mildura hospital, including the emergency department and mental health beds. I can tell the house that I was in Mildura last Thursday to announce a $480 000 boost for cancer services at Mildura hospital. It was an important announcement that will, through a $430 000 state government commitment and a matching $50 000 federal commitment, enable the hospital to double its capacity in its oncology and chemotherapy service and will provide an additional four chemotherapy chairs.

The project will also provide an additional treatment area, an isolation room, a counselling room and extra space. The Mildura hospital obviously plays a critical role in the north of the state and services not just Mildura and its region but also South Australia, and it

treats many patients from southern New South Wales too. This money was provided out of the Rural Capital Support Fund, an election commitment of the government. This is an important announcement that has been almost universally welcomed, and I look forward to Ms Broad also welcoming the $480 000 of additional money for oncology and chemotherapy in Mildura. It is an important announcement.

On the matter of my meeting with the staff and the community advisory board, I was very happy to meet with them at the hospital and also inspect a number of facilities, talk to the CEO and other senior officers at the hospital and visit the oncology ward and talk to a number of the nurses there — who, I might add, very warmly welcomed the additional $480 000 for cancer services. That stands in stark contrast to Labor's behaviour when it was in government. It refused to expand services at the hospital. It turned the tap off and virtually starved the hospital over 11 years. It is this government that has been prepared to make an election commitment to expand the emergency department and the mental health unit. It is this government that has been prepared, through the Rural Capital Support Fund, to put in an additional $480 000 for oncology services, recognising the distances and recognising the challenge and the need for additional services in Mildura.

The population of Mildura is growing — although you might be surprised if you talk to the federal Treasurer, who says that Victoria's population is falling and fell by 11 000 last year. I believe the population grew, including in Mildura, and that is why we have expanded the Mildura hospital budget this year — in contrast to the commonwealth, which is seeking to cut the budget of Mildura hospital — —

The PRESIDENT — Order! I am a little surprised that I have not had a point of order from the opposition, because I think the minister's answer has ranged far and wide.

Hon. D. M. DAVIS — It is contextual.

The PRESIDENT — Order! It is contextual and the minister does have time to respond to the question, which was fairly specific, and he has not got to that yet — —

Hon. D. M. DAVIS — I have.

The PRESIDENT — Order! I do not think so, because the question was actually about the local newspaper not being in attendance and why it was not invited. The minister has given a great appraisal of the particular project, but I am a little uncomfortable with his moving to attack the federal government on this question, which I do not think gave him that ambit.

Hon. D. M. DAVIS — The Mildura hospital, though, will face a $1.2 billion cut if the federal government does proceed, and I would oppose that. In terms of the announcement itself, I was in Mildura briefly for the purpose of that announcement to meet also — —

Honourable members interjecting.

The PRESIDENT — Order! The minister is responding to my comment, and favourably, to the benefit of the house. He does not need that sort of background noise when he is addressing the question, and I thank him for doing that. The minister, without assistance.

Hon. D. M. DAVIS — President, you will also be interested to know that I visited the *Sunraysia Daily* offices and gave an interview to a senior journalist there about the announcement and was quite proud to make that announcement with Peter Crisp, the member for Mildura in the Assembly and a very strong advocate for his local hospital. I have to say that Ms Broad was part of a government that disaggregated the hospital, that split apart the arrangements — —

The PRESIDENT — Time!

Supplementary question

Ms BROAD (Northern Victoria) — I thank the minister for his response, and I am quite sure that the *Sunraysia Daily* would have been very pleased to have covered his announcement, if only it had been invited. Given that the Premier promised the people of Victoria that:

> Accountability and transparency will be the principles that underpin —

their —

> government —

when he took office, will the minister take personal responsibility for ensuring that the *Sunraysia Daily* is invited to all his future media conferences in Mildura, should he give any?

Hon. D. M. DAVIS (Minister for Health) — I am very happy to work with all media outlets. As I indicated, I visited the *Sunraysia Daily* office; I spent 25 minutes at that office giving an interview to a senior journalist and, contrary to Ms Broad's comments, the *Sunraysia Daily* actually did cover the visit, the

Mildura Weekly covered the visit, as did the radio stations — every radio station in town. There was wall-to-wall coverage about the almost $500 000 in additional money for cancer services. WIN News covered it as well. Every single media outlet in town covered the nearly $500 000 that will be spent on additional cancer services. Ms Broad might not think that is a good thing, but everyone in Mildura thinks it is a good thing, and people are speaking up strongly in favour of it. She ought to too. I know she disaggregated the hospital and was part of a cabinet that split apart the Ramsay and Motor Trades Association of Australia sections, and she has to carry that cross — —

The PRESIDENT — Time!

Information and communications technology: data centres

Mr P. DAVIS (Eastern Victoria) — I am pleased to have the opportunity to ask a question without notice to the very learned Minister for Technology, Gordon Rich-Phillips. I ask the minister to inform the house on how Victoria is developing as a data centre hub.

Hon. G. K. RICH-PHILLIPS (Minister for Technology) — I thank Mr Davis for his question and for his interest in the continued development of the Victorian ICT industry. As Mr Davis has mentioned, data centres are a great opportunity for ICT here in Victoria. With the shift to cloud computing and software as a service we have ever-growing demand for the provision of data centres throughout Australia and particularly here in Victoria.

We have great competitive advantages in the data centre market in Victoria. One of the great needs that we can satisfy in Victoria is land supply on the fringe of the city. A lot of data centre operators do not want to be located in the CBD for the security of their facilities; they like to be located on the edge of the CBD and in the inner industrial areas around the CBD. Victoria is well placed to provide that type of land supply. We also have very competitive electricity costs. Electricity costs are the single largest input costs to data centre operations. The third area where we are very competitive is our good climate. One of the key ways to reduce the cost of running a data centre is to locate it in a place with a temperate climate so that cooling costs can be minimised. In all those three areas Victoria ticks the boxes very strongly. As a consequence we are seeing a great flow of investment into the data centre industry in Victoria this year.

I was very pleased to see this year the opening of Metronode's new data centre at Deer Park with an investment of $150 million in capital expenditure. Earlier this year I was pleased to go to the groundbreaking ceremony for Digital Realty's two new data centres at Deer Park. Mr Elsbury joined me at that announcement earlier this year. That represented a commitment of $150 million in capital expenditure. NEXTDC has announced its facility in Port Melbourne with an investment of $130 million. Earlier this year in the electorate I share with Mrs Peulich I was pleased to open Fujitsu's new facility, representing an investment of $60 million in capital expenditure. We have also seen Interactive's new investment in Port Melbourne, with a capital commitment of $30 million, creating 300 new jobs at that data centre. On top of this, Telstra has announced a major upgrade of its cloud computing infrastructure with a commitment of around $800 million, which will see substantial further investment here in Victoria.

We have a very good story to tell on the development of the data centre industry in Victoria. We have seen investment of more than $530 million in the 2012 calendar year alone. This underscores the strength of the ICT industry in Victoria, it underscores the strength of the Victorian economy and it underscores the confidence that investors have in Victoria.

Assistant Treasurer: office expenses

Hon. M. P. PAKULA (Western Metropolitan) — My question is to the Assistant Treasurer. This week I received a response to an FOI request for information detailing ministerial office expenses. There was one small item that intrigued me regarding the minister's office. There is an invoice, and it is for a small amount of money, for a lecture by Andrew Bolt on freedom of speech at the Institute of Public Affairs. I have no doubt it would have been very entertaining, and Mr Finn would have enjoyed it very much. It would have been a very enjoyable afternoon. My question is: if the minister or one of his staffers attends a lecture by Andrew Bolt on freedom of speech — and I am absolutely not worried about the sum, it is a very small sum; I am worried about the principle — can he explain why it is appropriate for his department, hence the taxpayer, to have paid for that?

Hon. G. K. RICH-PHILLIPS (Assistant Treasurer) — I thank Mr Pakula for his question. I can say to Mr Pakula that I have not attended a lecture by Andrew Bolt on freedom of speech. As to the substance of the question, I am happy to take that on notice and come back to him. Clearly there are a large number of individual items in a ministerial office's expenditure. I am not aware of the particular item he is referring to, and I will seek some further information.

Supplementary question

Hon. M. P. PAKULA (Western Metropolitan) — Simply by way of supplementary question, I am happy to provide the Assistant Treasurer with a copy of the invoice. I assume that if the minister was not the attendee at this $15 event, it was a member of his staff, and a member of his staff has presented a receipt for reimbursement. Am I right in saying that that is the only logical conclusion?

Hon. G. K. RICH-PHILLIPS (Assistant Treasurer) — I thank Mr Pakula for his supplementary question. I can say to Mr Pakula that there are a number of reasons that could be there, including an error in the accounts. I can assure him that that happens from time to time as well; we have seen other items charged to offices incorrectly. I will take the matter on notice, and I will seek some further information.

Footscray: urban renewal

Mr FINN (Western Metropolitan) — My question without notice is directed to the visionary Minister for Planning, and I ask: can the minister advise the house what action the Baillieu government has taken to advance urban renewal in the new capital of Melbourne's inner west, Footscray?

Hon. M. J. GUY (Minister for Planning) — Mr Finn and Mr Elsbury know, as they are from the western suburbs, that the mantra of this government is 'the right development in the right locations', and that is indeed what we are getting on with and what this government is focusing on when it comes to urban renewal. I had much pleasure in recently approving a new apartment complex in the central Footscray activities area. It is a $318 million development which will be a central part of the Footscray urban renewal precinct that will breathe new life, as Mr Finn and Mr Elsbury know, into Melbourne's inner western suburbs and, as Mr Finn correctly says, the capital of Melbourne's new inner western suburbs.

It is a five-stage development of two 17-storey towers, one 19-storey tower and two 32-storey towers on a 9500 square metre site. There will be 970 apartments in total, 1030 car spaces, 21 separate retail spaces throughout the ground level and a subterranean supermarket. As I said, it is a near $320 million investment — $318 million. This is about the right development in the right locations. This government is ensuring that development in defined activities areas allows development and investment to continue in Melbourne's activities areas, particularly in the western suburbs, and particularly in Footscray, which has a massive future ahead of it.

As Mr Finn and Mr Elsbury know, Footscray has a massive future ahead of it. There is the same number of kilometres between Footscray and Docklands as there is between the CBD and a number of major activities areas, such as South Yarra on the other side of the city. Footscray is in close proximity to our ports. It is in close proximity to the standard gauge railway, the broad gauge railway and new jobs precincts. It has a bright future, and as such the Baillieu government has much pride in bringing forward this development to provide an impetus to the development of the central Footscray activities areas.

With the Baillieu government's zone reform package, we will take a lot of pressure off the existing streets surrounding that activities area where existing urban character can be preserved. Hundreds of apartments and new dwellings can be focused in areas that the community know and accept will sustain urban change, but we will allow for the preservation of existing urban character outside those activities areas. As such, I have much pleasure in informing the house of the approval of that project and great new confidence in Melbourne's growing inner western suburbs.

QUESTIONS ON NOTICE

Answers

Hon. D. M. DAVIS (Minister for Health) — I have answers to the following questions on notice: 8551, 8558, 8560, 8562, 8589, 8715–21.

TOBACCO AMENDMENT (SMOKING AT PATROLLED BEACHES) BILL 2012

Committee

Resumed discussion of clause 1.

Mr BARBER (Northern Metropolitan) — As I was saying before question time, the minister would be aware that subsections 111(2) and (3) in the Local Government Act 1989 state in relation to the power to make local laws that:

> (2) A local law must not be inconsistent with any act or regulation.
>
> (3) A local law is inoperative to the extent that it is inconsistent with any act or regulation.

Has the minister taken advice on how this law will interact with the existing by-laws of local governments

in the city of Hobsons Bay and Surf Coast shire or any future council that might like to follow their lead?

Hon. D. M. DAVIS (Minister for Health) — I can indicate to the member that the government has strongly supported the tobacco control steps various councils — three in particular — across the state have taken on their beaches. We welcome those steps and have worked with those councils. We are also aware that this bill will interact with those steps, but it will provide consistency and predictability across the state for those areas it seeks to regulate, which are between the flags and within 50 metres of a flag. That will provide a consistent position across the state. At the same time councils can continue to regulate their beaches in a broader way, and we would welcome that. In the case of Surf Coast shire, for example, where the by-laws go much further and there is a comprehensive ban, we would welcome that continuing.

The government believes there is no inconsistency. The legal discussions I have had suggest that there is no difficulty with those laws. I am very happy to indicate that we will talk with councils if any difficulty is experienced. However, our understanding is that that will not be the case.

Mr BARBER (Northern Metropolitan) — So in drafting this law it is the government's clear intent that local government by-laws will be able to operate without any inconsistency in areas — that is, physical areas — that are not specifically dealt with in this bill?

The DEPUTY PRESIDENT — Order! I will take this as the last question on this topic. This relates to a proposed amendment to clause 3, as I understand it, and we are still on clause 1. I am happy to invite the minister to respond, but I would prefer further discussion on this issue to be held over to the relevant clause.

Hon. D. M. DAVIS (Minister for Health) — Deputy President, I think the point you make is right, it relates to what is considered in clause 3, but I am happy to answer it at this point. In the sense of any broader aspects, I can say that we do not believe there will be any issues. We believe we can work with local government in this way. As I said, we strongly encourage local councils to regulate other aspects of tobacco control both on beaches and beyond.

Clause agreed to; clause 2 agreed to.

Clause 3

Mr BARBER (Northern Metropolitan) — Ms Hartland has foreshadowed and circulated an amendment which would make the question I just raised absolutely clear. That amendment simply states:

> Nothing in this section limits the operation of a local law made under the Local Government Act 1989 applying to an area other than the area to which subsection (1) applies.".

Subsection (1) of course refers to the patrolled beach, the flags and 50 metres either side.

Hon. D. M. DAVIS (Minister for Health) — I think I have covered that. Yes, the answer is it does not in any way impinge more broadly on other actions of local government.

Mr JENNINGS (South Eastern Metropolitan) — I want to indicate to the chamber that it is not the intention of the Labor Party to support this amendment subsequent to advice that the minister just confirmed, which is what I believe the legal framework in Victoria would allow for, which is that the continuity of existing by-law provisions made by councils over the land that they are responsible for will not be adversely impacted on or limited by this new piece of legislation.

Hon. D. M. Davis — And indeed future ones.

Mr JENNINGS — The minister has interjected 'nor future ones', so in fact the existing by-law provisions will be saved and protected into the future and not adversely impacted on or restricted by this new law. If the minister can confirm that that is the advice that he has received from his legal officers, the solicitor-general and/or parliamentary counsel, then I will be satisfied.

Hon. D. M. DAVIS (Minister for Health) — Our legal officers are my source of information.

Mr Jennings — You can do better than that. You could say parliamentary counsel.

Hon. D. M. DAVIS — I think that to be true of parliamentary counsel, but I am not absolutely certain of that. Mr Jennings may have had discussions in respect of that.

Mr BARBER (Northern Metropolitan) — My approach is a bit different to that of Mr Jennings. I do not think it is necessary for the minister to discuss the advice the solicitor-general will give on what we are about to do. Generally it is better for us to make the laws cognisant of what the legal implications might be. The government has given us its assurances that in preparing this law it is not its intent to override local government activities outside the physical area, and that certainly gives comfort. However, there is grounds for dispute in this area of section 111 and its application. It

has been disputed in a number of cases. I hope it is not disputed in this case, and I hope if it is disputed, the result is positive and what we all want, which is that the laws that restrict smoking in public places are upheld, whoever might promulgate them. Nevertheless, the Greens believe that we have here quite an elegant amendment that makes it quite clear.

The DEPUTY PRESIDENT — Order! Before Mr Barber goes any further, Ms Hartland has not yet put her amendment. If we want to go down the path of discussing it, we should do this properly. Unless Mr Barber has general comments on clause 3 and if he wishes to continue having a discussion about the amendment, I need Ms Hartland to move her amendment.

Mr BARBER — The amendment was circulated during the second-reading debate, Deputy President, but I will yield to your guidance.

The DEPUTY PRESIDENT — Order! The amendment may have been referred to during the second-reading debate, but it needs to be formally moved in order for us to have a proper discussion in this stage of the committee. I invite Ms Hartland to move her amendment, and I will then give Mr Barber the opportunity to make further comment.

Ms HARTLAND (Western Metropolitan) — I move:

Clause 3, after line 31 insert —

"() Nothing in this section limits the operation of a local law made under the **Local Government Act 1989** applying to an area other than the area to which subsection (1) applies.".

Hon. D. M. DAVIS (Minister for Health) — I confirm that the government will oppose the amendment. We believe it is unnecessary and if included, might have unintended effects. It is our intention to support local government's activities in this area and to encourage them, and we do not believe this will assist. We think it is unnecessary. I am informed that the section of the Local Government Act does not have the effect which the proposed amendment is attempting to reverse.

Either way, it is very clear on a practical level that in other states there have not been great difficulties with big legal cases in this area. As a more general contextual point, a self-enforcing approach has operated, and there has been broad general community support for bans on smoking on beaches at various times in different states. It has not been the experience that large legal activity has occurred. What has occurred is that self-policing has been the prominent feature in all those states that have implemented similar bans.

Ms HARTLAND (Western Metropolitan) — In his answer the minister talked about unintended consequences. Could the minister explain what he means by that?

Hon. D. M. DAVIS (Minister for Health) — That is the advice I have received. I am also advised that it is a cleaner and more straightforward mechanism to leave the bill as it is.

Ms HARTLAND (Western Metropolitan) — I would still like to know what the unintended consequences are. I do not think that question has been answered.

Hon. D. M. DAVIS (Minister for Health) — I can confirm what I have indicated — that is, our advice is that the amendment is likely to have unintended effects. They were not enumerated in the advice, but it is clear that this amendment is unnecessary, and the government intends to work with local government to get the best outcomes.

Committee divided on amendment:

Ayes, 3

Barber, Mr	Pennicuik, Ms (*Teller*)
Hartland, Ms (*Teller*)	

Noes, 33

Atkinson, Mr	Lovell, Ms
Broad, Ms	Mikakos, Ms
Coote, Mrs	O'Donohue, Mr
Crozier, Ms	Ondarchie, Mr
Dalla-Riva, Mr	Pakula, Mr
Davis, Mr D.	Petrovich, Mrs
Davis, Mr P.	Peulich, Mrs
Drum, Mr	Pulford, Ms
Eideh, Mr	Ramsay, Mr
Elsbury, Mr (*Teller*)	Rich-Phillips, Mr
Finn, Mr	Scheffer, Mr
Guy, Mr	Somyurek, Mr
Jennings, Mr	Tarlamis, Mr
Koch, Mr	Tee, Mr
Kronberg, Mrs	Tierney, Ms
Leane, Mr (*Teller*)	Viney, Mr
Lenders, Mr	

Amendment negatived.

Clause agreed to; clauses 4 and 5 agreed to.

Reported to house without amendment.

Report adopted.

Third reading

Hon. D. M. DAVIS (Minister for Health) — I move:

That the bill be now read a third time.

I thank those members who made contributions. This is one of those occasions where members from all sides can join together in taking an important step to prevent ill health through a legislative action that will ensure that a clear message is sent across our beaches this summer and into the future. Families and children should not encounter smoking in the patrolled areas between the flags or within 50 metres of the flags. I thank honourable members and indicate our support for and willingness to work with local government on implementation of this legislation.

Motion agreed to.

Read third time.

Sitting suspended 12.57 p.m. until 2.03 p.m.

RETAIL LEASES AMENDMENT BILL 2012

Second reading

Debate resumed from 13 November; motion of Hon. G. K. RICH-PHILLIPS (Assistant Treasurer).

Mr TEE (Eastern Metropolitan) — I welcome the opportunity to speak on the Retail Leases Amendment Bill 2012, which seeks to reduce some of the red tape associated with the retail sector. It is true that the retail sector is under considerable threat at the moment. We have seen the high value of the Australian dollar, we have seen international competition through internet sales and more recently we have seen the government's zone planning amendments, which will have a major impact on the sector. The bill deals with a requirement for prospective landlords to provide a disclosure statement before entering into a lease, and it will be important to consider whether or not some of the changes to the zones will need to be part of that disclosure, because if you are being frank with prospective lessors, then you need to disclose some of the threats to the retail sector that may arise.

As I said, there is no greater threat in the state sphere than changes to the planning zones. We know that these changes will allow more commercial development in residential areas. We know that it would mean that existing retail businesses would need to compete with food-and-drink premises and offices in residential streets, where they will pay lower rent and where they will be competing with existing businesses. We know that those new businesses in residential streets will impact on the amenity of residential streets. So far as retailers are concerned, we know that those new businesses will not have the same standards or the same requirements, whether that be, for example, in terms of parking or a requirement to obtain a permit. The new businesses can be established as of right; there is no need for a permit. Knox City Council, for example, says that for retailers this change is likely to have long-term detrimental consequences for existing commercial precincts.

We have also seen that offices of any size can be built in retail areas, so what you will see is that businesses — like car and boat retailers, a Toyota dealership or a Bunnings, landscape garden suppliers, trade suppliers or primary produce retailers — can again set up as of right, without a permit or consultation with existing retailers. They will be able to establish as of right, and the legal advice from law firms like Maddocks is that this change could profoundly alter the make-up and function of retail precincts.

We have seen other changes, like shops and supermarkets setting up in commercial and industrial zones. What we will see is that the retail anchor, the supermarket, can move out of the retail area into a commercial or industrial zone and pay cheaper rent. This will of course have a major impact on existing small businesses, which will see the foot traffic associated with people walking to the supermarket disappear. There will be less activity in these retail precincts and, again, this will have a major impact on the retail sector. Maddocks has said that this has the potential to severely undermine the role of existing activity centres.

It is timely that we have a bill that seeks to reduce red tape, but it makes a marginal difference compared to the tsunami that is confronting the retail sector under these changes. Under these changes we will see a major expansion in the types of businesses in a commercial zone; in fact the only prohibited businesses will be jails, pig farms or major facilities like the MCG. Everything else will either require a permit or can occur as of right. If we look at the suite of changes that is confronting the retail sector and the impact that those changes are going to have as a whole on that sector, we can only concur with the views of property consultants like Urbis, who have said that some centres will change and that others may fail.

As we head towards the end of the year, what lies over the horizon for the retail sector is uncertain. Third parties like councils, Maddocks and property

consultants like Urbis have said that the retail and small business sectors under this government are facing a dreadful and unclear future. There is a mounting concern about the impact these zones, which will be introduced next year, will have on those sectors.

While we do not oppose the bill, it tinkers at the fringes in terms of support for or assistance to the sector. The major damage this government will cause is through the zone changes. This bill will do, and this government has done, nothing to ameliorate the impact those changes will have on the sector. As I said, these are not simply the concerns of the opposition; they are the concerns of a cross-section of stakeholders, including local councils and property consultants, and they are consistent with the legal advice we have received. While we do not oppose the bill and its efforts to reduce red tape, they are marginal compared with the catastrophe that will confront the retail sector next year. With those few words, I advise the house that the opposition will not oppose the bill.

Mrs KRONBERG (Eastern Metropolitan) — I am pleased to rise to speak in the debate on the Retail Leases Amendment Bill 2012. I am overjoyed that we have a bill such as this before the house, because the Baillieu coalition government has pledged to reduce red tape and business costs by 25 per cent, and this makes a good start. Anything that makes doing business in this state easier and more expeditious for the hardworking owners of businesses, particularly those across the retail sector, is welcome. There are many unsung heroes in the landlord community. Landlords may well have retail leases, among other things, within the purview of their property holdings, and they may have a lot of other business to attend to as well. This legislation is a welcome thing.

Turning to the formalities of the bill, it is essentially about repealing section 25 of the Retail Leases Act 2003, thereby removing unnecessary administrative and compliance costs on landlords of Victorian retail premises. As it stands, section 25 requires a landlord to notify the small business commissioner of certain details of a new or renewed retail lease within 14 days of signing the lease. In this day and age, having to do that sort of thing within 14 days is probably quite onerous — we are talking about 14 elapsed days, not 14 working days — and would add to the stresses associated with a transaction. I dare say that landlords across the state at the moment are probably mightily relieved when a new retail lease is brought to bear or one is renewed because there is so much pressure on the retail sector, as we all know.

One of the things the landlord needs to do within this 14-day period is provide the small business commissioner with the address of the retail premises, the name and address of the landlord and tenant, the date the lease was signed and any other matters prescribed by the regulations. It is interesting that even though it is fairly clear what the small business commissioner would be expecting by way of a submission from the landlord associated with the retail lease, many people have not been able to comply with the requirements. The integrity of the information has been degraded over time since the regulations came to bear in 2003, and it has become redundant. Perhaps this is a reflection on landlords for whom English is a second language. A whole host of factors affected the quality of the material the small business commissioner was aggregating.

I turn to some of the other aspects of the bill. It repeals subsections 84(1)(g) and 84(1A) of the act, which require the small business commissioner to create and maintain a register of the information provided under section 25. History tells us that the small business commissioner receives an average of approximately 13 800 retail lease notifications a year both in hard copy and online. The statutory notification requirement of the register, established in 2003, provided an information channel by which the commissioner could contact retail lease tenants and their landlords. The database became unreliable — in some instances it was inaccurate, and in others it was incomplete — so we had degradation of the material.

Since 2003, when the principal legislation was passed, we have seen the march of technology having a great impact on not only the retail sector in the ways highlighted earlier but also the way business communicates with the marketplace and the way it would want to communicate with regulators and other compliance bodies. This bill reflects the government's coming to grips with the reality of the present circumstances as to how businesses communicate in 2012. Much information is available through sources on the internet, including dedicated websites such as that of Business Victoria, which supports small business activity in the state.

The original register information has not been used for its intended purpose, and the whole thing has become redundant. It has become a true burden on business, and it is probably not too strong to say that it has become a bit quaint and old fashioned in terms of the march of progress along technological platforms.

It is also worth including commentary from the Productivity Commission, because it conducted two

major reviews for the Office of the Small Business Commissioner and it highlighted the redundant nature of section 25. The repeal is also being recommended by the Victorian Competition and Efficiency Commission. The high point is that this is another example of the Baillieu coalition government upholding its election promises and bringing to bear real change that supports the business community of Victoria.

This will make life a lot easier for people who already have to spend a lot of time in their business day dealing with quite onerous compliance burdens on a daily, weekly, monthly, quarterly or annual basis instead of meeting and expanding their viability in the marketplace. This bill tidies things up and brings them up to date, and it simply makes doing business in Victoria a lot easier. I recommend the bill to the house.

Ms CROZIER (Southern Metropolitan) — I am also pleased to speak briefly on the Retail Leases Amendment Bill 2012, and I am pleased that members opposite are not opposing this bill. As highlighted by my colleague Mrs Kronberg, this bill is going to cut red tape and make business easier to conduct in this state, especially in the area of retail, which is under significant pressure in the current economic climate. Anything we can do to support business by cutting red tape will assist the very important retail sector. This piece of legislation is intended to reduce red tape and decrease the regulatory burden. It is part of the coalition government's election commitment to slash red tape, and the government is supporting small business and business in general.

The bill introduces a number of amendments clarifying the obligations that apply to prospective landlords. When people enter leases, which is sometimes a very large commitment for them, they need to understand what they are signing up for. The bill makes amendments to sections 15, 17 and 23 of the Retail Leases Act 2003 to confirm and enhance protection for prospective tenants.

The amendment to section 15 requires a landlord to provide a tenant with a copy of the proposed lease agreement and to attach a brochure of information about the services of the small business commissioner. The amendment to section 17 requires a landlord to provide a prospective tenant with a copy of the proposed lease along with a disclosure statement seven days before the lease is signed. As I said at the outset, that is to ensure any prospective tenant has enough time to consider the implications and the clauses of the lease. That is an important aspect as often leases are entered into by people going into business for the very first time, and they should be supported when doing so. They need to understand what they are getting themselves into, but often, as many of us who have entered into, been part of or started up a small business would know, there are risks associated with going into business. Those risks need to be identified, and this bill will assist in those issues.

Retail is a very important part of our economy. Small businesses and those businesses that employ tens and hundreds of thousands of Victorians contribute a huge amount to the Victorian economy, and this bill will cut red tape for many people. It has been applauded by industry groups and, as was highlighted by Mrs Kronberg, the Productivity Commission and the Victorian Competition and Efficiency Commission have supported these moves and have been recommending them for quite some time. It is estimated that the savings to Victorian retail landlords will be in the vicinity of $700 000 annually, or a saving of $50 per notification that would otherwise have to be done.

It is really a common-sense proposal because of what is presently available with the use of databases. Notifying changes to the small business commissioner in the manner it has been done is time consuming and quite redundant in 2012 when technological advances have led to enhanced and updated databases and there are mechanisms to register and maintain details in a way that means they can be easily updated.

I speak on a regular basis to small businesses and retail outlets in my electorate of Southern Metropolitan Region. They have concerns in relation to the current economic climate. They would dearly love to have more confidence instilled from a national perspective. There is a lot of scepticism in the business community about certain aspects that are impacting the entire Australian economy. I am pleased to say that the Victorian coalition government is doing an enormous amount to instil confidence locally here in Victoria.

The government is undertaking other measures to assist retail more generally. There have been a number of funding grants to traders associations, for instance. I have been talking to a number of traders associations within my electorate who are very supportive of those initiatives that will give local traders — —

Mr Koch interjected.

Ms CROZIER — Chapel Street is an excellent example, Mr Koch, of a very vibrant, very good retail precinct in Melbourne. It is iconic, as Mr Koch knows; I am sure he has been down there a number of times. It provides a huge economic boost to this state and should be supported.

The member for Prahran — —

Mr Koch interjected.

Ms CROZIER — You raise a very good issue. The clearways issue affected retail right across the area, right down Chapel Street, High Street, Malvern Road and Toorak Road — all those areas. Mr Newton-Brown, the member for Prahran in the Assembly, and my parliamentary colleague Mrs Coote led the charge to remove clearways for years because of the huge impost they were going to place on those retail outlets, and they should be congratulated. There has since been a great boost to the local economy. Anything we can do to support retail, like getting rid of clearways, an initiative which was applauded and supported, is a further demonstration of the coalition government's commitment to supporting small business and retail.

In conclusion I reiterate that this is a good piece of legislation. It will reduce red tape for landlords and provide increased protection for tenants. It is important that we support small business. This important piece of legislation will instil further confidence in our retail sector across Victoria. I commend the bill to the house.

Motion agreed to.

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

Third reading

Motion agreed to.

Read third time.

FREE PRESBYTERIAN CHURCH PROPERTY AMENDMENT BILL 2012

Second reading

Order of the day read for resumption of debate.

Declared private

The DEPUTY PRESIDENT — Order! Having had the opportunity to examine this bill, I am of the opinion that it is a private bill.

Hon. M. J. GUY (Minister for Planning) — I move:

That the bill be dealt with as a public bill.

Motion agreed to.

Second reading

Debate resumed from 13 September; motion of Hon. G. K. RICH-PHILLIPS (Assistant Treasurer).

Hon. M. P. PAKULA (Western Metropolitan) — I rise to indicate that the opposition will not be opposing the Free Presbyterian Church Property Amendment Bill 2012 and to make some comments with regard to it. This is a bill that had a somewhat interesting passage through the other place, and I will address that in some detail.

The bill will give the Presbyterian Church of Eastern Australia more power to manage church assets and resources more effectively. It gives the body corporate of the church the power to pool trust funds, act as an executor of a will and enter into joint property arrangements with other denominations. It is a bill which is being debated concurrently with the Family and Community Development Committee of this Parliament's ongoing inquiry into child abuse by religious and other organisations.

I make that point not because there is any particular connection between the two things but because it informed the debate in the other place and the opposition's approach to the bill at the time it passed through the Assembly. The reason for that is that some of the groups that appeared and may continue to appear before the inquiry while it continues to run represent victims, and they have raised concerns about the structure of some ecclesiastical acts.

There are a number of victims groups, among them the group COIN, Commission of Inquiry Now, which believe some ecclesiastical acts either deliberately or inadvertently restrict the ability of a church to sue or be sued. During the briefing the opposition sought a letter of comfort from the Attorney-General's office about the changed structure of the church's financial and property holdings as it relates to this bill. We have received that letter, and I will go to it in a bit more detail in a moment.

For the benefit of the house it is worth going very briefly into a bit of background about the church itself. I am told that the Free Presbyterian Church of Victoria was formed after the disruption of 1843, when a schism emerged between the established Church of Scotland. In 1846 a Presbyterian minister in Victoria withdrew from the established church and founded the Free Presbyterian Church of Australia. A minister in New South Wales had earlier done something similar, forming the Presbyterian Church of Eastern Australia, which the Free Presbyterian Church eventually joined

in 1953. The principal act facilitated that union. The congregation retained the name Presbyterian Church of Eastern Australia, and today the church consists of about 1000 members. The Free Presbyterian Church Property Act 1953 established trustees to hold the Victorian property of the unified Presbyterian Church of Eastern Australia.

The trustees that constitute the body corporate, as was explained at the departmental briefing, requested that the government amend the principal act to allow for more effective management of the church's assets. Among the powers conferred by the bill will be the ability to pool trust funds, act as an executor of a will and enter into joint property arrangements with other denominations. They are all important modernising elements of the bill.

One of the things pointed out to us during the briefing was that there was a schedule to the original act which contained the names of people who are no longer alive and details of property that the church no longer holds, so certainly from that perspective of modernising the bill is important.

With respect to the power to pool trust funds, at the moment individual bequests have to be held as separate funds by the church. The church currently has to endure the administrative costs of investing those funds separately, and it needs express statutory power to pool those funds; that is something the bill is providing. As I have indicated, the bill provides the body corporate with the power to act as an executor or to apply for probate of a will or for the administration of an estate. The ability to enter into arrangements with other denominations to share property is a power the church currently lacks, a gap which is also being filled by this bill.

After the passage of the bill through the lower house I received an email from Reverend Dr Rowland S. Ward, the convenor of the synod law and advisory committee of the Presbyterian Church of Eastern Australia. It expressed the dismay of the church that the opposition in the Assembly opposed the bill. By return email today I indicated to Reverend Ward that in fact the opposition did not oppose the bill in the Assembly; the opposition moved a reasoned amendment, and upon the defeat of that reasoned amendment the opposition did not oppose the bill. In my email to Dr Ward I explained that the rationale behind the position adopted by the opposition involved concern for victims of child sexual abuse who were appearing before the joint investigatory committee and indeed others who were not appearing and that it was not designed to reflect on the Free Presbyterian Church as being a perpetrator of these offences in any way, shape or form.

The member for Oakleigh in the other place made that very clear in her contribution to the debate. The member for Oakleigh also indicated that there are many victims and representatives of victims who take the view that there are certain ecclesiastical acts that make it extremely difficult, if not impossible, for victims of abuse to successfully sue religious organisations because those acts tie property up in such a way that it cannot be got at.

Given that the parliamentary inquiry was ongoing at the time the bill was brought before the other place, given that it was likely that some of the submissions to that inquiry were going to go to the question of the structure of ecclesiastical acts and given that in the view of a number of victims it was an inopportune time to be dealing with questions of the structure of any ecclesiastical acts, it was the view of the Labor Party in the other place that the bill ought to be deferred until that inquiry reported. That was the point the opposition was trying to make.

I say that notwithstanding the fact that we received from Elise Parham, on behalf of the Attorney-General, Mr Clark, a letter which gives comfort and puts in writing the view that there is nothing in the amendments being dealt with today that would in any way make it more difficult for the assets of the Free Presbyterian Church to be accessed in circumstances where that might be necessary. I appreciate that letter and thank the office of the Attorney-General for it. Notwithstanding the receipt of that letter, it was the view of the opposition that it was not unreasonable to ask, in the interests of victims and for their peace of mind, that consideration of this bill be deferred while the inquiry continued, particularly in the circumstances that the inquiry was going to report within a matter of months.

Of course in the intervening period a couple of things have happened, most critically the fact that a royal commission has been announced by the federal government, a royal commission which may very well take a number of years to be concluded.

Ms Crozier — A number — how many?

Hon. M. P. PAKULA — A number of years. Whilst the state inquiry is continuing, it is not envisaged it will continue once the royal commission is up and running. Of course in those circumstances it would be our contention that this bill's consideration ought not to be deferred for years and years. It is

therefore not the intention of the opposition to move a similar reasoned amendment in the Council today.

With those few words, let me say that we are comforted by the undertakings provided by the office of the Attorney-General. The effect of the bill is benign. In an administrative sense it streamlines matters for the church, which is something the opposition supports. For the sake of absolute clarity, allow me to say to those representatives of that organisation once again that the approach adopted by the opposition in the other place was solely and entirely about respecting the sensibilities of victims of abuse and not designed to cast any shadow over this particular church. In the circumstances that has been made clear to the church by the opposition, and we wish this bill a speedy passage through the Council.

Ms HARTLAND (Western Metropolitan) — I want to thank Mr Pakula for his contribution. It was very enlightening as to why and how this came about in the lower house. I have read the record of the debates in the other house, and I have great admiration for the work of the member for Oakleigh in the Assembly. I think she has been quite dogged about making sure that these things are done properly. In reading this bill it is quite clear that it is about modernisation. It will assist the church to have modern, straightforward administrative processes, and for that reason the Greens will support it.

Mr O'DONOHUE (Eastern Victoria) — I am pleased to speak on behalf of the government in the first instance in the debate on the Free Presbyterian Church Property Amendment Bill 2012. What a difference a bit of time makes in the tenor of a debate. I am pleased the opposition will not be opposing the bill and that the Greens will be supporting it. That is welcomed by the government.

This is a relatively straightforward bill. As has been described by the other two speakers, it is about modernisation. It is about allowing the church to pool trust funds for investment purposes; to accept an appointment as and act as an administrator, executor or trustee; to enter into the joint use of property with other denominations; and do other updating types of functions such as to refresh the title of the principal act and the like.

The bill itself is relatively straightforward. It is not particularly lengthy, being 12 clauses in total. Although the house is treating it as a public bill, it is one of the rare private bills that comes before this place. Perhaps the most interesting thing in the debate thus far has been watching the shadow Attorney-General, Mr Pakula, do his best impersonation of a gymnast when trying to explain the disgraceful approach of the opposition to the bill in the other place where it tried to link two completely separate matters, two completely separate issues — that is, the work of the Family and Community Development Committee, a parliamentary joint investigatory committee — —

Mrs Coote — A very good committee.

Mr O'DONOHUE — Indeed, Mrs Coote, a very good committee, and I congratulate the chair, Ms Crozier, on her outstanding work and indeed Mrs Coote and other members.

Mrs Coote — Mr O'Brien and Mr Wakeling.

Mr O'DONOHUE — Mr O'Brien, Mr Wakeling, the member for Ferntree Gully in the other place, and other members for their work on that committee.

But to somehow link that committee to the passage of this bill, which is a straightforward bill, as has been described by Mr Pakula, Ms Hartland and the government, does not go to any of the issues that Mr Pakula mentioned. I noted Mr Pakula's very careful choice of language. He referred to 'the view of the Labor Party in the other place', clearly trying to distance himself from the behaviour — —

Hon. M. P. Pakula — What a ridiculous comment!

Mr O'DONOHUE — Mr Pakula says it is a ridiculous comment. He was very careful to qualify and not associate himself — and I understand Mr Pakula not wanting to associate himself — with the comments of his colleagues in other place and the way that that debate — —

Hon. M. P. Pakula — On a point of order, Deputy President, I hardly ever take a point of order, but I am not going to allow Mr O'Donohue to mislead this place about my motivations and my intentions. Let me say for the record: I absolutely associate myself with the practices of our members in the other place.

The DEPUTY PRESIDENT — Order! That is not a point of order; it is a point in debate.

Mr O'DONOHUE — Thank you, Deputy President, for ruling out Mr Pakula's point of order. To quote Mr Pakula, he referred to 'the view of the Labor Party in the other place'. But I am pleased that the advice I received from Elise Parham from the Attorney-General's office has clarified what I suppose everybody else understood, including those members of this church who have clearly contacted Mr Pakula, as he described in his contribution, about their concerns in

relation to the approach of the Australian Labor Party in linking this very simple bill with the very important and very sensitive work of the committee that is chaired by Ms Crozier.

Hon. M. P. Pakula — You should have some more empathy.

Mr O'DONOHUE — Deputy President — —

Hon. M. P. Pakula — Put yourself in other people's shoes.

Hon. M. J. Guy interjected.

The DEPUTY PRESIDENT — Order! Mr O'Donohue has the call. Neither Mr Pakula nor Mr Guy has been invited to make a contribution at this stage. Mr Pakula has already done so.

Mr O'DONOHUE — The government welcomes the change by the opposition. It welcomes the fact that this bill has the support of all the parties in this place. It is a straightforward bill. It is a bill that should be without controversy. It is a bill that will improve the administrative arrangements for the Presbyterian Church. It is a bill that updates and modernises the legislation so that events that have occurred which are now redundant or are no longer relevant are no longer part of the legislation. In summary, I wish the bill a speedy passage through this place.

Mrs COOTE (Southern Metropolitan) — I have a lot of pleasure in speaking on the Free Presbyterian Church Property Amendment Bill 2012. As has happened in the past when bills to do with the Free Presbyterian Church have come before the chamber, this gives me a great opportunity to talk about some of the organisations in my electorate. Just to give a background to this bill, it makes a number of amendments to the Free Presbyterian Church Property Act 1953, including changing the name of the act to the Presbyterian Church of Eastern Australia Property Act. Other amendments include allowing the pooling of trust funds, the appointment of the church to administer a will, and the joint use of property with other denominations such as the construction of a new building for cooperative purposes.

I would have to say that I was pleased to hear the clarification from Mr Pakula. I know he is concerned. I think there is a time and a place to discuss and talk about the inquiry of the Family and Community Development Committee, which I have the privilege to be on, under the excellent chairmanship of Georgie Crozier. As Mr Pakula indicated, the debate on this bill was not going to be the vehicle through which to speak about that. We are all very well aware of the great passion of the member for Oakleigh in the Assembly, but the debate on this bill is not the vehicle to be releasing that. It is a great pity that the church, which does not have a great opportunity to have its say, has been misconstrued and some concern and unhappiness has been caused. But I think Mr Pakula went some way today to making amends for that.

It is interesting to look at the 2011 census figures across Victoria. There were 142 216 people who identified their religious affiliation as Presbyterian and Reformed. This represents 2.66 per cent of the population of Victoria on census night. By comparison, there were 143 146 Presbyterians, or 2.9 per cent of the population, in the 2006 census; and 155 013 people, or 3.36 per cent, who identified as Presbyterian in the 2001 census. I think there is a bit of a trend happening here that may be of some concern, but I am sure the Presbyterian authorities will have a close look at the statistics — I am sure they are very aware of them.

For the Liberal Party the most famous Presbyterian of them all was our very own Sir Robert Menzies, Prime Minister of Australia and of course a stalwart of the Presbyterian Church and a great leader in every respect. He would have to be acknowledged as Australia's best — I must say John Howard runs a very close second — Prime Minister. But Robert Menzies came from Kooyong, within Southern Metropolitan Region, and was a huge icon in the Liberal Party. In fact those members who have visited my office will have seen a very large photograph of Sir Robert, who is there to guide us all through our deliberations in this place. He is the longest serving Prime Minister of Australia; he still holds that record. And, as all members know, he was the founder of our Liberal Party.

According to the Presbyterian Church website there are 166 Presbyterian churches in Victoria. Of these, 16 are in Southern Metropolitan Region, and they include the churches in Ashburton, Auburn, Balaclava, Brighton, Burwood Community, Camberwell, Canterbury, Caulfield, Cheltenham, the Cheltenham-Sudanese Presbyterian, Elwood, Gardenvale East, Hawthorn, Malvern, South Yarra and St Kilda. There are three Presbyterian congregations that are just outside of my region, which is interesting to know, and they are the Korean Congregation at North Balwyn, the Surrey Hills congregation and the Deaf Congregation at Surrey Hills.

I also have two major Presbyterian schools in my electorate. There are several schools managed by the Presbyterian Church, which are: Scotch College, Hawthorn, which is in my electorate; Presbyterian

Ladies College in Burwood, which is also in my electorate; St Andrews Christian College in Wantirna; King's College Christian School in Warrnambool; and Belgrave Heights Christian School, obviously in Belgrave Heights.

I would like to put on the record some comments about Scotch College and Presbyterian Ladies College. Presbyterian Ladies College is quite a remarkable school. I know some current Presbyterian Ladies College students but I also know a number of significant former students, including Kelly O'Dwyer, the federal member for Higgins, who is a prominent former PLC girl. We have to watch this space to see her stellar parliamentary career take off. She encapsulates what I think are some of the characteristics of the school — having a deep sense of integrity and values, having a very high academic result and being a leader in the community. They are some of the hallmarks that come out of PLC.

The other school, which is more in the heart of my electorate, is Scotch College in Hawthorn. I would like to talk a little about Scotch College, which is a truly remarkable school. It was founded in 1851, which was just 16 years after the settlement of Melbourne, and therefore it is a fundamental part of the history of this state. Our former Premier Jeff Kennett was a former Scotch College student, just like Sir Robert Menzies was. They held similar values and the same integrity.

Since its establishment Scotch College has been fulfilling its aim, which is:

> … to deliver an education which, secure in the traditions of our past and our Christian belief, opens boys' minds to the rich diversity of the world in which they live and challenges them to question and explore everything they find, with integrity, humour and compassion. And to do this in an exciting, intimate environment which nurtures self-expression and self-worth while promoting the uniqueness of each boy's journey.

Opening boys' minds to the rich diversity of the world in which they live is absolutely admirable. We have to look at contemporary education and where it leads, and it is important to look at education in a global sense to see that we are part of a global village. It is good to see that this aim of Scotch College is coupled with excellence in academic achievements, in sporting achievements and also in the community. It is that community understanding which is very good.

I would like to put on the record — and I am sure his son will feel particularly embarrassed — that our very own Richard Dalla-Riva's son became Scotch College's dux of English this year. I think that is truly admirable — —

Hon. M. P. Pakula — That is an apple that has fallen a long way from the tree, then!

Mrs COOTE — I would like to put on the record all our congratulations. I know Mr Pakula is also extending his congratulations to Mr Dalla-Riva's son. It is a great achievement. All of us who have children are pleased when our children do well. It is a good thing to see.

In July this year Scotch College hosted the International Boys' Schools Coalition conference. This was the 19th annual conference and saw 550 representatives of boys schools from around the world visit Scotch College. The theme of the conference was 'Unearthing creativity', and I am sure all participants gleaned really useful information from it. The Governor opened the conference, which gave it the imprimatur and showed its importance for Victoria. Scotch College uses these links to provide opportunities for students, including student exchange programs. It is a remarkable school.

The Presbyterian Church has been integral to our community. It has been a stalwart of the Victorian community for a significant time. As I said, I am pleased to have an association with those organisations, both the churches and the schools, in my electorate. The Presbyterian Church maintains numerous properties throughout Victoria. The bill will make it easier and cheaper to administer those properties and will therefore make more money available for the church's charitable works. I commend the bill to the house.

Mr ONDARCHIE (Northern Metropolitan) — Like others today, I rise to speak on the Free Presbyterian Church Property Amendment Bill 2012. I thank those who spoke before me: Mr Pakula, Ms Hartland, Mr O'Donohue and Mrs Coote, all of whom are supporting this bill.

The Free Presbyterian Church of Eastern Australia was founded in 1846 in Sydney. It is not the world's most livable city, because Melbourne is, but it was founded in Sydney in 1846. In 1953 the three congregations of the Free Presbyterian Church of Victoria were received into the church; the Free Presbyterian Church Property Act 1953 facilitated this union.

The objectives of the bill are to amend the Free Presbyterian Church Property Act to confer additional powers on the body corporate created under the principal act to enable the Presbyterian Church of Eastern Australia to more efficiently use and manage the property held under the principal act. The additional powers enable the body corporate to pool trust funds for investment purposes. Currently, trust law prevents

individual bequests being intermingled and requires them to be invested and managed separately. The bill allows the church to pool funds from different gifts and bequests into a common fund of investment. For example, where a donator has donated money for a specific purpose and this is invested in a common fund, the church must ensure that income or losses from those investments go back to the original purpose that they were donated for.

The additional powers also enable the body corporate to accept an appointment or act as an administrator, executor or trustee. Currently, it is generally accepted that a body corporate cannot act as an executor under a will and to take probate; it must appoint a person to seek out a particular type of probate where it is appointed. The bill sets out circumstances in which the church, as a body corporate, may apply for probate or administration of a will or estate in which the church has a beneficial interest. The bill also sets out circumstances where the body corporate can accept appointment as a trustee of property not already vested in the body corporate.

In her contribution today Mrs Coote talked about the Presbyterian churches in her electorate of Southern Metropolitan Region. I have to say that that is almost matched by the great Presbyterian churches of Northern Metropolitan Region, which is home to the very first Presbyterian church here in Victoria — Scots Church in Collins Street; a beautiful church I attended not long ago to see some very good friends of mine get married. There is also a Presbyterian church in Kangaroo Ground, on the edge of Northern Metropolitan Region, and in Bundoora, Clifton Hill, Epping, Heidelberg and Reservoir, and there is the beautiful Presbyterian church in Lime Street in Whittlesea. The beautiful old building is a great symbol of an organisation like the Presbyterian Church bringing a community together. The Presbyterian church in Whittlesea did a wonderful job during the tragic bushfires of 2009 in helping communities and bringing them together, as did many churches across that whole region.

Mrs Coote talked about perhaps one of the greatest Prime Ministers this country has ever seen, Sir Robert Menzies, a man who epitomised the values, behaviours and care for all Australians that every member of this house should have. He was a wonderful man, a wonderful leader and a great example for all Australians, and I proudly declare myself a Menzies-ist.

Mrs Coote — You can come to my office any time.

Mr ONDARCHIE — I would be more than happy to visit Mrs Coote's office to talk about that. I have to say that I am a product of the Uniting Church school that I proudly went to. A number of members, Mr Pakula included, are products of a Uniting Church school. In fact, our own Minister for Health attended the same year level as I did through secondary school at the Uniting Church school of Kingswood College in Box Hill.

The objectives of the bill we are talking about today include ensuring that the Presbyterian Church can enter into a joint use of property with other denominations, and Mr Pakula touched on that. Currently the church is unable to enter into arrangements with other denominations for the use of property or the sharing of facilities. This bill fixes that. It also updates the title of the principal act from the Free Presbyterian Church Property Act 1953 to the Presbyterian Church of Eastern Australia Property Act 1953, and it amends or repeals provisions in the principal act which are now redundant. The original legislation was intended to facilitate the union of congregations of the Free Presbyterian Church of Victoria, but that time has passed.

The pooling of funds through this bill will greatly reduce the administrative costs associated with managing individual bequests as separate trusts — separate financial instruments. The church engages in charitable work, and the reduction in costs that the bill will bring about will mean that maximum resources can be allocated towards these works. The joint use of property provisions will allow for cooperative dealings on projects which can enhance the use of church resources and free up redundant property for use in other activities, ultimately helping communities. An example might be where a church collaborates with another religious denomination to erect a new building for joint use, enjoyment and pastoral care for people in their local areas.

Interestingly the member for Oakleigh in the other place — and to his credit Mr Pakula touched on this today — led us a little bit askew from what this bill originally intended. Some of the comments that were made by the member for Oakleigh threw things a bit awry. To his credit Mr Pakula dealt with that quite well today; it was an example of Labor leadership in action. It was an example of the sort of leadership we are hoping for from the Labor Party. Who knows; the times, they are a-comin'. Maybe he is moving up the bus.

The church has confirmed — and Mr Pakula touched on this today — that it is not currently involved in any litigation. This is a very straightforward bill. The focus of the debate today should be on the reduction in the

church's administrative costs which can be dispersed more appropriately through its work. The cooperative nature of joint property use enacted through this bill can only go to benefit Victorians, local communities and all Australians. I wish the bill a safe passage through our house.

Motion agreed to.

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

Third reading

Motion agreed to.

Read third time.

APOLOGY FOR PAST FORCED ADOPTIONS

Debate resumed from 13 November; motion of Mrs COOTE (Southern Metropolitan):

That the Council take note of the parliamentary apology for past adoption practices tabled in this house on 25 October 2012.

Ms PENNICUIK (Southern Metropolitan) — I am very happy to support the motion to take note of the parliamentary apology for past adoption practices made on 25 October. I thank the office of the Minister for Community Services, Mary Wooldridge, for keeping us in the loop during preparations and even taking on board some of our suggestions. It was wonderful that while not all parliamentarians were in the Assembly chamber when the apology was made, good numbers of us were either in Queen's Hall or the Windsor Hotel with the hundreds of people who had come to see and hear the apology and who represented but a tiny number of the hundreds of thousands of Australians whose lives have been affected — some desperately and tragically — by past forced adoption practices.

I was very moved by what each of the party leaders said on that day, in particular Mr Barber's speech on behalf of the Greens, which we all worked on together. I was especially pleased to hear Minister Wooldridge commit to concrete actions, which is what the groups who have advocated for an apology and for redress for so long needed to hear. These actions include: an amendment to the Adoption Act 1984 which will allow birth parents to receive identifying information about their adopted adult sons and daughters, accompanied by a contact statement which will allow adopted persons to regulate contact if they desire; enhanced access to counselling and support, including professional development, to build competencies in post-adoption psychotherapy; free access to personal and family information through the Family Information Networks and Discovery service for people affected by past adoptions; and integrated birth certificates in conjunction with national reforms relating to documentation and provision of birth and adoption records.

I hope those measures, which will not be effective immediately, will be expedited and that the government maintains close contact with the various groups to assist with their ongoing needs. There also needs to be funding for networks of physical and online support groups, additional assistance to help with the reconnection of families who need to undertake more complex searches and assistance with intermediary services.

I urge the government to make sure that measures are in place to ensure that existing records are kept intact and collected in places where they are able to be more easily accessed by the families who need them. Ongoing research is needed to assist in understanding the extent of the impact of past practices and to inform the actions required to redress them. As we all acknowledge, the apology is nothing if it is not accompanied by concrete measures to redress past actions. There is a need for the government and others to provide leadership in developing greater awareness and understanding in the community of the trauma that was caused by past adoption practices and to encourage those institutions, professions and, I believe, individuals who were involved and who have not already done so, to apologise for those wrongs done. We think there should be a memorial, as has been suggested in some other states, to ensure that the public is aware of what happened and its ongoing consequences and to warn against it ever happening again.

On 19 June this year I gave notice of a motion to note the tabling of the Senate committee report *Commonwealth Contribution to Former Forced Adoption Policies and Practices* noting the apologies of other parliaments and calling on the Victorian government to apologise for past adoption policies and practices in Victoria. That motion fell off the notice paper yesterday, and I am pleased that it never came to be debated because the government moved forward with the apology that we all supported on 25 October.

The apology says that past adoption practices were misguided, unwarranted and caused immeasurable pain. 'Immeasurable' is a very apposite word because the ramifications of those practices were and are immeasurable. Although we know the approximate number of forced adoptions — one estimate is 250 000

in Australia — we have no idea how many Australian families were torn apart or how many individual lives were destroyed. The depth and extent of grief, pain and suffering is immeasurable. The number of people who may still not even know they were adopted and are unknowingly part of this is also unknown.

That it happened and that the rights of young mothers and their children were so abused is unbelievable. I believe it, though, because as would be the case for anyone in this place who is over 50 years old I saw it happen. In the early 1970s tens of thousands of Victorian babies were taken from their mainly young single mothers against their will and without their consent. I saw it happen to young women at my school and to young women close to me. I know that it has profoundly affected their lives and that they have not been able to 'get over it' as they were told to do at the time. Many never speak of it and so suffer in silence. Hopefully the apology may make it easier for them to speak about what happened to them. They were just teenagers. It was something that I saw happening and was very angry about. The pressure and the stigma were very strong and young pregnant women were powerless to overcome such pressure unless their families supported them.

As I was growing up I also knew a number of families with adopted children, some of whom had been told that their mother gave them away and did not love them. Many still believe this, which is an ongoing tragedy. I hope the apology and the measures of redress that have been announced can go some way to mend the hearts that have been broken and to soften the hearts of those who perpetrated it or stood by while it happened. I hope those sons and daughters who believe they were abandoned may now be more aware of the impossible circumstances facing their young mothers. Those young mothers were faced with guilt and shame for becoming pregnant and being forced to give up their babies and guilt and shame if they chose to and were able to keep them. They should never have been made to feel like that.

The apology also says that we will never forget and never repeat these practices. This will require vigilance and action on the part of us all. As Mr Barber said, both prejudice and discrimination against women who raise their children on their own are still with us. Every time someone has a go at sole parents, usually sole mothers, they keep this prejudice alive. These prejudices run deep. I still hear the type of judgemental and sexist attitudes that underpinned the past adoption practices expressed all around me today, and they need to be challenged.

As the Premier and others have said, not all adoptions were forced and not all outcomes were poor, but many were devastating. We need to ensure that adoption is a measure of last resort, and it should always be open, with the mother, father, son or daughter able to maintain contact, the only caveat being that it is safe for the child to do so. However, even in cases of open adoption there will still be issues and a need for ongoing support. As legislators, and if we are serious about it never happening again, we must also be aware of the issues and consequences of inter-country adoption, surrogacy and donor-conceived children, an issue in which I have taken a strong interest in this Parliament.

I would like to extend my admiration and thanks to those individuals and groups who have worked so long and hard to bring about this apology and the measures that go with it. To those mothers, fathers, sons and daughters who were separated by those flawed and unacceptable past forced adoption practices and whose lives have been immeasurably affected, I am so very sorry for your grief, pain and loss.

Motion agreed to.

HEALTH: FEDERAL FUNDING

Debate resumed from 13 November; motion of Hon. D. M. DAVIS (Minister for Health):

That this house —

(1) expresses its serious concern at the recently announced reduction in commonwealth health funding, changes which, if implemented, will result in retrospective, current year and future year reductions to state hospital funding which will seriously impact state budgets that have already been set;

(2) expresses concern about the factual basis of the commonwealth's decision, which relies on disputed population figures, noting also the lack of consultation with states and territories prior to the decision;

(3) calls upon the heads of treasuries to convene urgently to discuss the commonwealth Treasurer's determination and report on the basis of this decision, noting that the reductions in commonwealth funding for public hospitals will, unless reversed, be implemented in early December 2012 in the form of a $39 million clawback of funding to Victoria from the 2011–12 financial year and a $67 million reduction in the 2012–13 financial year for Victorian hospitals and large reductions in forthcoming financial years bringing the total commonwealth funding reductions of the health and hospitals funding through the health-care SPP and national hospital agreement to $475 million since the announcement of the commonwealth's 2012–13 budget; and

(4) further notes that six state health ministers expressed concern about the announced reduction in commonwealth health funding at the recent Standing Council on Health meeting.

Mrs PETROVICH (Northern Victoria) — I am pleased to speak on the motion with respect to the commonwealth health funding issues that are affecting Victoria. We have seen an unprecedented difficulty created for many states in the last number of days, with the commonwealth announcing that it will reduce funding to Victorian health services by $107 million this financial year. That is a budget cut of $107 million, which is made up of $39.7 million from 2011–12 and $67 million from 2012–13.

Sometimes we draw the analogy between governments and family homes and how a household operates, but it would decimate any business to have its operating budget pulled midstream. In fact that is what has happened with the pulling of this funding. The commonwealth contribution paid directly to health services is scheduled to start on 7 December, almost halfway through the financial year. The commonwealth funding cut will result in a decrease in health service activity and an increase in waiting times for elective surgery. How is that fair or reasonable to any of the states? For a Victorian Prime Minister to do this to her own community is incomprehensible.

Over the forward estimates there will be a reduction in funding of $475 million to Victoria and $1.6 billion nationally to 2015–16. Obviously that is going to have a huge impact across a range of public health services. We will talk about many of the services that will be affected in some detail, but it is going to be a very difficult task for any government — and it will impact on all states — to accommodate this sort of cut. There are complex health needs and there is an increased demand for health services. We have an ageing population and the community relies on high-quality services, but the hospital system was run down in the previous 11 years under the Bracks and Brumby governments. We have made some great inroads into restoring those services and have committed to improvements in a range of ways. In the 2012–13 financial year our total expenditure was $13.7 billion. That represents a $618 million increase in health expenditure over and above the previous year and a $376 million increase in acute health expenditure over and above last year.

This year's budget includes a $1.5 billion increase in funding for health and hospital systems, including an $883 million increase in acute health expenditure over four years. One of the big problems we have is dealing with preventable disease. We know prevention is the key to a healthy society, and healthy lifestyle choices are something this government is working towards in partnership with a range of organisations, including local government, health-care providers and people on the ground working, through the schools, in education. We have adopted a holistic approach, which can be seen through the healthy food campaign that the Minister for Health, David Davis, has been promoting. Working with people like Jamie Oliver, who is interested in healthy food choices and in some respects a return to the basics, such as using home-grown produce, the campaign is teaching communities the important skills of good food preparation and purchasing choices.

We know many lower income communities are not always able to make good choices, so we need to look at how we can do so economically. It is often a cheap and easy option to purchase prepackaged foods, which are not always good for people. It is also important to teach children about the correct choices for them, about eating five fruits and vegetables a day, getting good calcium intake through milk and the appropriate amount of protein and iron required for cognitive development. This is a very important philosophy. We have the capacity here in Victoria to grow clean, green food, which is in demand across the world, but it also starts at home, and we need to foster that education.

Many of the illnesses that are putting additional burdens on our health-care system — diabetes, cancer and heart disease — can be prevented. In some cases this involves looking after ourselves and getting out to do a bit of exercise. We all know that in this job that is not always easy, but the first step out the door is always the hardest, so if you can get out there, it helps if you can power walk for even 20 minutes a day. This government has a holistic philosophy across the board. The people and parks program, which is run in partnership with HeartSafe Victoria is designed to get people out into the bush, parklands and national parks so they can enjoy the natural environment of bushland, birds and waterways. This has been proven to reduce a whole range of conditions and improve people's health, and it is something on which we are working very hard.

If you bring up the subject of a health bill, people sometimes say, 'Why would you be talking about food, exercise and enjoying your natural environment?'. I suppose that is the key to it all. We have travelled a fair way from that, and this government is committed to bringing people back to considering these things. But we have copped a bit of a kick. Some of the commitments we have made to infrastructure and improved programs will be under some duress as a

result of the federal government's decision to cut funding.

We have committed to maintaining elective surgery capacity with $44 million to fill the lapsed commonwealth funding previously provided under the national partnerships agreement for improving public hospital services. There is $149.68 million allocated to elective surgery to continue supporting the ongoing demand for hospital services, including elective surgery. Across the northern region, which I represent, we have many very capable hospitals which specialise in particular surgeries; and it is heartening to see the collaborative approach that many of these hospitals are taking to make sure that their clients are serviced and waiting times are reduced.

I would like to talk about the organ retrieval and transplantation program, with $21 million having been committed to it. In the course of this Parliament we had a very good opportunity through the Legal and Social Issues References Committee to look at organ donation and how we do it here in Victoria. In many cases I have to say it was a challenging inquiry, because a lot of people who presented to that inquiry had either undergone organ donation surgery, had donated or had been recipients. There were also people who had lost family members and children. It was quite a heartrending experience in many respects. Those who undergo long-term dialysis face an existence of limited freedom and experience a very difficult time, and the gift of an organ certainly is a gift of life.

I was pleased to better understand — and one of the wonderful things about this job is being able to learn as you go — that our tissue bank in Melbourne, which provided a lot of skin from its skin bank after the Bali bombings, also has a bone bank. If you need a hip replacement or a knee reconstruction, a lot of the material for that comes from that bank. It is stored here in Melbourne and is made available for people to have life-changing operations.

I would like to talk about some of the additional work being done in health infrastructure provision in Victoria, some of which is taking place in Northern Victoria Region. Our commitment to the regions, including a huge commitment to Bendigo and Geelong, is such that $46 million has been allocated to the Ballarat base hospital to provide an extra 60 beds. That was part of our election commitment, and I know Mr Ramsay and also Mr O'Brien and Mr Koch pushed very hard for it. They worked tirelessly for that community, an area I got to know when I was shadow parliamentary secretary for health services, working with Helen Shardey, the former member for Caulfield in the Assembly. I visited that hospital on a couple of occasions and its needs were great for the growing community. The community was very keen to see a helipad provided to that hospital, and that was delivered by this government. We have a continuing, fine relationship with and an ongoing commitment to that facility.

Mr O'Brien — Congratulations to Mr Koch and his committee on the helipad.

Mrs PETROVICH — Absolutely; congratulations to Mr Koch. What Mr O'Brien says is very true.

We have allocated $15 million to expand maternity services and establish an intensive care unit at Sunshine Hospital. Obviously that is for an area where women and babies are at their most vulnerable. Maternity services are extraordinarily important to all of us in that time of need. This was a community that had been neglected, so we were very pleased to see funding delivered for that community.

The Charlton hospital was a longstanding issue that was raised in this chamber post the floods. Who would have believed that after 10 years of drought we would see the sort of damage that could be caused by rapidly rising water? We took our time to find a suitable site because there were some issues about that low-lying position. This is obviously a very important facility not just for Charlton but also for the surrounding area. It services quite a significant area, so we have committed $23 million to replace the hospital, which was damaged in the 2011 floods, which also caused a lot of grief.

We need to acknowledge that in country areas there is a long history of community support for hospitals by hospital auxiliaries. They work hard to fundraise and establish particular wings; they have done a lot of things over many years. There is a great buy-in by communities because they are proud of their hospitals, and they have a great sense of ownership of their facilities. People go to them when they are at their most vulnerable, but some of the happiest times in their lives also happen there when babies are delivered. There is a great sense of connectedness to these places.

We have allocated $93 million for an upgrade to Geelong Hospital, including 64 extra beds to care for older patients, and also to boost cancer care. Andrew Katos, the member for South Barwon in the Assembly, has worked very hard in that area and deserves some credit, as do Mr Koch and Mr O'Brien, who are great advocates for their communities. These commitments were made to the Geelong community during the

election. The vision of this government is about rebuilding and looking towards the future.

There is $40 million for the Frankston Hospital emergency department, including a 12-bed short-stay unit, and $10 million to upgrade the Castlemaine hospital to include a second theatre. This hospital is quite well — —

The ACTING PRESIDENT (**Mr Ramsay**) — Time!

Ms HARTLAND (Western Metropolitan) — Rather than my contribution engaging in the argy-bargy of who is right or wrong and what has happened with health funding, I would like to pose a set of questions mainly for the Minister for Health to address, but I would also like opposition members to address them in their contributions. My understanding — and I can be corrected if I am wrong — is that the figures from the Australian Bureau of Statistics are one of the reasons for the reformulation of the commonwealth funding. I would like to know from the government whether it disputes the way the ABS has done these figures, and if so, for what reason. Is it correct that the state government has cut the health budget by $616 million?

Hon. D. M. Davis — No, it is not.

Ms HARTLAND — It would be excellent if the minister could answer that in his reply. Is it correct that the minister has refused to accept $100 million from the commonwealth for 11 major health infrastructure projects? Can the minister outline exactly how much the commonwealth has cut from state funding? I will be in a much better position if I have answers to those questions, because some figures from the commonwealth show that commonwealth funding for Victoria's health budget has increased by 25.7 per cent. When the minister exercises his right of reply it would be good if he could respond to those four or five questions.

Mr LEANE (Eastern Metropolitan) — Mr Jennings responded eloquently and thoroughly to Mr Davis's motion when it was brought on in quite a hurry on Tuesday evening. This motion is a vehicle for the Baillieu government to back out of health commitments it made in 2010; it is all about blaming someone else. In their contributions in this house not once has any government members mentioned that over the last two budgets $616 million has been cut from the health budget. The health sector is outraged by the cuts in health funding being made by the Victorian government.

When it comes to the federal government, there is a bogus argument being made by the Victorian Minister for Health. The Victorian government will receive $11.1 billion in GST from the federal government, which is a record amount. It will also receive $3.66 billion — well over $3 billion — towards the health contribution to the state. This is in comparison to the Baillieu government, which promised to fix the problems.

The government said it would supply 100 new hospital beds in its first year and deliver 800 new hospital beds in its first term. At this stage it is miles behind. The minister cannot identify where his 100 new hospital beds for the first year are. He has gone through a process of saying, 'Trust me', but he cannot identify where the new hospital beds are, and the people of Victoria are just not that gullible. The beds are not there. The commitment was made: the government was going to fix the problems. All sorts of things that were going to be developed in health have just not happened.

Mrs Petrovich touched on community health and certain health preventive measures which she believes her government has made that are quite good, and some of them obviously would be, but I have to say that community health centres are seething because of the funding cuts in the last budget, and they are pretty sure they are going to cop another round of funding cuts from this government in the next budget. They have had to cut services and staff, and these are the centres that work on preventive health. They are absolutely seething because of the actions of the Minister for Health and Minister Wooldridge, who is both the Minister for Community Services and the Minister for Mental Health, who played her part in it.

As the previous government speaker mentioned, an understanding of Jamie Oliver and all that stuff is all very good, as is promoting young people eating fruit and vegetables; however, this is the same government that cut funding for free fruit for primary school students on Fridays, so government members should spare us their contributions about all this health promotion and what they are doing in the community as far as health goes.

No matter how David Davis spins it, it is a reality that $616 million has been cut from his portfolio over the last two budgets, and he knows that that is what he has done. He knows that he is not going to deliver on the commitment to provide 800 new hospital beds over this term. He knows that he has not delivered the 100 new hospital beds he promised in the first year, even though he says, 'Trust me, they are there'. They are not there; there are actually less hospital beds.

This government came in with a promise in health that it would cut waiting lists. Waiting lists have increased dramatically. In every area of health the performance has gotten worse. Health is a challenging area, and the thing about the health area is that you are catching up all the time. If you let it get away from you, as this government has clearly done, it makes it very hard to catch up again.

As far as blaming the federal government goes — and that is happening in all the portfolios in Victoria — the federal government will inject into the Victorian government $11.1 billion of GST revenue and over $3 billion towards the health sector. However, this state government needs to blame someone for it not delivering on its promises. As I said, it is happening in every portfolio. Recently the Minister for Public Transport said, 'I don't know if we will be able to deliver the transport projects we promised we would deliver, and that is because of the federal government'. This is an ongoing theme of the Baillieu government. The Baillieu government blames others for not delivering on the election commitments it made.

Those election commitments belong to this government. They are not any other jurisdiction's election commitments. They are not election commitments from outer space. They belong to the Victorian government that was voted in by the people of Victoria, with a majority in both houses, to govern for four years. They are this government's election commitments. Government members can go on with this process of blaming other jurisdictions for not delivering, as they will continue to do, but they have to understand that while they can stand up here and convince themselves that that is fact, people expect them to deliver on their election commitments and not blame everyone else and not go to all sorts of fudged figures and make bogus, false claims in motions like the one Mr Davis has moved. Be very careful insulting the people of Victoria's intelligence, because it will not stand.

We look forward to the next time trucks reverse over a portfolio. I am sure it will be someone else's problem for not delivering all the sorts of things that were promised in schools. We have seen what is happening to TAFE. The government said it would fix the problems, but it has caused huge problems in TAFE, and the Victorian people are angry. They know who to point the finger at. In health they know who to point the finger at. Mr Davis can put up as many of these motions as he likes, and we can spend time debating them, but what is happening outside this building and out there in the Victorian public is not fooling anyone. People know that these were the government's election commitments. People know that the government can blame as many people as it likes, but these things came out of the mouths of government members. They said that they would fix the problems, that they would reduce waiting lists and that they would deliver 800 new hospital beds over their first term of government, but so far their performance has been underwhelming and has actually gone in reverse. Rather than fixing the problems as it identified them, all the government has done is exacerbate them. All it has done by doing nothing and sitting on its hands for the last two years is exacerbate any problems in the health system. Good luck to government members in trying to convince themselves. However, it is not themselves whom they need to convince but the people who voted for them on the tranche of policies and promises they took to the 2010 election, which they have gone nowhere near delivering.

Mr O'BRIEN (Western Victoria) — This is another important motion on a very important issue. The motion is important for setting the record straight as to what is happening in relation to the commonwealth government's unjustified cuts in funding to the Victorian health system. I will just briefly pick up the point Mr Leane concluded on, which was to acknowledge that there were problems left to us by our predecessors, not only with the health system in Victoria but with the whole way Labor managed Victoria's infrastructure programs and its budget. This government was elected on a platform of fixing those problems, and that is what we are proceeding to do. We have inherited a situation where we not only have to clean up the mess from another failed state Labor government but we also have a universally condemned, hopeless federal government to contend with — I do not think there has been a more universally condemned federal government since the Whitlam government — as we are trying to fix up the problems that are occurring as a result of the previous government in Victoria.

One thing that is important to remember from an economic perspective is that a very good previous federal coalition government — namely, the Howard government — left the Victorian budget in what was a very strong position. As a result of the GST, a significant reform by that federal coalition government, year after year we would have a surplus of funds delivered into Victoria's coffers for the then state Labor government to waste. That allowed it to mask the fact that budget after budget it exceeded its budgeted expenditure. Yes, it always returned a surplus because its coffers were being filled by the federal government, but it always exceeded its budget.

This became difficult and created problems because the state government failed to correct its ways and continued with a flurry of even worse spending decisions, particularly between the 2006 and 2010 elections. Probably the most ridiculous of those was the north–south pipeline, which was an absolute waste of almost $1 billion — $750 million — which has affected the Victorian budget and water users. We had the irony of Mr Lenders seeking to bring a number of motions to this house in relation to water usage charges while not acknowledging or apologising for the ridiculous decisions his government made in relation to things like the desalination plant.

What we now have is a situation where the federal government has committed to a surplus at all costs and so, in its midyear review, it has made further cuts to the Victorian health system that were not budgeted for, to which this government has had to respond. Those cuts approximate $475 million or $1.6 billion to 2015–16 at a national level. Rightly or wrongly the health system in this state is funded by both the state and federal governments. Therefore we have had continual debates about the relative contributions and performance of each level of government. One of the ways these debates could be resolved is through looking, where possible, at the views of independent commentators such as the Auditor-General. That is something I will turn to shortly, but I want to complete my discussion of the context the Victorian government has found itself in.

The challenges that exist are well documented. I compliment Mrs Petrovich on her insightful and well-informed contribution about the difficulties of rural health in particular and the need for further preventive medicine as our ageing farmers sometimes find themselves in more idle occupations, such as sitting down listening to speeches! Farmers who used to be more active are finding themselves less active. These are the sorts of preventive issues that are causing a major demand on our health-care system.

But, as I touched upon earlier, we also have the loss of commonwealth funding to deal with, with a $50 million cut to elective surgery, and across the state there is the loss of $6.1 billion in GST revenue. Unfortunately if the money does not flow through from the commonwealth, that has implications. We also have the commonwealth government's obsessive desire to tinker with and turn back the sensible incentives in relation to private health insurance that were put in place, yet again, by the former coalition government. The commonwealth government seems to think that because there is a scheme that is working well to take people out of the public system — to take pressure off the public system — we ought to tax it or make further changes to it in a money grab so that it can bring the federal budget into surplus. It fails to recognise that that causes significant downstream costs to private health insurance and private hospitals, which make up a large proportion of state health services. However, it continues to do this, and that creates further pressure on state governments.

There is also the increasing complexity of the types of treatments required by patients and the need for more integrated and holistic care — again as well outlined by Mrs Petrovich — the need for preventive medicine and alternative medicine on occasion and the need to support those seeking treatments. In terms of the economic context the state and the Department of Health find themselves in, there is also the well-documented $13 million carbon tax impost upon Victoria's health-care system.

Mr Finn interjected.

Mr O'BRIEN — I heard a groan from behind me, and I see that Mr Finn is in the chamber. If he has a chance, I am sure he will say more about the carbon tax.

I witnessed Ms Mikakos make a contribution to the debate on Mr Jennings's motion yesterday which sent Mr Ondarchie into a flurry of activity. It was extraordinary to hear it, because it almost precisely matched the terms of a letter which Mr Ondarchie provided to me. It was not a letter from a hospital complaining about the state government's delivery of health services but rather a letter specifically picking up many of the points that Ms Mikakos was making in abstract — but it was directed to the commonwealth Minister for Health in relation to the very cuts this motion is about.

Added to those cuts is the carbon tax, which is effectively a reverse tariff on Australian businesses and Victorian hospitals, in that it does not impose itself equally upon our trading partners. It suggests that there is a worldwide problem of global warming, so we will tax Victorian and Australian businesses but we will not properly assess the impact of other countries and other polluters around the world. Rather, we will go ahead blindly with the highest carbon tax in the world. We will tax ourselves out of existence. I commend Senator Barnaby Joyce for raising this time and again in the federal sphere as a major issue and calling it 'a great big new tax on everything', let us not forget those words. They were well endorsed by the leader of the federal Liberal Party, Tony Abbott. The cost to the economy is something the Victorian government and Victorian

health users will have to deal with. It is estimated that these costs will grow to $19 million in 2020.

In relation to the government's performance, we are committed to fulfilling our election commitments, and we have made significant contributions to the health system in Victoria. For example, we have provided funding in not only the 2011–12 budget but also the 2012–13 budget — there is $13.7 billion for total health expenditure in that budget. That represents an increase — not a decrease — of $618 million in health expenditure over and above last year. It also represents an increase of $376 million in acute health expenditure over and above the last financial year. Highlights of that include $1.5 billion over four years for increases to the health and hospital system, which includes $883 million over four years for acute health expenditure. For example, there is $603.5 million to increase the capacity of our hospitals and support demand growth.

That $883 million, I note, is just a smidgen above the amount the previous government sank into a pipeline that sits idle between the Sugarloaf area and the catchments of Melbourne — what a ridiculous idea, what a hopeless election commitment, what a waste of $700 million, and something that this government would not do. Notwithstanding the challenges we face with $6.1 billion less, we are still delivering on our election commitments in tighter times.

We are maintaining elective surgery capacity of $44 million, which is also to fill the lapsed commonwealth funding agreement provided under the national partnership agreement for improving public hospital services. Let us pick up on something that we need to remind the people of Victoria about. On occasion we get accused of not getting our message out, and we put substance over spin, but for anyone who happens to listen to this speech, let us remind ourselves of the poor deal the previous government signed up to, together with the other state Labor governments at the time, for the commonwealth partnership. Whatever Mr Leane or others may say about us, they have to say that the pen stroke that delivered that agreement was made by the member for Mulgrave in the Assembly, Daniel Andrews, when he was Minister for Health, and the then Premier, John Brumby.

That agreement was renegotiated by the current Minister for Health, David Davis, and Premier Ted Baillieu to be a much better deal than that achieved by Labor when it was in government. That is a straight fact. That is what happens when you put spin over substance, when you put the collective Labor mentality of tax, spend and grow the bureaucracy over substantial delivery of health services by health practitioners to the public in a way that is as efficient as possible. As Victorians we are very grateful that we were able to negotiate a better deal on our health services under the national partnership.

In relation to elective surgery, there are ongoing commitments of $149.68 million over the four years, which will continue to support the ongoing demand for hospital services and elective surgery. There is $21 million allocated to the important organ retrieval and transplantation services that were touched on in the extensive contribution made by Mrs Petrovich, who was a member of the Legislative Council's Legal and Social Issues References Committee when it held an inquiry into organ donation in Victoria, as I was, together with Mr O'Donohue, Ms Hartland, Ms Crozier, Mr Elasmar, Mr Viney and Ms Mikakos. The committee did an extensive body of work in relation to the issue of not only organ donation but also tissue retrieval. It is not commonly known that the state is a leader in this field through the work of Dr Kornder and the Donor Tissue Bank of Victoria.

The committee produced a report about this work and the government has committed $21 million to continue the leading work of the Victorian health system in this field that benefits not only the Victorian community but also others outside Victoria. That was demonstrated by the work of Victorian and other important Australian professionals in relation to skin grafts and work done after the Bali bombings. I also note that Richard Willis from the committee secretariat did a lot of work to assist the committee and continues to do so in his role as senior secretary of Council committees. Organ donation continues to be a topic that requires careful consideration. For those who wish to develop a further understanding, I recommend the committee's report of March 2012 headed *Inquiry into Organ Donation in Victoria*.

Another initiative in relation to the budget includes capital expenditure, and again this contrasts with the previous government, which built a pipeline — —

Mr Leane interjected.

Mr O'BRIEN — I will give Mr Leane some tips for the Royal Children's Hospital.

The ACTING PRESIDENT (**Mr Ramsay**) — Order! Mr O'Brien is to speak through the Chair.

Mr O'BRIEN — Thank you, Acting President; I was taking up the interjection and I was generally making my contribution through the Chair. I do not reflect on your ruling, and I thank you for your

guidance. I will continue to make my contribution through the Chair.

Through the Chair, I return to the point I was making — namely, that the Royal Children's Hospital is a good initiative and the government supports the work of that hospital, as it supports the work of all our hospitals. We thank the professionals who act in those areas, including a number of members of my family by coincidence at this point in time, among many other health professionals who are listed in my maiden speech. I have always admired the dedication of health professionals who often carry out their duties in difficult circumstances, and I commend them all for their work.

The capital expenditure to which the government has committed in the 2012–13 budget — a commitment that serves the electorate I share with Mr Ramsay and Mr Koch — has been a good capital commitment for regional health. The $364 million allocation includes $46 million to provide 60 extra beds at Ballarat base hospital and honour our election commitment to build a new helipad for the hospital on top of the new multideck car park, as touched on by Mrs Petrovich in her contribution.

Acting President, as one who well serves the interests of Ballarat, I am sure you would join me in acknowledging the significant work that our colleague Mr Koch undertook in chairing the helipad committee. This outcome is the result of a long campaign pursued by Mr Koch, probably by you, Acting President, in another capacity, and by me, also acting in another capacity, to obtain an emergency helicopter for south-west Victoria. The Minister for Ports, Dr Denis Napthine, as the member for South-West Coast in the Assembly, also worked tirelessly over two election campaigns to convince the state Labor government to deliver this, and eventually it did, but at a much greater cost both in money and, regrettably, accidents and lives than might have been the case if it had been delivered much earlier. As I said, the significant budget contribution will also provide 60 extra beds for the Ballarat base hospital.

The government has also provided $15 million to expand maternity services and establish an intensive care unit at Sunshine Hospital in Mr Finn's electorate. I know both Mr Finn and Mr Elsbury, who is another fierce and passionate advocate for Western Metropolitan Region, were there — —

Mr Finn — I was at the opening.

Mr O'BRIEN — I note Mr Finn's interjection that he was at the opening. He will no doubt follow that project with great interest. I urge people to read a very good publication put out by Mr Finn called *The Finn Review* — in which I note Mr Leane featured prominently the other day — to see the extensive work that he and Mr Elsbury continue to do in advocating for the west, which was without a shadow of a doubt neglected under the previous government.

Another important and sensitive commitment has been $23 million to build the new Charlton hospital. This project has been co-funded by the commonwealth in order to replace the hospital that was damaged in the January 2011 floods. All members who serve that area — in particular Mr Drum, Mrs Petrovich and Ms Lovell — pursued this issue with sensitivity. I am sure the Labor members serving that area, Ms Broad and Ms Darveniza, also pursued the flood recovery issue. This is an important delivery of funds to a community which continues to deal with the very difficult issue of flooding.

Back in Western Victoria Region — as Mr Koch enters the chamber — there is $93 million for a major upgrade of Geelong Hospital, including 64 extra beds, care for older patients and a boost for cancer care. That is a very important commitment for a very important hospital in Western Victoria Region. Geelong Hospital delivers health services to the Geelong area, in conjunction with St John of God Hospital, a private hospital which is also a very good provider of services in that area. I have met with representatives in relation to some of its needs in recent times.

Mr Guy's election commitments have also been delivered on, with land set aside for a further hospital at Waurn Ponds that will include an integrated research facility. Other commitments that are well documented include $40 million to expand and reconfigure the Frankston Hospital emergency department**,** including a 12-bed, short-stay unit, $10 million to upgrade the Castlemaine hospital, including a second theatre, and $5 million for radiotherapy services in Warrnambool to service south-west Victoria. I note Mr Ramsay hosted a group of leaders from the south-west area; he is an advocate for that area, along with me and the very hardworking minister and member for South-West Coast in the Assembly, Denis Napthine. There is also $20 million to redevelop and expand the Kilmore hospital, including 30 extra beds, and $2 million to introduce chemotherapy services at Seymour.

On top of this a number of existing projects are already under way, including $1 billion for the Victorian Comprehensive Cancer Centre and $630 million for the

Bendigo hospital. I note that Mr Drum still seeks Labor's support for the larger hospital but the opposition continues to pursue a hospital worth $102 million less. Nevertheless the coalition will deliver on its commitment. We also have $447 million for the Box Hill Hospital upgrade, a $40 million greater capital contribution than that promised by Labor.

These initiatives are supported by other allocations in the 2012–13 budget, including over $100 million to the Victorian Innovation, e-Health and Communications Technology Fund to support IT services across the health system, $2.6 million to fulfil our election commitment, which is being delivered, to continue and expand the Vision 2020 initiatives to raise awareness about eye health, record funding of $1.14 billion for mental health, including $60 million funding for 95 additional beds, and $59.6 million over four years for the Victorian Cancer Agency.

In various contexts that demonstrates the coalition's commitment to health. Again, however, we are faced with a situation where in order for Wayne Swan, the federal Treasurer, to scramble to achieve his budget — and I note the Assistant Treasurer is in the house — we have been forced to take the cuts which the federal Labor Party has not only made but has then sought to blame us for over the last two days. We have documented those cuts well, and we are joined in our criticism of those cuts by other health ministers and state leaders.

It is important to set the record straight. At the Standing Council on Health meeting of 9 November all six state health ministers collectively expressed concern about the commonwealth reduction in hospital funding and its impact, the basis for the decision and the lack of any consultation prior to the decision being made. Just to remind everyone, that decision was that the commonwealth would reduce funding for Victorian health services by $107 million in this financial year. This is $107 million made up of $39.7 million from 2011–12 and $67 million from 2012–13. It is scheduled to start on 7 December 2012. As a government we continue to call on Labor members of this house and their federal colleagues to bite the bullet and reverse what is a very poor decision for health services and what I also understand will be a very poor decision for them electorally.

It involves $475 million over the forward estimates — and $1.6 billion nationally — to 2015–16. It is based, to pick up a point that I believe was made by Ms Hartland earlier, on an incorrect and invalid calculation of Australia's population growth figure that shows a .03 per cent drop. The official ABS (Australian Bureau of Statistics) figures show the Australian population grew by 1.5 per cent and the Victorian population by 75 000, whereas the commonwealth Treasurer's determination claims that the Victorian population fell by 11 000. We can go to the independent data, which comes from the ABS, and we can go to the statistics; we should also go to the logic of the speeches that have been made. I have referred already to the one made by Mr Darren Cheeseman, the federal member for Corangamite, in which he justified the cuts on the basis of the high Australian dollar.

Mr Finn — A fair dinkum goose.

Mr O'BRIEN — That will hurt all our fair dinkum animals over Christmas. And this will hurt Victorian families.

The position in relation to the data is important. It is important to remember that one should go to the data. In this debate one can look also at the way the health ministers have responded. I will read an extract from the Standing Council on Health communiqué. The six state ministers have supported the following position:

> State health ministers noted that the determination relating to the downward revision of the national specific purpose payments for health care was not made by the federal Minister for Health.
>
> State health ministers expressed concern about the reduction in commonwealth health funding changes, which has resulted in:
>
> > retrospective and future reductions to state funding, which will seriously impact on state budgets that have already been set;
> >
> > the factual basis of the decision relies on disputed population figures.
>
> Concerns were raised about the lack of any consultation with states and territories prior to the decision.
>
> State health ministers urged that the heads of Treasury convene urgently to discuss the commonwealth Treasurer's determination and report on the basis of this decision.

We call on the federal health minister, Ms Plibersek, to take this issue seriously. One cannot proceed seriously on the basis of a decision that is supported by supposed empirical data showing the population to be falling when it appears that the population is growing without changing the decision. It is not logical. It is unreasonable to proceed on a course based logically on having said, 'We'll make a decision based on population growth' if, given the decision taken was based on a population fall and it is proved later there was a rise, the decision is not adjusted. It needs to be adjusted; the commonwealth needs to reverse this. That needs to be done instantly.

I will conclude, because I know Mr Finn is very desirous of making a contribution. I note he was in the house yesterday when the contribution to the *Colac Herald* of Mr Cheeseman was quoted.

Mr Finn interjected.

Mr O'BRIEN — Mr Finn actually managed to remember his name; I am not sure whether he really could. I think I reminded him of the name, to be fair. It is extraordinary to justify these cuts to the Victorian health budget by the commonwealth on the basis that the high Australian dollar has made it cheaper to import medical products. Mr Cheeseman said inflation has been lower than previously forecast. What a ridiculous justification for cutting our health funding.

Given the debate that has been swirling around this chamber between representatives of the Labor Party and representatives of the government, there might be some confusion, as a result of the various perspectives taken, about who is right — as to whether there has been, as Mr Leane said, a significant cut made by the state, or whether the cuts are commonwealth cuts and the Victorian budget and budgetary mix put together by this government has helped our Victorian hospitals. In seeking to perhaps conclude my contribution on the debate and to urge further reference to objective data, I refer to the most recent — November 2012 — Victorian Auditor-General's report on public hospitals, which represents the results of the 2011–12 audits. In the audit summary and in the findings the Auditor-General concludes:

> Notwithstanding some opportunities for improvement, Parliament can have confidence in the adequacy of financial reporting and the internal controls of the entities audited.

Not all the Auditor-General's reports have been so complimentary of government departments, particularly many of those reports relating to previous government programs, which we could cite ad nauseam. I will not do so, given the list is already there.

I will, however, pick up one of the points Mr O'Donohue made in relation to the sale of the pokie licences, where we lost $3.1 billion which will be picked up as, in effect, a windfall gain by the large operators — not the small operators, as is sometimes claimed by Mr Pakula. That $3.1 billion that was ripped out of the Victorian balance sheet could have funded many hospitals.

It could have funded significant improvements. We are talking about a $630 million Bendigo hospital, and on one bad decision $3.1 billion was blown. We are talking about the equivalent of the cost of three Victorian comprehensive cancer centres in that botched government decision alone. But the Auditor-General's finding in this report ought to be the final words on this bill, because they show an independent assessment of this lengthy debate between Labor and Liberal members as to who is right and who is wrong. At page 1 of the audit summary under the heading 'Financial results and sustainability' the report says:

> The combined operating result for all hospitals improved from a deficit of $102 million in 2010–11 to a deficit of $43 million in 2011–12, predominantly due to sector-wide cost containment measures and increased government funding.

We have the independent auditor — the umpire, if you like, to put it in cricket terms — confirming that as a result of increased Victorian government funding there has been a sector-wide cost improvement.

We will have to deal with the commonwealth cuts. I support the motion. I commend it to the house and allow Mr Finn to take up the fight in the time available to him.

Mr FINN (Western Metropolitan) — I will move along with my contribution — very quickly. I did have 15 minutes, but as a result of the government cuts I now have 5!

What we have seen over the life of this government in Victoria is an attack from Canberra the likes of which I have not seen in my political life, which spans some 35 years. I have never seen a Prime Minister go out with such enthusiasm to attack the state that she allegedly represents. I have never seen a Prime Minister go out with malice aforethought, in my view, to declare war on any state of the commonwealth, but to do that to the state that she allegedly resides in is particularly appalling.

You have to ask why Victoria has been subject to these cuts from day one of the Baillieu government. Going back to day one, one of the first things the Gillard government did was to cut half a billion dollars out of the regional rail project budget. The first thing we had to do was find half a billion dollars to allow that project to continue. This state of affairs has been ongoing to the point where it has gone to a committee, and a report to Parliament will be produced very soon discussing the federal-state funding arrangements. I would hate to anticipate what may be in the report, but there may be some reference to the fact that Victoria is not getting a fair go.

In part this means that at the moment we cannot get the east–west link, which we desperately need in Melbourne. It means that we cannot get the Sneydes

Road overpass at Point Cook. It means that we cannot get the Duncans Road interchange at Werribee, which is vitally important. We have got the Wyndham Harbour development, which is currently going ahead. We have got Point Cook, which is not growing so much now, but it has been growing like Topsy until very recently, and we have the Werribee tourism precinct, which is severely affected by the fact that we do not have the Duncans Road interchange we desperately need. Why do we not have that?

We do not have that because the Labor government, whose local federal Labor member for that area is the Prime Minister, will not give us the money. She will not give Victoria the money. That is something she should be held accountable for; that is something that the people of the federal electorate of Lalor should look to their local member for and ask, 'Why aren't you giving us the money we need for these very basic roads, for these basically needed roads?'. It is appalling. Those people are entitled to ask, 'What is the deal with Canberra? What is going on in Canberra over funding for the states?'. It is clear to me, as I think it is clear to everybody in this country, that the only thing that matters to this federal government is politics. Justice for the states and their residents does not enter into it. This is all about propping up mates.

Members might recall that the Prime Minister and the federal Treasurer pulled out hundreds of millions of dollars from the coffers and put them into Queensland to try to save Anna Bligh, the former Premier of Queensland. What a total failure it was! It was just like everything else Julia Gillard has done. We saw what happened to Anna Bligh earlier this year in the Queensland election. Now the Prime Minister is trying to save her mate over in South Australia, whose name completely escapes me at the minute, but anyway that does not matter. The fact is that Victoria is missing out and the Prime Minister is sending big dollars over to South Australia in an attempt to save a state Labor government which is doomed. Why she would even bother I do not know.

I am not sure if the Prime Minister is sending huge sums of money down to Tasmania. I think by any measure Tasmania is stuffed economically. It is gone for all money. When you have a Labor-Greens coalition it has to be said you have got no hope. Before you start, you have got no hope, and of course they have had that very unfortunate combination down there for some years. There is literally no hope for Tasmania. I think even the Prime Minister has accepted that that would be pouring good money after bad.

The situation we have in the states is that we have limited capacity to raise funds. We have a few taxes here and a few taxes there, but overwhelmingly the majority of our revenue comes from the federal government. The federal government taxes the people of this state and gives only some of it back, it has to be said. My view is that much of the money that goes to Canberra is wasted. One thing that is totally unforgivable is the sin of waste. My suggestion to the federal Treasurer is that he could have a surplus this year — I am not talking about this financial year; I am talking about this calendar year — if he cut three-quarters of the federal government. We do not need a federal department of health; we have got a state one. We do not need a federal department of education; we have got a state one. We do not need a federal department of agriculture; we have got a state one. There are literally dozens of departments and thousands of public servants in Canberra we do not need, because we have the people here in the states doing the job.

Why would you need an education department in Canberra that does not run any schools? Why would you need a health department in Canberra that does not run any hospitals? It is a nonsense. Get rid of these departments that we do not need. It is just a nonsense and outrageous in the extreme. As a result of this criminal waste we are seeing the states, where these services are delivered to the people, missing out. That is just not good enough. As representatives of the people of Victoria we should be screaming from the tops of the mountains about this. I certainly am and have been for a while, and, if I have to, I will continue to do so for some time. It is just not good enough.

I know money is tight, but the trouble is I know why money is tight, and it does not need to be tight. If we got rid of all these bludgers in Canberra, we would not have to worry about it; it would not be an issue. It just would not be an issue. Give the money to the people who use it for the benefit of the community. Do not give it to people who shuffle it around for a while and give it back to you.

Mr O'Brien — Or don't.

Mr FINN — Or do not, indeed, as Mr O'Brien points out. Give it to the people who are in the best position to use it for the advancement of the community and the people of this state. If Mr Swan wants his surplus this year — and I think his getting it is highly debatable; even Mr Pakula would say it is highly debatable that Mr Swan will get his surplus this year — that is all he has to do: eliminate waste in Canberra and get rid of three-quarters of the federal government. He

should go back to what was the original intent of the Australian constitution.

Mr O'Brien — We don't have a Victorian army.

Mr FINN — No, we do not have a Victorian army, and that is one department I would not be cutting in Canberra, I can assure Mr O'Brien. We would keep the federal Department of Foreign Affairs and Trade, obviously; we would keep the defence forces and we would keep a number of areas where the states would obviously not have a say. If we were to make cuts in many other areas, we would be able to provide the services that we need. We would be able to provide a new hospital in Footscray, which is urgently needed. We would be able to provide the east–west link.

In conclusion, I will say it again because it has to be said. There is a lot more that I could say on this subject, but apparently I have run out of time. There is a way to fix this problem and to fix it now, but the federal government needs the political courage to do it. I am not holding my breath. I have not seen any evidence that the federal government has any courage of any kind at all.

Hon. D. M. DAVIS (Minister for Health) — I want to speak very briefly in reply just to remind the house of the nature of the motion. I might add that despite some of the debate that has occurred in both quarters, the motion is a narrowly construed motion.

The motion calls on the house to express its serious concern at the recently announced reduction in commonwealth health funding and about the factual basis of the commonwealth's decision and the disputed population figure approach that was adopted by the commonwealth. It calls on the heads of treasuries to convene urgently to discuss the commonwealth Treasurer's determination and report on the basis of the decision. It also notes the size of the cutbacks: more than $39 million out of the 2011–12 financial year, already gone, and $67 million this year. That $39 million plus $67 million payment from the commonwealth will be withdrawn, beginning on 7 December. So $107 million will be taken out of funding that was promised in the federal budget in May, in the state budget, and in budgets that have been specifically set with health services. There will be further cuts in subsequent years into the future, to a total of $475 million.

In the debate I made the point that this will re-base the health agreement to a different level than was anticipated, and that will affect funding for every hospital through the commonwealth part of the funding deal for evermore. Let us be quite clear about the impact of this. Concern was expressed about it by six health ministers. The shape and form of this motion closely parallels the motion passed by the six health ministers at the recent conference in Perth. It is true that the federal minister had a different view, but four conservative state health ministers and two Labor state health ministers — from Tasmania and South Australia — had the same view about the words that were in the communiqué. Those words made it very clear that the states did not accept the federal determination.

I want to be quite specific in terms of what has gone on with this. We in no way criticise the Australian Bureau of Statistics. In fact, the states rely explicitly on the ABS figures for their views about population growth. The ABS figures make it clear that Victoria's population has grown by 1.5 per cent in the last year and the national population has grown by 1.5 per cent. That is different from the Treasurer's determination that the Victorian population has fallen by 11 000 and the national population has grown by only 0.03 per cent. He has arrived at those figures by combining two time series in a way that would cause someone to fail first year statistics at university.

Mr Lenders interjected.

Hon. D. M. DAVIS — I am very, very confident about these numbers, and they are not disputed. The numbers have not been disputed by the federal minister.

I also respond to a couple of Ms Hartland's clear points. She asked: is there a state cut? No. I refer her directly to the Auditor-General's report from yesterday which, on page 6 of the audit summary, makes it quite clear that the government has improved the deficit position of its networks and has done that through containment measures of various types and also increased government funding. There is no question that funding has increased substantially this financial year and last financial year, and will continue into the future. We will not reduce funding to our health services; we will increase it.

I also make it clear that it is not just me saying this; it is being said by people from across the health sector. I quote from a letter, which was also referred to yesterday in the house, from Professor Glenn Bowes, an eminent and respected clinician and a very good chair of Northern Health. He has written to the federal minister and copied that to a number of federal MPs. He made the point that his area, the city of Whittlesea, is the second-fastest growing municipality in Australia. The concept that there would be a fall in population in

Victoria, when there are these massive growth numbers, is frankly absurd and wrong.

Ms Hartland and Mr Finn are from the western side of the city and they know — and even Mr Pakula, when he occasionally visits his electorate there, understands — that the population of the west is growing very fast. Down in the Torquay area, in the Barwon Health region, there is enormous population growth. In the south-east of the city there is enormous population growth and, as Professor Bowes points out, in the northern region there is also massive population growth. The figure of 75 000 for last year is the figure pointed to by the ABS. It makes it very clear that Victoria's population has in fact grown.

The health agreements basically look at three factors in terms of these indexation issues. They look at population growth, and I make it clear that population growth is the key factor, and they look at technology and utilisation. The states have less quibble with what the commonwealth has done on those second two factors, although there are some discussions on those matters as well. But the key thing is that about three-quarters of the cut being instituted is off the back of this dodgy population growth estimate. It is using a figure different from the figure the ABS is using, a figure that is different from what is being put in the official series.

The key point is that this is a highly specific motion. It calls for the house to express its serious concern about the announced reduction by the commonwealth, to express its concern about the factual basis of that decision and to call on the heads of Treasuries to convene urgently to discuss this. It notes that six state health ministers expressed concern about the announced reduction in commonwealth health funding at the recent Standing Council on Health meeting.

I believe this is a Victorian issue and an issue that is important to fight for. That is why I have been prepared to fight on a national level and with my fellow health ministers in support of these positions. We are prepared to say that the commonwealth has got this wrong because it has. The facts do not support its position. We are doing that because it matters for our health services. The impact will be felt directly by patients if on 7 December the first of the cuts are made.

Let us be quite clear. The Council of Australian Governments ministers are gathering on 7 December, and on that day this cut will be made to the budgets of every single health service in Australia. That is what is going to occur. To be fair to the federal minister, it was not her decision to do this; this decision has been imposed on her by the Prime Minister and by the Treasurer.

Mr Lenders interjected.

Hon. D. M. DAVIS — What I am saying very clearly is that I am not blaming the federal health minister personally. She has been left a very difficult task in carrying this matter, and it has been painfully clear at recent meetings that she does not relish this difficult task. But the fact is that health services will suffer, individual patients will suffer and the system will be rebased all for the purpose of a dodgy swindle by the commonwealth. This is a dodgy swindle that seeks to rebase health funding. We will prosecute this case very strongly because we understand it is in the interests of Victorians. I think members of the opposition have to make a decision as to whether they are Victorians first and Labor Party members second, or whether they are Labor Party members first and Victorians second and are therefore prepared to make excuses and toady up to the commonwealth government in a way that is not in the interests of Victorian patients.

House divided on motion:

Ayes, 19

Atkinson, Mr	Koch, Mr
Coote, Mrs	Kronberg, Mrs
Crozier, Ms	O'Brien, Mr
Dalla-Riva, Mr	O'Donohue, Mr
Davis, Mr D.	Ondarchie, Mr (*Teller*)
Davis, Mr P. (*Teller*)	Petrovich, Mrs
Drum, Mr	Peulich, Mrs
Elsbury, Mr	Ramsay, Mr
Finn, Mr	Rich-Phillips, Mr
Guy, Mr	

Noes, 16

Barber, Mr	Pakula, Mr
Broad, Ms	Pennicuik, Ms
Eideh, Mr	Pulford, Ms
Hartland, Ms (*Teller*)	Scheffer, Mr (*Teller*)
Jennings, Mr	Somyurek, Mr
Leane, Mr	Tee, Mr
Lenders, Mr	Tierney, Ms
Mikakos, Ms	Viney, Mr

Pairs

Hall, Mr	Elasmar, Mr
Lovell, Ms	Tarlamis, Mr

Motion agreed to.

CLASSIFICATION (PUBLICATIONS, FILMS AND COMPUTER GAMES) (ENFORCEMENT) AMENDMENT BILL 2012

Introduction and first reading

Received from Assembly.

Read first time for Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) on motion of Hon. G. K. Rich-Phillips; by leave, ordered to be read second time forthwith.

Statement of compatibility

For Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations), Hon. G. K. Rich-Phillips tabled following statement in accordance with Charter of Human Rights and Responsibilities Act 2006:

In accordance with section 28 of the Charter of Human Rights and Responsibilities Act 2006 (charter act), I make this statement of compatibility with respect to the Classification (Publications, Films and Computer Games) (Enforcement) Amendment Bill 2012.

In my opinion, the Classification (Publications, Films and Computer Games) (Enforcement) Amendment Bill 2012, as introduced to the Legislative Council, is compatible with the human rights as set out in the charter act. I base my opinion on the reasons outlined in this statement.

Overview of bill

The bill makes a number of amendments to the Classification (Publications, Films and Computer Games) (Enforcement) Act 1995 to implement the decision of participating ministers in the national classification scheme to introduce a new R 18+ classification for computer games in Australia. The bill is intended to complement the Classification (Publications, Films and Computer Games) Act 1995 (cth) by restricting the sale, delivery, demonstration and advertisement of R 18+ computer games to persons aged 18 years and over.

The bill also inserts an exemption for law enforcement agencies and authorised persons from certain offences prohibiting the online transmission of objectionable material and child pornography. This exemption will allow law enforcement agencies or authorised persons to securely transmit child pornography for law enforcement purposes, such as including that material in national law enforcement and intelligence sharing databases.

Human rights issues

Charter act rights that are relevant to the bill

Freedom of expression (section 15)

Section 15(2) of the charter act provides that every person has the right to freedom of expression which includes the freedom to seek, receive and impart information and ideas of all kinds. Section 15(3) permits lawful restrictions of the right reasonably necessary to respect the rights and reputations of other persons and for the protection of national security, public order, public health or public morality. In addition, section 7(2) permits other reasonable limits on the right which can be justified in a free and democratic society.

Freedom of expression is relevant to part 2 of the bill, which provides a range of restrictions on the sale, demonstration and advertisement of R 18+ computer games seeking to ensure that such games are not accessible to children.

The Supreme Court has recently held in *Magee v. Delaney* [2012] VSC 407, that not all exercises of freedom of expression are covered by section 15(2). Before any question arises as to whether the right in section 15(2) is permissibly limited under section 15(3) or section 7(2), it must be determined whether the particular expression of ideas and information is covered by section 15(2). The scope of section 15(2) is limited by public policy considerations inherent in the nature of a free and democratic society based on the rule of law. On this basis, section 15(2) does not cover expression in the form of damage to a third party's property or the threat of such damage, nor expression in the form of violence including sexual violence against persons, or the threat of such violence.

It is possible that some content in some computer games, if extolling acts and threats of serious violence and property destruction, may be forms of expression which are not covered by section 15(2) following the reasoning in *Magee v. Delaney*. In addition it is possible that obscene content is not protected by section 15(2) — it is not protected by the free speech right in the First Amendment to the US Constitution. The UN Human Rights Committee in General Comment 28 on the ICCPR has also stated that certain pornographic material portraying violence and degrading treatment of women must be restricted, notwithstanding the free expression right in article 19 of the ICCPR. Most of these types of content will not be permitted in R 18+ computer games under the new Guidelines for the Classification of Computer Games and it is possible that such content is not covered by section 15(2) of the charter act for the reasons given.

But even if such content is permitted in R 18+ games and is covered by section 15(2), the provisions in part 2 of the bill which ensure that R 18+ computer games are not accessible to children are permissible limitations under section 15(3) of the charter act, which provides that the right in section 15(2) is subject to lawful restrictions reasonably necessary for the protection of the rights of others, national security, public order, public health or public morality.

Without appropriate restrictions, children are likely to be exposed to adult material which contains seriously violent and sexually explicit material which is unsuitable and may cause distress and/or have other harmful consequences. For these reasons, the creation of a new adult-only classification for computer games and the consequent restriction on access to such games by children, even if this is a limitation on the right in section 15(2), is a limitation permitted by section 15(3), being reasonably necessary for the protection of the rights of others and the protection of public morality and public order. The same reasoning has long justified restricted access to R 18+ films.

Equality before the law

The proposal to limit access to R 18+ computer games to adults has the effect of treating minors differently on account of their age. This may constitute a limitation on section 8(3) of the charter act, which provides for equal protection of the law without discrimination although, again, age-based restrictions have long been recognised as appropriate in a free and democratic society (for example, access to tobacco or alcohol, and R 18+ films) to reflect the particular vulnerability of children. It is possible that such age-based restrictions for the protection of children may not amount to limitations of the right in section 8 of the charter act because they are not an unfavourable or disadvantageous treatment of children and hence do not constitute discrimination. But to the extent they do limit the right in section 8, the restrictions in the bill are demonstrably justifiable limitations on that right.

The restriction of adult-oriented computer games to persons aged 18 years and over is one of the primary purposes of this bill. The restrictions are designed to prevent potential harm and distress to children that may arise from viewing or playing computer games that are unsuitable for them. Such restrictions already operate within the NCS scheme in the context of adult films and publications.

Presumption of innocence (section 25(1))

The right to be presumed innocent is a longstanding right that is recognised in the charter act. However, there may be circumstances where the presumption may be limited. This is particularly so in respect of public welfare regulatory offences and where a defence is enacted for the purpose of allowing an accused to avoid criminal liability in circumstances where reasonable steps have been taken towards compliance in what could otherwise be an absolute liability offence.

Clause 8 of the bill establishes the offence of sale or delivery of an R 18+ computer game (or unclassified computer game likely to be classified R 18+) to a minor, unless the person is the parent or guardian of the minor. The penalty for this offence is 60 penalty units, or up to six months imprisonment. As is commonly the case in the context of regulatory provisions, the offence is framed to operate as a strict liability offence. Actual knowledge that the person is a minor is not an element of the offence. However, clause 8(2) establishes a defence to a prosecution and enables a person to escape liability for sale or delivery to a minor if they can prove:

> the minor showed the person acceptable proof of age prior to sale or delivery and the accused believed on reasonable grounds that the minor was an adult; or
>
> in the case of delivery, the minor was an employee of the accused and the delivery took place in the course of the employment.

This provision mirrors the offence (and defence) in relation to sale and delivery of R 18+ films.

The effect of placing a legal burden on the accused to establish a defence, and thereby their innocence, is a limit on the right to be presumed innocent. However, I consider that in this case the limit is reasonable and justifiable for the purposes of section 7(2) of the charter act, having regard to the following factors.

The purpose of imposing the burden of proof on the accused to establish his or her defence is to ensure protection of children through (a) encouraging individuals and retailers to take steps to ensure that they do not supply R 18+ materials to minors, and (b) enabling the offence to be effectively prosecuted. Proper enforcement of the classification scheme protects the broader public interest, and is in accordance with the rights of children under section 17 of the charter act to such protection as is in their best interests. One of the guiding principles contained in the national classification code is that 'minors should be protected from material likely to harm or disturb them'. This is particularly the case in the context of interactive computer games, the impacts of which have been a source of concern for parents, guardians and the community more broadly.

Requiring a person who supplied an R 18+ computer game to a child to prove that he or she either was shown proof of age and had a reasonable belief that the minor was an adult or that the supply took place in the course of employment, acts as an incentive for individuals to exercise care and diligence in ensuring compliance with the regulatory scheme. It encourages individuals to err on the side of caution and to take reasonable steps (such as obtaining proof of age) to ascertain that it is legal to supply a person with the R 18+ material. In particular, the reverse legal onus acts to encourage retailers to take appropriate steps to ensure that R 18+ material is restricted to adults. Given the large amount of content regulated under the NCS, the efficacy of the scheme is reliant on the cooperation of distributors and retailers to ensure that classification restrictions determined by the independent classification board are appropriately enforced. The strict approach taken to departures from the legislative obligations reinforces the importance of compliance with the scheme.

Further, the limitation on the right to be presumed innocent imposed by clause 8 is required to ensure that the offence of selling R 18+ computer games to minors is not frustrated due to difficulties the prosecution may face in establishing beyond reasonable doubt that the circumstances giving rise to a defence did not exist. The evidence to establish or to disprove the defence (for example, as it relates to the reasonable belief that the minor was an adult, or the particular employment context in which the minor was provided with the material) will often be uniquely within the defendant's knowledge and not available to the prosecution.

The onus on the accused to prove the defence is not unduly burdensome. An accused will have personal knowledge of the circumstances that give rise to the relevant defence, such as whether proof of age was provided, whether the accused had reasonable grounds to believe the minor was an adult, and whether the material was provided in the context of employment. The accused will therefore be able to give evidence of the matters giving rise to the defence, and the courts are an appropriate forum to test the veracity of such evidence led by an accused.

Finally, I note that there are no reasonably available alternative means by which the objectives of the offence provision could be achieved. Imposing an 'evidentiary' burden on the accused (as opposed to a legal burden), which would merely require the accused to point to evidence that may suggest the existence of a defence, would mean the burden would be too easily discharged by the accused. In such circumstances, there would be insufficient incentive for individuals to take appropriate steps to ensure that they can demonstrate compliance with the requirements of the bill.

For the above reasons, I consider that the limitation on the right to be presumed innocent in clause 8 is demonstrably justifiable and compatible with the charter act.

Richard Dalla-Riva, MLC
Minister for Employment and Industrial Relations
Minister for Manufacturing, Exports and Trade

Second reading

Ordered that second-reading speech be incorporated into *Hansard* on motion of Hon. G. K. RICH-PHILLIPS (Assistant Treasurer).

Hon. G. K. RICH-PHILLIPS (Assistant Treasurer) — I move:

That the bill be now read a second time.

Incorporated speech as follows:

Victoria participates in a national scheme for the classification of films, publications and computer games, administered by the Classification Board in accordance with the national classification code and relevant classification guidelines.

Under the current national scheme, computer games can receive a maximum classification of MA 15+ (unsuitable for persons under 15 years of age) to be lawfully available in Australia. If a computer game contains content that exceeds what is permissible within the MA 15+ category, it is refused classification.

The issue of whether to create an additional, higher level R 18+ classification has been under consideration by commonwealth, state and territory censorship ministers for some time. The issue has required careful consideration of the appropriate balance between allowing the introduction of an R 18+ classification for computer games while continuing to provide protections against material containing excessive levels of graphic, frequent and gratuitous violence.

Increased restrictions on the content permissible in the MA 15+ category (arising from the development of new Guidelines for the Classification of Computer Games) will likely see many high-level computer games more appropriately falling within the new R 18+ classification category. These guidelines also ensure that computer games with extreme violence, abhorrent or gratuitously offensive content continue to be refused classification, so that such games remain illegal to sell and demonstrate.

The availability of an adult classification for computer games will reduce the existing industry practice of modifying high level computer games (many of which are subject to an adult classification in overseas jurisdictions) to conform to the content restrictions contained in the MA 15+ category in order to allow the game to be legally available in Australia. This occurs notwithstanding that the overall themes of the computer game are adult oriented and are not suited to younger gamers.

While historically computer games were regarded as predominantly played by children, generational change has led to an increased proportion of adult gamers. The introduction of the new classification appropriately recognises this shift in the audience demographic and creates policy consistency with the availability of adult films and publications.

This bill establishes restrictions on R 18+ computer games in Victoria to complement commonwealth amending legislation, which establishes the new classification category. The provisions of this bill limit access (including sale, hire and demonstration) of R 18+ computer games to adults and establishes penalties for non-compliance. To the extent possible within the jurisdiction of the national classification scheme, the bill also restricts the advertising of R 18+ computer games to circumstances where the audience is comprised of adults. Finally, the bill updates a number of definitions and references to reflect the existence of an R 18+ classification for computer games.

The bill also facilitates Victoria's participation in important national collaborative efforts to improve the enforcement of child exploitation offences. Seizures of child exploitation material from an accused are typically voluminous and require significant resources to be used to categorise and analyse the material in order to prosecute an offender. To mitigate this enforcement agencies rely on databases such as the Child Exploitation Tracking System (CETS) and the Australian National Victim Image Library (ANVIL) to store and categorise previously seized child exploitation material.

The databases enable law enforcement agencies to upload seized material to crosscheck with material already on these databases, without the need to manually view and categorise newly seized material, which often duplicates previously seized child pornography. These initiatives greatly improve the efficiency of the law enforcement process and improve occupational health and safety outcomes by reducing the need for law enforcement officers to view and categorise large amounts of distressing and disturbing content. Without the exception created by the bill, Victorian police have been required to physically hand over seized material to their federal counterparts for secure online transmission to avoid breaching Victorian offences.

To enable law enforcement agencies to lawfully transmit seized child pornography for the purposes of inclusion in the CETS and ANVIL databases in Victoria, the bill establishes a law enforcement exemption from certain online transmission offences contained in the Classification (Publications, Films and Computer Games) (Enforcement) Act 1995. For example, law enforcement agencies will have an exemption from sections 57, 57A and 59, which prohibit use of an online transmission service in the context of objectionable material or child pornography.

This exemption will only apply to defined agencies or persons authorised by the Chief Commissioner of Police and extends only to a person acting in the exercise of a power, duty or function authorised by law. The exemption is consistent with exemptions from child pornography offences contained in the Crimes Act 1958. This sensible reform recognises that in enforcing child pornography laws, enforcement bodies are required to handle and share material for the purposes of collaboration and intelligence gathering.

I commend the bill to the house.

Debate adjourned on motion of Hon. M. P. PAKULA (Western Metropolitan).

Debate adjourned until Thursday, 22 November.

EDUCATION LEGISLATION AMENDMENT (GOVERNANCE) BILL 2012

Introduction and first reading

Received from Assembly.

Read first time for Hon. P. R. HALL (Minister for Higher Education and Skills) on motion of Hon. G. K. Rich-Phillips; by leave, ordered to be read second time forthwith.

Statement of compatibility

For Hon. P. R. HALL (Minister for Higher Education and Skills), Hon. G. K. Rich-Phillips tabled following statement in accordance with Charter of Human Rights and Responsibilities Act 2006:

In accordance with section 28 of the Charter of Human Rights and Responsibilities Act 2006 (the charter act), I make this statement of compatibility with respect to the Education Legislation Amendment (Governance) Bill 2012.

In my opinion, the Education Legislation Amendment (Governance) Bill 2012 (the bill), as introduced to the Legislative Council, is compatible with the human rights protected by the charter act. I base my opinion on the reasons outlined in this statement.

Overview of bill

The primary purposes of the bill are —

(1) to amend the Education and Training Reform Act 2006 (ETRA):

(a) to abolish the Victorian Skills Commission and the provisions enabling the creation or declaration of industry training boards; and

(b) to change the governance arrangements for TAFE institutes and adult education institutions, providing for —

the establishment of new governing boards appointed solely on the basis of relevant skills and experience, with the board no longer including elected or coopted directors, and the chief executive officer being ineligible for appointment, and

the establishment of the institutions as incorporated entities (instead of their boards as at present); and

(c) to transfer, with modifications, the power to manage and disburse training funding to the Secretary to the Department of Education and Early Childhood Development from the Victorian Skills Commission to the secretary; and

(d) to enable VET funding contracts to be entered into with contractors that provide government-subsidised training, and to enable those contracts to include certain terms that may not otherwise be enforceable at common law; and

(e) to allow for information held about contractors that provide government-subsidised training places to be exchanged between commonwealth and state education regulators and education agencies.

(2) to amend the governance arrangements of the eight university acts to provide:

(a) that there must not be fewer government-appointed members than council-appointed members (instead of the current rule that they must be the same in number);

(b) that there will no longer be elected council member positions, although staff and students will remain eligible for appointment;

(c) greater flexibility in governance arrangements, with the size of the council being able to be varied by order in council at the request of two-thirds of a university's council, subject to parliamentary disallowance.

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

The bill potentially engages the following human rights protected by the charter act:

Section 13: privacy and reputation

This charter act right is engaged by clause 10 of the bill, which inserts a new section 3.1.7 into the ETRA, and which provides a statutory right of entry where a VET funding contract expressly authorises a person, who the secretary of the department has authorised, to enter and inspect a premises in order to monitor compliance with a VET funding contract.

The proposed new provision however does not apply universally. It applies only to those entities which have entered into a funding contract with the state for the provision of VET. Additionally, it is only relevant (for charter act purposes) in respect of contractors providing VET that are individuals, not corporations (as the charter act only applies to individuals).

For those entities which fall into both of the above categories, the section 13 right is not limited. The right to enter the premises has to be agreed to by the training provider through their acceptance of the contract with the state and the receipt of funding that flows from that contract. The bill ensures the lawfulness of the entry authorised by contract. The entry will not be arbitrary because the bill provides that the entry can only take place during the times agreed to in the VET funding contract, and because it would only occur if the contractor had given prior agreement to the right of entry in a VET funding contract.

Section 18: right to participate in public life

This charter act right is engaged by two clauses in the bill.

The first is clause 20, which inserts new section 3.1.16(3) into ETRA, and which provides that neither a member of Parliament (MP) nor the chief executive officer (CEO) of a

TAFE institute can be appointed to be a director of such a board.

The second is clause 29, which inserts a new section 3.3.33(3) into ETRA and makes similar provision in relation to adult education institutions.

In the case of MPs, these provisions exist in the ETRA as it currently stands, and are simply being re-enacted through this bill. In the case of CEOs of TAFE institutes or of adult education institutions, the rationale for these provisions is to limit the potential for any role conflict between board director responsibility and CEO responsibility.

Whilst the charter act right to participate in public life is engaged, it is not limited. The provisions do not preclude these persons completely from being members of boards and thereby participating in public life additional to their existing public responsibilities. Rather it precludes them from holding two positions simultaneously that may be potentially incompatible. Any individual affected by the new provisions can make a choice as to the capacity in which they wish to participate in public life by choosing one position over another.

This right is also engaged but not limited by the proposed reconstitution of the boards of the TAFE institutes and adult education institutions by clauses 17, 26 and 33 (new sections 6.1.32 and 6.1.33) of the bill, which will result in the current board directors going out of office when new orders in council are made reconstituting those boards. This does not limit the right of any qualified individuals to participate as board directors under the new arrangements.

The right is also engaged by the provisions that abolish the existing elected staff and student positions on the boards of adult education institutions and TAFE institutes and university councils. While these positions continue to exist, staff and students remain eligible for appointment to these boards and councils if they hold the necessary qualifications. As it does not make them ineligible to participate, it does not limit their rights in this respect.

Section 24: fair hearing

This charter act right is engaged by four clauses of the bill. However, in each case, and as detailed further below, the right to a fair hearing is not limited because the decision-making powers involved are of a standard nature and do not confer extraordinary powers on the decision-maker.

This charter act right is engaged but not limited by clauses 21, 22, 30 and 31 of the bill, which amend sections 3.1.18, 3.1.19, 3.3.34 and 3.3.35 of ETRA respectively.

Clauses 21 and 30 of the bill give the Governor in Council the discretionary power to remove the chairperson or directors of the board of a TAFE institute or the governing board of an adult education institution (AEI) from office at any time.

This is an existing power in relation to those directors of these boards that are appointed by the Governor in Council or the minister. It is in any case the default situation under the Interpretation of Legislation Act 1984, section 41(1)(b), that the power to appoint a person to a position includes the power to remove an appointee.

Certain existing provisions are being removed that prescribe a removal process on the grounds of proven misbehaviour. However, these existing provisions relate only to directors who are not appointed by the Governor in Council or the minister. These provisions have become redundant because, under the restructure of the boards by this bill, all director positions will be Governor in Council or ministerial appointments.

Thus, in short, the existing removal process is not substantively changed by this bill. The current situation is that government-appointed directors may be removed by the Governor in Council at any time. What has changed, in effect, is that all directors will become government appointed, and thus subject to this rule.

Further, any decision made to remove a chairperson or director would, as a matter of practice, be subject to normal rights of review — in this case either by the Supreme Court on a point of law.

Clauses 22 and 31 of the bill enable amend sections 3.1.19 and 3.3.35 of ETRA respectively. These sections deal with the minister's reserve powers in relation to the governance of TAFE institutes and adult education institutions respectively. Currently, those sections enable the Governor in Council, among other things, to dismiss all the directors of the board of a TAFE institute or an adult education institution and appoint new directors. A process is prescribed by the act already for the exercise of this power, and this process includes the grounds of removal and the natural justice procedures that must be followed.

The effect of the amendments is only that, following removal by the existing process, new directors would be appointed in accordance with the normal appointment procedures for directors, instead of by the Governor in Council. Thus, the amendment does not alter the existing process for removal itself, or the existing procedural safeguards. The amendment only affects how new appointments would be made following the removal of a board.

Conclusion

I consider that the Education Legislation Amendment (Governance) Bill 2012 is compatible with the Charter of Human Rights and Responsibilities Act 2006.

The Hon. Peter Hall, MLC
Minister for Higher Education and Skills
Minister responsible for the Teaching Profession

Second reading

Ordered that second-reading speech be incorporated into *Hansard* on motion of Hon. G. K. RICH-PHILLIPS (Assistant Treasurer).

Hon. G. K. RICH-PHILLIPS (Assistant Treasurer) — I move:

That the bill be now read a second time.

Incorporated speech as follows:

This bill proposes amendments to the Education and Training Reform Act 2006 to revise governance structures for Victoria's post-secondary institutions including TAFE institutes and universities. The bill proposes to abolish the

Victorian Skills Commission and industry training boards, whose roles have become redundant. The bill also proposes a legislative framework for the public funding of vocational education and training programs. This funding will be provided through contracts between the Department of Education and Early Childhood Development and providers of vocational education and training, whether public or private. To this end, the bill proposes several changes to contract law as it applies to these funding contracts, so as to facilitate their monitoring and enforcement.

First, in regard to TAFE institutes, the bill's proposals will help to ensure a governance framework that supports a more contemporary, accountable and effective TAFE sector. The proposals aim to allow TAFEs to compete effectively in the demand-driven market, ensure greater accountability and enable risk to public funds to be appropriately managed.

The bill proposes to accomplish these aims in a number of ways. The legal structure of TAFE institutes is proposed to be changed. Currently, TAFE institutes are unincorporated bodies but have incorporated boards. These boards are partly self-appointed, and also include the institute CEOs and elected directors. This is an odd arrangement for large, self-governing public institutions. It dates from the time when TAFE was part of the school system and each had a council with a mainly advisory role.

The amendments proposed in the bill provide for TAFE institutes to become incorporated entities, like other major public authorities, with powers and functions to provide education and related services to the community. Each institute will have a board responsible for institutional governance, but it will be the institute rather than the board which is the incorporated entity.

The bill inserts a new statement of objectives for TAFE institutes. This sets as objectives the delivery of educational services and utilisation of assets on the state's behalf as efficiently as possible, ensuring sustainability in the medium to long term, acting in accordance with prudent commercial practice, and maximising their contribution to the economy and community wellbeing. The objectives statement also emphasises the importance of delivering quality educational services, innovation and leadership, as well as collaboration between institutes to serve the needs of industry and the community and groups with particular education needs.

In future, directors will be chosen solely for skills and experience suitable for membership of the governing body of a large public authority that is responsible for substantial taxpayer assets and for delivering important services to the community. All appointments will be made by the minister on the basis of qualifications, moving away from election or selection as representatives of stakeholder groups. While boards will continue to consult stakeholders, there will no longer be directors elected by staff and students as of right or chosen by the board itself.

Currently, the CEO of an institute is also a board director. This is a hangover of the time when TAFE colleges, as they were then called, formed part of the department of education. The department employed the college principal who was assisted by, and was a member of, the college council, which had a largely advisory role. This model is no longer appropriate. TAFE institutes operate as separate, self-governing corporations with responsibility for substantial public assets and the conduct of significant commercial activities that deliver public value. The board is the governing body of the institute, develops complex educational and commercial strategies, employs all staff and oversees the institute management. As the CEO reports and is accountable to a board with these roles, it is more appropriate that the CEO not be a director.

The bill requires that the orders in council which currently establish TAFE institutes and their governance structures be reviewed and remade. These orders deal with governance matters such as board membership and its objectives and powers, within the parameters set by the act. These are often referred to as the board constitutions. The review will lead to the making of new constitutions for each institute and the appointment of new boards under the new arrangements. Until the review is completed and new constitutions made, the existing boards remain in place.

The bill also proposes similar governance changes to the two adult education institutions — the Centre for Adult Education and the Adult Multicultural Education Services — which are established in a similar way to TAFE institutes under a separate division of the act.

The bill will also facilitate the merger of boards and managements of TAFE institutes and adult education institutions. Initially, it is proposed to merge the boards of the Box Hill Institute of TAFE and of the Centre for Adult Education. These would remain separate educational institutions with their own industrial agreements, staff, funding and revenue, but with a common board and CEO. This will make it possible to achieve synergies and efficiencies in the delivery of educational services.

The bill also proposes greater flexibility in the governance arrangements for Victoria's eight universities. As honourable members will be aware, each university is established under its own act of Parliament, which were re-enacted on the same pattern in 2009 and 2010.

Currently, each university council comprises between 14 and 21 members, including official members, government-appointed members, coopted members and elected members.

After discussions with university chancellors, it is now desirable that universities should have flexibility in the size and composition of their councils. Following similar reforms enacted in New South Wales in 2011, the bill proposes to amend each university act to enable the number of government-appointed and council-appointed members to be increased or decreased without the need for legislation. If a university adopts this option, it would also be able to alter the nexus between government-appointed and council-appointed members. At present they must be exactly the same number. Instead, the number of government-appointed members may be the same as or more than — but may not be less than — the number of council-appointed members.

Such changes could only be made at the request of two-thirds of a university's council with the approval of the Governor in Council. Any changes must be tabled in Parliament and would be subject to disallowance.

Further, the bill proposes that there will no longer automatically be elected members on the university councils. Appointments will be based on holding qualifications to perform the duties of the position of a director of a major institution. Staff and students will not be disqualified from

appointment as council members if they have the appropriate skills, but they will not have guaranteed positions.

The bill also proposes the abolition of the Victorian Skills Commission (VSC). The VSC originated as the State Training Board in the late 1980s. It determined training programs for TAFE institutes, regulated private providers of vocational education and training, allocated government training funds, oversaw the operations and governance of TAFEs and regulated apprenticeships. It was also the government's principal advisor on training policy.

Since that time, the major roles of the VSC have transferred to other bodies or have been discontinued. Its regulatory functions in relation to education providers moved to the Victorian Registration and Qualifications Authority (VRQA) in 2007 or, more recently, to the Australian Skills Quality Authority (ASQA). Its regulatory role in apprenticeships recently moved to the VRQA as a result of amendments passed earlier this year. The VSC no longer allocates training funds — from 1 January 2011, government training funds are allocated by the market, according to enrolment under the 'demand-driven' system. The one remaining role the VSC has is to give advice. However, this role can be better performed through industry consultation. The bill therefore proposes to abolish the VSC from 1 January 2013.

The bill also proposes to remove the legislative machinery relating to industry training advisory boards (ITABs). The ITABs were established by industry to provide advice on training to state and commonwealth training agencies, a role for which they were given public funding and statutory recognition by orders made under the act. With the discontinuation of the VSC, there is no longer a formal statutory role for ITABs. For this reason, the recognition orders were revoked on 1 July 2012 and the bill proposes to remove the recognition mechanism from the act.

The VSC's statutory powers to provide public funding for vocational education and training are, in practice, exercised by the Department of Education and Early Childhood Development under delegation. It is now proposed to formalise that arrangement, by transferring the power to allocate state funding for vocational education and training to the secretary of the department through VET funding contracts.

The bill also proposes a number of modifications to contract law, as it applies to VET funding contracts, to enable compliance with those contracts to be better monitored and enforced by the department. This is necessary because contract law is primarily designed for the commercial environment, rather than for delivery of services to the community. These modifications are intended to ensure that expenditure of public funds is properly monitored and so that the state can ensure that these services are delivered to the appropriate standard and that the contractor is accountable for this.

To this end, the bill seeks to strengthen the government's powers to monitor and enforce contracts with providers of government-subsidised training, whether public institutions or privately operated training providers.

This is because, generally speaking, under contract law it is not possible to include penalties for simply breaching a contract — an actual loss must be proven. Where an education provider fails to deliver the contracted service or fails to deliver it to the required standard, it is the students rather the state that would incur the loss.

Thus, even if contracts are clearly breached, the state may have few options for effective enforceable legal redress, other than not renewing the contract, if it has not incurred a direct loss. On the other hand, a student who has incurred a loss may not be able to recover that loss because he or she is not a party to the contract.

This creates a situation where there are few disincentives or consequences for a provider failing to honour a contract, other than the risk that it would not be renewed.

To overcome these problems, the bill proposes several measures to enforce contracts for the delivery of publicly funded education with enhanced powers not available in normal commercial contracts between businesses.

First, the bill proposes to allow VET funding contracts to include monetary penalties if the contract is breached or if standards are not met. This will be a strong incentive for RTOs to honour their contractual obligations.

Secondly, the proposed amendments will permit a court to order a provider to carry out its contract where monetary compensation may not be a sufficient remedy. For example, say a provider has refused to allow its students to complete their courses and exams in a government-funded course because of a dispute. In such a situation, enabling the students to complete their courses and exams may be as important, or more important, than a monetary penalty. This amendment will enable a court to order the provider to allow the students to complete their courses or sit exams.

Third, the bill proposes to enable VET funding contracts to specify that certain contractual terms are to operate directly for the benefit of the students. This would give students the right to claim against the provider if they suffer a loss as a result of breaching such a term. The bill needs to create this right because normally only parties to a contract can enforce it.

While these are significant extensions of normal contractual principles, it should be kept in mind that these VET funding contracts are not arrangements only between commercial entities operating on purely commercial principles. These are arrangements for the delivery of public educational services on behalf of the state by providers that have agreed to perform this important public function on behalf of the state. It should also be kept in mind that these provisions are not of a regulatory nature that apply to all providers. They apply only to providers that have freely agreed to provide such services under terms arranged in advance.

The bill also proposes to enable the VRQA to take into account a provider's history of compliance with government training contracts in assessing its suitability to be registered as a training provider under Victorian law. This will enable it to make decisions on a consistent basis with the commonwealth VET regulator, the Australian Skills and Qualifications Authority (ASQA), which already has similar powers in relation to providers registered under commonwealth law.

Lastly, it is important that the state is able to share information about compliance with VET funding contracts with regulators and education authorities. In particular, the bill will authorise the department to provide such information to commonwealth, Victorian and interstate education

regulators, and will enable the state regulator (the VRQA) to reciprocate.

As a result of the proposals in the bill, the state's TAFE institutes, adult education institutions and universities will be able to continue to develop modern and professional governance structures, drawing on the skills of suitably qualified board members. The proposed new contractual provisions will also strengthen the mechanisms available to the state to protect students from unscrupulous providers, by ensuring that government-subsidised training is delivered to the appropriate standards, in accordance with funding contracts. It will give students greater rights, and help ensure that public training funds are expended and accounted for properly.

I commend the bill to the house.

Debate adjourned for Ms MIKAKOS (Northern Metropolitan) on motion of Mr Lenders.

Debate adjourned until Thursday, 22 November.

OFFSHORE PETROLEUM AND GREENHOUSE GAS STORAGE AMENDMENT (NOPSEMA) BILL 2012

Introduction and first reading

Received from Assembly.

Read first time for Hon. P. R. HALL (Minister for Higher Education and Skills) on motion of Hon. G. K. Rich-Phillips; by leave, ordered to be read second time forthwith.

Statement of compatibility

For Hon. P. R. HALL (Minister for Higher Education and Skills), Hon. G. K. Rich-Phillips tabled following statement in accordance with Charter of Human Rights and Responsibilities Act 2006:

In accordance with section 28 of the Charter of Human Rights and Responsibilities Act 2006 (charter act), I make this statement of compatibility with respect to the Offshore Petroleum and Greenhouse Gas Storage Amendment (NOPSEMA) Bill 2012.

In my opinion, the Offshore Petroleum and Greenhouse Gas Storage Amendment (NOPSEMA) Bill 2012 (the bill), as introduced to the Legislative Council, is compatible with the human rights protected by the charter act. I base my opinion on the reasons outlined in this statement.

Overview of bill

The purpose of this bill is to amend the Offshore Petroleum and Greenhouse Gas Storage Act 2010 (OPGGS act) to confer additional responsibility on the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA), a commonwealth statutory agency, to regulate the structural integrity of facilities, wells and well-related equipment for petroleum operations, petroleum safety zones and areas to be avoided in the Victorian offshore area (state waters).

Human rights issues

I note that, as many of the provisions in the bill are likely, in practice, to regulate corporate entities and only natural persons have human rights (section 6(1) of the charter act), the charter act will only apply to the extent that natural persons are affected.

Freedom of movement

The right to freedom of movement, specifically the right to move freely within Victoria, under section 12 of the charter act may be limited by clause 13 and 14 of the bill.

Clause 13 and 14 of the bill amends section 668 and 672 in part 6.6 of the OPGGS act respectively to provide that NOPSEMA, rather than the Minister for Energy and Resources (the minister), may designate a specified area of up to 500 metres around a petroleum well, structure or equipment in state waters as a petroleum safety zone, and prohibit vessels from entering or being present in the petroleum safety zone without the written consent of NOPSEMA, and may authorise entry into the designated 'area to be avoided' in state waters, as set out in schedule 2 of the OPGGS act.

NOPSEMA has a policy in place, that applies in commonwealth waters and to each jurisdiction where powers have been conferred on NOPSEMA, when assessing applications for entry into the 'area to be avoided' and for establishing petroleum safety zones, which seeks to balance the risks to the safety of the petroleum well, structure or equipment with the potential impacts on other users of the oceans commons.

NOPSEMA considers a number of factors when assessing applications for establishing petroleum safety zones, including the proximity to shipping lanes and commercial fisheries, water depth or activities likely to take place at the petroleum well, structure or equipment, and requires applicants to demonstrate consultation with parties who may be affected by the establishment of the petroleum safety zone. NOPSEMA's current policy in relation to authorising entry into the 'area to be avoided' is that the vessel owner must provide a legitimate reason for the vessel to enter and be present in the area, and must agree to comply with any conditions imposed by NOPSEMA, which are determined in liaison with the Australian Maritime Safety Authority.

Any limitations on the freedom of movement imposed by the designation of petroleum safety zones and limiting entry into the 'area to be avoided' under part 6.6 of the OPGGS act are reasonable and necessary to avoid the potential catastrophic consequences of a collision between certain vessels and offshore facilities, such as potential loss of life, serious damage to the environment, and interruptions to petroleum operations. There are no less restrictive means available to achieve the objective of the measures.

Right to privacy

The right to privacy under section 13(a) of the charter act may be engaged by clause 8 of the bill.

Clause 8 of the bill substitutes section 647 in part 6.5 of the OPGGS Act to enable the chief executive officer (CEO) of NOPSEMA to appoint a petroleum project inspector to exercise powers or perform functions under the OPGGS act or regulations in relation to the structural integrity of facilities, wells or well-related equipment for offshore petroleum operations in state waters. Petroleum project inspectors appointed by NOPSEMA will have powers of enforcement, including the powers of access, inspection and entry, as set out in division 1 of part 6.5 of the OPGGS act. The category of persons that may be appointed by NOPSEMA to be petroleum project inspectors will be the same as those currently able to be appointed by the minister.

Clause 8 may engage the right to privacy where the inspectors enter residential areas which constitute an individual's home or where a reasonable expectation of privacy may arise so as to engage the right to privacy. However, the right is not unreasonably limited in such cases because any interference is neither unlawful nor arbitrary and where the interference is specifically authorised by the OPGGS act, it is only authorised to the extent necessary to ensure compliance with the petroleum regulatory regime and is accompanied by adequate safeguards. Section 650 of the OPGGS act provides that entry by petroleum project inspectors into residential premises is only permitted with the consent of the occupier or in accordance with a warrant issued by a magistrate. Further, as petroleum project inspectors are public authorities pursuant to section 4 of the charter act, petroleum project inspectors appointed by NOPSEMA will be bound by section 38(1) of the charter act to employ their general enforcement powers in a manner that is compatible with the charter act.

Right to fair hearing

The right to a fair hearing under section 24 of the charter act is relevant to clauses 8, 13 and 14 of the bill.

Clause 13 and 14 of the bill amends sections 668 and 672 of the OPGGS act respectively to enable NOPSEMA, rather than the minister, to establish and administer petroleum safety zones and authorise entry into the designated 'area to be avoided', while clause 8 of the bill substitutes section 647 of the OPGGS act to enable the CEO of NOPSEMA to appoint petroleum project inspectors to regulate the structural integrity of facilities, wells or well-related equipment for offshore petroleum operations in state waters. The minister would continue to appoint petroleum project inspectors to administer the remainder of the OPGGS act.

Where the effect of an adverse decision would be determinative of an individual's private rights and interests, the right in section 24(1) of the charter act may be engaged. This could be the case, for example, where a person with a commercial interest is restricted from entry to a petroleum safety zone or the area to be avoided.

Part 9.1 of the OPGGS act provides that a decision by a delegate of the minister made under the OPGGS act or regulations may be reviewed by the Victorian Civil and Administrative Tribunal (VCAT) following a process of internal reconsideration of that decision by the minister. In addition, certain decisions made by the minister under the OPGGS act or regulations may be reviewed by VCAT.

Previously, the National Offshore Petroleum Safety Authority, which was superseded by NOPSEMA on 1 January 2012, and now NOPSEMA, has been regulating occupational health and safety in the Victorian offshore area since January 2005. While enforcement and compliance decisions made by NOPSEMA occupational health and safety inspectors are subject to internal review by NOPSEMA, the decisions made by NOPSEMA are currently not reviewable by VCAT under the OPGGS act. This is consistent with the current approach under the commonwealth regime, where decisions made by NOPSEMA under the commonwealth Offshore Petroleum and Greenhouse Gas Storage Act 2006 are not reviewable by the Administrative Appeals Tribunal.

The OPGGS act is specified in schedule 3 of the commonwealth Administrative Decisions (Judicial Review) Act 1977 (AD(JR) act) as an enactment to which that act applies. Thus, a decision made by NOPSEMA in the exercise of any function conferred by it by the OPGGS act would be subject to judicial review in the Federal Court in accordance with the commonwealth AD(JR) act, thereby affording affected persons an oral hearing before an independent and impartial body.

Based on the reasons above, I am satisfied that the processes created by clauses 8, 13 and 14 of the bill do not limit the right to a fair hearing.

Conclusion

For the reasons given in this statement, I consider that the bill is compatible with the charter act.

Hon. Peter Hall, MLC
Minister for Higher Education and Skills

Second reading

Ordered that second-reading speech be incorporated into *Hansard* on motion of Hon. G. K. RICH-PHILLIPS (Assistant Treasurer).

Hon. G. K. RICH-PHILLIPS (Assistant Treasurer) — I move:

That the bill be now read a second time.

Incorporated speech as follows:

The government is committed to maintaining an effective regulatory framework for petroleum exploration and recovery, and to ensure the safety of petroleum and greenhouse gas activities in the Victorian offshore area.

The Offshore Petroleum and Greenhouse Gas Storage Amendment (NOPSEMA) Bill 2012 will further this commitment by conferring additional statutory responsibilities on the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) to regulate structural integrity for petroleum operations, petroleum safety zones and the designated 'area to be avoided' in the Victorian offshore area.

NOPSEMA, formerly the National Offshore Petroleum Safety Authority, has had regulatory responsibility for occupational health and safety in the Victorian offshore area since 2005. However, recent amendments to the commonwealth Offshore Petroleum and Greenhouse Gas Storage Act 2006, due to take effect on 1 January 2013, means that NOPSEMA will not be able to continue regulating

occupational health and safety for petroleum operations in the Victorian offshore area, unless responsibility for regulating structural integrity for petroleum operations is also conferred on NOPSEMA.

It is critical that the offshore petroleum industry is effectively regulated. The recent incident on the Stena Clyde offshore drilling facility in Bass Strait in August this year, where the lives of two workers were tragically lost, demonstrates the potential human cost of safety failures in the offshore petroleum industry and reinforces the need for an effective regulator.

As Australia's national independent regulator for offshore petroleum safety, well integrity and environmental management, NOPSEMA has launched an investigation into the two fatalities, the first in four years in the offshore drilling industry.

To minimise risks to the state, the bill will amend the Victorian Offshore Petroleum and Greenhouse Gas Storage Act 2010 to expand the functions of NOPSEMA to include the regulation of the structural integrity of facilities, wells and well-related equipment for petroleum operations in the Victorian offshore area. This will enable NOPSEMA to continue regulating occupational health and safety for offshore petroleum operations in state waters.

The bill will enable the chief executive officer of NOPSEMA to appoint petroleum project inspectors to regulate structural integrity for petroleum operations in state waters. The bill will also transfer responsibility for establishing and administering petroleum safety zones and authorising entry into the part of the defined 'area to be avoided' located in the Victorian coastal waters of the Bass Strait, from the Victorian Minister for Energy and Resources to NOPSEMA. The establishment of petroleum safety zones and limiting entry into the 'area to be avoided' is intended to reduce the risk of collision by vessels with offshore petroleum facilities by ensuring that vessels maintain a safe distance.

The remainder of the Victorian act will continue to be administered by the Minister for Energy and Resources, including the regulation and administration of titles and environmental management for both petroleum and greenhouse gas operations, greenhouse gas safety zones and structural integrity for greenhouse gas operations in state waters.

Whilst the commonwealth act enables the state to confer responsibilities on NOPSEMA to regulate the environmental management of petroleum and greenhouse gas operations in state waters, it is proposed that the state will retain this function to ensure Victoria's key environmental objectives are met.

The arrangements proposed by this bill will provide transparency and certainty by having the same body regulating occupational health and safety and structural integrity for petroleum operations in the Victorian offshore area. Conferral of both functions on NOPSEMA for petroleum operations will ensure the effective management of these regulatory practices. This is intended to create greater efficiency in the regulatory approvals process for well activities and will support and encourage growth in offshore petroleum operations in Victoria.

I commend the bill to the house.

Debate adjourned on motion of Mr LENDERS (Southern Metropolitan).

Debate adjourned until Thursday, 22 November.

POLICE REGULATION AMENDMENT BILL 2012

Introduction and first reading

Received from Assembly.

Read first time for Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) on motion of Hon. G. K. Rich-Phillips; by leave, ordered to be read second time forthwith.

Statement of compatibility

For Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations), Hon. G. K. Rich-Phillips 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 Police Regulation Amendment Bill 2012.

In my opinion, the Police Regulation Amendment Bill 2012, as introduced to the Legislative Council, is compatible with human rights as set out in the charter act. I base my opinion on the reasons outlined in this statement.

Overview of bill

The purpose of the Police Regulation Amendment Bill 2012 is to amend the Police Regulation Act 1958 (act) to:

abolish the Police Appeals Board and establish a Police Registration and Services Board (the PRS board);

amend provisions relating to appointments, transfers, appeals and reviews;

establish a police profession register; and

make various transitional provisions for the operation of the new scheme of appeals and registration.

Human rights issues

The right to privacy and freedom of movement

Clause 15 of the bill empowers the PRS board to issue a witness summons to a person to give evidence and produce documents for the purpose of determining appeals and reviews (new section 86AV). Clause 16 of the bill similarly empowers the PRS board to issue a witness summons for the purpose of determining whether to register or renew the registration of a person, or to enable the PRS board to provide advice to the chief commissioner about whether it is appropriate to appoint an officer from another jurisdiction, or a former officer, to be a member of the force (new

section 87U). Clause 16 further empowers the PRS board to require an applicant or proposed appointee to provide certain information (such as criminal record checks, references and evidence of service (new section 87S)), and to exercise broad investigatory powers (including powers to require an applicant or proposed appointee to attend and give evidence (new section 87T)).

A number of rights are relevant where powers are conferred on a public authority to compel a person to attend an examination, and to provide information and documents — in particular, the right to privacy (in the sense that information provided may be personal) and freedom of movement (in the sense that a person may be required to attend personally).

To the extent that the right to privacy is relevant, I consider that any interference is neither unlawful nor arbitrary. To the extent freedom of movement is limited, those limits are reasonable and justified under section 7(2) of the charter act. The information-gathering powers of the PRS board are directly linked to the stated purposes of the relevant provisions, and are necessary to ensure that decisions regarding appeals, reviews, registrations and appointments are based on full and accurate information. This serves the public interest by ensuring that members of the force are appropriately qualified, honest and of good repute and standing. Further, the information-gathering powers relating to applicants and proposed appointees are a direct consequence of those persons applying for registration or appointment to the force, so any expectation of privacy is minimal. The bill also provides an additional safeguard for the privacy of persons affected by the amendments through the confidentiality requirements in new section 87Q. For these reasons, I am satisfied that the amendments relating to the PRS board's information-gathering powers are compatible with the charter act.

The bill also contains provisions to establish the police profession register, which will contain identifying information and other details about persons who are former members of the force or suspended members absent from the force (for the purpose of considering subsequent reappointment). The bill also contains provisions to facilitate the sharing of information between the PRS board and the chief commissioner about the character, reputations, qualifications and training of persons (for the purpose of considering appointments). For the same reasons as outlined above, I am satisfied that these provisions are compatible with the charter act.

The right to a fair hearing

Section 24(1) of the charter act protects the right of a party to a civil proceeding to have the proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing. It is likely that reviews and appeals before the PRS board would be regarded as civil proceedings. The right to a fair hearing is principally protected by the procedures set out in division 3, including the requirement to afford natural justice (section 86AQ). Further, section 86AS balances the importance of having public hearings with the right to privacy by enabling hearings to be held in private if it would facilitate the conduct of the appeal or review or would otherwise be in the public interest. There are, however, two aspects of the procedures of the PRS board that require further discussion.

Determination in the absence of the applicant/appellant

New sections 86AG and 86AK impose very short time frames for the determination of appeals in respect of the promotion or transfer of another member or protective services officer, and of reviews in respect of directed transfers. If an applicant cannot be present at the hearing, they may elect to have the application determined in their absence or withdraw the application. If they fail to make an election, the appeal or review may be determined in their absence. While the time frames are short and potentially result in a person not being able to make oral submissions to the board, I consider the provisions are compatible with the right to a fair hearing.

The decisions at issue require speedy determination. It is not appropriate to allow the appeal process to unnecessarily delay the promotion or transfer of another member. Appeals are not intended to be a fresh opportunity to apply for a promotion or transfer and will usually be limited to the material that was before the original decision-maker (section 86AG(2)). Pursuant to section 86AG(1), the board will have the selection file in relation to the promotion or transfer (as required by section 86AG(1)), which will include the appellant's application and any supporting material. While an appellant will usually be restricted in lodging additional documents, there is ability for the board to grant permission to do so in exceptional circumstances (section 86AG(2)). This may include granting permission to lodge written submissions in circumstances where an appellant is unable to appear personally to make oral submissions. There is also an ability to extend time in exceptional circumstances (section 86AZ).

The nature of directed transfers is such that delays in determination of review applications should be kept to a minimum, and section 86AK provides for a streamlined process for such decisions. Reviews of such decisions will generally be limited to the material before the original decision-maker, which must be lodged with the board pursuant to section 86AK. While there are short time frames for the determination of reviews of directed transfers, a person who is unable to appear personally can be represented pursuant to section 86AT and/or, in exceptional circumstances, may be permitted to lodge written submissions pursuant to section 86AK(2). Further, there is an ability to extend time in exceptional circumstances (section 86AZ).

Restrictions upon representation

New sections 86AT and 87ZL provide for restrictions upon representation. On a review (section 86AT(2)) or a registration matter (section 86ZL(1)), both the chief commissioner and the applicant or member may be represented, but not by a legal practitioner. On an appeal against promotion or transfer, the appellant and the person selected for promotion or transfer may appear in person and are not able to be represented while the chief commissioner may be represented by a person other than a legal practitioner (section 86AT(1)).

Section 24(1) does not confer a general right of legal or other representation. However, in limited circumstances, courts have recognised that representation may be necessary to ensure a fair hearing.

I consider that the exclusion of representatives from appeals against decisions to promote or transfer another member or protective services officer is compatible with the right to a fair

hearing protected by section 24 of the charter act. The nature of the decisions and grounds of review is such that representation is not necessary to ensure a fair hearing. To the contrary, if individuals were able to be represented there would be a real risk of creating an imbalance, particularly between the appellant and the person selected for promotion or transfer. Section 86AT does provide that the chief commissioner may be represented (other than by a legal practitioner) in appeal proceedings; however, this merely reflects the practical circumstances of the chief commissioner being unable to appear personally at every appeal.

I also consider that exclusion of legal practitioners from review hearings and registration hearings is compatible with the right to a fair hearing. Both the chief commissioner and the applicant or member are entitled to be represented by a person other than a legal practitioner. The nature of the decisions and the availability of skilled and experienced non-legal representatives in this area is such that legal representation is not required to ensure a fair hearing.

Right to be presumed innocent

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

Sections 86AV(5) and 87U(2) create criminal offences for failing to comply with a summons, without reasonable excuse. Pursuant to section 72 of the Criminal Procedure Act 2009, the onus is on the accused to present or point to evidence that could establish a reasonable excuse.

Courts in other jurisdictions have generally taken the approach that an evidential onus such as this does not limit the presumption of innocence. The prosecution bears the onus of establishing the principal elements of the offence and, once an accused has presented or pointed to evidence of the reasonable excuse, the prosecution must also disprove that excuse beyond reasonable doubt. Additionally, whether a person has a reasonable excuse for contravening the relevant provisions will be within his or her knowledge. By contrast, it would be extremely difficult, if not impossible, for the prosecution to prove the absence of a reasonable excuse given the range of potential excuses available. Accordingly, even if the provisions amount to a limit upon the right to be presumed innocent, the limitation is reasonable and justifiable under section 7(2) of the charter act.

Richard Dalla-Riva, MLC
Minister for Employment and Industrial Relations
Minister for Manufacturing, Exports and Trade

Second reading

Ordered that second-reading speech be incorporated into *Hansard* on motion of Hon. G. K. RICH-PHILLIPS (Assistant Treasurer).

Hon. G. K. RICH-PHILLIPS (Assistant Treasurer) — I move:

That the bill be now read a second time.

Incorporated speech as follows:

This bill amends the Police Regulation Act 1958 to give effect to the memorandum of understanding (MOU) entered into by the government, the Chief Commissioner of Police and the Police Association, which complements the 2011 Victoria Police enterprise agreement.

The MOU agreed to the introduction of legislation to implement the productivity gains in the EBA and also to provide for other improvements to the administration of Victoria Police.

Police Registration and Services Board

The bill will replace part V of the act to establish the Police Registration and Services Board, which will replace the current Police Appeals Board. The new board will have three divisions with the following responsibilities.

First, the review division will determine appeals and review applications lodged by police members and protective services officers.

Secondly, the registration division will maintain the police profession register, determine applications for registration and will provide advice to the Chief Commissioner of Police about the character and reputation, skills and expertise of persons seeking lateral entry into Victoria Police.

Thirdly, the professional standards division will provide advice to the Chief Commissioner of Police about the training and qualifications necessary for members as part of a modern professionalised force. The functions of the professional standards division will be developed over time but at its core this division will assist Victoria Police command by approving competency standards, educational courses and supervised training arrangements for police members and promoting the professional development of police.

The new board will be headed up by a president who will be accountable to the minister for the performance of the functions of the board, and each division will be headed up by a deputy president.

Additional members will also be appointed to each of the divisions with requirements set out for the constitution of each division when performing its functions. The bill allows for the same individual to be appointed to more than one division if appropriate. All members of the board will be appointed by the Governor in Council on the recommendation of the minister.

Appeals and reviews framework

The bill will insert a new part IVAA in the act which will set out a revised framework for appeals or reviews by the new board. Together, these amendments will dramatically improve the efficiency of appeals in relation to non-selection for transfer or promotion, which currently takes on average 75 days to resolve. With the proposed amendments to the act, such appeals will take approximately two weeks to resolve.

There is no change to the fundamental appeal rights for members of police and protective services officers other than those agreed to in the MOU. The new provisions will modify appeal rights for promotion and transfer decisions in accordance with the streamlined arrangements agreed to in the MOU. Police and protective services officers will be able

to appeal a promotion or transfer decision only if they applied for the position and have not lodged four or more appeals in respect of promotions and transfer decisions in the previous 12 months.

Police members and protective services officers will also be able to apply to the board for a review of other types of decisions, including non-confirmation and disallowance of promotions, demotions, compulsory and directed transfers, termination of appointments and dismissals.

The bill will also streamline procedures for lodging and determining reviews and appeals. Applicants will now have strict time frames in which to lodge an application for a review or an appeal — in most cases applications will need to be lodged within three days of being notified of a decision and the Chief Commissioner of Police will have two days in which to lodge relevant files with the board.

None of the parties to a review or appeal will be able to lodge additional documents that were not available to the original decision-maker unless there are exceptional circumstances and the board gives leave to do so. Further, the board must determine matters within five days of receiving the relevant file from the chief commissioner. Finally, applicants will have to be available for the hearing or, if they are unable to be present, to elect either to have the matter heard in their absence or withdraw the application.

Appeals will be determined in accordance with superior efficiency, and decisions relating to dismissals, demotions and directed transfers will be reviewable on the grounds that the decision is harsh, unjust or unreasonable.

Police profession register

The bill will also create the police profession register in part V of the act. The register will contain the details of persons who have been registered by the board as being of good character and repute, having the necessary qualifications and experience and having the aptitude and efficiency to perform as a police member at a specified rank.

The registration division of the board will be able to carry out the necessary checks and investigations for the purposes of determining whether to register someone and providing advice to the Chief Commissioner of Police about a potential lateral entry candidate.

The police profession register will be a first in Australian policing and will play a role in aiding lateral entry of members at the lower ranks — currently not possible within Victoria. The new police profession register will also assist in dealing with members who want to take a career break for family or other reasons. The new board will ensure that experienced police members are not lost to the profession in Victoria and will allow them to be registered while not serving as a police member.

These changes will address the current situation where, for example, a member of, say, the rank of inspector leaves the force on maternity leave. Currently if that member wishes to return to the force in five to six years time, she must return as a constable. This process costs the organisation thousands of dollars per annum in lost experience and unnecessary training time. The bill will see that member being assessed by the board, recommendations made as to what the member needs to do to refresh her skills to take up an appointment at the rank they held prior to her departure. The board can also assess whether the member has maintained the appropriate integrity requirements while on leave.

These amendments will facilitate, where appropriate, the appointment of a former member above the rank of constable, something which is not currently possible. This will both ensure that ex-members keep in contact with policing, as well as provide an avenue for those members to return to Victoria Police — having been assessed by the board with respect to what refresher training is required for the ex-member to return to their former serving rank.

This is the first step in developing a police profession register, the first of its kind in Australia. The government has committed in its response to the Rush inquiry to introduce new legislation to modernise the legislative foundation for Victoria Police in 2013. The government has also requested work to progress disciplinary reforms as part of a further round of reform. Extending the scope of the register to all Victoria Police officers will also be progressed at this time.

Other amendments

The bill will make other amendments to the act to implement the agreements from the MOU.

The bill will amend section 8 of the act to provide for part-time and fixed-term appointments and appointments for specific roles or project work. This will allow the Chief Commissioner of Police to offer flexible employment to police members. This will assist in times of a surge in resourcing demands on Victoria Police.

The bill will also introduce section 8AC to provide that the chief commissioner may transfer a police member to any part of the state if it is reasonably necessary for the provision of policing services. The bill provides that a member can appeal such a decision on the grounds that it is harsh, unjust or unreasonable. This amendment strikes the right balance between ensuring that vacancies are filled promptly and without undue delay whilst taking into account the individual circumstances of the member.

The bill will amend section 11 of the act, so that the chief commissioner may give notice to a police member that their authority as a constable is ineffective for the period set out in the notice. A notice under section 11 can only be issued if the police member is on long-term leave without pay but not where the police member is on certain types of excluded leave including maternity or parental leave.

The bill will insert section 16C into the act providing that a police member will be deemed to have abandoned their appointment if they have an unauthorised absence from duty of one calendar month or longer.

The bill will repeal the ‘no confidence’ dismissal powers of the chief commissioner. These powers have been infrequently used and issues of incapacity for duty will now be better managed through amendments made to division 4, part IV of the act to enable the Chief Commissioner of Police to compulsorily transfer or dismiss any member unable to meet the inherent requirements of his or her position, with an appeal right to review such a decision on the grounds that it is harsh, unjust or unreasonable.

This bill will introduce important amendments to the regulatory framework for the administration of police in Victoria. It will modernise and streamline cumbersome

appeal processes and contribute to the increasing professionalisation of Victoria Police.

I commend the bill to the house.

Debate adjourned on motion of Hon. M. P. PAKULA (Western Metropolitan).

Debate adjourned until Thursday, 22 November.

ROAD SAFETY AMENDMENT (OPERATOR ONUS) BILL 2012

Introduction and first reading

Received from Assembly.

Read first time for Hon. M. J. GUY (Minister for Planning) on motion of Hon. G. K. Rich-Phillips; by leave, ordered to be read second time forthwith.

Statement of compatibility

For Hon. M. J. GUY (Minister for Planning), Hon. G. K. Rich-Phillips tabled following statement in accordance with Charter of Human Rights and Responsibilities Act 2006:

In accordance with section 28 of the Charter of Human Rights and Responsibilities Act 2006 (charter act), I make this statement of compatibility with respect to the Road Safety Amendment (Operator Onus) Bill 2012.

In my opinion, the Road Safety Amendment (Operator Onus) Bill 2012, as introduced to the Legislative Council, is compatible with the human rights protected by the charter act. I base my opinion on the reasons outlined in this statement.

Overview of bill

The operator onus system is used for enforcing offences where the identity of the offender is not known, such as road safety camera offences. The operator onus system applies to offences involving motor vehicles and trailers.

The operator onus system is based on the principle that if the identity of the driver or person in charge of the vehicle is not established at the time the offence is detected, the person last known to have possession or control of the vehicle should generally be liable for the offence. The person last known to have possession or control of the vehicle can avoid liability if they can establish that they were not responsible for the vehicle at the time of the offence and provide information sufficient to identify and locate the responsible person.

The purpose of the bill is to amend the provisions of the Road Safety Act 1986 in relation to the operator onus system —

(a) to provide that higher penalties may be imposed on a corporation in relation to an operator onus offence;

(b) to apply an additional penalty on a corporation that repeatedly fails to nominate the person involved in an operator onus offence that involves a vehicle for which the corporation is responsible;

(c) to provide that an unknown user statement will, in most cases, not be an effective statement if it is based on a failure to keep proper records of who had possession or control of the relevant vehicle;

(d) to increase the penalty in relation to the offence of exceeding the speed limit by 35 kilometres per hour or more in a heavy vehicle in circumstances where a corporation is liable for that offence under the operator onus system (increases to the penalty for other speeding offences and red light and level crossing offences, where a corporation is liable for the offence, will be made through appropriate amendments to the Road Safety Road Rules 2009 and the Road Safety (General) Regulations 2009);

(e) to increase the penalty for the offence of providing false or misleading information in a statement under the operator onus system and to provide the court with discretion to impose sanctions including the cancellation of driver licences and permits and disqualification of the offender from obtaining a Victorian licence or permit and from driving in Victoria for a specified period;

(f) to increase the time limit for commencing prosecutions for the offence of providing false or misleading information in a statement under the operator onus system from 12 months to 24 months;

(g) to prevent the making of an unknown user statement where the relevant offence involved a taxicab;

(h) to prevent taxicab drivers from renominating other persons for operator onus offences where the renomination would be inconsistent with the detailed driver records kept by the operator of the taxicab; and

(i) to otherwise improve the efficiency and effectiveness of the operator onus system.

Human rights issues

The following analysis addresses human rights issues that arise in relation to natural persons. Impacts on corporations have not been addressed since the charter act does not apply to those entities.

Section 12 — Freedom of movement

The bill provides that persons who provide false or misleading information in a statement under the operator onus system may be subject to sanctions including the cancellation of driver licences and permits and disqualification from obtaining a Victorian licence or permit and from driving in Victoria for a specified period.

The imposition of these sanctions engages the right to freedom of movement under section 12 of the charter act because they prevent a person driving a vehicle for a specified period.

However, the right is not limited, as any individual who is subject to these sanctions will continue to be free to use other forms of transportation (aside from driving a motor vehicle), including travelling as a passenger in a vehicle driven by another person, in order to move freely within Victoria.

Section 13(a) — Privacy

The bill provides that a nomination statement given in relation to an operator onus offence involving a taxicab that nominates a person who is accredited under the Transport (Compliance and Miscellaneous) Act 1983 to drive a taxicab must include the driver accreditation certificate number of the person. Given that the certificate number is a unique identifying number relating to the nominated person, this engages the right to privacy under section 13(a) of the charter act.

However, the right is not limited because the requirement to provide the driver accreditation certificate number is authorised by law. Furthermore, the collection of the information is not done in an arbitrary fashion. The driver accreditation certificate number is only required where the nominated person is alleged to have committed an offence to which the operator onus system applies.

Section 25(1) — Right to be presumed innocent

The bill provides —

(a) that an unknown user statement cannot be made in relation to an offence involving a taxicab;

(b) that a taxicab driver cannot make a known user statement nominating another person in relation to an operator onus offence involving a taxicab, if that nomination would be inconsistent with the records kept by the taxicab operator in relation to who was driving the taxicab at the relevant time;

(c) that in those cases where the making of an unknown user statement is still permitted, an unknown user statement will not be an effective statement if the reason for not knowing who had possession or control of the vehicle at the relevant time was based on a failure to keep proper records; and

(d) for the restatement of the purpose of the operator onus system as set out in section 84BA of the Road Safety Act 1986.

The restrictions on the use of unknown user statements and known user statements engage a person's right to be presumed innocent under section 25(1) of the charter act. This is because these restrictions would, at first glance, appear to increase the risk that an accused will be found guilty of an operator onus offence despite reasonable doubt as to whether he or she was the correct person that should be held responsible for the alleged offence.

Also, the restatement of the purpose of the operator onus system restates the existing limits on a person's right to be presumed innocent because that system, as a whole, limits the right of a person to be presumed innocent. That limitation arises because the operator onus system provides that a person is liable for an operator onus offence involving a vehicle for which that person is responsible, unless the person can establish that another person should be held responsible for that offence.

The current operator onus system as a whole does limit the right to be presumed innocent. However, this bill, which makes amendments to the system, does not limit that right for the following reasons.

The restriction on the use of unknown user statements in relation to offences involving taxicabs is consistent with regulation 7 of the Transport (Taxi-cab Industry Accreditation) Regulations 2007 which requires the operator of a taxicab to keep detailed records as to who was driving a taxicab at any given time. If this existing requirement is complied with, there would be no circumstance where an unknown user statement could validly be submitted under the current legislation. Therefore, the removal of the ability to make an unknown user statement has no practical effect on any taxicab operator beyond what is currently required by the regulations.

Similarly, the restriction on the use of known user statements by taxicab drivers (in those circumstances where the use of a known user statement would be inconsistent with the records kept by the taxicab operator) reinforces the current record keeping requirements under the Transport (Taxi-cab Industry Accreditation) Regulations 2007. In the event that there was some dispute between the driver and the taxicab operator as to who was driving at the relevant time, the person nominated as the driver of the taxicab could continue to make a nomination rejection statement (rather than a known user statement). Victoria Police would then investigate further as to who should be held responsible for the alleged offence. Given that the right of a person nominated as the driver of a taxicab to make a nomination rejection statement is being preserved, the taxicab driver's ability to avoid liability for the alleged offence is also maintained.

The restriction on the use of unknown user statements, where a statement will not be effective if the reason given for not knowing who was in possession or control of the vehicle at the relevant time was a failure to keep proper records, reinforces the duty of an operator of a vehicle to keep a record of who has possession or control of the vehicle. If an operator of a vehicle keeps proper records, then there would be no case where they would need to make an unknown user statement. Therefore, the right to be presumed innocent is not limited.

The restatement of the purpose of the operator onus system does not limit the right to be presumed innocent because the new purpose provision does not, in any significant respect, differ from the provision it replaces. It merely expresses in clearer terms, the purpose of the operator onus system and that purpose is essentially unchanged.

Conclusion

I consider that the bill is compatible with the Charter of Human Rights and Responsibilities Act 2006. Provisions of the bill engage with, but do not limit, rights conferred by sections 12, 13(a) and 25(1) of the charter act.

Matthew Guy, MLC
Minister for Planning

Second reading

Ordered that second-reading speech be incorporated into *Hansard* on motion of Hon. G. K. RICH-PHILLIPS (Assistant Treasurer).

Hon. G. K. RICH-PHILLIPS (Assistant Treasurer) — I move:

That the bill be now read a second time.

Incorporated speech as follows:

The bill improves the effectiveness and efficiency of the operator onus system and implements a government commitment to close the loophole concerning corporations failing to nominate drivers who commit operator onus offences.

The operator onus system is used for enforcing offences where the identity of the offender is not known, such as road safety camera offences. The operator onus system applies to offences involving motor vehicles and trailers.

The operator onus system is based on the principle that if the identity of the driver or person in charge of the vehicle is not established at the time the offence is detected, the person last known to have possession or control of the vehicle should generally be liable for the offence. The person last known to have possession or control of the vehicle can avoid liability if they can establish that they were not responsible for the vehicle at the time of the offence and provide information sufficient to identify and locate the responsible person.

The key issue that the bill addresses is the failure by some corporations to nominate a driver as responsible for an operator onus offence. If a corporation does not nominate the driver, then that driver can avoid demerit points and other licence sanctions, such as suspension, or cancellation and disqualification from obtaining a licence.

The bill addresses this issue by improving the nomination process as it applies to corporations. It does this by providing that higher penalties may be imposed on a corporation for an operator onus offence, either at court or via an infringement notice.

A corporation will be able to avoid the higher penalty by making an effective nomination after receiving an infringement notice for an offence. For example, if the corporation nominates an individual in an effective known user statement, that individual will be sent an infringement notice for a lower penalty, and the infringement notice for the higher penalty, originally sent to the corporation, will be withdrawn.

The bill creates a new offence of failure to give an effective statement. The purpose of this new offence is to encourage corporations to identify the drivers of vehicles involved in offences that carry demerit points, to enable the demerit points for those offences to be recorded against the driver licence or learner permit of the person who actually committed the offence. The maximum penalty for this offence will be 120 penalty units. A corporation may face prosecution for this offence if it fails to give an effective statement in relation to three or more relevant infringement notices served on the corporation within a 12-month period.

The bill increases the penalty for the offence of providing false or misleading information in a statement under the operator onus system and provides the court with discretion to impose sanctions including the cancellation of driver licences and learner permits and disqualification of the offender from obtaining a Victorian licence or permit and from driving in Victoria for a period of up to 24 months.

The bill also increases the time limit for commencing prosecutions for the offence of providing false or misleading information in a statement under the operator onus system from 12 months to 24 months. The additional time provided to commence proceedings is necessary to allow sufficient time for false and misleading statements to be detected. False and misleading statements are often identified after a series of statements have been made.

The bill addresses a disparity between the Transport (Compliance and Miscellaneous) Act 1983 and regulations under that act, and the Road Safety Act 1986 concerning taxicab operators and drivers. The Transport (Compliance and Miscellaneous) Act 1983 and regulations under that act require taxicab operators to keep a record of who is driving their taxis at all times, whereas the operator onus system, in its current form, allows taxicab operators to submit unknown user statements and taxicab drivers to renominate other drivers for operator onus offences.

The bill addresses this disparity by preventing the making of an unknown user statement where the relevant offence involves a taxicab. The bill also prevents taxicab drivers from renominating other persons for operator-onus offences where the renomination would be inconsistent with the detailed driver records kept by the operator of the taxicab.

The final key issue that the bill addresses is that some individuals and corporations are submitting unknown user statements in response to operator-onus offences in circumstances where it is reasonable for the individual or corporation to know who had possession or control of the vehicle. The bill addresses this issue by placing a limit on the acceptable content of 'unknown user statements'. A failure to keep records of who had possession or control of a vehicle at the time of the offence will not be an acceptable reason for failing to nominate the responsible person unless exceptional circumstances apply.

To conclude, the measures in the bill will help ensure that the operator-onus system functions efficiently and effectively. In particular, the bill will limit opportunities for road users to avoid demerit points and other licence sanctions. This will help to ensure that unsafe drivers are removed from our roads and will therefore contribute to safer roads for all Victorians.

I commend the bill to the house.

Debate adjourned for Ms PULFORD (Western Victoria) on motion of Hon. M. P. Pakula.

Debate adjourned until Thursday, 22 November.

STATE TAXATION AND OTHER ACTS AMENDMENT BILL 2012

Introduction and first reading

Received from Assembly.

Read first time on motion of Hon. G. K. RICH-PHILLIPS (Assistant Treasurer); by leave, ordered to be read second time forthwith.

Statement of compatibility

Hon. G. K. RICH-PHILLIPS (Assistant Treasurer) tabled following statement in accordance with Charter of Human Rights and Responsibilities Act 2006:

In accordance with section 28 of the Charter of Human Rights and Responsibilities Act 2006 (charter act), I make this statement of compatibility with respect to the State Taxation and Other Acts Amendment Bill 2012.

In my opinion, the State Taxation and Other Acts Amendment Bill 2012, as introduced to the Legislative Council, is compatible with the human rights protected by the charter act. I base my opinion on the reasons outlined in this statement.

Overview of bill

The purpose of this bill is to amend the Land Tax Act 2005 to ensure that the principal place of residence exemption operates as intended and limits the power of the commissioner of state revenue to recover unpaid land tax from tenants. It introduces changes to the Taxation Administration Act 1997 to address a number of practical issues which have arisen in the administration of the objection provisions and provides for the disclosure of taxation information to registrar of titles. The bill also, by amending the Road Safety Act 1986, makes permanent the $35 increase in the base light vehicle registration fee, which was effected by interim regulations on 1 April 2012. Finally the bill amends the Trustee Companies Act 1984 to facilitate the transfer of estate assets and liabilities to State Trustees Limited and licensed trustee companies in certain circumstances.

Human rights issues

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

This bill engages the following human rights protected under the charter act:

Right to privacy and reputation

Section 13 of the charter act provides that a person has the right not to have his or her family, home or correspondence unlawfully or arbitrarily interfered with.

Clause 21 provides that the commissioner of state revenue may disclose information obtained in the administration and execution of a taxation law to the registrar of titles.

In administering stamp duty and other taxes, the commissioner of state revenue may identify fraudulent activity relating to land titles. This clause will allow that information to be disclosed to the registrar of titles. This will provide an opportunity for steps to be taken to correct the register of titles, thereby helping to protect the interests of those affected by fraudulent activity.

To the extent that the information disclosed is personal information the right to privacy may be relevant. This may include, for example, the name, address and phone number of a victim of titles fraud or the person who allegedly carried out the fraud. However, disclosure in these circumstances is in the public interest and will help promote the property rights of individuals affected by titles fraud. The registrar of titles will be subject to the strict secondary disclosure rules in the TAA, which will limit the further disclosure of this information. Under these provisions it is an offence to disclose information obtained from a tax officer unless the commissioner consents to the disclosure and the disclosure is made for the purposes of enforcing a law or protecting the revenue.

For these reasons the disclosure of information to the registrar of titles is not unlawful or arbitrary and does not limit the right to privacy in the charter act.

Right to property

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

Clause 5 of the bill clarifies that the principal place of residence exemption from land tax does not apply to land adjoining the family home where that land contains a separate residence.

To the extent that this amendment results in land adjoining the family home becoming subject to land tax the right to property may be relevant. However, this provision does not in any way deprive a person to his or her title to, ownership or use of the property. Rather it ensures Victorians are generally entitled to only one principal place of residence exemption as intended and ensures that all taxpayers that own a second residence are treated in the same way for land tax purposes.

For these reasons I consider clause 5 does not limit the right to property under section 20 of the charter act.

Recognition and equality before the law

Section 8(3) of the charter act provides that every person is equal before the law and is entitled to equal protection of the law without discrimination within the meaning of the Equal Opportunity Act 2010 on the basis of an attribute set out in section 6 of that act.

Clause 8 will provide an exemption from land tax for Victorians who can no longer live at home because of deteriorating health or mobility. The exemption will allow a person to continue to claim the principal place of residence exemption in respect of their former home for up to six years, provided that it is not rented out.

To the extent clause 8 may provide a land tax exemption based on age or disability, it may represent a limitation on an individual's right to recognition and equality before the law.

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

The right to recognition and equality before the law may be limited by the operation of clause 8 of the bill to the extent that it may provide a land tax exemption based on age and disability in certain circumstances.

(a) What is the nature of the right being limited?

The prohibition on discrimination is one of the cornerstones of human rights instruments and this is reflected in the preamble to the charter act. However, as with all rights protected by the charter act, the section 8 right to equality

before the law may be subject to reasonable limitations, pursuant to section 7 of the charter act.

(b) What is the importance of the purpose of the limitation?

This limitation is important to the extent that it provides a person who has lost the ability to live independently with land tax relief on their home, while they transition into care arrangements. This represents a reduction in the financial burden for vulnerable Victorians who may be living within restricted means.

The limitation is consistent with section 88 of the Equal Opportunity Act 2010, which provides that a person does not discriminate by establishing special services, benefits or facilities that meet the special needs of persons with a particular attribute.

(c) What is the nature and extent of the limitation?

The land tax exemption in clause 8 provides targeted relief to persons who have moved from their principal place of residence to reside at a hospital or an aged-care facility or with a carer that provides personal support due to the person's inability to live independently. The land tax exemption does not extend more broadly to individuals who are absent from their primary home for other reasons, such as work or extended holidays.

The exemption is limited to a period of six years to assist with the transition to new care arrangements. To maintain equity within the land tax system, the exemption does not apply if the property is rented out for a period of six months or more in a tax year.

(d) What is the relationship between the limitation and its purpose?

There is a direct relationship between the limitation and the purpose of assisting vulnerable Victorians transition to care arrangements by ensuring that they are still entitled to the principal place of residence exemption in respect of their primary home for up to six years after they move into care. It is expected that this will reduce their financial burden and make the transition to care easier.

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

There is no less restrictive means available.

For these reasons, I consider the limitation on section 8 of the charter act to be 'reasonable' in the circumstances.

Conclusion

I consider that the bill is compatible with the charter act.

Gordon Rich-Phillips, MLC
Assistant Treasurer

Second reading

Ordered that second-reading speech be incorporated into *Hansard* on motion of Hon. G. K. RICH-PHILLIPS (Assistant Treasurer).

Hon. G. K. RICH-PHILLIPS (Assistant Treasurer) — I move:

That the bill be now read a second time.

Incorporated speech as follows:

The family home plays an important role for all Victorians. It provides a sense of physical, emotional and financial security and connects families to their communities. In recognition of these important benefits a person's principal place of residence is exempt from land tax.

This bill will make a series of amendments to the principal place of residence exemption in the Land Tax Act 2005 (Land Tax Act). These amendments will provide for the more equitable application of exemption and ensure that it continues to deliver benefits in the manner intended.

This bill will amend the exemption for land which is contiguous to the family home to clarify that it does not apply to contiguous land which contains a separate residence. This bill will also amend the Land Tax Act to allow the principal place of residence exemption to be apportioned where a landowner rents out a separate residence on the same land as the family home. These changes will ensure that the land tax consequences are the same for all landowners regardless of where that residence is located.

This bill will also make a number of minor technical amendments to ensure that the exemption continues to operate as intended, including clarifying that only beneficiaries with a current interest in land held under trust receive the benefit of the principal place of residence exemption. These amendments are important because they make the application of the exemption clearer and will provide greater certainty to taxpayers about how the exemption applies in their circumstances.

Significantly, this bill provides a new land tax exemption. This exemption will apply for Victorians who can no longer live independently because of deteriorating health or mobility. Under this exemption a person can continue to claim the principal place of residence exemption for up to six years after they leave the family home to go into permanent care. This exemption will apply provided the home is not rented out. This exemption will assist these Victorians transition to their new living arrangements and demonstrates this government's commitment to addressing cost of living pressures for Victorians.

Earlier this year the government announced a review of provisions which allowed the commissioner of state revenue (commissioner) to recover unpaid land tax from tenants. This bill gives effect to the outcomes of this review by limiting the amount of unpaid land tax that can be recovered. Under these changes the commissioner will only be entitled to recover the amount of rent that is due to the landlord, and ensures this payment discharges the tenant's legal obligation to pay rent. This will provide a fairer outcome for tenants in Victoria going forward.

The integrity of Victoria's tax system relies on effective and sustainable tax administration. This government has an ongoing commitment to maintaining best practice tax administration and ensuring that the commissioner is well positioned to meet the needs of both the government and community as we move into the future.

In line with this commitment this bill amends the Taxation Administration Act 1997 (TAA) to address a number of practical issues that have arisen in the administration of the objection provisions. Under the TAA a taxpayer that is dissatisfied with a tax assessment has the right to seek a review of the assessment by the commissioner of state revenue. This is a critical first step before the taxpayer can seek review of a tax assessment by the Victorian Civil and Administrative Appeals Tribunal or appeal against a tax assessment to the Supreme Court of Victoria.

The TAA allows the commissioner of state revenue to suspend consideration of an objection where a person fails to respond to a written request for further information relevant to resolving the objection. This bill amends the TAA to clarify that suspension may take effect from the time the written request for information is served, rather than when a person has failed to comply with a request for information. These amendments will also provide that the commissioner can suspend the determination of an objection where he is required to seek independent valuation advice from the valuer-general in order to resolve an objection. This amendment will help to ensure that the commissioner has all the information he needs to make a decision on an objection, before a taxpayer's rights to external review and appeal are triggered.

The provisions relating to objections to valuations will also be updated to make them fairer for all taxpayers. Under the current provisions the commissioner is required to obtain an independent valuation from the valuer-general where a taxpayer objects to a valuation used for the purposes of assessing tax. Where that valuation is at least 15 per cent more than the value provided by the taxpayer in support of their objection, the taxpayer is required to pay the cost of that valuation.

This bill makes the requirement for the commissioner to obtain a valuation from the valuer-general optional going forward. This will allow the commissioner to resolve an objection based on any reasonable valuation put forward by the taxpayer, therefore reducing the time and cost of resolving objections. These amendments will also close a loophole that arises because a taxpayer is only required to pay for a valuation if the independent valuation sought by the commissioner is at least 15 per cent more than the value provided by the taxpayer. As a result, taxpayers can avoid paying the cost of a valuation by failing to provide an alternative valuation in support of an objection. This amendment addresses the unintended advantage available to taxpayers who fail to provide evidence of value in a tax dispute.

This bill amends the TAA to permit the disclosure of information to the registrar of titles. This will enhance opportunities for Land Victoria to take steps to remedy the impacts of land titles fraud that is identified by the SRO, and will help better protect the interests of Victorian landowners.

The government resolved to implement a modest increase in light vehicle registration fees in order to fund the development of a new registration and licensing system. As a result, the base light vehicle registration fee was increased by $35 from 15.68 fee units ($191.60) to 18.54 fee units ($226.60) on 1 April 2012.

The base light vehicle registration fee is currently imposed by regulations under the Road Safety Act 1986. Implementation of the original increase occurred by means of interim regulations under the Road Safety Act 1986.

In this bill, the government is continuing the $35 increase and also taking the opportunity to transfer the fee to the Road Safety Act 1986.

In May 2010, the Corporations Act 2001 of the commonwealth (the Corporations Act) was amended to implement a Council of Australian Governments (COAG) reform of trustee companies' 'traditional trust services', with ASIC taking over responsibility for prudential supervision of trustee companies from the states and territories.

These amendments provided for a 'compulsory transfer determination' to be issued by ASIC, requiring one trustee company to transfer trust assets and liabilities to another after ASIC has cancelled the transferring company's licence.

The amendments also required there to be explicit complementary legislation in the states and territories. In May 2010, this Parliament amended the Trustee Companies Act 1984 to insert provisions satisfying this requirement.

In 2011, the commonwealth Parliament made further amendments to provide that compulsory transfer determinations can also be made to transfer trust assets and liabilities to a state public trustee. In Victoria, the role of public trustee is undertaken by the state-owned company State Trustees Ltd.

These 2011 commonwealth amendments also provided for ASIC to issue determinations approving voluntary transfers of trust assets and liabilities between licensed trustee companies, but not public trustees.

These voluntary transfer provisions are primarily intended to allow for a cost-effective process for corporate trustee company groups with multiple subsidiaries in various states and territories to consolidate their trust business into one ASIC-licensed entity, but are not limited to this purpose.

The proposed amendments to the Trustee Companies Act included in this bill will complement the 2011 amendments to the Corporations Act by providing the necessary explicit references to the Corporations Act provisions. At present, voluntary transfers can be made under commonwealth transitional provisions, but these will expire on 31 December 2012, frustrating the intentions of the national scheme with respect to Victorian-registered trustee companies unless the proposed amendments are implemented by then.

These proposed amendments cover compulsory transfers to State Trustees Ltd and voluntary transfers between licensed trustee companies and will automatically extend to these transfers the provisions inserted in 2010 that relate to matters such as exemption from state tax and 'successor in law' status.

The bill also amends the State Trustees (State Owned Company) Act 1994 to enable State Trustees to accept compulsory transfers of assets and liabilities under ASIC determinations, while continuing to exclude State Trustees from other aspects of ASIC regulation.

I commend the bill to the house.

Debate adjourned on motion of Mr LENDERS (Southern Metropolitan).

Debate adjourned until Thursday, 22 November.

ADJOURNMENT

Hon. G. K. RICH-PHILLIPS (Assistant Treasurer) — I move:

That the house do now adjourn.

Melbourne Water: desalination plant charges

Mr LENDERS (Southern Metropolitan) — The matter I raise on the adjournment tonight is for the Premier. It relates to the findings on pages 30 and 31 of the *Auditor-General's Report on the Annual Financial Report of the State of Victoria 2011–12*, in particular under the heading 'Right to acquire the residual interest in the plant' — namely, the Wonthaggi desalination plant.

If we read the Auditor-General's report, we find that in the current water pricing period Melbourne Water is being charged $319 million by DSE (Department of Sustainability and Environment) for set-up costs at the desalination plant. As of 30 June 2012, $223 million of this amount had been spent by DSE; the rest is an underspend of almost $100 million.

The reason I am raising this for the Premier is that, just as we saw consumers being overcharged hundreds of millions of dollars by Melbourne Water for bills that would never be paid, and the Premier said it was a hiccup for a family to deal with $177 a year of overpayments, what we appear to find in this Auditor-General's report is that for the second time in a few months Melbourne Water has been overcharging consumers for a service that will never be delivered and a price that will never need to be paid — that is, the costs to DSE that are being charged to Melbourne Water are a significant overcharge. This government has for a second time been caught red-handed charging Melbourne water users for services not being delivered.

The action I am seeking from the Premier is that he intervene, like he did with the last overcharge, and that, like he did with the last overcharge, he consider refunding consumers for the amount overcharged. This $100 million charge by the government for services not delivered but paid for by Melbourne water users should be rectified, like it was the last time. I seek that the Premier, in his statement and his determination, not refer to the $177 overcharge as a hiccup — as he did last time — but that he take this matter seriously and address the overcharging of Melbourne Water by the Department of Sustainability and Environment which is referred to on page 31 of the Auditor-General's report.

Community services: juvenile incarceration

Ms MIKAKOS (Northern Metropolitan) — I wish to raise with the Minister for Community Services my concerns about recent reports of a 16-year-old Aboriginal boy being held for four months in solitary confinement inside one of Victoria's high-security adult jails.

The ABC program *7:30 Vic* first reported on 31 October 2012 that this 16-year-old boy was spending 22 hours a day in solitary confinement and the other 2 hours handcuffed in an exercise yard. There were reports about a youth diversion round table on 19 September which was attended by the Minister for Community Services, the Minister for Corrections, and the Attorney-General. It took another month for anything to happen in relation to this individual.

Concerns about this case were raised by the child safety commissioner, the Australian Human Rights Commission, Amnesty International, Youthlaw and a number of legal groups. There were also reports of at least five or six other young offenders being kept in maximum security at Port Phillip Prison, although these figures have never been verified by the government.

The Minister for Community Services claimed in a media response that she is not able to discuss individual cases. While I certainly agree that she cannot identify individuals, I note that Professor George Hampel, a former justice of the Supreme Court, believes there is no reason the minister cannot disclose the number of young people who are currently being held in adult prisons or how many are in solitary confinement. I cannot see why she cannot disclose that quantum, particularly as these figures are published annually in the Youth Parole Board and Youth Residential Board annual report. We have figures for 2011–12 in the latest annual report, and I believe the minister should be able to disclose figures from 1 July onwards.

The matter that I particularly want to raise tonight is to ask the minister to explain why this practice is necessary in the first place and why the security in juvenile facilities is not adequate. The 2010 review conducted by Neil Comrie identified security, staffing and infrastructure issues that needed to be addressed in juvenile justice and particularly the emerging problem of high-risk, violent offenders who needed to be managed within the juvenile justice system.

I specifically ask the Minister for Community Services to explain why the practice of keeping youth offenders in adult prisons is occurring — in particular why youth offenders are being kept in solitary confinement — and

why she has not taken any action to implement the Neil Comrie recommendations, specifically in relation to what was identified in his review as an emerging problem of high-risk violent offenders needing to be managed within the juvenile justice system.

Students: education conveyance allowance

Mr RAMSAY (Western Victoria) — My adjournment matter is for the Minister for Education, Martin Dixon. The action I seek is in regard to the new education conveyance guidelines, in this instance in rural and regional Victoria. I find it quite difficult to bring this adjournment matter to the attention of the chamber and the minister, but I would not be a proper representative of Western Victoria Region if I did not represent the views of my constituency. I fully understand the need to review the conveyance allowance, given that it has not been done in 10 years. I also understand that the urban growth boundaries have significantly changed with the population shift into those areas over that time.

As I said, I would not be a proper representative of my region if I did not express the views of constituents in the rural school communities who have expressed concern about the introduction of a means test for the education conveyance allowance when their 2013 fees have already been set. Rural students in remote areas do not have access to public transport, and many schools have indicated that many parents who do not have grandfather rights will not be able to afford the freedom of choice of education in rural areas.

I therefore ask the minister to consult with these schools again and provide some clarification on the policy being set by the Department of Education and Early Childhood Development in order to accommodate the concerns raised by those who will not have access to grandfather rights for the conveyance allowance and so that those in rural and remote areas will still be able to have that freedom of choice.

Stanley Road, Vermont South: safety

Mr LEANE (Eastern Metropolitan) — As the President would know, the Healesville freeway reserve has been declared surplus by VicRoads. VicRoads has opted for a process of community consultation, and at a consultation this week concern was expressed by two school communities, particularly the principals of Parkmore Primary School and Emmaus College. These schools are situated on Stanley Road, which traverses Vermont South to Forest Hill running north–south. This is not a through road at the moment because of the freeway reserve, but VicRoads has indicated that it intends to make Stanley Road a through road. This means that a much greater volume of traffic will be travelling past these two schools, and for obvious reasons this is a great concern for those school communities.

The school communities are asking the minister for transport to step in and advocate to VicRoads that Stanley Road not be a through road; the issue being that the north–south traffic that normally uses Springvale Road coming from a westerly direction may use Stanley Road as a short cut rather than using Springvale Road. They are concerned that this could result in an estimated 1200 extra car movements a day and affect pedestrian safety, especially for school students. The action I seek is that the minister for transport advocate to VicRoads and convince it not to go ahead with making Stanley Road in Vermont South a through road.

Hon. G. K. Rich-Phillips — Could I have some clarification from Mr Leane on who he was directing his adjournment item to?

The PRESIDENT — Order! It was the Minister for Roads.

Responses

Hon. G. K. RICH-PHILLIPS (Assistant Treasurer) — A few members raised matters tonight. Mr Lenders raised a matter for the attention of the Premier about what he said were overpayments in respect of water authorities as disclosed in the *Auditor-General's Report on the Annual Financial Report of the State of Victoria 2011–12*, which was tabled yesterday. I note this report also details the cost of the desalination plant that Mr Lenders and his government were responsible for landing Victorian taxpayers with. The Auditor-General's latest report shows the nominal cost of that desalination plant is some $17 639 million, around $1.8 million a day for Victorian taxpayers each and every day out to 2039. I have to take Mr Lenders's concern in raising the matter for the Premier with a grain of salt, but nonetheless I will pass that on.

Ms Mikakos raised a matter for the Minister for Community Services with respect to Aboriginal youth incarcerated in adult prisons, and I will pass that on.

Mr Ramsay raised a matter for the Minister for Education with respect to the education conveyance allowance guidelines.

Mr Leane raised a matter for the Minister for Roads, and I will pass that matter on.

I have written responses in respect of two other matters raised by members.

The PRESIDENT — Order! The house stands adjourned.

House adjourned 5.00 p.m. until Tuesday, 27 November.