PARLIAMENT OF VICTORIA

PARLIAMENTARY DEBATES (HANSARD)

LEGISLATIVE COUNCIL

FIFTY-SEVENTH PARLIAMENT

FIRST SESSION

Thursday, 25 October 2012

(Extract from book 17)

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THURSDAY, 25 OCTOBER 2012

Thursday, 25 October 2012

The DEPUTY PRESIDENT (Mr Viney) took the chair at 9.33 a.m. and read the prayer.

QUESTIONS WITHOUT NOTICE

WorkSafe Victoria: board

Mr LENDERS (Southern Metropolitan) — My question is to the Assistant Treasurer. I refer to coverage in the *Age* regarding the minister's appointment of Denise Cosgrove as chief executive of WorkSafe Victoria. Can the minister advise whether any concerns were raised with him about Ms Cosgrove's suitability for this position or the appointment process itself?

Hon. G. K. RICH-PHILLIPS (Assistant Treasurer) — I thank Mr Lenders for his question. The government has made the appointment of Denise Cosgrove as the incoming chief executive of the Victorian WorkCover Authority (VWA). That appointment has been made in accordance with the requirements of section 25 of the Accident Compensation Act 1985. Ms Cosgrove will be a director of VWA and has been appointed through the same process as all directors have been appointed.

Supplementary question

Mr LENDERS (Southern Metropolitan) — I thank the Assistant Treasurer for his non-answer. Is it not a fact that the Victorian WorkCover Authority director, Paul Barker, has resigned in protest after the minister ignored the recommendations of the board to not appoint Ms Cosgrove? It is an appointment that Mr Barker describes as, and I quote — and I am happy to table his resignation letter — 'clear and obvious risks' which 'strike at the very heart of the board's accountabilities and responsibilities'. The minister did not answer my first question as to whether any concerns were expressed to him. I put to him that this seasoned and veteran director has resigned over the board being jeopardised by the appointment.

The DEPUTY PRESIDENT — Order! I am sorry; I need to understand what the question was. Mr Lenders may have stated it at the beginning, but I missed it.

Mr LENDERS — In his first answer the minister did not mention any concerns, so my supplementary was to put those concerns to him and ask him whether it was a fact. 'Is it a fact' was the question — —

Hon. D. M. Davis interjected.

Mr LENDERS — That is correct. Mr Davis says, 'Is it a fact that this person did resign'.

Hon. G. K. RICH-PHILLIPS (Assistant Treasurer) — I thank Mr Lenders for his supplementary question. I say to Mr Lenders, as I did in the substantive answer, Ms Cosgrove's incoming appointment as chief executive of WorkCover has been made in accordance with the Accident Compensation Act. It is an appointment by the Governor in Council, as all directorships of WorkCover are, and it followed a conventional process after an international search for a replacement chief executive.

Health: federal funding

Mr ELSBURY (Western Metropolitan) — My question is to the Honourable David Davis, Minister for Health. Given the population growth and service demands in the western region of Melbourne, will the minister detail for the house the impact on Western Health of the commonwealth government's latest savage cuts to health funding announced on Monday?

Hon. D. M. DAVIS (Minister for Health) — I thank the member for his question and for his long-term advocacy for health services, particularly in the western region of Melbourne. What is clear is that there is massive population growth in the western side of metropolitan Melbourne and a failure to plan for that growth by the previous government — massive population growth in the western side of the city. The state government is increasing funding to Western Health and to Mercy Health; indeed Western Health will this year get $32 million more in spending, a 7.4 per cent increase in its funding — a very significant lift in recognition of the challenges that it faces. The state government has also put capital money in to support intensive care and more maternity services at Sunshine and has opened more maternity services at Werribee Mercy as well.

But what is clear is that the announcement made by the commonwealth on Monday will see $430 million pulled out of the health agreement due to a population fiddle. The federal Treasurer and the federal government are the only people in the land who believe the population in Victoria is falling. They believe the population of Victoria last year fell by 11 000.

Honourable members interjecting.

The DEPUTY PRESIDENT — Order! The minister, without assistance.

Hon. D. M. DAVIS — Let us be very clear what this will mean. On a pro rata basis the impact of those

cuts on Western Health will be savage; they will mean $24.5 million will be ripped out of Western Health because of the decision of the federal government, unless it is prepared to reverse that decision. I am hopeful it will see sense, reversing the decision — —

Hon. M. P. Pakula interjected.

Hon. D. M. DAVIS — I have got to say, Mr Pakula, you never go to the western suburbs.

Hon. M. P. Pakula interjected.

The DEPUTY PRESIDENT — Order! Mr Pakula should have seen that I was on my feet. The fact that the President is unable to preside over the chamber does not mean I am any less capable of keeping order and maintaining the forms of the house, and I will do so. I think the minister is inviting interjections by his tone, and I do not think that the opposition should be participating at that level.

Hon. D. M. DAVIS — Deputy President, thank you. What is a fact is that the federal government, through a population fiddle, is seeking to take $430 million of health funding out of Victoria, plus it wants to take another $39.7 million from last financial year in a retrospective adjustment, which would make the figure $470 million. But if you just take the $430 million in forward-looking money, the share of that lost funding that Western Health would have to accommodate, unless the commonwealth was prepared to reverse its decision, would be $24.5 million — $6.1 million a year.

This $430 million cut is a direct indication of how whacky the commonwealth's view is. Reduced population is not what is going on in the western suburbs. It is not what is happening in Victoria; we have population growth. The health-care agreements are very clear: utilisation, a technology factor and population growth are the basis, and those three factors should be combined to find a fair account of funding for Victoria. What is clear is that the federal government believes the population in Victoria is falling and it is using dodgy data, a dodgy approach and a dodgy mechanism to reduce the share of spending of the states and territories.

I have got to tell you that a $430 million cut will have a significant impact on the western suburbs if the federal government persists with its decision and does not reverse its incorrect calculation of population growth. Population has grown — —

The DEPUTY PRESIDENT — Order! The minister's time has expired.

Health: federal funding

Mr JENNINGS (South Eastern Metropolitan) — My question is for the Minister for Health. The minister has prompted me to ask a slightly different question from the one I was intending to ask. During the last two Public Accounts and Estimates Committee hearing sessions when asked the question, 'Can the minister guarantee that every dollar that is provided by the commonwealth government for health is spent by the Victorian government on health?', the minister has refused to answer the question. He has refused to confirm that every health dollar given by the commonwealth to Victoria is spent on health. Can the minister now take the opportunity, given his assault on the commonwealth government, to give a guarantee to the people of Victoria that every dollar of the $3.612 billion that the commonwealth provides to the state of Victoria for health is totally acquitted in the health portfolio?

Hon. D. M. DAVIS (Minister for Health) — I will say very clearly in response to the member that the share of funding from the commonwealth in health is falling. The recent data that came out shows it has fallen from 42 per cent of health funding to 39 per cent. If the federal government's $430 million cuts to health are instituted, it will fall even further.

Mr Jennings — How much did they give you?

Hon. D. M. DAVIS — It will fall even further, Mr Jennings.

Mr Jennings — How much did they give you, and how much did you spend?

Hon. D. M. DAVIS — What we know about you, Mr Jennings, is you are Labor first and Victorian second. You are defending the cuts by the commonwealth. We know what is going on. We know that Labor members are determined to toady up to their federal colleagues and support cuts to health care in Victoria, cuts that will impact in the southern part of Melbourne, cuts that will impact in regional Victoria, cuts that will impact in smaller bush centres, cuts that will impact in regional cities, cuts that will impact on the western side of the city, cuts instituted by the Prime Minister, Julia Gillard, cuts that will hurt people and cuts that will impact on health services all across the state.

I would say to Mr Jennings that he has to stop toadying up to the federal government. He has to be prepared to

stand up for Victoria. He has to be prepared to stand up against Prime Minister Julia Gillard's dodgy manipulation of population data. Everyone knows that the population has increased and that the share of Victoria's spending by the commonwealth is falling.

Supplementary question

Mr JENNINGS (South Eastern Metropolitan) — My apologies; throughout the barrage the minister threw at me and my volley back, it was pretty clear, on my hearing, that he did not take the opportunity to confirm that in fact Victoria acquits all the health expenditure provided by the commonwealth on health. I ask the minister to take the opportunity to say he spends every health dollar that comes from the commonwealth to Victoria on health — take it now.

Hon. D. M. DAVIS (Minister for Health) — What I can say very clearly to the member is that we are increasing funding in health. We are more than pulling our weight. We are spending more than our share. The commonwealth is actually reducing its share of health spending, and recent figures show it has fallen from 42 per cent to 39 per cent. It was meant to be a 50-50 deal, a shared responsibility, and the commonwealth is not pulling its weight. It is declining its share of spending.

What I have to say is that the state government is increasing its share of spending. If the $430 million cut is instituted, that will be very damaging to Victorian health care. We have not heard Mr Jennings utter a word against those cuts. It is time that the Leader of the Opposition and the shadow spokesperson on health came out and condemned the $430 million cut that Julia Gillard and the federal Minister for Health, Tanya Plibersek, are instituting in health in Victoria. That is a very significant cut, and it is time — —

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

Housing: waiting list

Mrs COOTE (Southern Metropolitan) — My question is to Ms Lovell, the Minister for Housing. Can the minister update the house on the progress the coalition is making towards reducing the public housing waiting list?

Hon. W. A. LOVELL (Minister for Housing) — I thank the member for her question and her ongoing interest in the vulnerable families of Victoria who are waiting for access to public housing. I am pleased to announce today that the public housing waiting list in Victoria has been reduced by a further 495 applications. This is the fourth quarter in a row that the coalition has reduced the public housing waiting list. Obviously we are working very hard on housing people, and we are getting results.

We are not prepared to allow people to languish on the list, as Labor did in the past. When we came to government there were 41 212 people on the public housing waiting list in Victoria. That number has now been reduced to 36 445 people. That is 4767 fewer people on the public housing waiting list than there were under Labor. Labor's list was disgraceful. It was increasing, and Labor's management of public housing was disgraceful. The Victorian Auditor-General has reported on this, saying that Labor had ignored the warnings of Treasury and the Auditor-General and put the future of public housing at risk.

We are putting public housing back on a sustainable footing through our new public housing framework, which we will release next year. We have introduced better management of the public housing waiting list, unlike Labor members, who, in committee, talked about 'cleansing' the list. We do not cleanse the list, like Labor did. We are working with people on those lists. We are reprioritising to category 1 some of those people who have been waiting the longest in order to see them housed sooner. We are working with people on the list to advise them of their other options through community housing organisations, and we are also assisting them with bond loans to get into private rental.

We have managed the list better. We have introduced better management of the properties to reduce turnaround time so that people are housed sooner. We are rejuvenating Norlane, Westmeadows and Heidelberg, and we are putting more public housing on the ground to house people. Labor's record on public housing is disgraceful. It disposed of properties at a massive rate. In fact the member for Richmond in the lower house, Richard Wynne, disposed of 4495 properties during his term as the Minister for Housing. That completely wiped out all the benefits of the Nation Building program.

We are working with the people on the waiting list to get them housed sooner. I am sure Mrs Coote will be absolutely delighted to know that in her electorate of Southern Metropolitan Region the number of people on the Cheltenham office's waiting list has fallen by 38. In the Dandenong office it fell by 168, in the Frankston office by 28 and in South Melbourne and Prahran by 6, so every office in the member's region had a reduction in people waiting for public housing this quarter.

Hospitals: bed numbers

Mr JENNINGS (South Eastern Metropolitan) — My question, perhaps unsurprisingly, is for the Minister for Health. Can the minister identify anywhere on any page of any of the 81 health reports that have been tabled in the last three weeks where the government's promised 800 new beds commitment has been identified? Where is one page, one reference to any of the so-called new beds that his government has provided?

Hon. D. M. DAVIS (Minister for Health) — The member well understands that bed numbers are recorded by the Australian Institute of Health and Welfare (AIHW) annually. They report average available beds.

Mr Jennings — No, they are not.

Hon. D. M. DAVIS — Yes, they are.

Mr Jennings — No, bed days are not.

Hon. D. M. DAVIS — No, I am sorry; they are actually reported by bed numbers too. What the AIHW data shows very clearly is that we are on track exactly with our election promise to deliver the number of beds. There were more than the 100 that we promised in the first full financial year, and that is where we are. The member asked about the budget, and he might have a look for himself — —

Honourable members interjecting.

The DEPUTY PRESIDENT — Order! Mr Jennings has asked his question. I believe if he wishes, he has the right to have a supplementary question, so he can ask further questions then.

Hon. D. M. DAVIS — If the member wants to look at the budget papers, he will see, for example, intensive care beds and neonatal intensive care beds are directly pointed to in a number of spots, but the key point here is that the aggregate number of beds is reported by the AIHW, in the authoritative way that you would expect, and that is reported annually.

Hon. M. P. Pakula interjected.

Hon. D. M. DAVIS — We have delivered more than the required number.

Hon. M. P. Pakula interjected.

Hon. D. M. DAVIS — You can go and look up the figures yourself.

Hon. M. P. Pakula — You are the health minister.

Hon. D. M. DAVIS — More than 100, as we promised, have been delivered in the first full financial year. There you are. We are on track, and the opposition will just enjoy that.

The government is committed to delivering on its bed promises, but what I will tell Mr Jennings is that it will be more difficult to deliver on bed numbers and it will be more difficult to deliver on services if we are to be hit by the commonwealth government ripping $430 million out of the system. Through a dodgy fiddle the commonwealth government is claiming that the population in Victoria has fallen by 11 000 — that is what the commonwealth is claiming — so it will reduce funding to Victoria by $430 million over the forward estimates period. That will make it harder to deliver services, it will make it harder to deliver beds, it will make it harder to employ doctors, it will make it harder to employ services, it will make it harder to lower waiting lists and it will make it harder to meet elective surgery and emergency department targets.

I say to Mr Jennings that the commonwealth has to pull its weight. It is about time that he stood up as a Victorian first, rather than as a Labor person first, but it appears that he is prepared to toady up to the commonwealth and to give excuses for the cuts it is proposing of $430 million across the forward estimates period.

Supplementary question

Mr JENNINGS (South Eastern Metropolitan) — I took your guidance, Deputy President, and did not interject on the minister's answer because I was totally satisfied with the hole he was digging for himself. I am certain the minister will never appear at question time at 9.30 ever again. I ask the minister to confirm to the chamber that the last data published by the Australian Institute of Health and Welfare — the published bed days/bed numbers — was for 2010–11 and there has not been any data published subsequently, so the only year that has been published was a year that was funded by the last Labor government.

Hon. D. M. DAVIS (Minister for Health) — As the member knows, the cycle is very clear: the financial year ends, the data is collected and collated by the Australian Institute of Health and Welfare and sometime in the early part of the year — —

Mr Jennings interjected.

Hon. D. M. DAVIS — You will just have to wait for the institute of health and welfare to bring forward

its report. But we are very confident that the numbers will be achieved each financial year as we go forward.

Planning: Ballarat

Mr RAMSAY (Western Victoria) — My question is to the Minister for Planning, the Honourable Matthew Guy. Can the minister inform the house of what action the Baillieu government has taken to bring forward much-needed land supply for new homes and jobs in Ballarat?

Mr Leane interjected.

Hon. M. J. GUY (Minister for Planning) — Thank you, Mr Leane; I appreciate it.

I want to thank Mr Ramsay for a very good question in relation to land supply and combating affordability issues in Victoria's third-largest metropolitan area, Australia's 20th-largest metropolitan area and the next city in Australia where the population will pass 100 000 people — and that is, of course, Ballarat. Ballarat is an amazing centre for growth, an amazing centre for change and an amazing centre — —

Honourable members interjecting.

The DEPUTY PRESIDENT — Order! I advise members to be very careful. I would appreciate it if members on my left would stop making sounds that are inappropriate. I invite the minister to continue.

Hon. M. J. GUY — This is telling. This is a good news announcement for Ballarat. This is about hundreds of new jobs for Ballarat. This is about millions of dollars worth of investment for the regional economy in Victoria, and the best we can get out of the frontbench of the Labor Party are juvenile antics which reflect people who have had too little sleep and too much coffee.

What we on this side of the chamber are doing is getting on with the job of bringing forward land supply for one of Victoria's major regional centres and getting on with the job of bringing forward new employment for Ballarat. I have previously made available land for the new suburb of Lucas. We are working well with the City of Ballarat. The productive and sensible and forward-thinking approach of the City of Ballarat has been a major conduit for actually bringing forward this land supply today. It has brought the relationship between Ballarat and the state government closer and has of course put Ballarat ahead of other regional cities not just in Victoria but across Australia. This decision means Ballarat has the ability to grow, where other regional centres do not.

Mr Leane interjected.

Hon. M. J. GUY — Mr Leane, you may be reflective of the most juvenile person in this Parliament and you — —

The DEPUTY PRESIDENT — Order! I have rebuked members of the opposition; I do not need the minister to add to it in his contribution. If I hear further inappropriate comments, I will deal with them. The minister has the call.

Hon. M. J. GUY — I do have the call, Deputy President, and I am making the point that this is a serious issue for jobs in country Victoria and Ballarat. It is important and reflective of the attitudes and behaviour of everyone in this chamber when they know that we are talking about a serious issue. Mr Ramsay has raised it, Mr O'Brien has raised it with me a number of times as well and Mr Koch has also raised it with me on a number of occasions. It is about the sensible need to bring forward land supply in Victoria's third-largest city. This government is getting on with the job of doing that; previous governments did not. This government is building a relationship with a regional council that is working quickly, more quickly than it has worked before, to bring forward that land supply which, as I said, will see jobs and new suburbs for a regional centre that this government has confidence in and that all western Victorians should have confidence in — a regional centre that this government intends to see grow and grow strongly and sustainably into the future.

WorkSafe Victoria: board

Mr LENDERS (Southern Metropolitan) — My question is to the Assistant Treasurer, Mr Rich-Phillips. I refer to the letter of resignation from Mr Paul Barker, the deputy chair of the Victorian WorkCover Authority, particularly where he says:

> Given that the minister and I have fundamentally opposing views regarding corporate governance …

Then he goes on:

> … and the management of strategic and operational risk, I decided that I could not continue on the board.

What steps has the minister taken to assess the magnitude of the strategic and operational risks addressed by Mr Barker?

Hon. G. K. RICH-PHILLIPS (Assistant Treasurer) — I thank Mr Lenders for his question. Mr Lenders purports to quote from a document. I do not know the basis of the document he purports to

quote from. He says he is quoting Mr Barker; Mr Barker has been a long-term board member of the Victorian WorkCover Authority. He continues as the chairman of the Transport Accident Commission and other government agencies, and I continue to have a very good working relationship with Mr Barker. Mr Barker can certainly speak for himself if he has views on matters of WorkCover or the TAC. However, with respect to the Victorian WorkCover Authority and the appointment of a chief executive, as I indicated before, that is an appointment made by the Governor in Council on the recommendation of the government, as all previous chief executives and directors have been, and an appropriate process was followed.

Supplementary question

Mr LENDERS (Southern Metropolitan) — Again the minister did not address my question, which was: what actions has he taken to assess the magnitude of the strategic and operational risks that Mr Barker has alluded to? I specifically ask: what action has he taken to assess the significant risks alluded to by the resigned deputy chair of the Victorian WorkCover Authority? If he wishes, I am happy to table the letter I am referring to in the house.

Mr O'Donohue — On a point of order, Deputy President, the question Mr Lenders has put to the minister is exactly the same as the substantive question.

Mr LENDERS — On the point of order, Deputy President, I have asked the minister a substantive question. The minister has not answered the substantive question. I have reworded the substantive question and am seeking that he answer it. I put to you, Deputy President, that I have reworded a question to seek an answer. The purpose of a supplementary question is to deal with the question that was asked or the minister's response to the question. I put to you, Deputy President, that my supplementary question relates to both those headings.

Hon. D. M. Davis — On the point of order, Deputy President, Mr Lenders, from his own mouth, admits in effect that he has reworded the same question — that it is the same question — and confirms the point of order made by Mr O'Donohue. He is not able to ask precisely the same question as a supplementary, even if it is ever so slightly reworded.

The DEPUTY PRESIDENT — Order! I have heard enough at the moment. I will invite Mr Lenders to rephrase his supplementary question.

Mr LENDERS — In my substantive question I asked the minister about Mr Barker's letter. He said he was not aware of the letter. I have offered to table the letter. From Mr Barker's letter, I am asking the minister what action he is taking to deal — —

Honourable members interjecting.

Mr LENDERS — The question I am asking the minister invited — —

The DEPUTY PRESIDENT — Order! Mr Lenders does not need to respond to an interjection. I will deal with the ruling on the validity of the supplementary question. I am asking Mr Lenders to ask his question.

Mr LENDERS — In his answer to my substantive question the minister invited me to cite the letter, which I have done in my supplementary question. Further to Mr Barker's letter of 11.59 a.m. on 26 September, I am asking the minister what action he is taking to ensure that the Victorian WorkCover Authority is not going to run at a loss and will provide the dividends that he seeks to take from it each year.

The DEPUTY PRESIDENT — Order! I rule the question in.

Hon. G. K. RICH-PHILLIPS (Assistant Treasurer) — Mr Lenders asks me now what I am doing to ensure that the Victorian WorkCover Authority does not run at a loss. I can say to Mr Lenders, as he would well know, that with the way the VWA accounts for its operations the VWA frequently reports a loss, as it did when he was minister and as it did when he was Treasurer. That is a function of what happens in financial markets. As Mr Lenders would also recognise, whether the VWA reports a bottom-line loss or not is not relevant to its performance and operations.

Manufacturing: landing helicopter dock ship

Mr O'DONOHUE (Eastern Victoria) — I have a question for Mr Dalla-Riva in his capacity as the Minister for Manufacturing, Exports and Trade. I ask: can the minister update the house on the arrival of Australia's largest warship and what impact this arrival has on the defence industry and manufacturing in Victoria?

Hon. R. A. DALLA-RIVA (Minister for Manufacturing, Exports and Trade) — I thank the member for his question. This government and I recognise the importance of the defence industry here in Victoria. I have looked at the opportunities that are provided not only in manufacturing but right across a variety of different areas — in ICT and others — and I have taken the very strong view that defence should be very much supported here in Victoria.

On Wednesday, 17 October, I was pleased to join the federal Minister for Defence Materiel, Jason Clare, in watching the arrival of the first of what will be the two largest warships ever operated by the Royal Australian Navy. What we saw arrive through the Port Phillip Heads was the next HMAS *Canberra*. It arrived in Port Phillip Bay and was taken to Geelong, where it will be further commissioned before being floated out near Dromana today, tomorrow or Saturday. It will then be taken off the carrier ship and tugged into the Williamstown shipyards.

This is important for Victoria. This landing helicopter dock, or what they call the LHD, ship is a major project for Victoria's defence industry. I know that the previous government, with this side's support, was supportive of BAE Systems. It is important to have the capacity there to develop and build on the upgrades of this LHD ship. To put it into some perspective, the construction and fit-out of the LHD ship will add to the 900 existing jobs — there will be new jobs, and they will be secured for this project.

We have already been out to the Williamstown shipyards where the pier had to be extended, such is the length of this warship. Why is it the largest? To put it into some perspective, it is 230 metres long. That is equivalent to the height of the Rialto building. Having now seen it firsthand, I know that it is significant. It weighs 27 000 tonnes. Its sister, the HMAS *Adelaide*, will arrive here early in 2014. Each ship will have capacity to carry 1100 personnel, 100 armoured vehicles, which I hope will be the Thales Bushmaster and/or Hawkei — we will be pushing for that — and 12 helicopters. Dare I say it with tongue-in-cheek, as I did to Minister Clare, one would hope the joint strike fighter would have some capacity on that as well, obviously not the take-off one but the other one.

It is important to put on record that the LHD ship has the capacity to be used for humanitarian purposes. It has a 40-bed hospital with two operating theatres, an intensive care ward, a laboratory and X-ray facilities. It can generate enough power to sustain a city the size of Greater Geelong. It is a significant superstructure. BAE Systems already has commenced work on the superstructure. This includes four modules, each weighing more than 300 tonnes, which will house the combat, communications and ship management systems. It will conduct the final fit-out of all the operational compartments.

For the people of Victoria and Melbourne, the LHD ship will arrive in Williamstown on either Saturday or Sunday. I would encourage everyone to go down and visit this great, wonderful development that is occurring here in Victoria.

Southern Cross Education Institute: audit

Ms PENNICUIK (Southern Metropolitan) — My question is for the Minister for Higher Education and Skills. The Southern Cross Education Institute offers state-funded courses in areas such as child care, business and aged care to 1000 local and international students. Its CEO is Azeezur Rahaman, whom police are investigating for alleged vote rigging. In light of recent reports of rorts in a number of Victorian private providers, is the minister or his department auditing Southern Cross Education Institute?

Hon. P. R. HALL (Minister for Higher Education and Skills) — I thank Ms Pennicuik for her question. In respect of the audit functions of both the Victorian Registration and Qualifications Authority and the Department of Education and Early Childhood Development, as the member knows, I have outlined before what additional measures have been taken to ensure that those who are contracted with government to deliver training do deliver that training to the standard expected of them. Where there is any suggestion that there are breaches of that the department will be diligent in pursuing those particular matters.

In respect of the particular institution she mentioned, I am not sure whether that particular one is under investigation at the moment, but I will find that out and get back to the member before the end of the day. I can assure members that making sure training providers in this state deliver at the standards expected of them is something dear to my heart and is a priority of my department.

Aviation industry: western Victoria

Mr O'BRIEN (Western Victoria) — My question is to the Minister responsible for the Aviation Industry, the Honourable Mr Rich-Phillips, and I ask: can the minister update the house on the assistance being provided by the Baillieu government for regional airports in western Victoria?

Hon. G. K. RICH-PHILLIPS (Minister responsible for the Aviation Industry) — I thank Mr O'Brien for his question and his interest in regional airports in western Victoria. Mr O'Brien has been a strong advocate for the municipalities in his electorate in terms of their regional airports and the assistance sought for their upgrades, as have Mr Ramsay and Mr Koch, also members for Western Victoria Region.

Last week I was very pleased to visit Edenhope in western Victoria where I announced that the Victorian government would contribute more than $100 000 to upgrade Edenhope Airport through the Regional

Aviation Fund, a $20 million fund established by the government last year to assist operators of regional airports to upgrade the operational infrastructure of those facilities. The $100 000 will go towards widening the runway and upgrading the runway lighting. That is a very significant project for the Edenhope community, and it is one that we expect will be completed within the next six months. It is important to the community because it will assist in increasing air ambulance access to the community, particularly night air ambulance access. Mr O'Brien, as a good representative of his community, has been a strong advocate for that project.

I was also pleased last week to visit Stawell with Mr Ramsay to announce that the Victorian government, through the Regional Aviation Fund, would commit an additional $565 000 towards the completion of stage 3 of the master plan for Stawell Airport. This is the final stage of the master plan that the government has funded; indeed the previous government made a contribution towards it as well. This final stage will see further upgrades to aprons and taxiways as well as the creation of an instrument approach into Stawell, which will allow all-weather operation into the Stawell aerodrome. Again this will have important benefits for emergency services operations into Stawell and for the Stawell region. That is a $565 000 additional commitment by the Victorian government.

There is a lot happening in regional Victoria through the Regional Aviation Fund. The Victorian government is pleased to work with municipal councils in regional Victoria to assist them in upgrading this infrastructure. The reality is that a lot of the aviation infrastructure throughout regional Victoria is very old, some of it dating from the World War II, and many councils do not have the capacity to upgrade those facilities from their own resources. The Victorian government is pleased to be able to assist them, and I was very pleased last week to assist those communities in western Victoria with announcements about those important upgrades.

Answers

Mr TEE (Eastern Metropolitan) — I am following up on a question from question time of Thursday of the last sitting week when I asked the Minister for Planning whether or not he would be attending a $2000-per-plate Enterprise 500 Victoria fundraiser on 30 October as one of the keynote guests. Mr Guy said, 'I will check my diary and get back to Mr Tee.' I am wondering if he has had an opportunity to check his diary.

The DEPUTY PRESIDENT — Order! The member can only raise that by leave on a Thursday. Was leave granted for Mr Tee to raise that question for answering or not?

Leave refused.

Ms Mikakos — On a point of order, Deputy President, I too am following up on a — —

The DEPUTY PRESIDENT — Order! That can only be done by leave. Are you seeking leave?

Ms Mikakos — Yes, I am seeking leave.

The DEPUTY PRESIDENT — Order! Is leave granted?

Honourable members interjecting.

Ms Mikakos — Minister Lovell said yesterday in response to a question I asked her about early intervention places in Loddon Mallee that she would get back to me.

The DEPUTY PRESIDENT — Order! Leave is not granted.

Leave refused.

PETITIONS

Following petitions presented to house:

Higher education: TAFE funding

To the Legislative Council of Victoria:

The petition of certain citizens of the state of Victoria draws to the attention of the Legislative Council the impact of recently announced funding cuts to the Victorian statewide TAFE system.

We believe that the removal of approximately $300 million in funding from the sector will have a devastating impact on regional communities. These cuts will result in a reduced level of service for members of the public, including those most disadvantaged. These cuts will impact Victorian citizens' ability to access a variety of affordable training opportunities in their local area.

The petitioners therefore request that the Legislative Council of Victoria protect this vital resource for the state and reinstate full service funding levels to all Victorian TAFE agencies. In addition, we request a review of cuts to course subsidy levels and an increased level of funding be reinstated to continue the viability of courses delivered by TAFE and required by the community.

For Mr VINEY (Eastern Victoria) by Mr Leane (530 signatures).

Laid on table.

Higher education: TAFE funding

To the Legislative Council of Victoria:

The petition of certain citizens of the state of Victoria draws to the attention of the house the state government's plans to cut hundreds of millions of dollars from TAFE funding. In particular, we note:

1. the TAFE Association has estimated up to 2000 jobs could be lost as a result of these cuts;

2. many courses will be dropped or scaled back and several TAFE campuses face the possibility of closure;

3. with 49 000 full-time jobs already lost in this term of government, skills training has never been more important for Victorians.

The petitioners therefore request that the Legislative Council urges the Baillieu state government to abandon the planned funding cuts and guarantee no further cuts will be made.

For Mr VINEY (Eastern Victoria) by Mr Leane (229 signatures).

Laid on table.

Families: cost of living

To the Legislative Council of Victoria:

This petition of concerned residents of Victoria draws to the attention of the house a failure of the Baillieu government to honour its promise to help '… families struggling under cost of living pressures'.

Further, we note that Mr Baillieu's budget adds to living costs by abolishing the School Start bonus and first home buyers scheme, cutting education maintenance allowance and TAFE funding, increasing car registration by $35, and pensioner concessions by less than inflation.

The petitioners therefore call on the Victorian government to take immediate steps to cut the cost of living for families as promised and reverse these actions.

By Mr LENDERS (Southern Metropolitan) (2 signatures).

Laid on table.

PAPERS

Laid on table by Clerk:

Ombudsman — Report on the Investigation into allegations concerning rail safety in the Melbourne Underground Rail Loop, October 2012.

Special Investigations Monitor's Office — Report, 2011–12.

Statutory Rules under the following acts of Parliament:

Building Act 1993 — No. 113.

Melbourne City Link Act 1995 — No. 114.

Subordinate Legislation Act 1994 — Documents under section 15 in respect of Statutory Rule Nos. 113 and 114.

Surveillance Devices Act 1999 — Primary Industries Department Report under section 30L of the act, 2011–12.

Victorian Civil and Administrative Tribunal — Report, 2011–12.

Victorian Environmental Assessment Council Act 2001 — Minister's request for the Victorian Environmental Assessment Council to investigate into additional prospecting areas in parks, pursuant to section 16(1)(a) of the act.

BUSINESS OF THE HOUSE

Adjournment

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

That the Council, at its rising, adjourn until Tuesday, 13 November 2012.

Motion agreed to.

MEMBERS STATEMENTS

Noble Park: community participation awards

Mr TARLAMIS (South Eastern Metropolitan) — On 13 October I attended the third Noble Park community participation awards gala dinner held at the Noble Park RSL where this year seven awards were presented to dedicated community volunteers for their outstanding contribution to the community. I was honoured to join Cr Roz Blades to present awards to the following recipients. Joy Melbourne received the community award for leadership, support, advice and assistance to the local community. Kevin Wright received the sporting achievement award for his contribution to sport and recreation in the community through his work with young people, facilitating their participation in sport and recreation and providing outstanding leadership and mentoring. Trish Marson received the youth services award for her efforts in providing encouragement and education for up-and-coming youth leaders and ensuring that they remain connected and engaged with the community in a meaningful way through active participation and engagement in community life.

Sam Navarria and Josie Luppino both received the cultural and service award for their tireless efforts in promoting cultural endeavours not only in the local Noble Park community but also to a wider cultural audience. The foundation award went to Joan Spence for her selfless dedication and lifetime commitment to

building on the 'struggle town' ethos on which Noble Park was founded. There was also a posthumous award for Mary Spittal who was a Noble Park stalwart and one of the founding members of the Noble Park Keysborough Community Action Forum who sadly passed away earlier this year.

I make special mention of members of the award judging panel — that is, Jim Laidlaw, Helen Smith, Alf Goldburg, Roz Blades, Gaye Guest and John Meeham — for their efforts in selecting the award recipients from a large field of worthy candidates.

Finally, I acknowledge the Noble Park RSL for its ongoing support of this and many other community activities and Gaye Guest for all her efforts in making this event the success that it was.

Peter MacCallum Cancer Centre: ladies auxiliary

Mrs KRONBERG (Eastern Metropolitan) — During the last sitting week I had the utmost pleasure in hosting a morning tea for the splendid volunteers who form the ladies auxiliary of the Peter MacCallum Cancer Centre. This event was designed to recognise and congratulate the members of the ladies auxiliary — a group whose members could be considered as some of Melbourne's unsung community volunteers.

A modest and often self-effacing group shared a hectic morning with us. The ladies auxiliary has raised $1.3 million in the last 30 years. We congratulated them and celebrated this milestone with them. It is a really measurable achievement. Individually and collectively they contribute so much to the wellbeing of those associated with the Peter McCallum hospital.

We were joined by Helen Abbott, Valerie Beachley, Elizabeth Bedford, Gwen Bode, who is a life member, Gwen Burrows, Kath Bugden, who is a past president, Lois Herrman, Lois Holder, the president, Joan Johnston, Lurlene Kennedy, Phillis Maher, Pat Osborne, Joan Reynolds and Lois Roy. The administration manager of volunteers, Anne Franzi-Ford; the corporate secretary, Les Manson; and the CEO, Craig Bennett also joined us.

Youth Mentoring Week

Ms MIKAKOS (Northern Metropolitan) — This week is Youth Mentoring Week, which gives us the opportunity to celebrate the positive impact that mentoring can have on young people. It is also an opportunity to raise the profile of becoming a mentor and promote its benefits.

I have visited many youth mentoring programs across Victoria and have seen and heard firsthand what it means for a young person to have a mentor in their life. It is a close bond of friendship and trust that often goes on to become a lifelong relationship. It has proven successful in linking disengaged young people to jobs, education, recreation and community activities.

Last year the Baillieu government cut the Mentoring and Capacity Building Initiative which was a dedicated stream of funding for young mentoring programs across the state that was initiated by the previous Labor government. It also cut funding to the Victorian Youth Mentoring Alliance, forcing it to merge with the Youth Affair Council of Victoria in order to keep its organisation going. These are not the actions of a government that supports youth mentoring.

Scouts: Plenty Valley region

Ms MIKAKOS — On 19 October I attended the Scouts Australia Plenty Valley region annual reports awards and presentation night at the Mernda Village Community Activity Centre. The first Doreen scouts group started in November 2011, and it is now working towards establishing a second group in Mernda in the next few weeks. The group has a huge number of volunteers across the whole Plenty Valley region who support our young people.

Congratulations to all the award recipients and to Peter Rutley, the Plenty Valley region commissioner for Scouts Australia and all volunteers on their ongoing commitment to supporting our young people.

Disability services: Scope Shannon Park

Mrs COOTE (Southern Metropolitan) — Today I will talk about a visit I paid last week with Andrew Katos, the member for South Barwon in the Assembly, to Shannon Park in Geelong. Shannon Park is such an inspiration to us all. There has been an enormous amount of redevelopment at Shannon Park which the state government has considerably contributed to. I put on the record my acknowledgement of Frank Costa, a local Geelong businessperson, who has contributed and been very supportive.

Shannon Park has been an integral part of the Geelong community. Shannon Park has worked with people with disabilities for a significant time. This new development is going to enable the wider community to use parts of the facility — including, for example, the hydrotherapy pool, which is easily accessible for elderly people, people with a disability and people who are recovering all sorts of operations and illnesses.

It is very interesting to note that the industry sector of Shannon Park employs 34 Geelong people with a disability. There are 25 permanent customers, including 16 customers who are based in Geelong. Scope young ambassadors are also involved with Shannon Park because Scope runs Shannon Park. I put on the record my praise for the work of Jennifer Fitzgerald and Christine Brooks.

Department of Business and Innovation: grants

Mr SOMYUREK (South Eastern Metropolitan) — I rise to condemn the Baillieu government's cut in the last financial year of 65 per cent of grants that assist manufacturers and other businesses. Mr Baillieu's restructure of the Department of Business and Innovation resulted in the value of grants that are provided to assist manufacturers and other small businesses dropping from $1 billion in 2010–11 to just $350 million in 2011–12. The Baillieu government has repackaged many DBI grants that are provided to Victorian businesses, and we now know these repackaged grants will actually cut support to Victorian businesses by $650 000.

At a time when manufacturers in Victoria were crying out for help, Mr Baillieu was slashing financial support. The grants that have been gutted or cut completely were designed to assist businesses in a range of industries, many of which desperately need help, like the manufacturing industry.

Manufacturing: government performance

Mr SOMYUREK — On another matter, I condemn the Baillieu government for its poor performance in maintaining our state's manufacturing base. Australian Bureau of Statistics employment data for the August quarter show that New South Wales was rapidly closing in on Victoria as the hub of national manufacturing employment with Victoria losing 4 per cent of full-time manufacturing positions, or 10 300 full-time manufacturing positions, in contrast to New South Wales gaining 3.6 per cent full-time manufacturing positions, or 8600 full-time manufacturing positions, in the August quarter. It is obvious from these statistics that the sector has lost confidence in the Baillieu government and is seeking greener pastures in New South Wales.

Liberal Party: climate change policy

Mr BARBER (Northern Metropolitan) — This morning's Newspoll seems to indicate that the party that campaigns on the basis of having no policies, Labor, has leapt ahead of the party that only ever campaigns on one policy — that is, opposition to action on climate change — the Liberals. How has that ended up for the conservative parties? Not with a bang but a whimper. Even as people are getting their electricity and gas bills, they are asking themselves, 'What was that all about?'.

In this place, where many like to join in the chant, there are only two members left who still want to talk about the carbon price: Mr Finn, he of the selective concerns against modernity — I will let members work out the acronym for that — and Mr David O'Brien, who will basically do anything to get a laugh from his mates. In the meantime the government has four environment ministers — the Minister for Agriculture and Food Security, who is also the Minister for Water; the Minister for Planning; the Minister for Environment and Climate Change; and the Minister for Energy and Resources — who, because of the position of their party overall, are completely unable to talk about climate change. To get them out of this trouble, I suggest they need to come and talk to the Greens to find out what basic package of measures is needed by any state government which wants to take action on climate change.

The DEPUTY PRESIDENT — Order! I am not sure what Mr Barber is referring to in relation to the acronym — I was not paying that much attention to it — but I hope that it was not unparliamentary.

Carbon tax: manufacturing industry

Mrs PEULICH (South Eastern Metropolitan) — I cannot believe my good fortune in having Mr Somyurek and Mr Barber set the scene for my 90-second statement. I would like to quote from a *Dandenong Leader* newspaper article headed 'Concerns for manufacturers in Dandenong South', which refers to Surdex Steel's general manager, Mr David Ferguson. The article states:

> Mr Ferguson said the company had been hit by a 29 per cent increase in power bills, and over 11 sites it had been a substantial cost.

In the article Mr Ferguson is quoted as having said:

> My concern is that in the meantime, Australian manufacturing becomes less competitive and we export jobs.

The article states:

> Mr Abbott —

the leader of the federal opposition, who had paid a visit to Surdex Steel —

> said Surdex, like many other manufacturers, was suffering under the carbon tax.
>
> 'The whole point of the carbon tax is to put prices up', he said.

The on-the-ground views certainly differ from the ones espoused by Mr Barber, which might be a perspective from Northcote.

However, Mr Barber also denies that this is an issue for the Greens. Mr Barber was waxing lyrical recently about the Greens having preselected 107 Greens candidates and that they were on the party's website. That is why I was so perplexed by the Greens candidate for the Red Gum ward of the City of Greater Dandenong using blue branding — the Greens candidate has turned blue — and the affiliation with the Greens party being in very small font at the bottom of the how-to-vote card. Clearly in the industrial heartland of the south-east it does not pay to be a Green or to support a carbon tax, but it does pay to support manufacturers and portray yourself as a blue.

Melbourne Airport: expansion

Mr EIDEH (Western Metropolitan) — Last week I had the pleasure of taking a tour of Melbourne Airport and hearing firsthand of the airport's plans for the future. At the outset I wish to express my thanks to Chris Woodruff, the CEO of Melbourne Airport, and to the President of the Legislative Council, the Honourable Bruce Atkinson, for giving me this opportunity and for organising such an important tour.

Despite the economic woes that have beset our state since the election of the Baillieu-Ryan administration, the operators of Melbourne Airport have faith that the airport will survive and grow regardless. That is why they intend to invest $1 billion over the next five years. There are great projects planned to expand and improve facilities by providing a much-needed new runway, modernising the baggage carousels, putting in more check-in counters and gates, and redeveloping the airport's forecourt. A new cargo facility is being built, and there will be improvements to the Virgin terminal and more.

While I wish to praise these people for their efforts, I must also raise the issue of a need for a rail link to the airport. The best way to reduce traffic chaos and to speed up access is via a dedicated railway line, something that may well be difficult for the Minister for Public Transport to envisage. Cheap and efficient transport to and from the airport must be key issues for any responsible government, as is the need for a better gateway to Melbourne so that when tourists leave the airport they see signs welcoming them to Victoria. They should see signs promoting Werribee zoo, our adorable penguins, our amazing wineries and the host of things to see and do in our state. This all requires the state government to be interested in the airport and in the future of our state.

Local government: differential rates

Mrs PETROVICH (Northern Victoria) — In my travels around Northern Victoria Region last week the issue of differential rates set by councils was raised with me in St Arnaud, Alexandra, Beveridge, Seymour and Bendigo. The house recently witnessed the passing of the Local Government Legislation Amendment (Miscellaneous) Bill 2012. This bill will create a level of transparency in local councils by streamlining government processes and improving governance. The bill includes significant reforms relating to the levying of differential rates, which are causing concern for many of my constituents in northern Victoria.

There has been a recent trend for councils to use differential rates in ways that discriminate against particular industries or businesses by imposing artificially high rates on them. Targeted properties include fast food outlets, poker machine venues and land included in the urban growth zone. In the past councils have often given very flimsy justifications for imposing these differential rates, and affected property owners have been hit with exorbitant rate rises with little opportunity to object. Thirty-six councils have differential rate applications applicable to less than 30 properties, leaving these property owners, such as Beveridge farmers affected by Mitchell Shire Council's doubling of their rates, with little power to fight the decision.

The Local Government Legislation Amendment (Miscellaneous) Bill includes a head of power for the minister to issue guidelines on the appropriate use of the differential rate. Councils will be required to have regard to these guidelines when setting the differential rate. I encourage concerned or affected people to participate in this consultation process and congratulate the minister on taking action to address the problems associated with issues around differential rates.

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

Manna Free Community Meals

Ms DARVENIZA (Northern Victoria) — I take this opportunity to bring to the attention of the Parliament the wonderful work being done by Robyn Stone and

Sandra Clough in Tatura. Eight years ago Robyn and Sandra founded a community group called Manna Free Community Meals in Tatura to provide food for needy people. Robyn grew up in a house where her grandmother and her mother, who were very charitable people, often shared their evening meal. Manna Free Community Meals has grown to feed between 30 and 40 people each week. The group provides meals for families, single mums and pensioners, with the youngest customer being 10 years of age. Robyn and Sandra enjoy not only providing these meals but also the fact that people often stay on after the meal is finished and spend time chatting to each other.

The Community Fund Goulburn Valley is a very important fund and has provided support for Manna for the past seven years. It recently announced that it would fund another $4000 so the program can keep running for the next 12 months. Robyn and Sandra also have a new industrial kitchen, which is their pride and joy, and the group provides 1300 meals a year at the Anglican church I congratulate both these women on their wonderful work.

Ballarat: government funding

Mr RAMSAY (Western Victoria) — I take this opportunity to congratulate the Minister for Planning, Matthew Guy, on his announcement around improving residential development in the Ballarat West corridor. This is consistent with the Baillieu government's funding announcement of $38 million to the Ballarat West link road, which will provide over 10 000 jobs in that corridor.

It also is consistent with the $10 million for the first stage of the $18 million Phoenix College development in the education centre of Ballarat; the $46.4 million upgrade of Ballarat Health Services, which includes a helipad, 60 more beds and a new ambulatory care department; the $2 million regional soccer facility; the $700 000 historic Ballarat East fire station upgrade; the $1 billion in vocational education and training sector funding; an extra 77 police in Ballarat; $2.9 million to the University of Ballarat's Technology Park extension; $2 million to replace the Magpie Bridge; $835 000 to the Ballarat West employment zone construction blueprint; $15 000 to the Ballarat Agricultural Society; $70 000 to develop the master plan for the Ballarat major events precinct; $800 000 to the Committee for Ballarat's Leadership, Ballarat and Western Region project; and $500 000 for the Committee for Ballarat to establish the Victorian Regional Community Leadership Program secretariat. That is the Baillieu government's commitment to Ballarat just in this government's first two years.

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

CIVIL PROCEDURE AMENDMENT BILL 2012

Second reading

Debate resumed from 23 October; motion of Hon. G. K. RICH-PHILLIPS (Assistant Treasurer).

Mr SCHEFFER (Eastern Victoria) — When this bill was previously debated I was reminding the house in my opening remarks of the circumstances in which the Civil Procedure Bill 2010 was introduced into the Parliament by the previous Labor government. The then Attorney-General, Rob Hulls, indicated that the changes to procedure contained in the 2010 Civil Procedure Bill were part of the first phase of a major reform program that would continue until 2013 and that the second phase would review the costs rules for litigation and the role of expert witnesses. These two matters are of course included in the bill before the house today, but unfortunately the government has put in place provisions that will have consequences which Labor finds unacceptable so we cannot support the bill, as the house has already heard.

It is clear there is merit in lawyers being required to provide their clients with as full information as possible on the costs an action incurs. Currently the court has the power to direct lawyers to provide these details to the court itself and to the legal practitioner's client, but paragraph (1)(b) of new section 65A, which is headed 'Order to legal practitioner as to length and costs of trial' and is to be inserted by clause 6 of the bill, would give the court the power to make an order directing a legal practitioner acting for a party to give details of costs not only to the court but also to any party, including the other side to the proceeding.

It seems to me that there is an obvious problem here because material relating to costs can provide a client's opponent with information touching on the financial resources a litigant will need to pursue their claim, how long they can keep a case going and what evidence they can afford to have prepared. It is also true that a client who knows that a court may direct their legal representative to reveal information on costs to the opposing party would be reluctant to disclose, and this would erode the obligation that a client has to fully share information relating to the case with their lawyer. Overall, giving the court the power to direct legal practitioners to disclose a cost estimate to the other party hands an advantage to an opposing party which may be well resourced, because the better resourced

party can string out the proceedings, exhausting the capacity of their opponent and win the case, which is exactly what the reforms contained in the Civil Procedure Act 2010 aimed to prevent. For these reasons, the opposition cannot support the amendments relating to costs as set out in this bill.

The other issue that Labor has a problem with, which Mr Pakula also canvassed in his contribution, is that the bill unreasonably gives the court the power to limit the type and amount of expert evidence that can be given. The explanatory memorandum for part 3 of the bill indicates that while expert evidence plays a critical role in civil litigation, it is also expensive, complex and can delay proceedings. The explanatory memorandum states that it is the objective of this bill to reduce costs and delays associated with expert evidence, to improve the quality and integrity of that evidence and to assist the court to actively manage and control expert evidence.

Clause 10 in part 3 of the bill, which inserts a new part 4.6 into chapter 4 of the principal act, provides the court with new powers and discretions in relation to expert witnesses. The explanatory memorandum establishes that the courts play an important role in determining the most effective and proportionate use of expert witnesses. New section 65H and subsequent sections provide for the court to give directions on the preparation of an expert's report, the length of the court's time the expert witness may take and the limits of the issues the expert may traverse, ruling out certain matters from the expert's evidence, limiting the number of expert witnesses and providing for the court to direct two or more expert witnesses to provide joint reports to the court.

We all understand the objectives of these provisions, but Labor believes that in the end they sacrifice more than they protect, unbalancing the intention of the Civil Procedure Act and the Civil Justice Review, which, as I have already indicated, informed it. We believe that the powers and obligations given to the court in this bill undermine the unfettered right of a litigant and their legal representative to call their own independent experts.

The Law Institute of Victoria points out — Mr Pakula also referred to this — that these provisions could mean that a case that is mounted on the basis of specific advice from an expert witness could be frustrated if the court decided to knock out the very expert witness that the case relied on. That would obviously harm the ability of the party bringing the action to effectively present their case. Labor also believes that the court should not be able to interfere with a party bringing an action by limiting their capacity to call expert witnesses. Sometimes it is absolutely necessary for more than one expert to give evidence on the one subject.

Of course it could be argued that a court will be more than able to take all these concerns into account and ensure that in the end no-one's rights are compromised, but from our point of view, the point is that the provisions in the bill surely give the power to determine the matters listed in new section 65H to the court, whereas they ought to remain in the hands of the litigant and his or her legal representative. On that basis, the opposition will not be supporting this bill.

Mr ONDARCHIE (Northern Metropolitan) — I rise today to speak on the Civil Procedure Amendment Bill 2012. I thank my learned colleague Mr David O'Brien for setting the scene for the government's argument in relation to the bill. The bill simply improves the efficiency of the civil justice system and reduces the administrative burden on litigants and legal practitioners. However, I should take up the arguments that have been levelled in this place by Mr Pakula and most recently by Mr Scheffer vis-a-vis new section 65A, which is to be inserted into the principal act by clause 6 of the bill. I am somewhat surprised by the argument the opposition is running as to why it cannot support this bill. Mr Scheffer went to the issue of providing an estimate of costs to the court and the other party. That was the substantive part of his argument about why the Labor Party could not support the bill. I am here to correct Mr Scheffer and Mr Pakula, because they can support the bill.

In 2010 the former government put through the Civil Procedure Act 2010. Section 50 of the act as it now stands is headed 'Order to legal practitioner as to length and costs of trial etc.' and it states:

> (1) A court may make an order directing a legal practitioner acting for a party —

and I will summarise here — to prepare a memorandum setting out the estimated length, the estimated costs and disbursements, and the case for the memorandum to be given to a party's estimated costs. The memorandum as specified can be given to the court, a party or both the court and any party.

Mr Pakula and Mr Scheffer have argued that the new section 65A being inserted by the Civil Procedure Amendment Bill 2012 is not something they will support, and yet the provision that appears in section 50 of the Civil Procedure Act, which Labor put through in 2010, says exactly the same thing. It somewhat surprised me that Labor members came in here and announced their opposition to this bill when they

supported the exact same thing in 2010. As a result, no doubt when it comes to the vote on this bill they will support it, because it is exactly what they argued for in 2010. We look forward to them transforming their feigned opposition into support for this bill.

I want to talk specifically about part 3 of the bill, which talks about expert evidence. All members who have joined the debate on this bill have talked about that. The expert witness amendments in this bill aim to improve the quality and integrity of expert evidence and enhance its usefulness to judges and magistrates. The discretions in relation to expert witnesses avoid abuse of expert witnesses where parties use multiple witnesses, and they allow for a more efficient process in terms of time costs. Lengthy cross-examination and time wasted on issues not in dispute will be avoided. There is an ability for parties to seek leave to adduce further evidence where the joint or court-appointed witnesses provisions are in play to allow the interests of justice to be satisfied.

Let me talk very quickly about the three main changes made by this bill. These changes are about cost disclosures, expert evidence and certification requirements. Some articles have appeared in the press about these issues in recent times. One published in the *Herald Sun* of 24 September 2012 and written by Peter Mickelburough and Katie Bice talks about the concerning trend of psychologists simply accepting offenders' attempts to put the best possible spin on their crimes and mislead the court. The article states:

> Such witnesses did not try to verify the claims by reviewing evidence …

The Chief Judge of the County Court supported the comments made by County Court Judge Joe Gullaci, who was worried about the evidence expert witnesses were giving.

Noel McNamara, the president of the Crime Victims Support Association, said it is time for a crackdown on these professional witnesses. In the same *Herald Sun* article he is quoted as having said:

> They get paid to say what they say and I've never heard one yet get up and say (someone) can't be rehabilitated …

The article gives some examples. Under 'Case study 1' it states:

> A psychologist told a court last year that a man who took part in a contract killing had an adjustment disorder that affected his ability to make calm and rational choices. The man claimed it was never his intention to kill the victim but panicked when he believed the man recognised him. But evidence showed he was disguised in a balaclava and had planned the murder for money in the weeks before.

And yet the psychologist told the court that he had an adjustment disorder!

'Case study 2' states:

> A man bashed a security guard, punching him in the head and kicking him while he lay on the ground. A psychologist claimed in 2010 he was suffering post-traumatic stress amnesia at the time, having been hit on the head himself during a nightclub scuffle, and was not acting voluntarily at the time of the assault. But CCTV —

closed-circuit television —

> footage showed the man buttoning his shirt up after being evicted from the club and walking unaided, unrestrained and with a normal gait. A CT —

computerised tomography —

> scan after the incident had shown no brain injury and a neurologist described it as a minor head injury.

And yet the psychologist expert witness said that this was an issue.

'Case study 3' states:

> After pleading guilty to cultivating a large cannabis crop, a man asked for leniency to support his wife and family. The psychologist gave evidence the man's wife had a muscle weakness disorder, which made it difficult for her to lift their children or run a household without help.

That was what the psychologist said. It continues:

> But the court was told in 2007 the woman tended to a cannabis crop many times over four months and sprinted from the premises to avoid police.

As I have indicated to this house on another occasion, in 2005 my dear uncle was murdered. Without going into the details, in part of that case evidence was given that the accused — the person who was ultimately found guilty — had a history of psychosis and drug abuse issues, and that was tendered before the court. I am not going to make any comment or judgement about the sentence, but I have to say that on some occasions expert witnesses simply tell the story that the witness asks them to. This bill deals with that, and I commend it to the house.

Mr ELASMAR (Northern Metropolitan) — Like my colleagues on this side of the house, including Mr Pakula and Mr Scheffer, I rise to oppose the Civil Procedure Amendment Bill 2012 because, in simple language, it is a bad bill. It does nothing to enhance the civil legal procedures in this state. It is a drastic backward step for some people who are seeking redress in the civil courts.

Members of the government have asked why we have raised concerns about new section 65A, which is to be

inserted into the principal act by clause 6 of the bill. Let me explain it again. New section 65A proposes to allow a legal practitioner to be forced to disclose an estimate of their client's costs to the opposing legal team prior to commencement of proceedings. In its argument the government has said that this will improve efficiency and cut costs within the civil justice system. Yes, it will. However, fundamentally what it will do is deny justice to people whose only recourse to justice is the civil court. If we legislate that litigants must expose their financial status at the outset of a court action, large corporations or wealthy litigants may well play the waiting game or procrastinate and delay proceedings until their opponent runs out of money, and why would they not do that? It would be immoral but legal.

Even the prestigious Law Institute of Victoria says this provision will disadvantage some clients. I am inclined to agree. As the law stands now there are processes which currently apply whereby the court can direct legal practitioners acting for either party to give an estimate of the cost of a trial to the court, to their client or to all parties involved, and it may do this at any time during the course of the civil action, prior to its conclusion.

The bill also proposes far-reaching changes to the role of expert witnesses. It will give civil courts unprecedented powers to stipulate the number of expert witnesses who may be called to substantiate evidence on behalf of litigants. In some cases courts will be able to deny a litigant the right to produce an expert witness to testify on their behalf even though the evidence of that expert witness might provide the basis of the litigant's claim for compensation in the first place. That appears to me to be a denial of natural civil justice in anyone's language. I could go on and on, but Mr Pakula and Mr Scheffer have done the right thing. We are opposing the bill.

House divided on motion:

Ayes, 21

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

Noes, 19

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

Motion agreed to.

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

Third reading

Motion agreed to.

Read third time.

RESOURCES LEGISLATION AMENDMENT (GENERAL) BILL 2012

Second reading

Debate resumed from 11 October; motion of Hon. G. K. RICH-PHILLIPS (Assistant Treasurer).

Mr SCHEFFER (Eastern Victoria) — The Resources Legislation Amendment (General) Bill 2012 is an omnibus bill that makes some relatively minor changes and a number of technical adjustments to some eight pieces of legislation.

The opposition is not opposing the bill because none of the provisions in it make changes that are controversial. The second-reading speech sets out the scope of the changes put forward. I guess it is important to reflect on the fact that second-reading speeches are an opportunity for a minister to put forward the policy context and aspirations that a government has for a portfolio area. A second-reading speech is also an opportunity to make the case for a piece of legislation and to elaborate on how the provisions in a bill will make a difference to Victoria and Victorians.

Mining is a valuable sector of the Victorian economy, contributing just under $6 billion per annum, and yet, curiously, the minister does precious little with the opportunity to tell Victorians what the coalition's plans are. I suspect the reason for this is that the legislation and the speech have been devised and put forward by the minister's department and he has just let them through in a way that is becoming more and more common as each parliamentary week passes. I have noted before that the Baillieu government appears to believe its job is to keep the show ticking over and that that of itself will bring it credit in the minds of voters, whereas the truth is that good governments keep their eyes on the next 10 years and the next generation.

In this second-reading speech the minister provides a very good example of this belief, in that he devotes precisely one sentence to the broader perspective — and it is not much of a sentence at that — that is, the Baillieu government is committed to maintaining an efficient and modern regulatory framework for the sector and growing it for the benefit of all Victorians. That is it; the rest of the contribution is of a technical nature.

I guess the good thing about the bill is that it shows that the Victorian public service is continuing to apply itself in its excellent way to ensuring that necessary legislative changes are made in the areas of geothermal energy development, mineral resources exploration licensing, greenhouse gas geological sequestration, petroleum exploration and the complex issues of consultation with those who own or occupy land over which pipelines may be laid. As I indicated at the outset, the opposition will not be opposing this legislation.

In May this year the Parliament received from the Economic Development and Infrastructure Committee (EDIC) the report on its inquiry into greenfields mineral exploration and project development in Victoria. As the committee's media release stated, the inquiry examined why Victoria has fallen behind other Australian and overseas jurisdictions in attracting investment to explore and develop its mineral resources. The committee found that the evidence clearly indicates that the complexity of the regulatory regime in Victoria is increasingly difficult for exploration, mining and extractive industries to navigate. The final report says these industries find it costly in both time and money, and there is a strong view that the regulatory arrangement must be simplified. I guess the present bill goes some way to remedying this particular problem.

The earth resources sector consists of the petroleum, mining and extractive industries and plays a significant role in regional Victoria. Brown coal open-cut mining and the energy industry are critically important to the prosperity of people living and working in the Latrobe Valley and Wellington and in Gippsland generally. As well, extractive industries, and in particular sand mining, play an important role in the local economy of the shire of Cardinia, which is also part of Eastern Victoria Region. While the earth resources sector may represent only 2 per cent of the wider Victorian economy, its importance to sections of regional Victoria can be very significant.

According to the EDIC report on its inquiry into greenfields mineral exploration and project development in Victoria, approximately 5000 people in regional Victoria are directly employed in the Victorian mining industry and a further 5000 are indirectly employed. The report notes that, as well as gathering evidence of the importance of the resources sector to the Victorian economy, the committee found that the sector suffered from a relatively poor perception on the part of the global resources sector and the Victorian community alike.

The committee recommended that the government adopt:

> … an integrated, whole-of-government approach to the state's resources sector, supported by clear and consistent policies, and that this policy be widely communicated to the resources sector and the broader Victorian community to demonstrate strong support for the sector and its future.

The committee heard from two mining companies operating in eastern Victoria, Orion Gold, working the Walhalla mine, and the Independence Group, listed as IGO, a proponent of a copper and goldmining project in east Gippsland. Both indicated that the government was not providing clear direction and support for the industry. The committee pointed to the success that South Australia has had in attracting new mineral exploration investment and attributed this to the support that emanated from the state's Premier downwards to the bureaucracy and the government's strategic planning documents. This government has not yet responded to the recommendations of the report on the inquiry into greenfields mineral exploration and project development in Victoria.

Along with the committee, all of us are mindful of the challenges faced by the resources sector — that is, the mining industry — and that Victorians are concerned that mining can harm our fragile natural environment, disrupt farming and undermine efforts to reduce greenhouse gas emissions. The community polarisation over mining is not helpful, and the recommendations of the Economic Development and Infrastructure Committee aim to give the hapless Minister for Energy and Resources some suggestions as to how he could improve the situation. The very first recommendation is that the Baillieu government should find a way of consulting with stakeholders, including local communities, on coal seam gas exploration and development.

This is a very big issue in Gippsland. Part of the problem is that the government and the industry have not seized the opportunity to talk to farmers, Landcare and local environment groups and have basically left it for Environment Victoria, the Environment Defenders Office and Doctors for the Environment to take the running. After the government had voted down Labor's

motion to have the Environment and Natural Resources Committee conduct an investigation into the issue and ignored Labor's call for a 12-month moratorium, it was finally dragged by The Nationals into calling a temporary halt to issuing new exploration licences.

Hon. P. R. Hall interjected.

Mr SCHEFFER — Exactly. Mr Hall is patting himself on his shoulder. It is true that his party has dragged the Liberals into using common sense on this issue. I applaud him and his party for doing that. At least there is some sense on that side of the chamber. But I have to say it is no wonder that there is a crisis of confidence in this government's capacity to give balanced and coherent support to the resources sector in the future.

Arguably the biggest issue in the resources portfolio in Victoria is brown coal. Members will remember that back in 2009 the then Brumby Labor government established Clean Coal Victoria and appointed Mr Charlie Speirs as its inaugural CEO. Mr Speirs still holds the position, and he does an excellent job in a complex field. When Mr Speirs was appointed in 2009 he admitted that while coal is abundant, it is no longer popular because, as he said, it has some environmental issues. Mr Speirs saw the mission of Clean Coal Victoria as helping to find environmentally sustainable ways of using coal and acknowledged that it is sort of true that the expression 'clean coal' is an oxymoron. Mr Speirs was having a bet both ways back in 2009, before the introduction of a carbon price and the implementation of the emissions trading scheme, when he said he did not see another Loy Yang being built but thought we should not rule out new-design coal-fired power stations that could manage to limit emissions.

I do not wish to comment on energy issues as they come within another portfolio area, but I make the point that the public debate around energy is clearly linked to resource issues. The government, including the Minister for Energy and Resources, has to face up to the fact that one of the reasons why there is so much suspicion of the mining and resource industries is that people link mining to environmental harm and greenhouse emissions. The government needs to make a better case for the resources industry and mining, and that means ensuring that the public is fully informed through the planning and operational phases and that Victoria follows best practice in protecting the environment and ensuring that valuable farmland is not compromised. As well as that, people need to know there are laws in place that protect their rights and their capacity to influence, if not ultimately determine, issues of concern to them.

The technical changes that this bill makes to a number of pieces of legislation are not controversial, but the government has to understand that it needs to address the poor perception of the resources sector in Victoria.

Mr ELSBURY (Western Metropolitan) — I support the Resources Legislation Amendment (General) Bill 2012. Since European settlement in Victoria we have benefited from the mineral resources this state holds in abundance. At the regional sitting of Parliament the importance of this state's mineral wealth was recognised when gold was made the mineral emblem of Victoria. Some would say that when Victoria decided to split from the New South Wales colony it was a happy coincidence that gold was discovered here not long afterwards. Gold has played a crucial role in the rapid development of this state, including the establishment of an advanced network of infrastructure and public buildings which we still enjoy today. Victoria is unique in that it is a compact mainland state with a large population and diverse mineral and earth resources wealth. Be it coal, gas, mineral sands, stone or geothermal potential, Victoria is a fortunate state.

This bill makes amendments to a number of pieces of legislation. These amendments demonstrate the coalition's commitment to developing an efficient and responsible natural resources sector. The Geothermal Energy Resources Act 2005 and the Greenhouse Gas Geological Sequestration Act 2008 will both be amended to reflect requirements of the Petroleum Act 1998 for the provision of access authorisations and drilling authorisations. This amendment will generate consistency across earth resources legislation.

The Mineral Resources (Sustainable Development) Act 1990 will be amended to enable the holder of a prospecting licence to dispose of tailings with the consent of the Minister for Energy and Resources. This amendment also clarifies the payment of royalties by holders of prospecting licences. There is no change to the way that gold royalties are perceived by this bill. Reportable events in mining and prospecting operations must be reported to the chief inspector. The Petroleum Act 1998 will be amended to provide that a permit for exploration may be granted over a non-contiguous parcel of land and over an area smaller than that applied for. This is a practice also used for mineral titles, so these will be brought into line.

Amendments will bring the Offshore Petroleum and Greenhouse Gas Storage Act 2010 into alignment with the Commonwealth Offshore Petroleum and Greenhouse Gas Storage Act 2006. This will see an increase of penalty units to 600 penalty units for a corporation and 120 penalty units for individuals.

Further amendments to the Offshore Petroleum and Greenhouse Gas Storage Act 2010 will allow holders of related authorities to construct a deviation well from an onshore site to an adjacent offshore area.

Amendments will also be made to the Pipelines Act 2005 to clarify provisions, the Interpretation of Legislation Act 1984 to remove a reference which has become redundant and the Resource Legislation Amendment Act 2011 to repeal provisions which are no longer required.

Victoria's resources are of great value to us all. During 2010–11 mining and other earth resources operations realised $7.3 billion towards gross state product. Understanding that the resources under our feet hold such great economic benefit and generate many thousands of jobs across the state in regional and outer metropolitan Victoria, the coalition has undertaken a parliamentary inquiry into barriers to new mineral exploration and project development. The Economic Development and Infrastructure Committee undertook an inquiry with a number of terms of reference. I was going to read those out, but I think I will skip past them. The committee reported to Parliament in May this year. Its recommendations are being considered by the government, and the government's response will come before the end of this year.

The government has also been proactive in supporting a growing mining sector in Victoria. While Western Australia and Queensland have vast mineral deposits, the advantage we have here in Victoria is the ability to access mineral wealth in relatively close proximity to our population, industry and port facilities. In Western Australia and Queensland vast infrastructure spends are needed to develop roads and rail, and those states also face the logistical nightmare of housing a workforce, providing provisions and carting the ore long distances from any major cities or towns.

Here in Victoria we also have the industry available to value-lift primary resources. In Altona natural gas can be refined and in the process plastics can be produced. Market assessments of the Latrobe Valley coalfields are being undertaken to develop that resource. The establishment of the earth resources ministerial advisory council brings together members of the community, the agricultural sector and the mining industry so that concerns can be addressed and cooperation can be promoted.

The Victorian and commonwealth governments have jointly put $90 million into the advanced lignite development program. In other words, we are intending to improve brown coal and its value by being able to burn it in a much cleaner fashion. Businesses can make applications to that program. The Victorian Department of Primary Industries is also implementing red tape reforms to provide efficient processes for mining and extractive industries while continuing to put in place measures to protect the environment and communities.

Given the importance of the earth resources sector and the fact that this legislation supports uniform rules and regulations across the sector, retains environmental protections and removes redundant legislation, I support the bill.

Ms HARTLAND (Western Metropolitan) — The Greens support this bill.

Motion agreed to.

Read second time.

Third reading

Hon. P. R. HALL (Minister for Higher Education and Skills) — By leave, I move:

That the bill be now read a third time.

I thank members of the opposition and the Greens for their support of the bill. My response to comments made by Mr Scheffer during the second-reading debate is that it is a good thing if a bill is technical and explanatory rather than based on government policy. In terms of the description of the minister as a 'hapless minister', I think Mr O'Brien is a very fine Minister for Energy and Resources.

Motion agreed to.

Read third time.

Sitting suspended 11.20 a.m. until 2.03 p.m.

APOLOGY FOR PAST FORCED ADOPTIONS

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

That there be laid before this house a copy of the parliamentary apology for past adoption practices.

Motion agreed to.

Laid on table.

Ordered to be considered next day on motion of Hon. D. M. DAVIS (Minister for Health).

SERIOUS SEX OFFENDERS (DETENTION AND SUPERVISION) AMENDMENT BILL 2012

Second reading

Debate resumed from 11 October; motion of Hon. G. K. RICH-PHILLIPS (Assistant Treasurer).

Ms MIKAKOS (Northern Metropolitan) — I am pleased to rise today to speak on the Serious Sex Offenders (Detention and Supervision) Amendment Bill 2012. I indicate that the Labor opposition will be supporting this bill.

When it comes to governing in the interests of all Victorians there are many challenges a government faces, and perhaps some of the most difficult of these are those that deal with community safety. On a number of occasions in the past we have had cause to debate legislation relating to sex offender crimes. These are particularly abhorrent and heinous crimes, and ones that we know through evidence are much more likely to be repeated by the sex offender. These are the issues this bill relates to.

The bill is short in length and mostly technical in nature. It seeks to make a number of technical amendments to the Serious Sex Offenders (Detention and Supervision) Act 2009, which was an initiative of the Labor government.

Legally a serious sex offender is defined as someone who has committed a sexual offence involving a child or a sexual offence involving violence. Under the current system when a serious sex offender who has been incarcerated comes up for parole, the Director of Public Prosecutions or the Secretary of the Department of Justice, depending on the type of order being sought, can make an application to the court on the basis that they believe there is probative and persuasive evidence that a serious sex offender is highly likely or reasonably likely to reoffend.

This is not a decision that is made lightly. We must remember that we are dealing with sex offenders who have already served their sentences and are up for release. Balanced against their right to be released is the right of the community to be safe. This is particularly the case where children may be involved. The principal act extended supervision orders for sex offenders in Victoria under the Serious Sex Offenders Monitoring Act 2005, the main purpose of which was to enhance the protection of the community. Where there is evidence that a serious sex offender presents an unacceptable risk of harm to the community, particularly to children, they may be subject to ongoing detention and supervision. I still believe this is an appropriate approach.

Having regard to the minister's second-reading speech, it appears this bill is the Baillieu government's response to the Cummins report entitled *Report of the Protecting Victoria's Vulnerable Children Inquiry*, which was delivered in February this year; that is what the second-reading speech claims. The Cummins report makes a series of recommendations — 90 in total — which largely deal with the reporting and investigation of suspected abuse and early intervention for at-risk children. The recommendations related to the child protection system as a whole.

Recommendation 50 in the report calls for the repeal of sections 182–86 of the Serious Sex Offenders (Detention and Supervision) Act 2009 to remove the court's power to make suppression orders. This was not a recommendation unanimously supported by the panel, and, although it was the majority view, this bill will not repeal those sections. In fact, the bill does not implement recommendation 50 of the Cummins report, despite the minister's claim that it does so.

The bill does not change fundamentally the powers of the act, only certain criteria within it. The coalition has claimed that this bill will name and shame sex offenders, but it is unlikely that that will be its effect. The most significant issue in this bill relates to the matters to which a court must have regard when considering the making of an order in relation to the publication or non-publication of the name, details and location, amongst other things, of a serious sex offender.

I make the point that there are few crimes that elicit a more emotive response than sexual offences, and understandably so. These offences violate relationships of trust between perpetrator and victim and almost always cause significant psychological trauma to the victim. In many cases that trauma is experienced for many decades to come; in fact it could be lifelong trauma that the person experiences. The effects of such crimes will be felt by the victim and their family for a long time after the offence has been committed.

In many of these cases the victim is known to the offender. Offenders are not always adults, but they are predominantly so, and it is quite alarming and shocking to think that these offenders are adults with whom the child or victim has a trusting relationship. It might be someone in their immediate or extended family. It might be friends or neighbours. That is atrocious.

The concern I have is that the victims themselves may not want the details of the offender published when those details would identify the victim as well. We cannot make the simple assumption that if we identify the name and location of the serious sex offender, the victim will feel or be any safer, because in some circumstances doing so may well identify the victim.

Under section 183 of the Serious Sex Offenders (Detention and Supervision) Act 2009 it is an offence to publish without court approval information about any evidence given, witnesses heard or reports submitted in a proceeding or any information that could identify a victim. A member of the police force may disclose the identity and location of an offender to CrimTrac and the child offender register or in the course of law enforcement. The media may publish the identity and location at the request of the police.

Under section 185 a court may order the suppression or publication of the identity and/or location of an offender if satisfied that it is in the public interest. The bill does not seek to amend these provisions. The bill seeks to replace part of the existing criteria relating to non-publication orders — set out in section 185(c) — which deals with whether or not the publication of details would endanger the safety of any person or the interests of the victims or enhance or compromise the purposes of the act.

Clause 13 of the bill proposes to replace the 'enhance or compromise' consideration and instead specify consideration of 'the protection of children, families and communities'. The opposition does not oppose this specific amendment; in fact it supports it. It is effectively in keeping with the aim and objective of the principal act, which is to protect the interests of victims, families and specifically children.

At the briefing we received from the department — and I am grateful for that briefing, as I was in attendance — it was indicated that this amendment is the centrepiece of the bill. However, I will be interested to hear from government members how they believe this change to section 185(c) will lead to different judicial outcomes than the current catch-all consideration. We also support the amendment in the bill to allow a court to view the relevant non-publication order when reviewing a supervision order. We consider this to be appropriate. We also think it is appropriate that offenders are not granted indefinite anonymity whilst serving their orders, because circumstances can of course change.

Clause 11 of the bill proposes to insert a definition of the word 'publish' into the principal act. To the extent that the opposition may have concerns about this bill, those concerns relate to this area. The amendment is, as I understand it, an attempt by the government to eliminate some uncertainty that exists around the definition of a media organisation in the current act. A media organisation is currently defined as a person or body that engages in journalism. This bill says the word 'publish' means inserting into a newspaper or periodical; disseminating by broadcast or telecast; or disseminating by other means.

The department indicated in the briefing that this latter class of disseminating by other means is intended to capture things such as blogging and internet activism. Given the extent to which technology has developed over the last few years, the opposition understands there is a need to address this definition. Our concern lies in the way in which this definition has been drafted. We are concerned that it is so broadly drafted that it may in fact capture private communications between individuals and lead to further unintended consequences. These are concerns that I hope government members and the minister will deal withduring their contributions.

Under the principal act, the secretary of the department may notify the registrar of births, deaths and marriages of the name and particulars of an offender to help identify any offenders who seek a name change without obtaining prior approval. Clause 9 of the bill seeks to substitute 'may' with 'must'. The department indicated that to date it is not aware of any offender who has attempted to change their name without approval and, according to the department, the secretary has always notified the registrar. Effectively this is a technical amendment that is merely updating the principal act to reflect the current practice.

Clause 14 of the bill relates to the sharing of information and adds the Corrections Act 1986 to the list. The list allows suppressed information to be shared when necessary to carry out the functions of the acts listed. Currently 12 acts are listed, including the Housing Act 1993 and the Migration Act 1958. This amendment will allow corrections and custodial officials to be informed about the names and particulars of offenders under supervision or detention who have, for example, returned to prison on unrelated charges. This is a sensible amendment in that it aims to encourage the sharing of information between the relevant authorities.

In relation to the expiry of orders, there is currently a 14-day notice period for bringing proceedings that can be dispensed with by the secretary, the registrar or a member of Victoria Police. However, it is not clear if

that individual must personally bring the proceedings. This amendment clarifies the intent of this provision for administrative purposes so that the individual dispensing with the notice period does not need to be the informant present when proceedings commence.

Lastly, clauses 4, 5 and 6 of the bill allow for the expiry of supervision, detention and interim orders under certain circumstances. This may be the case where the offender dies or is deported under the commonwealth Migration Act 1958. I understand from the briefing that since 2005 three offenders serving supervision orders have died and two have been deported. Given these low figures, the argument put forward in the explanatory memorandum that this amendment will reduce court workloads is perhaps an exaggeration, but nonetheless we think it is a sensible amendment to the principal act.

By way of conclusion, I say that this bill deals with the incredibly difficult issue of how we manage serious sex offenders who are no longer incarcerated. Under Labor Victoria was the first state to adopt a regime for the detention and supervision of offenders, and inevitably with legislation that is the first of its kind there will need to be further amendments and updates as we think they are warranted once we have had the benefit of seeing the legislation operating in practice. We grappled with what were difficult issues, and we see that the government is now grappling with similar issues. The safety of children, victims and the community motivated Labor's introduction of the principal act, and we are again motivated by those factors in supporting these amendments.

I said at the outset that the description of this as a name and shame bill is not in fact accurate. We think that is a misnomer given the fact that the bill does not implement the recommendation of the Cummins report in relation to this issue, but we do support the bill.

Ms PENNICUIK (Southern Metropolitan) — The Greens are not opposing the Serious Sex Offenders (Detention and Supervision) Amendment Bill 2012 in its totality, but we will be moving amendments to the bill, which I am happy to have circulated.

Greens amendments circulated by Ms PENNICUIK (Southern Metropolitan) pursuant to standing orders.

Ms PENNICUIK — The bill amends the Serious Sex Offenders (Detention and Supervision) Act 2009, which was introduced by the previous government and which the Greens supported. The bill amends the act to, in the words of the government:

> … include the protection of children, families and the community, as well as the offender's compliance with orders made under the act and their whereabouts, to be matters which the court must have regard to when deciding whether to make publication and suppression orders under the act.

It will require the regular review of suppression orders relating to offenders, such that whenever those orders are being reviewed any suppression order that has been applied by the court would also come under review, which is not the current situation.

The bill includes a definition of 'publish' for the purposes of provisions relating to suppression under section 182 of the act, and that clarifies what is meant by 'publish'. During a briefing with departmental officers I queried the necessity of that definition as opposed to using the dictionary definition of the word, which has been sufficient until now. I thank the departmental officers and the minister's adviser for the briefing on the bill.

By listing the Corrections Act 1986 in the principal act the bill clarifies that the secrecy provisions in the act do not prevent the sharing or disclosure of necessary offender information for purposes related to the administration of the Corrections Act, as was mentioned previously. It provides for the expiry of supervision or detention orders, including interim orders, if the offender has died — I suppose most people would consider that to be the end of the order, but apparently it needs to be mentioned — or been deported or removed from Australia under the commonwealth Migration Act 1958.

The bill provides that the Secretary of the Department of Justice must provide the names of offenders subject to orders to the registrar of births, deaths and marriages, whereas at the moment the act says that the secretary may provide the names of offenders to the registrar. I understand from the briefing that it is the current practice to provide them and that it does not ever not happen, but it is best to make sure by including a provision in the bill that it must always happen. This is obviously to prevent serious sex offenders from attempting to change their names.

The bill also clarifies that a member of the police force of the rank of inspector or above, or holding the position of registrar under the regulations, may dispense with the period of notice for bringing a proceeding for breach of an order, but when that comes to the court the member above the rank of inspector does not have to be the police member bringing the proceeding to the court.

The Greens support most of the provisions of the bill. However, we have concerns with the changes made to

section 185 of the principal act by clause 13, which is the most substantial clause of the bill. As it stands, section 185 provides that when the court is considering whether to grant a suppression or non-publication order with regard to information that might lead to the identification of the offender and his or her whereabouts, the court must have regard to:

(a) whether the publication would endanger the safety of any person;

(b) the interests of any victims of the offender;

(c) whether the publication would enhance or compromise the purposes of this Act.

The purposes of the act are worth looking at. They state:

(1) The main purpose of this Act is to enhance the protection of the community by requiring offenders who have served custodial sentences for certain sexual offences and who present an unacceptable risk of harm to the community to be subject to ongoing detention or supervision.

(2) The secondary purpose of this Act is to facilitate the treatment and rehabilitation of such offenders.

Under the current section 185 a court would have to have regard to whether the publication would endanger the safety of any person, whether the publication of the information is in the interests of any victims of the offender and whether the publication would enhance the protection of the community by facilitating the treatment and rehabilitation of such offenders.

That reference to the purposes of the principal act is being removed by the bill. Section 185(c) is substituted by:

(c) the protection of children, families and the community;

d) the offender's compliance with any order made under this Act;

(e) the location of the residential address of the offender.

As Ms Mikakos mentioned, the government has said that this has come out of the Cummins report on the Protecting Victoria's Vulnerable Children Inquiry that was released at the beginning of this year. That is a good report. Its recommendations go mainly to the Children, Youth and Families Act 2005 and the Family Violence Protection Act 2008. Recommendation 50, by majority, is that sections 182 to 186 of the Serious Sex Offenders (Detention and Supervision) Act be repealed. I am very happy that the government has not taken up that recommendation, because that would have been very concerning.

The government has taken up an option of changing what a court needs to have regard to in making a decision under sections 183 or 184. My amendment 2, which I have circulated to the lead speakers for the government and the opposition, will reinstate section 185(c). In addition to the paragraphs that the government wants to substitute for the current section 185(c) and the two current paragraphs (a) and (b), the existing paragraph (c) would be included as paragraph (f). Instead of the court having to consider three matters, it would have to consider the existing three matters plus the government's three new matters.

The reason I will move this amendment is that I am concerned about the removal of the requirement for the court to consider whether the publication of information or the granting or not granting of a suppression order would enhance or compromise the purposes of the principal act. The government is proposing that paragraph (c) in current section 185 be substituted with a new paragraph (c), 'the protection of children, families and the community', which is already covered by the existing paragraph (c). It refers to the purposes of the principal act, which include the enhancement and protection of the community.

It is a bit of a roundabout act by the government in that it is partly being reinserted by clause 13, but more worryingly the secondary purpose of the principal act, which is to facilitate the treatment and rehabilitation of such offenders, is now not to be referred to because of the replacement of paragraph (c). That is concerning because it seems to me — and not only to me but also to many other people who are concerned about how we deal with these very difficult issues of serious sex offenders — that rehabilitation and reducing the possibility or probability that those people will reoffend is very important, and the court will now not have to have regard to that under the bill. That, I think, is a problem.

I have concerns about clause 13. If the court is asked to consider the offender's compliance with any order made under the principal act, what relevance would that have in terms of the publication or not of a suppression order? I can understand if, for example, an offender has not being complying with their supervision order. We know the extended supervision orders — we debated this in the previous Parliament — are applied to the most serious sex offenders. These offenders have served their sentences but the Director of Public Prosecutions or the Department of Justice, in watching the progress of these offenders throughout their incarceration, has come to the view that although they could be released they pose an unacceptable risk to the community of reoffending. I understand there are no

such orders in place at the moment. However, under the legislation the secretary can apply for an extended supervision order before such a person is released. That extended supervision order can last for 15 years and it can entail quite a number of conditions.

Going back to my point, I can understand that if conditions are not complied with by a serious sex offender who is under a supervision order, that would be a breach which may bring about changes to the order, or in some cases the offender may be put back in custody under some orders. However, I cannot understand — and I will ask the Minister for Employment and Industrial Relations, who is in the chamber, about this — what relevance this has to whether the information should be made public. I also cannot understand what relevance new paragraph (e) in relation to the location of the residential address of the offender has.

I did ask those questions at the briefing. The departmental staff did their best to explain. They were not entirely assisted by the ministerial adviser, who did undertake to get back to me but so far has not got back to me with the answers to those questions. I will be interested in trying to tease out in the committee stage what the answers are.

That is the point of our second amendment, which involves strengthening the matters to which a court must have regard when it is considering whether to make a non-publication order with regard to information that might lead to the identification of an offender or his or her whereabouts. As I said, these are some of the most difficult issues that face the community and certainly face us as legislators. The question that must be asked is whether some of the people who are at very high risk of reoffending and who are difficult for Corrections Victoria to deal with should be detained for longer under the detention part of the act. There are not any people under detention orders at the moment, but I understand there are around 60 people on extended supervision orders.

The other query I have about section 185 of the principal act concerns the two other very strong paragraphs. The first is paragraph (a) about whether the publication would endanger the safety of any person. This of course includes the offender, so whether the publication of the identity and whereabouts of that person would put that person in danger of vigilantism or attack by other people in the community is an issue the court would have to look at. That provision will remain in the act. Paragraph (b) concerns the interests of any victims of the offender. That also still has to be taken into account by the court.

We need to think clearly about this. With those two provisions still in place — and I am glad they are — a court would have to think very long and hard. I am sure it has because, as far as I can glean from the departmental advisers, the only people on supervision orders who do not have their identities suppressed are the ones who are living in this special facility outside Ararat prison.

The court has decided under section 185 as it stands that suppression orders should be in place for serious sex offenders who are living in the community. I suspect that one of the reasons for this is that in most cases these types of offenders are known to the victim. They are often a family member of the victim, a family friend of the victim, a neighbour of the victim or a person known to the victim. The potential for disclosure of that person's identity and whereabouts to disclose the identity of the victim is high, particularly if it is a family member or close friend. Having that information in the community is not going to protect the victim, and once it is out, it cannot be retrieved. I suspect the court takes that particular section into consideration.

For me it is one of the most important considerations, and I am glad that it has remained. With the new provisions I am not sure whether the court would come to any decisions different from those it makes now. I am not at all convinced that the substitution made by clause 13 is necessary or would result in different decisions being made.

My staff did a bit of research on what goes on in the rest of the world. Evidence from overseas shows that public identification may have the unintended consequence of driving offenders underground, motivating an offender to disappear — for example, there is an alarming number of lost sex offenders in the USA — eroding the motivation for an offender to rehabilitate and eroding social ties, accommodation and employment, and that public notification may not lessen sex offences and may lead to recidivism and vigilantism.

Studies suggest that making it harder for sex offenders to find a home or a job makes them more likely to reoffend. For example, Gwenda Willis and Randolph Grace of the University of Canterbury, New Zealand, found that the lack of a place to live was significantly related to recidivism. Another study showed that 70 per cent of respondents believed that publicly listing offenders would create a false sense of security for parents and more than 60 per cent believed that sex offenders who are listed would become targets of vigilantism in their community.

The other concern I have about this is that once the identity and whereabouts of sex offenders are made known to the community, what is the community expected to do with this information? I am not sure that that has necessarily been answered. How is that information supposed to lessen the risk to children? What responsibility is being placed on the community to lessen the risk of such offenders reoffending? How does this identification aid in the rehabilitation of offenders, and how does it protect victims from being identified and retraumatised? So there are questions. I have faith in the courts, and I am sure that they would look at all these possible consequences before releasing any of this information.

The Greens wrote to Liberty Victoria, which raised similar sorts of concerns to those I have been talking about in my contribution. It is supportive of the retention of section 185(c), in favour of which I had already resolved to move an amendment. I presume the government will not be supporting my amendment — I do not want to pre-empt Mr O'Donohue, who is listening to me — and the opposition has indicated that it will not support the amendment. I find that a bit disappointing, given that the opposition when in government inserted those provisions into the act only three years ago. There has been no evidence put to me that the act is not working well or that these new provisions would be an improvement on the existing provisions, which I think were well thought out and went straight to the issues of what a court should be looking at with regard to these very difficult issues that face a court when these matters are brought to them.

It is hard to think of more difficult issues to deal with than serious sex offenders. I am talking about people who have been involved in violent sexual offences against women, men and children. These offences are not always committed against children; they can be against adults as well. Such offenders are the types of people who perhaps do not attend rehabilitation while they are incarcerated or for whom attempts at rehabilitation just do not work. It is very difficult to know how to deal with this issue. Obviously the protection of children and adults from the activities of these types of people — who can inflict terrible injuries, not only physically but also psychologically and emotionally, on people that lasts the rest of their lives — is a difficult issue to deal with.

I believe the existing section 185(c) of the act covers the issues that need to be covered and gives a court good guidance with regard to making a decision which also fits in with the other decision it has to make — about the conditions et cetera that would apply to an offender who is released into the community. When we were debating the Working with Children Amendment Bill 2012 I mentioned that I totally support the Working with Children Act 2005 and the intent of it but that it should not provide a false sense of security. There are people who are capable of committing these offences who have not been caught and are not under supervision orders, and you may be living in the same street as they live and not know about it because they have not been identified. People need to be vigilant.

It is a very difficult issue and something I have given a lot of thought to. I believe the existing section 185(c) is correct, and I certainly do not agree with its removal, which is provided for under clause 13 of the bill. Otherwise, I do not have any major problems with the rest of the bill.

Mr O'DONOHUE (Eastern Victoria) — The Serious Sex Offenders (Detention and Supervision) Amendment Bill 2012 is a very important bill. I say at the outset that from having read in *Hansard* the debate on this bill in the Assembly and from listening to Ms Mikakos and Ms Pennicuik, I think the debate has been conducted in a very measured and thoughtful way. It is clear that, like Ms Pennicuik, many people have spent considerable time considering this important issue and the consequences of the principal act and this amendment bill that is before the house today. I also say the government is pleased that the opposition is supporting the bill and that the Greens are not opposed to the bill.

Ms Mikakos and Ms Pennicuik have spent some considerable time going through the details of the bill. Suffice it to say, the bill itself is a relatively straightforward and short bill of 15 clauses, but it raises some very complex issues in relation to the rights of individuals and the community. Noting that point, I also draw the attention of the house to the fact that no issues were raised about this piece of legislation in the *Alert Digest* report from the Scrutiny of Acts and Regulations Committee.

I refer to the second-reading speech, and I quote:

> There are few more important or solemn commitments a government can give than to pledge to enhance the protection of children, families and the community. This government has made such a commitment and, in relation to this law, this bill is a step towards fulfilling it.
>
> …
>
> The key amendments in this bill clarify and strengthen the provisions of the act relating to applications to suppress the identities and whereabouts of serious sex offenders.

The courts must have regard to the protection of children, families and the community in deciding

whether to suppress the identity and whereabouts of an offender. The bill also requires that a serious sex offender's compliance record and previous orders be considered as part of the court's decision-making process.

In their contributions to the debate members have spoken about the issues around publication, but the bill amends section 185 of the principal act by removing 'whether publication would enhance or compromise the purposes of the act' and replacing it with the requirement that a court considering an application for a non-publication order must have regard to the protection of children, families and the community.

I again quote from the second-reading speech:

> The bill also makes it explicit that non-publication orders are time limited and subject to regular review, by including a requirement that non-publication orders must be reviewed at the time of review of the ongoing detention and supervision order under the act at least every three years.

The government believes these are legitimate changes to the principal act which, as opposition members spoke about in their contributions, was legislation introduced by the Labor government. We believe these amendments to the principal act are sensible and will put families and the community more at the centre of considerations.

In that vein, the government will not be supporting the amendment which will be proposed by Ms Pennicuik and which inserts into section 185:

> (f) whether the publication would enhance or compromise the purposes of the act.

As I have said, the purpose of this amendment bill is to put greater weight on the protection of the community when considering whether or not to grant a suppression order. Ms Pennicuik's amendment would undermine the purpose of this act.

Ms Pennicuik related some concerns that were raised by Liberty Victoria, and I appreciate those points. This is a difficult area dealing with a small group of individuals which is difficult for the government and the community to regulate. Having said that, the government makes no apology for placing the interests of the community at the forefront of this bill and therefore on that basis rejects the amendment moved by Ms Pennicuik.

Of course with these amendments the courts will still have discretion because each situation is different with its own particular set of circumstances and facts. We believe this bill strikes the right balance in recognising that fact while at the same time putting a greater emphasis on the interests of the community. As I said, having read the contributions of members in the Assembly — contributions from Ms Hennessy, Mr Wakeling, Mr Battin and many others — I acknowledge this has been a difficult but considered and thoughtful debate. The government believes this is an appropriate act and a step in the right direction. We welcome the support of the opposition and, in the case of the division, the support of the Greens.

With those words, I look forward to the passage of this bill, but I repeat, the government will be voting against the amendment moved by the Greens.

Motion agreed to.

Read second time.

Committed.

Committee

Clause 1

Ms MIKAKOS (Northern Metropolitan) — I have a question that relates to clause 13, but it is probably easier to deal with it while we are considering the purposes clause. It relates to the issue of the changes to court consideration and the criteria proposed to be changed in this bill. Did the government seek legal advice in respect of how the amendments will ultimately change judicial behaviour?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — The advice I have is that legal advice was sought on the proposals and it supported the government's stated intention in the bill.

Ms PENNICUIK (Southern Metropolitan) — As Ms Mikakos has opened up this issue, I point out that the minister's response was really not an answer to her question. Her question was whether, without putting words into her mouth, there was going to be any change to judicial decision making as a result of the bill.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I apologise to Ms Mikakos. Obviously the advisers and I thought that was the information she was after. In terms of her specific question, the advice I have is that it is not possible to predict as each matter is dealt with depending on the circumstances.

Ms MIKAKOS (Northern Metropolitan) — I thank the minister, and I accept that of course the court and

the judge concerned will make all decisions based on the circumstances. However, my question specifically asked: did the government rely on any legal advice that this amendment will ultimately change judicial behaviour in general terms? For example, has the government had legal advice that fewer suppression orders will be made as a result of these changes?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I will take the issue back; that is why we got legal advice which was in relation to proposals. I have outlined the government's intention regarding the legislation.

I will put forward the current suppression orders as at 24 October so I can put them in the context of the answer Ms Mikakos is seeking. There are 60 orders that suppress the identity and whereabouts of certain individuals; 7 orders that suppress identity only; 4 orders that suppress whereabouts only; and 25 orders involving no suppression of identity or whereabouts. What I am saying is that it is dependent on each circumstance, which is what I indicated earlier. It is expected — in relation to Ms Mikakos's specific question — that there may be fewer applications in the future as offenders become clearer on factors that are taken into account. It is not possible to predict the direct impact on the number of orders once this legislation is passed, but this gives members an idea of the ratios of cases involving full suppression and no suppression — that is, it was 60 to 25 with a variation in between as at 24 October.

Ms MIKAKOS (Northern Metropolitan) — Those figures will be very useful in terms of being able to make a comparison in the future if there is a change to the number of suppression orders. But the minister said in his reply that it is expected that there will be fewer suppression orders. That is really the heart of my question. The minister made that statement, but I want to know whether the government has had legal advice to that effect and on what basis the minister is expressing that view.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — There was legal advice, but it did not go to the specific issue of the expected fewer applications; it only went to the stated intention of the bill. As to Ms Mikakos's specific question, the answer is that the legal advice did not go to the particular detail she seeks. The advice I have from staff members at the department is that they expect, given that there is some clarity in terms of the factors to be taken into account, that there will be a reduction in the number of suppression orders. But I think, as Ms Pennicuik quite rightly pointed out, we would not be able to measure that until a subsequent time. I have given Ms Mikakos as many details as I can in terms of the situation as at 24 October. The comparison will be able to be made subsequently. Ms Mikakos would know in terms of government processes that there will be a review process to see if there has been the intended effect.

Ms PENNICUIK (Southern Metropolitan) — In regard to the minister's answer, I would like the minister to clarify for the record that the 25 individuals on supervision orders who have not been granted suppression orders are all living at a special facility for serious sex offenders located outside of Ararat and are, in fact, not living in the community.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I am advised that the answer is no. Not all the people who are referenced live at Corella Place.

Ms PENNICUIK (Southern Metropolitan) — Can the minister say how many of those 25 people on supervision orders are not at Corella Place?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — For a range of reasons it would be fair to say that the department is not in a position to provide that level of detail. I have given members the broader figures that indicate where things are at, but in all fairness to the process we need to skip some of those broken-down details and focus on broader figures.

Ms PENNICUIK (Southern Metropolitan) — That goes to show how sensitive the whole issue is. Concern has been raised around the world about there not being suppression orders and other people finding out about certain people living in their streets. Some individuals take it on themselves to harass or attack those people. I asked this question in the briefing: what duty of care do the government and the Department of Justice have in regard to the welfare of the people who are being monitored by them and who are under the department's supervision orders?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — My advice is that there is a high level of duty of care, and the courts have directed that Corrections Victoria be aware of these issues in the management of offenders.

Ms PENNICUIK (Southern Metropolitan) — I do not want to labour these points — I know it is a difficult issue — but has the department looked at the sorts of consequence for a person who is a danger to the community, who is under a supervision order but who

has not had a suppression order made against them so their whereabouts are known and, because of harassment or whatever, they might end up having to be moved to Corella Place? Has the department anticipated that it might find that more people will be moved out of the community and into Corella?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I thank the chamber for allowing me the opportunity to make sure that I get my responses right in terms of the questions that are being asked. The advice I have been given is, as was indicated earlier, that experience has been gained over the years of the scheme's operation by the former government, which introduced it. Ms Pennicuik's concerns have not been a significant issue during the operation of the scheme. However, the primary focus is on the protection of the community, so that will come first and foremost. I indicated earlier that ultimately it will be up to the courts to determine these matters on a case-by-case basis. The figures I gave earlier indicate that courts are taking a view of these matters on a case-by-case basis given the variety of suppression orders made.

Ms MIKAKOS (Northern Metropolitan) — The minister will be relieved that I am moving on. On an unrelated issue, coming to clause 11 — —

The ACTING PRESIDENT (**Mr Elasmar**) — Order! The committee is dealing with clause 1.

Ms MIKAKOS — I am sorry to confuse the Chair, but I want to turn to the definition of the term 'publish'.

The ACTING PRESIDENT (**Mr Elasmar**) — Order! Is Ms Mikakos still on clause 1?

Ms MIKAKOS — Yes, still on clause 1. I am trying to assist the minister by asking these questions on clause 1, and then we can deal with the amendment. In relation to the definition of the term 'publish' in clause 11, I said earlier that the definition includes 'disseminate to the public by any means' and that the opposition has concerns about that being a very broad definition, which perhaps risks capturing private email communications between individuals. I ask the minister if he can give us an assurance that private citizens will not be inadvertently caught up by this provision by having private email communications captured under this definition?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I appreciate the question, and I understand that for the chamber's expediency in dealing with the bill we are going to clause 11, but I will talk about it in the context of broader issues under clause 1.

The advice I have is that section 182 of the principal act makes it an offence to publish certain sensitive information unless a court has authorised such publication. The absence of a definition of 'publish' for the purposes section causes difficulties interpreting and applying the provision. The intent of this provision is to prevent this sort of sensitive information being made available or disclosed to the general public. The definition of 'publish' inserted by the bill into this section is based on similar definitions throughout Victorian statutes. It makes it clear that the prohibition is on making this information generally available, including as an example, by way of newspaper, television and the internet. This would cover blogs and possibly even Facebook and Twitter, depending on the circumstances. Again, these matters will be dealt with on a case-by-case basis.

The information held under this act is covered by the Information Privacy Act, and corrections officers are required to comply with that act. An improper use of information by a corrections officer would constitute a breach of the public service code of conduct. Section 189 of the principal act sets out the circumstances when a person, including a corrections officer, may disclose the information. These circumstances are in broad terms where an officer reasonably believes the information is necessary for another listed person to carry out functions under one of the acts listed. The definition of 'publish' would not encompass an email or private conversations between two individuals.

Clause agreed to; clauses 2 to 6 agreed to.

Clause 7

Ms PENNICUIK (Southern Metropolitan) — Clause 7 inserts new section 65(4) into the principal act relating to the periodic review of a supervision order. New section 65(4) provides that when the court reviews the supervision order the court must at the same time review any order made under section 184 — which is a suppression or publication order — and with regard to the matters specified in section 185, which we will be talking about later. Can the government outline why it has introduced this provision, because it is quite a big change from the existing situation where the matters that are looked at under the current act are the actual conditions of the supervision order but not the publication or suppression order?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I thank the member for her question. The advice I have on the issue around clause 7 in relation to the review of supervision orders is that every supervision or detention order is subject to review by a court. The review is carried out to ensure that the order conditions are appropriate and to test the need for the order to continue. The default review period for supervision orders is 3 years and for detention orders it is 12 months, but courts can set earlier review periods. Upon review the court will consider if the order should continue and if any conditions need to be amended.

The purpose of this provision is to ensure that when periodic reviews of orders made under the act are undertaken a court also reviews any non-publication order in place that restricts the identification of the offender and/or their whereabouts. At the time an order is made, the parties are able to put forward arguments concerning the frequency of the reviews. The act also provides for the parties to apply for a review at another time if circumstances change. The advice I have is that no appeals on review frequency have occurred.

Ms PENNICUIK (Southern Metropolitan) — That would be because it is not provided for under the act at the moment. So this will mean that the situation may change for people on supervision orders at the moment. Of course it does not apply to anyone on detention orders because there are not any, but even if there were, they would not have an address to divulge. People on supervision orders who, if they already have a non-publication order, would have expected that to remain in place for the duration of their supervision order — because that was the situation when they were put on the supervision order — may find that now changes. I think it will make more work for the courts.

My other question is: if, hypothetically, under this new clause a person had their non-publication order reviewed when their supervision order was reviewed and the non-publication order was lifted but their supervision order continued and that was then reviewed in either 12 months or 3 years and it was found that some problems had occurred because of the lifting of the non-publication order, could a non-publication order be reinstated?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — The short answer is yes, but of course the underlying principle of this bill is to ensure the community's protection first. The protective provision of the act enables the secretary to act quickly where an offender is breaching conditions of their order or where they have been demonstrating behaviour that may lead to further offending. Ultimately it is up to the courts to decide as part of the process. Whilst Ms Pennicuik looks at the issue from one side, it is aimed at the other side — providing for reviews of orders where there may be an escalation in the person's behaviour or where the offender is breaching their order. The government has taken the view that in that context a non-publication order in relation to an offender would also be considered. That is the position of the government in this clause.

Ms PENNICUIK (Southern Metropolitan) — I do not want to labour the point, but the minister's answer did bring up another question. I understand that if there are serious breaches of an order, the secretary can apply to the court to have that reviewed — for example, with a view to putting more serious conditions on the order — so under this clause I am wondering if there are problems occurring because of the lifting of a non-publication order and whether the secretary can bring that quickly to the court? For example, the Office of Corrections may have had to move someone and may decide that it would be in the interests of the community to reinstate a non-publication order. Could that be done as quickly as the review of a supervision order?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — As I have said, the underlying principle and the primary focus is the protection of the community. If in the course of these processes an application is made, it may well be that there is a return to a non-publication order, but it will depend on the circumstances. My understanding is that this provision is really aimed at dealing with situations where there has been a breach of conditions or demonstrated behaviour that suggests that further offending may occur and place the community at risk — that is, situations which therefore require a shorter review period. As part of that review period there is an opportunity to look at the non-publication orders as well.

Clause agreed to; clauses 8 to 12 agreed to.

Clause 13

The ACTING PRESIDENT (**Mr Elasmar**) — Order! I ask Ms Pennicuik to move her amendment 1, which is a test for her more substantive amendment 2. Ms Pennicuik may therefore also speak to her amendment 2.

Ms PENNICUIK (Southern Metropolitan) — With your indulgence, Acting President, I would like to ask

some questions about the clause before I actually move the amendment.

The ACTING PRESIDENT (**Mr Elasmar**) — Order! The member may go ahead.

Ms PENNICUIK — In prefacing my questions, I want to briefly pick up on a point that was made by Mr O'Donohue in his contribution to the second-reading debate with regard to my amendment. He made the claim that my amendment would undermine the protection of the community. Existing section 185(c), which will be removed by this clause, says that the court, in determining whether to make a non-publication order, must have regard to whether the publication would enhance or compromise the purposes of the act. The main purpose of the act is to enhance the protection of the community. Reinstating that paragraph would mean that the court must have regard to the protection of the community, so I do not see how I am undermining the protection of the community by reinstating that provision.

However, my question to the minister is in regard to the new paragraphs that are being inserted. I want to know how the court is to establish whether or not a publication order would protect children, families and the community, as indicated in new section 185(c).

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — Ms Pennicuik raised a couple of issues. In relation to one of them, the advice I have been given is that Ms Pennicuik suggested that the court would no longer be able to consider an offender's rehabilitation. The advice I have is that that is not correct. The omission of existing section 185(c) does not mean the court cannot or must not consider the rehabilitation of an offender; it means it is no longer a factor that the court must consider. I wanted to make that clear first, and then I might get back to it.

The second matter is that this amendment will alter the matter a court must consider when making a non-publication order under section 184. The court must be satisfied that an order is in the public interest, and it is required to consider all of the following: whether the publication would endanger the safety of a person; the interests of any victim of the offender; the protection of children, families and the community; the offender's compliance with an order; and the address of the offender. In the absence of an order made under this provision, information that does not contravene section 182 may be published, including the identity and whereabouts of the offender. This constitutes a positive presumption that must be rebutted by an application and consideration of these factors. The bill will also ensure that orders made under section 184 must also be reviewed at the time any order is reviewed.

Ultimately this is a matter for the court to determine, based on all the evidence given. This is a matter of judicial discretion and a matter that is best left to the courts, which have the experience in these matters.

Ms PENNICUIK (Southern Metropolitan) — The minister has told me a lot of stuff I already knew, which he often does. That was a bit harsh possibly. Suffice it to say I do not really understand the difference between the protection of the community, which is in the purposes of the act, and the protection of children, families and the community, which is being inserted in here, and the taking out of the protection of the community.

The minister made the comment that the removal of section 185(c) does not mean the court cannot have regard to the rehabilitation of the offender, but the thing is that some of the provisions in this bill we are debating today — —

The ACTING PRESIDENT (**Mr Elasmar**) — Order! I advise the people sitting in the gallery that photos are not allowed to be taken.

Ms PENNICUIK — I lost my train of thought. We are talking about rehabilitation, and this bill has quite a number of provisions that make things clear as to what a court must do and what the department must do, and in that regard I understand that the court may have regard to any matter. However, in terms of these serious issues, usually we list in legislation what the court must have regard to. This bill is deliberately removing rehabilitation as one of the matters the court must have regard to. I do not take the minister's answer that it is okay, and the court can have regard to that — —

The ACTING PRESIDENT (**Mr Elasmar**) — Order! My message to the people in the gallery is that no photos are allowed, so I ask that they do not use their cameras or their mobile phones.

Ms PENNICUIK — That is basically my answer in relation to the minister's comment. In the briefing, in relation to new section 185(d), which refers to 'the offender's compliance with any order made under this act', I asked how the government sees that as relevant — whether the offender has complied with their order or not. Say that they have complied with the order, how is that relevant to the non-publication order? And how is it relevant if they have not complied with the order? I can see that when you are reviewing the

order, their compliance or non-compliance with the order might mean that you either make the order more strict or less strict, depending on the circumstances, but I cannot understand the relevance of the non-publication part of it.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I get back to the original government view in relation to the bill before the house, and that is that the primary focus is on the protection of the community, and that is why that is clearly stated in the amendment proposed in paragraph (c) in clause 13 — 'the protection of children, families and the community'. As to the issue that Ms Pennicuik raised, the government's view is that the offender's compliance with any order made under this act, which is what the court must have regard to, would fit within the requirement of whatever the order is in terms of the offender's process and progress, but ultimately from this government's point of view protection of the community is paramount, and that is why we have made very clear our intention throughout this bill.

Ms PENNICUIK (Southern Metropolitan) — I want to make it clear that I agree that we need to protect the community, but that is already there in the existing section 185(c), which refers back to the purposes of the act. Clause 13 takes away the reference to the purpose of the act and reinstates it in a new paragraph (c).

The minister has not been able to answer what the relevance of proposed section 185 (d) in clause 13 is. I was never able to get an answer from the briefing as to what the relevance of that is either. I am just asking the question why that particular paragraph is there and what relevance it has. I think the government should be able to argue or provide a rationale for a provision it is putting into an act, and it has not been able to.

My next question, without wanting to labour all this, is to ask what is the relevance and why would the court need to take note of the location of the residential address of the offender? It is not a trick question; I just want to know whether that is relevant to the non-publication.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — Ms Pennicuik, as to the issue in relation to proposed section 185 (e), the residential location of an offender is relevant to the decision to make a non-publication order because publication may stigmatise other co-residents — for example, other residents of a DHS-administered disability accommodation facility. Another example may be where an offender has breached the conditions of their order and then is sentenced to time in prison. In that instance his whereabouts may not be of such concern.

Ms PENNICUIK (Southern Metropolitan) — As I suspected, it would probably work against publication of the whereabouts because, as the minister says, the location may in fact breach the paragraph concerning the interests of any victim of the offender.

I will just go back. I am quite happy to move my amendment now, and the reason I am quite happy to do that is just to speak to my amendment. I move:

1. Clause 13, line 9, omit 'offender.".' and insert "offender;".

I am not quite sure why new paragraphs (c), (d) and (e) are being put into section 185, but if the government were to accept my amendment and reinstate current section 185(c), which requires the court to have regard to the purposes of the act including rehabilitation, I would be pretty relaxed. I am not relaxed with the removal of that paragraph because I think the court can take all these matters into consideration and will come out with the right decision for the circumstances, but I think with the removal of the existing section 185(c) we have a problem, from my point of view. I am happy to move the amendment. These are the reasons for it. The government's bill really does not improve the principal act from the way it currently is as put in place by the previous government.

Ms MIKAKOS (Northern Metropolitan) — I wish to indicate to the house that the Labor opposition will be opposing the Greens amendment. We certainly agree with the sentiment that there has been a lot of rhetoric associated with this bill in portraying it to be something other than what it actually is. It is not a name and shame bill, but it does not implement recommendation 50 of the Cummins report.

In respect of this specific amendment, we think it is a bit of theatre to take that paragraph out and it is a bit of theatre to put it back in. I refer specifically to section 35 of the Interpretation of Legislation Act 1984. Perhaps it is easier if I quote from the section. Section 35 says:

> In the interpretation of a provision of an Act or subordinate instrument —
>
> (a) a construction that would promote the purpose or object underlying the Act or subordinate instrument (whether or not that purpose or object is expressly stated in the Act or subordinate instrument) shall be preferred to a construction that would not promote that purpose or object …

In effect the Interpretation of Legislation Act already enables the court to look at a construction that would promote the purpose of the act, and we think focusing on a provision that it is neither here nor there obscures the very difficult conversation and the very difficult task of keeping our community safe from sex offenders. On that basis we are opposing this amendment.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I thank the members for their comments. In the government's view the amendment would dilute the purpose of the important amendment being progressed by this bill — that is, to provide judges with the opportunity to take into consideration the protection of children, families and the community when considering whether to grant a suppression order. The amendment as proposed would have the effect of the secondary purpose of the act, the treatment and rehabilitation, potentially being given even weight with the primary purpose of the act, which is the protection of the community. We believe that that goes against the intent of the bill, and therefore the amendment is not supported by the government.

Ms PENNICUIK (Southern Metropolitan) — I would like to make a concluding remark in support of my amendment, which is that the evidence from around the world shows that rehabilitation is a factor in the protection of the community. Rehabilitating offenders is a way of protecting the community, so the amendment is not at cross-purposes with protecting the community. The minister is trying to imply that in my wanting to reinstate rehabilitation that is somehow opposed to protection of the community. In fact it goes hand in hand with protection of the community, if offenders do not reoffend. I think it is really disingenuous to try to insinuate that that is what I am trying to do here.

On what Ms Mikakos said, she argued against her government's act. I just wanted to clear that up, because I think the minister was trying to make out something that is not the case. The Greens are concerned with the protection of the community and rehabilitation is part of that. I do not agree totally with the interpretation of the Interpretation of Legislation Act 1984. Having the purpose of the principal act in section 185(c) does in fact focus the attention of the court on that.

Committee divided on amendment:

Ayes, 3

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

Noes, 35

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

Amendment negatived.

Committee divided on clause:

Ayes, 35

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

Noes, 3

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

Clause agreed to.

Clauses 14 and 15 agreed to.

Reported to house without amendment.

Report adopted.

Third reading

Motion agreed to.

Read third time.

TRANSPORT LEGISLATION AMENDMENT (MARINE DRUG AND ALCOHOL STANDARDS MODERNISATION AND OTHER MATTERS) BILL 2012

Second reading

Debate resumed from 11 October; motion of Hon. G. K. RICH-PHILLIPS (Assistant Treasurer).

Hon. M. P. PAKULA (Western Metropolitan) — It gives me great pleasure to rise to make a contribution to the debate on the Transport Legislation Amendment (Marine Drug and Alcohol Standards Modernisation and Other Matters) Bill 2012 and to indicate to the house that the opposition will not be opposing the bill. We do have some issues with the level of consultation that has attended the introduction of this bill. We are concerned about the apparent inability of the government and in particular Dr Napthine, the Minister for Ports, to maintain positive relationships with key stakeholders in this area, in particular the Boating Industry Association of Victoria. Moreover, we are concerned about one particular provision of the bill that has been raised by the Scrutiny of Acts and Regulations Committee and that relates to the circumstances in which police can enter a marine vessel without a warrant and without any particular suspicion or due cause. We will be moving an amendment relating to that.

Beyond that, the bill is relatively uncontroversial. Generally it brings Victoria's boating legislation in line with developments that have been taking place in other portfolio areas, particularly in regard to safety on the water, and in line with developments that have been going on at the Council of Australian Governments (COAG).

The typically Pavlovian response of government members every time they introduce a bill, get to their feet or say anything about anything at all is to make the claim that something that this government is doing is about fixing a mess left behind by the previous government.

Mrs Peulich — How is that a Pavlovian response?

Hon. M. P. PAKULA — Mrs Peulich, I would ask you and perhaps other members of the government to reflect on how successful this strategy seems to be.

Mrs Peulich — What has it got to do with Pavlov?

Hon. M. P. PAKULA — Like one of Pavlov's dogs, Mrs Peulich, every time the government does anything, whether it introduces a bill or hears a bell, it feels the need to try to trash the reputation of the former government or the commonwealth.

Mrs Peulich interjected.

Hon. M. P. PAKULA — I am simply making the point, Mrs Peulich, that even in regard to a marine safety bill this government and this minister see everything as an opportunity to make unfounded and poorly executed political points.

Mrs Peulich — You poor things.

Hon. M. P. PAKULA — Mrs Peulich, I can assure you I am not seeking your sympathy. I know that to attempt to seek your sympathy would perhaps be the most futile exercise I could ever engage in.

However, let me say in regard to this bill — without some of the hyperbole which the minister provided in his second-reading speech — that it updates the relevant legislation following a review of agency powers previously available for use following the experience of a pollution event. The bill is also updates provisions in relation to directors' liability following the COAG agreement and brings drug and alcohol standards much more in line with those that are found in the Road Safety Act 1986. As members are aware, when it comes to drug and alcohol use the Road Safety Act 1986 fundamentally has a zero tolerance approach, and that is what the government is intending to do with regard to marine safety, in part at least, with the introduction of this bill.

Some of the specific changes the bill provides for include the creation of the offence of operating a vessel while at or over the prescribed drug or alcohol concentration level. For those aged under 21 that is .00, as it is for operators of commercial vessels, including vessels at anchor. The change with regard to the drug concentration level is important, because previously it was really a matter for police to prove whether an individual in control of a vessel was in a state that rendered them unable to control the vessel. That very subjective approach was proving to be exceptionally difficult for police to establish in court. The provision of a blood concentration level rather than a much more subjective test is appropriate.

The bill also provides further power to police and transport safety officers to inspect vessels and to make directions as to the movement of vessels. As I indicated at the outset of my remarks, during the committee stage

I will move an amendment with regard to the circumstances in which police should be able to inspect or enter a vessel. I will make more comment about that during the committee stage.

The provisions in the remainder of the bill are reasonably minor. It transfers the responsibility for pollution control functions from the director of transport safety to the secretary of the department. It removes the requirement in the Marine Safety Act 2010 that a vessel may be registered only in the name of a natural person. It is reasonably easy to understand why that might have caused some difficulty for companies and associations. It also updates relevant directors' liability provisions, imposes some licensing requirements on persons who provide prescribed services including towage, and provides for the alteration and rectification of some typos.

At this point it is important to put on the record that despite the rhetoric of the Minister for Ports, Dr Napthine — that tactical genius who today goaded the Speaker of the Assembly into releasing some video footage — about the state in which marine legislation was left by the previous government, the facts are that in terms of the last government's record, what it did with regard to boating safety and boating regulation more generally was second to none.

The facts are that we introduced hoon boating laws in 2009–10 and we gave water police powers to ban vessels from the water for up to 48 hours. Victoria was the first jurisdiction in Australia to introduce those laws; we led the nation in boating safety. We introduced the marine criminal offences of culpable operation of a vessel causing death and dangerous operation of a vessel causing death or serious injury. We introduced the Marine Safety Act 2010. The capacity of police and regulators to improve safety on the state's waterways was improved more by that act than by any piece of legislation introduced previously. From 2005 onwards we saw a substantial increase in the number of boating participants wearing lifejackets. That was a direct result of the education campaigns introduced by the previous government.

There was the investment of $41 million in the boating safety and facilities program. There were projects like the Torquay boat ramp, there was new parking at Patterson River, there were new jetties and pontoons in places as far-flung as Geelong, Gippsland and Portland, and there were statewide education campaigns — all introduced by the previous government. And still Minister Napthine, in his second-reading speech for this bill in the Assembly, tried to claim that the earlier piece of legislation had been rushed through and that somehow this legislation was correcting grievous errors made by the previous government.

The fact is that the matters raised with the Baillieu government by Victoria Police in mid and late 2011 were not raised with the previous government. In fact at the time the last bill was introduced the police were satisfied with the items included in that bill. Further, when the Baillieu government introduced the Transport Legislation Amendment (Marine Safety and Other Amendments) Bill 2011 last year it did not make any mention of these matters. The Baillieu government only became aware of these matters after not just the introduction but the passage of that bill.

As for the allegation that the previous marine safety bill was rushed through the Parliament, the fact is that stakeholder consultation on that piece of legislation commenced in November 2008, and the bill was introduced in 2010. It is that degree of stakeholder consultation that provides this government with the answer to the question of why the relationship between the previous government and the boating industry was so much better than the relationship between this government and the boating industry today. It is because we did not play them for fools, we did not introduce legislation without talking to them and we did not treat them in a high-handed way, as this minister does. We treated them with respect and we consulted with them, and as a result we got legislation that was not rushed and that had the support of most of the major stakeholders in the industry.

I remember very well that when last year's Transport Legislation Amendment (Marine Safety and Other Amendments) Bill was introduced the Boating Industry Association of Victoria indicated that the consultation process had left a lot to be desired. I remember those comments in correspondence from the BIAV. I understand why it now feels that nothing it says matters to this government. It is quite a feat in an area like marine safety, where there is, frankly, one major stakeholder — there are a number of smaller stakeholders but only one major stakeholder, the Boating Industry Association of Victoria — for a government to manage to alienate that stakeholder so comprehensively. It reminds me of the debate we had earlier today and on Tuesday about the Civil Procedure Amendment Bill 2012. It has become clear exactly how comprehensively the government has alienated the Law Institute of Victoria with regard to that piece of legislation.

I hope for the sake of good governance in this state that this does not become a pattern where the government simply lauds it over stakeholders and introduces legislation without properly consulting them, legislation that those stakeholders feel they have no proper stake in and on which they feel they have not been consulted in any reasonable or realistic way. But the evidence is coming in — I was going to say trickling in, but it is flooding in — that this seems to be the new way of doing business in Victoria: stakeholders finding that the doors of government are closed to them and feeling that the things they say to government either do not resonate or are not listened to. This bill and the way the Boating Industry Association has been treated is yet more evidence that points in that direction.

As I have indicated, save for the one matter that we intend to move an amendment on, the majority of matters contained in the bill are relatively uncontroversial. But I say to the government that it is about time fences were mended with the BIAV, the voice of the boating industry. Recreational boaters in particular should be listened to, and these significant stakeholders should no longer be made to feel like they are pariahs.

I am of a mind to make those comments because of the ungracious nature of the minister's second-reading speech and the feeble attempts to demonstrate that this bill is somehow an attempt to fix a process that was rushed, which was the minister's claim. I say again that the previous government's approach to this industry was to consult widely and to release proposals for stakeholder comment well in advance of introducing legislation in the Parliament, and if this government took a leaf out of that book, perhaps it would not find its key stakeholder so disillusioned, as is the case today.

Ms PENNICUIK (Southern Metropolitan) — The Transport Legislation Amendment (Marine Safety Drug and Alcohol Standards Modernisation and Other Matters) Bill 2012 amends various pieces of marine-related legislation. The general purposes of the bill are to create new offences prohibiting the operation of a vessel — and that includes a jet ski, which is welcome — whilst impaired by a drug other than alcohol; to prescribe a zero concentration of alcohol for persons under 21 years of age who may be in control of a vessel; to align the penalty and enforcement provisions for drug and alcohol offences with equivalent provisions under the Road Safety Act 1986; to provide for a drug assessment and testing regime; to clarify functions, powers and responsibilities in relation to marine pollution; to make various other amendments, including, for example, the removal of the requirement that only a natural person can register ownership of a vessel; and to give police powers to enforce general marine safety standards and, I must add, to enter a vessel.

There are two issues with this bill. One is the inadequacy of the second-reading speech, and Mr Pakula has taken offence to the tone of the second-reading speech. The other is the inadequacy in particular of the statement of compatibility on this bill.

I agree that the bill is supportable in terms of what it is trying to achieve, which is, as the minister says, to bring the provisions into alignment with the Road Safety Act, but that is pretty well all he said. Second-reading speeches and statements of compatibility are legal documents which the courts look to. I have raised in this chamber before the fact that some of second-reading speeches leave a lot to be desired. Second-reading speeches are supposed to comprehensively cover the bill that they are introducing, but in many cases significant provisions in bills are left out of the second-reading speeches and you only find those provisions when you read the explanatory memorandum and go through the clauses of the bill yourself. You often find things in a bill that are not mentioned at all in its second-reading speech.

It has taken my staff quite a long time to work out whether the provisions of this bill are in fact in keeping with the Road Safety Act 1986. We have discovered that generally that is the case, but it took a bit of work for us to actually discover that. Far be it for me to say it, but I think the government could lift its game in terms of the level of detail and comprehensiveness contained in many second-reading speeches. They are not meant to be just ministerial statements and political documents. They are meant to be legal documents about what a bill contains, not how well the government is doing with regard to its promises et cetera. That is the role of the media release that the minister puts out once the bill is introduced; it is not the role of the second-reading speech. I am concerned that the government is going down this road. The previous government was not blameless in that regard either.

Hon. M. P. Pakula — You were going so well.

Ms PENNICUIK — I was going so well, but I like to be even-handed. Before Mr Pakula interrupted me I was going to say that this government is making an art form of it.

I wish to refer to the charter report from the Scrutiny of Acts and Regulations Committee (SARC) for this bill, which notes that:

> Clauses 4, 6 and 15 restrict how a person accused of some marine drug and alcohol offences may conduct his or her defence in some circumstances. The committee will write to the minister seeking further information as to the compatibility of clauses 4, 6 and 15 with defendants' charter rights to a fair hearing, to call and examine witnesses and to not be compelled to testify against themselves.

It further notes:

> The committee observes that the effect of these provisions is to restrict how a person accused of some marine drug and alcohol offences may conduct his or her defence in some circumstances … similar to existing provisions governing trials for drink and drug-driving offences.

However, this is not raised at all in the statement of compatibility.

Under the heading 'Privacy — power to enter and search any vessel without warrant, consent or grounds' the report notes that:

> New section 162B(2) provides police officers with the power to enter and search any vessel in Victoria without a warrant, consent or grounds to suspect a contravention.

The provision in the bill states that the police can enter a vessel to ensure it is complying with the principal act or any other act. The police are meant to have a reasonable suspicion or a reasonable belief or a warrant before they enter private property, and a vessel, like a car or a house or a building, is private property. The report raises that point and states that:

> The committee will write to the minister seeking further information as to the compatibility of new section 162B with the charter's right against arbitrary or unlawful interferences with privacy.

The report went on to say with regard to practice note number 2:

> The committee will write to the minister regarding the statement of compatibility.
>
> The committee notes that the statement of compatibility for the bill:
>
> > does not expressly or accurately identify the inserted or amended reverse onus provisions in its discussion of 'Rights in criminal proceedings';
> >
> > does not discuss a search and entry provision that may engage the charter's right against arbitrary or unlawful interferences in privacy in a significant respect.
>
> The committee recalls its *Practice Note No. 2*, which states that the committee will write to the minister where, in the committee's opinion, a statement of compatibility is inadequate or unhelpful in describing the purpose or effect of provisions in a bill that may engage or infringe a charter right.

It went on to say again:

> The committee will write to the minister regarding the statement of compatibility.

I find that all very concerning, and I point out that this bill was listed as no. 6 on the notice paper as we came into this sitting week and it then flew up to no. 1. I raised that with Ms Lovell, who is the minister in charge of government business in this house. I highlighted the concerns that had been raised with staff about this bill and pointed out that the Scrutiny of Acts and Regulations Committee *Alert Digest* No. 15, which we expected would contain the minister's response, would not be tabled until Tuesday and we would not have time to consider it if this was the first bill up. I thank Minister Lovell for her consideration in ensuring that we would proceed with a different bill prior to this bill to give us a chance to consider the minister's response. Thank goodness for that, because the minister's response to the matters raised by SARC was some 10 pages long. I think it is the longest response from a minister I have seen, but I have to suggest that there was more heat than light in it.

I raise this as a very important issue because we now have on the record a statement of compatibility that is completely inadequate and the minister had to write 10 pages to justify its inadequacy. It seems from reading the minister's response that the Department of Transport drafted the statement at the last minute and decided that it was adequate. Clearly it is not according to SARC and according to me because it did not go to the issues that engage the charter, which is what the statement of compatibility is meant to do.

SARC said that the statement did not expressly or accurately identify all of the reverse onus of proof provisions and did not mention any search and entry provision at all. I cannot remember seeing a statement like this under practice note 2 from SARC before. Clearly the statement is inadequate. Even the minister vaguely acknowledges this in his response. The minister with carriage of the bill and responsibility for the department should have realised this and rectified the problem before this bill reached the upper house. The entire statement should have been sent to the Department of Justice, because it is highly unlikely it would have let this one go through.

The minister's response, on page 18 of the *Alert Digest*, reads:

> I am satisfied that this regime is not inconsistent with the right to privacy. As such, no reference to privacy in connection with this provision was considered to be required in the statement of compatibility.

He gives the reason that in 2007, after the introduction of the charter, a review was undertaken of relevant transport legislation and the predecessor to clause 26 of the bill — section 77 of the Marine Act 1988 — was considered and assessed as compatible with the charter. The minister is saying that we do not need to look at this provision in the introduction of this bill because it was looked at in 2007. But each bill stands alone and each statement of compatibility stands with that bill.

The minister said that the Department of Transport did not consider that clause 26 required specific reference in the statement of compatibility but to ensure that the provisions aligned with Victoria's human rights and privacy legislation the department consulted with the Department of Justice and Privacy Victoria and both were comfortable with this proposal. I am surprised that the Department of Justice, if that is the case, was comfortable with not mentioning these clearly important issues in the statement of compatibility.

It is unsatisfactory that these provisions were omitted from the statement of compatibility, due to last-minute work by the department to get these laws ready for the summer boating season, I am presuming. The season was not sprung on the government just now. These laws could have been anticipated and drafted in a reasonable time.

The minister's take is:

> Insofar as the statement does not expressly identify each reverse onus provision by reference to the inserted or amended provision, I note that work on the bill was complex and continued until close to the time of the bill's introduction. It was desirable that each provision be addressed and as a result I have drawn the matter to the attention of the Department of Transport …

That is just not good enough. The fact that the bill was complex and the government had a timetable does not excuse it from not presenting a proper statement of compatibility with the bill when it has these reverse onus provisions. They should have been addressed as well as the privacy provisions with regard to police entry.

I understand, but I am not sure if Mr Pakula mentioned, that the opposition has an amendment to this bill.

Hon. M. P. Pakula — Yes, I did mention that.

Ms PENNICUIK — I have not seen the amendment but I know basically what it is seeking to achieve, and given that I know what it is seeking to achieve, I do not think it has been circulated.

Hon. M. P. Pakula — No. I am happy for it to be.

Ms PENNICUIK — Mr Pakula is happy to have it circulated. I will have a look at it when I see it, but in principle I am supportive of the amendment, which I understand will insert a provision stating that the police may not enter a vessel unless they have a reasonable belief or suspicion, or words to that effect. It is the case under the law generally that police cannot just enter a private vessel or vehicle or a private residence without a warrant or a reasonable suspicion that an offence has been committed.

The Greens will not oppose the bill, but to have those concerns raised so starkly by the Scrutiny of Acts and Regulations Committee and to have a 10-page response from the minister that vaguely acknowledged that a mistake had been made is not acceptable. Be that as it may, hopefully we will not have to address this sort of issue again. Timetables for legislation should include the preparation of the proper documentation to accompany legislation.

The ACTING PRESIDENT (**Mr Ramsay**) — Order! It is very brave of Ms Pennicuik to support an amendment she has not seen.

Mr KOCH (Western Victoria) — It is a pleasure to rise to speak on the Transport Legislation Amendment (Marine Drug and Alcohol Standards Modernisation and Other Matters) Bill 2012, which provides parity between the rights of licensed boat owners and the rights afforded to licensed vehicle owners and their passengers on Victorian roads. This is a measure that will ensure greater safety to not only licensed boat operators but also all persons under their charge.

The main purpose of the bill is to amend the Marine (Drug, Alcohol And Pollution Control) Act 1988 to modernise Victorian marine drug and alcohol standards. The bill achieves this by: firstly, introducing new offences that align drug standards in the marine sector with those in the road transport and rail sectors in Victoria and those in the marine sector of other eastern states; secondly, providing for appropriate penalties, testing regimes and evidentiary provisions to support the new standards; and, thirdly, giving police officers adequate powers to enforce the standards. The bill also amends the Marine Safety Act 2010 to give police powers to enforce marine safety standards and allow vessels to be additionally registered to incorporated or unincorporated bodies, partnerships and associations. As has been indicated, this will reduce the red tape that currently exists.

In addition the bill modifies the directors' liability provisions under the Port Management Act 1995 in line

with the Council of Australian Governments directors' liability reform project principles. The bill also make provision for the enforcement of marine safety standards by amending the Transport (Compliance and Miscellaneous) Act 1983, particularly provisions about transport safety infringements, and the Marine Safety Act 2010.

The bill amends the Marine (Drug, Alcohol And Pollution Control) Act 1988 to clarify the functions, powers and responsibilities of the Secretary of the Department of Transport relating to marine pollution and the responsibilities of and indemnities that apply to the participants in the marine pollution contingency plan. Finally, the bill amends the Transport Legislation Amendment (Public Transport Development Authority) Act 2011 to make statute law revision amendments to the act. This important amendment corrects a major flaw in the Marine Safety Act introduced in August 2010 by the former government, very late in its reign. The act did not address or consider certain issues, especially those concerning the situation involving commercial boat skippers consuming drugs or alcohol either alone or in company during voyages.

I understand from Mr Pakula's comments that during the committee stage the opposition will be moving an amendment to the bill. I have not seen the amendment, but I understand it relates to random blood testing and water police officers boarding vessels without cause. We look forward to that amendment being moved during the committee stage.

The oversight in relation to drug and alcohol testing gave skippers of boats, particularly commercial boats, licence to continue operating their boats with blood alcohol levels up to .05 while, at the same time, commercial road and rail operators and road users under the age of 21 were required to maintain a zero blood alcohol level in similar circumstances. This is not the first piece of legislation introduced by the former government that has required further amendment to fix the mess left behind in order to meet standards sought by our communities.

As a former deputy chair of the parliamentary Road Safety Committee, a committee that has a revered history because it has always sought to offer the best road safety protection to all commercial and recreational vehicle users, I can say — although I have not been in charge of a boat for some time — it goes without saying that common sense, hand in hand with good strong enforcement, should prevail when pursuing good laws in order to see safety maintained.

Our water police are well trained, experienced and have excellent equipment to carry out their duties. This is well recognised by boat owners and all operators. The enforcement of the law in areas like Port Phillip Bay, Corio Bay, off the coast in Bass Strait and in our inland waterways in all areas of marine safety has been stepped up whereby all boat owners are very aware their actions are being watched. Those flouting the law are now being quickly brought to account.

Managing the responsible use of drugs and alcohol and influencing the behaviour of participants will help reduce risk-taking — for example, consuming drugs or alcohol when travelling at excessive speeds; skylarking; not complying with safety and equipment standards; using marine craft in bad light, especially in the early morning and late afternoon when river snags may not be apparent or may be just under the surface and not visible; or not using best practice when loading and unloading boat trailers.

It is important to note that testing now falls under new provisions, including officers having the right to board and inspect vessels for compliance and enforcement purposes. Further, officers are also afforded the opportunity to request any necessary test — be it an oral test or a blood, urine or breath test — be undertaken by persons skippering vessels that are under way or even at anchor.

Clauses 4 and 6 of the bill contain reverse onus provisions. The imposition of an evidential onus ensures that a defendant may supply any evidence to explain his or her behaviour or reasons for the presence of alcohol or drugs in their system. The presumption of innocence is protected by requiring the prosecution to provide information regarding the person's behaviour or the presence of drugs and alcohol.

There is little doubt that the amendments in the bill address key risk factors — including, in some cases, fatalities — associated with water and the boating industry. There are serious and significant issues that relate to safety on our waters that are not dissimilar to issues on our roads. Where possible, governments are charged with the responsibility of offering all recreational boat-users and travelling Victorians the best possible safety outcomes.

It is not only the safety of the person that should be considered; we also have a responsibility to prevent any environmental damage, pollution risk and, likewise, damage to the state's economy. This amendment bill further incorporates common sense and sends the correct safety messages to all boat owners, both

recreational and commercial, and endeavours to align Victoria with other states in relation to safe marine vessel uses and their management.

Consultation has taken place widely, including consultation with the police on changes to the marine, drug and safety scheme and enhanced police powers, and they are very supportive of the reforms. Also the Department of Justice has been consulted on the changes to the marine, drug and alcohol scheme, enhanced police powers and the changes to the director's liability provisions in the Port Management Act 1995, and it also supports those proposals.

I anticipate there will be some criticism from our commercial fishers, especially fishermen, in relation to the zero blood alcohol limits, but the recent sinking of the *Lady Cheryl* demonstrates safety issues to people on board along with economic and environmental damage. Drug usage can result in similar circumstances occurring.

It is also important to refer to Mr Pakula's belief that former amendment bills in relation to boating were subject to consultation for a period of over two years — from 2008 to 2010. I hear clearly what he was saying, but I have to say that from my point of view, and I think Victoria's point of view, consultation and transparency were never strong cards of the previous government, irrespective of those earlier statements. Far from it. One of the things that concerned Victorians across the board was the lack of involvement, particularly with consultation. This is probably one of the main reasons we find the opposition now occupying the opposition benches in this house. This is good legislation, and I commend the bill to the house.

Motion agreed to.

Read second time.

Committed.

Committee

Clauses 1 to 25 agreed to.

Clause 26

The ACTING PRESIDENT (**Ms Crozier**) — Order! I advise the committee that Mr Pakula has amendments to clause 26, and they are all related.

Hon. M. P. PAKULA (Western Metropolitan) — I move:

1. Clause 26, page 68, line 30, omit all words and expressions on this line and insert —

"(1) This section applies to —

(a) a vessel that is being operated; or

(b) a vessel that a member of the police force believes on reasonable grounds —

(i) will be operated on State waters; or

(ii) has been operated on State waters within the preceding 30 days.

(2) This section does not limit section 162A.

(3) A member of the police force who believes on reasonable grounds that the owner or operator of a vessel has not complied with this Act or the regulations, or the vessel does not comply with this Act or the regulations, may —

(a) enter and search the vessel; and

(b) inspect any equipment, builders plate or vessel document found on the vessel.".

I understand this amendment is a test for all other amendments, and I thank the committee for the opportunity to speak briefly to the amendment. If members turn to pages 69 of the bill, they will see new section 162B, which provides:

(2) A member of the police force may enter and search a vessel, or inspect any equipment, builders plate or document found on a vessel, in order to determine whether this Act and the regulations are being complied with.

…

(3) The member of the police force —

(a) must do a thing mentioned in subsection (2) at a reasonable time;

(b) may do a thing mentioned in subsection (2) with the assistance of another member of the police force or a transport safety officer.

The limitations are only that this needs to occur within a reasonable time, and that is in effect it in terms of the limitation on that general power. As the power is currently described, it is for a police officer to enter any vessel at any time for any reason — it is as simple as that. That is the matter identified by the Scrutiny of Acts and Regulations Committee. As Ms Pennicuik indicated in her contribution, despite the fact there has been a lengthy response from the minister, that lengthy response did not — certainly not to the opposition's satisfaction — respond adequately to the matter raised by the Scrutiny of Acts and Regulations Committee. I

remind the committee what SARC said in regard to this on page 13 in *Alert Digest* No. 15:

> The Committee observes that new section 162B(2) applies to any vessel in Victoria … provides police officers with powers of entry and search without a warrant or the consent of the vessel's owner or occupier; and does not require that the police officer have any reasonable grounds to suspect a contravention of any law.

The minister's response does not effectively contest that finding of SARC. The legislation is currently drafted to provide that any boat, no matter where it is — including if it is in somebody's driveway or garage — can be entered by the police for any reason and without a warrant whether or not police have any reasonable suspicion of any wrongdoing. That really opens the door.

Given that so many boats are stored in or at people's homes, basically this provision gives police the ability to enter properties without warrant and without any suspicion of improper conduct whatsoever. Opposition members are fully cognisant of the need for police to inspect vessels, sometimes without warning, and to be able to do so in a timely and responsive way in response to reasonable suspicions and suspected contraventions of the law or regulations.

My amendment 1 replaces the three subsections in section 162B of the bill, so that the section will apply to a vessel that is being operated — that is, not just a vessel in someone's home or at mooring — or a vessel that a member of the police force believes on reasonable grounds will be operated on state waters or has been operated within the preceding 30 days. My proposed subsection (3) provides police with the ability to enter and search a vessel and inspect any equipment, builders plate or document found on the vessel if a member of the police force believes on reasonable grounds that the owner or operator of the vessel has not complied with the act or the regulations or that the vessel does not comply with the act or the regulations. My other amendments are consequential on my amendment 1.

In a nutshell, the effect of Labor's amendment would be that rather than having a provision which says the police can enter any vessel any time for any reason, whether it is on the water or not, whether it has been on the water or not, whether it is about to be on the water or not, or whether it is in someone's home or not, we would have a provision that says the police can enter a vessel at any time if they have a reasonable suspicion that there has been a contravention and if the vessel is being operated or the police believe that it is going to be or has been operated in the last month. That is a reasonable limitation. It brings the requirements for the entry of a marine vessel into line with the sorts of obligations that are imposed on Victoria Police in terms of entering someone's property. Given that vessels are often on people's private property, that seems only fair and reasonable.

Ms PENNICUIK (Southern Metropolitan) — On now seeing the amendment and how it fits with section 162B of the bill, the Greens will support it. I said in the second-reading debate that I supported the amendment in principle on what I knew of it then, which was that it is aimed at basically qualifying the ability of police to enter or search a vessel, limiting it to situations where a member of the police force believes on reasonable grounds that the vessel will be or has been operating in state waters and the police member believes on reasonable grounds that the owner or operator has not complied with the act or the regulations. The Greens are never in favour of granting police powers to enter private property without reasonable grounds. It is a standard provision for legislation to have that qualifier on the power of police to enter private property, and that is all that is being inserted here. We will support the amendment.

Hon. M. J. GUY (Minister for Planning) — Firstly, I am not sure it is deliberate, but it is important to note that if this amendment were successful, it would actually give transport safety officers wider powers than Victoria Police. The power to enter vessels without consent or warrant was previously contained in section 77 of the Marine Act 1988, as it was then titled; as everyone knows, it is now the Marine (Drug, Alcohol and Pollution Control) Act 1988. Section 77 of the Marine Act provided powers to both transport safety officers and members of the police force to enter vessels without consent or warrant to check compliance with requirements under the act or regulations, to search vessels and inspect any equipment or documents found on the vessel.

Section 13 of the Marine Act also provided transport safety officers and members of the police force with powers to inspect vessels. In addition, section 18 provided authorised officers or members of the police force with powers to require the owner of a vessel to give information leading to the identification of any person in charge of the vessel on any occasion or to make a reasonable inquiry to obtain that information. When the previous government passed the Marine Safety Act 2010 a number of these powers were transferred to the Transport (Compliance and Miscellaneous) Act 1983; however, some powers

previously provided to members of the police force under the 1988 act were not included, and the government presumes this was due to error. These previously available powers are being reinstated by clause 26 of this bill. The new section 162B(2) to be added by the bill essentially restores the powers previously provided by section 77 of the Marine Act 1988, with two important variations, and I will briefly explain them.

Firstly, while the provision has the same effect that section 77 had, it has been drafted in clearer and plainer English by the Office of the Chief Parliamentary Counsel. That is to be expected following the changes to the regulatory regime made by the Marine Safety Act 2010.

Secondly, the provision has been clarified as a result of the inclusion of a clear narrative example at the foot of new section 162B(2), which helps explain the types of documents which may then be inspected using the power. It is the government's view that the clear purpose of the power is to ensure that a member of the police force can ascertain that existing statutory requirements have been satisfied and also that this power is limited through the requirement that an entry take place at a reasonable time. This also helps to ensure that the use of the power is reasonable and not arbitrary.

I conclude by saying that the documents listed are a licence, certificate of competency, certificate of survey, certificate of safe operation and a logbook, each of which are required to be held by certain classes of vessels and persons as a result of the application of the Marine Safety Act 2010 and the Marine Safety Regulations 2012. The inclusion of those examples arose from discussions between the Department of Transport and Victoria Police. It was aimed at clarifying the nature of the use of the power. I mention those example documents which may be sought in order to check compliance with the act or indeed regulations to make it clear that the purpose of entry is simply to secure compliance with the act and regulations. I hope that explains the government's opposition to the amendment.

Hon. M. P. PAKULA (Western Metropolitan) — I will respond to one matter that Mr Guy raised, which is the relative powers of transport safety officers and Victoria Police. It is my advice — and we all operate under advice in matters such as this — that in fact transport safety officers, like Victoria Police, have significant powers of entry, but again, with regard to section 228Z of the Transport (Compliance and Miscellaneous) Act, which was inserted by the 2010 act that I referred to in my second-reading contribution, they are able to board any vessel at any time it is in use and to enter without consent marine premises while marine operations or other marine-related activities are being carried out.

Again, it goes to the matter I raised in my contribution to the debate on this amendment. The bill in its current form goes much further than that. It goes beyond the question of whether something is with or without consent to with or without a warrant, and it also goes beyond the question of whether a vessel is in use. The provision as it is currently drafted provides those rights of entry even when a vessel is not in use, has not been used and is not intended to be used. That is why we have endeavoured to place, as a consequence of our amendment, some reasonable restrictions on the circumstances in which vessels can be entered by police.

Committee divided on amendment:

Ayes, 18

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

Noes, 21

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

Amendment negatived.

Clause agreed to; clauses 27 to 34 agreed to.

Reported to house without amendment.

Report adopted.

Third reading

Motion agreed to.

Read third time.

TOBACCO AMENDMENT (SMOKING AT PATROLLED BEACHES) BILL 2012

Introduction and first reading

Received from Assembly.

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

Statement of compatibility

For Hon. D. M. DAVIS (Minister for Health), 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 a statement of compatibility with respect to the Tobacco Amendment (Smoking at Patrolled Beaches) Bill 2012.

In my opinion, the Tobacco Amendment (Smoking at Patrolled Beaches) Bill 2012, as introduced into 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 the bill is to prohibit smoking within 50 metres of the red and yellow flags erected by Surf Life Saving Victoria or one of its affiliated surf lifesaving clubs at patrolled beaches. It is intended that this smoking ban will further limit the exposure of children and families to second-hand smoke, denormalise smoking, minimise the littering of cigarette butts and improve public amenity at patrolled beaches in Victoria.

Human rights issues

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

The bill does not engage any human rights protected by the charter.

2. Consideration of reasonable limitations — section 7(2)

As the bill does not engage any of the human rights protected by the charter act it is unnecessary to consider the application of section 7(2) of the charter act.

Conclusion

I consider the bill is compatible with the charter act because it does not raise any human rights issues.

Hon. David Davis, MP
Minister for Health

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:

No parent wants their child to grow up to become a smoker.

Smoking claims nearly 4000 lives in Victoria each year and it remains the leading avoidable cause of cancers, respiratory, cardiovascular and other diseases.

Half of all long-term smokers will die from a smoking-related illness.

At a cost of $6 billion, this smoking-related illness impacts not only on Victoria's health-care system, but on families, the community and the economy (through lost productivity).

Dating from the passage of the Tobacco Act 1987 there has been bipartisan support for a range of reforms to reduce smoking prevalence in Victoria enacted in step with community expectations to increase the range of smoke-free settings and to reduce smoking and exposure to environmental tobacco smoke.

Smoking is banned in all enclosed workplaces in Victoria (including restaurants) and is banned on the grounds of all Victorian government schools. Smoking is also prohibited in the covered areas of train platforms, tram stops and bus shelters, and in cars carrying children.

Almost $8 million is allocated to tobacco control in Victoria each year through the Department of Health and the Victorian Health Promotion Foundation (VicHealth).

This funding supports antismoking advertising, smoking cessation support programs, programs targeted toward groups with the highest level of smoking, and education and enforcement activities.

Just one in seven Victorians is a regular smoker, but more work needs to be done. Smoking rates are still too high among lower socioeconomic groups and in the Aboriginal community.

The Baillieu government will continue these important tobacco control measures by introducing new evidence-based reforms in Victoria over time.

Our goal is to protect the next generation of Victorians, our children, from the harms of smoking.

We know that children are impressionable, that seeing people smoke increases the likelihood that they will become smokers as adults.

To this end, so that today's children do not become tomorrow's smokers, we need to continue our work to denormalise smoking at a whole-of-community level,

ensuring that children do not grow up to see smoking as a normal part of everyday life.

Breaking the link between smoking and everyday family activities is vital to changing social norms around smoking.

Our children must understand that smoking is both highly addictive and harmful to health.

I am proud of this initiative to make Victoria's patrolled beaches smoke-free from 1 December 2012.

Beaches are an important part of summer in Victoria, and I want everyone to experience our unique coastal landscapes at their best.

Through banning smoking on beaches we can protect Victorian families from exposure to second-hand smoke, stop children seeing people smoke and reduce environmental damage from butt littering.

Going to the beach is a healthy outdoor activity for all Victorians and there is no place for smoking. We want to ensure our children are breathing fresh air.

Smoking will be banned between the flags, and within 50 metres of the flags, on all patrolled beaches, including bayside, seaside and riverside beaches, for instance at Mildura.

Statewide smoking bans on beaches were introduced in Queensland in 2005, in Western Australia in 2010 and in Tasmania in 2012. This reform will therefore bring Victoria into line with these states.

'No smoking' signs will be erected at beaches to remind people of the ban, and a communications campaign will also inform Victorians that patrolled beaches are now smoke free.

Over time, it is expected the ban will become largely self-enforcing, but inspectors authorised under the Tobacco Act 1987 will enforce the ban initially.

Smokers who ignore the ban will face an on-the-spot fine of $141, which may increase to over $700 if the matter goes to court.

I commend the bill to the house.

Debate adjourned on motion of Mr JENNINGS (South Eastern Metropolitan).

Debate adjourned until Thursday, 1 November 2012.

JUSTICE LEGISLATION AMENDMENT (MISCELLANEOUS) 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 Justice Legislation Amendment (Miscellaneous) Bill 2012.

In my opinion, the Justice Legislation Amendment (Miscellaneous) 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.

The bill will amend the Supreme Court Act 1986 to clarify the rule-making power of the Supreme Court with respect to the matters which can be referred to a judicial registrar. This amendment is relevant to the right to a fair hearing under section 24 of the charter act.

The amendment will enable the Supreme Court to make rules of court allowing associate judges to refer appropriate, less complex matters to judicial registrars on a case-by-case basis. This will enable associate judges to hear other more complex matters more expeditiously.

The Supreme Court already has the power to make rules providing for the delegation to judicial registrars of particular classes or types of proceeding. The amendment will clarify that the court can also make rules giving a general power for an associate judge to refer a particular application to a judicial registrar.

The right to a fair hearing is not limited, because the circumstances in which a judicial registrar can exercise judicial power are under the auspices of the court. As well, decisions of judicial registrars are, under the court rules, subject to full review by judicial officers of the Supreme Court.

The bill will repeal section 134AE of the Accident Compensation Act 1985, which requires judges of the County Court to give detailed, extensive and complete reasons when deciding a worker's application for leave to proceed with a common-law claim for damages for a serious injury.

The giving of reasons for decisions is an aspect of the right to a fair hearing, and hence this part of the bill is also relevant to section 24 of the charter act. However, the nature of the requirement to give reasons for decisions should be proportionate to the nature of the application.

The requirement to give detailed, extensive and complete reasons in these particular applications places an unnecessary and additional burden on judges and contributes to court backlogs. The provision of judgements in more summary form, as is the usual practice for applications made by way of originating motion, would be more appropriate than the current requirement, which is disproportionate to the nature of the application.

The repeal of the provision will not relieve the court of its obligations to provide clear, proper and adequate reasons appropriate to the nature of each application and sufficient for

the Court of Appeal to consider on appeal. It is also consistent with broader civil justice reforms aimed at facilitating the just, efficient, timely and cost-effective resolution of disputes, while relieving the administrative burden on the courts and litigants.

There are a number of rights in the charter act that are relevant to the Terrorism (Community Protection) Act 2003. However, this statement of compatibility deals only with the impact of the amendment to the Terrorism (Community Protection) Act 2003 as contained in the current bill.

The effect of the bill is that the tabling of the review of the operation of the Terrorism (Community Protection) Act 2003 will not be required until 31 December 2013. This will provide an additional period of six months from the current statutory reporting date of 30 June 2013 and will enable the review of the Victorian act to have full and considered regard to the findings of the Council of Australian Governments' review of counter-terrorism.

The bill will have no effect on the broader operation of the Terrorism (Community Protection) Act 2003.

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:

The Justice Legislation Amendment (Miscellaneous) Bill makes a number of improvements to legislation relating to Victoria's courts and judiciary, together with an amendment to the Terrorism (Community Protection) Act 2003 (terrorism act) that will facilitate a full and proper consideration of a review of counter-terrorism legislation being undertaken by the Council of Australian Governments (COAG).

The bill repeals section 134AE of the Accident Compensation Act 1985. Section 134AE requires judges of the County Court to give detailed, extensive and complete reasons when deciding a worker's application for leave to proceed with a common-law claim for damages for a serious injury. The provision was inserted into the act in 2000 and was intended to ensure that detailed reasons were given in applications for leave. However, the provision has created a significant and unnecessary burden on the judges of the court and adds to the time taken for serious injury applications to be decided.

The court will still be required to provide clear, proper and adequate reasons for applications for leave to proceed. However, in future, reasons for decision will be appropriate for an application made by way of an originating motion.

Removing this requirement will assist the court to resolve serious injury applications more quickly to the benefit of all concerned, particularly injured workers.

The bill amends section 13 of the Judicial Remuneration Tribunal Act 1995. The Judicial Remuneration Tribunal (JRT) is required to make recommendations to the Attorney-General in relation to judicial officers' conditions of service at intervals of not less than one year and not more than two years. The requirement to report periodically does not reflect the JRT's current statutory functions, which were substantially changed by the Judicial Salaries Act 2004. This amendment better reflects the more limited functions now performed by the JRT.

The bill amends the Supreme Court Act 1986 to increase the effectiveness of judicial registrars in the Supreme Court. The amendment will enable the court to make procedural rules which would allow associate judges to refer particular matters to judicial registrars for determination.

The bill amends the County Court Act 1958 by providing that service in the office of Chief Magistrate counts as service in the office of County Court judge for pension purposes. At present, service in a number of judicial and statutory offices counts as service for the purpose of calculating judicial pension entitlements, but the office of Chief Magistrate is not included amongst those offices. As the office of Chief Magistrate already carries the same pension entitlement as County Court judge, it is appropriate to rectify this anomaly.

The bill amends section 38(1) of the Terrorism (Community Protection) Act 2003, which requires the responsible minister to arrange for a review of the operation of the act to be conducted and a report tabled in Parliament by 30 June 2013. The amendment extends the date for the review to 31 December 2013.

At present, there is a review of counter-terrorism being conducted under the auspices of COAG. This review is expected to report back to COAG later this year.

The review under section 38(1) should consider the outcome of the COAG review and its impact on the Terrorism (Community Protection) Act, including whether the act needs further amendment. The extension will allow full and proper consideration of the outcomes of the COAG review. This will ensure that proper consideration is given to the impact on the operation of the terrorism act and the need, if any, for further legislative amendments. This in turn will avoid unnecessary duplication in the matters to be considered by the statutory review.

I commend the bill to the house.

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

Debate adjourned until Thursday, 1 November.

ROAD MANAGEMENT AMENDMENT (PENINSULA LINK) 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 Management Amendment (Peninsula Link) Bill 2012.

In my opinion, the Road Management Amendment (Peninsula Link) 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 objective of the bill is to amend the Road Management Act 2004 (Road Management Act) and the Accident Towing Services Act 2007 (Accident Towing Services Act) to facilitate the operation of the Peninsula Link Freeway under the project deed between the state of Victoria and the project company Southern Way Pty Ltd (Southern Way) entered into on 20 January 2010.

Under the terms of the deed, Southern Way is required to construct, operate and maintain a freeway-standard road for a term of up to 25 years. The amendments broadly mirror the legislative changes which benefited ConnectEast Pty Ltd in respect of the operation and maintenance of the EastLink freeway.

Human rights issues

The bill engages human rights through powers provided to Southern Way to oversee the operation and maintenance of the Peninsula Link Freeway.

Section 12 — Freedom of movement

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

The bill is required to enable a major piece of state infrastructure constructed by the private sector to be made available for public use as a public road. The provision of a public road supports the right of freedom of movement. However, there are a number of provisions in the bill which engage the right of freedom of movement. However, these do not limit that right because they accord with the Road Management Act which has the primary object of establishing a coordinated road management system in Victoria.

For instance, VicRoads has power under the Road Management Act to remove a connection or means of access to a freeway made without the consent of the coordinating road authority. In addition, VicRoads may fence a freeway to prevent access to it.

Clause 12 of the bill provides that Southern Way has the same powers as VicRoads to remove connections to the freeway and build fences in relation to it.

This is effectively the same provision as that contained in section 134A(13) of the Road Management Act which confers those powers on ConnectEast for EastLink.

Section 13 — Privacy and reputation

Section 13 of the charter act provides that a person has the right not to have his or her privacy, family, home or correspondence unlawfully or arbitrarily interfered with and not to have his or her reputation unlawfully attacked.

This right is engaged by clause 8 of the bill which enables a VicRoads authorised officer to exercise powers in respect of Peninsula Link Freeway. This may involve requiring a person to give his or her name and address to an authorised officer or to assist an officer when this officer is exercising a power of entry.

The exercise of these powers by an authorised officer does not limit the right because the powers are conferred in accordance with law and do not arbitrarily interfere with the right.

Clause 8 effectively provides for the same provision for Peninsula Link as that contained in section 71(5A) of the Road Management Act which confers those powers on VicRoads for EastLink.

Section 20 — Property rights

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

The bill confers certain powers of a state road authority on Southern Way particularly through the application of schedule 4 to the Road Management Act. The powers enable Southern Way to remove:

unregistered and abandoned vehicles;

vehicles which are causing obstructions or dangers; or

any other things which obstruct the road.

The exercise of these powers by Southern Way does not limit the right because the powers are conferred in accordance with law and are justified because they operate to improve the safety of road users and the efficiency of the road system.

New section 134D(11) effectively provides for the same provision for Peninsula Link as that contained in section 134A(11) of the Road Management Act which confers those powers on ConnectEast for EastLink.

Section 25 — Rights in criminal proceedings

Section 25 of the charter act provides that a person charged with a criminal offence has the right to be presumed innocent until proved guilty according to law, which includes the minimum guarantee that he or she is not compelled to testify against himself or herself or to confess guilt.

This right is engaged by clause 8 of the bill as the privilege against self-incrimination arises where an authorised officer requires a person to comply with a request or direction. The exercise of these powers by VicRoads does not limit the right because section 81 of the Road Management Act provides for protection against self-incrimination by stating that it is a reasonable excuse for a natural person to refuse or fail to give

information or do any other thing that the person is required to do by or under this act, if the giving of the information or the doing of that other thing would tend to incriminate the person.

Clause 8 effectively provides for the same provision as that contained in section 71(5A) of the Road Management Act which confers those powers on VicRoads for EastLink.

Conclusion

For the reasons given in this statement, I consider that the bill is compatible with 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 objective of the bill is to support the opening and ongoing operation and maintenance of the Peninsula Link by amending the Road Management Act 2004 and the Accident Towing Services Act 2007.

The bill facilitates the operation of the Peninsula Link — a 27-kilometre freeway between EastLink at Carrum Downs and the Mornington Peninsula Freeway at Mount Martha.

The powers granted under the bill are very similar to those conferred by legislation in the past to the operators of other road projects such as City Link and EastLink.

There has been broadbased support for the Peninsula Link.

The delivery of the Peninsula Link is an important step in supporting Victorian jobs and enhancing the state's economic growth and livability.

Peninsula Link is a public-private partnership project.

Southern Way Pty Ltd has been contracted by the state to build the road and keep it open, available and properly managed and maintained.

A trip on the freeway will take around 17 minutes — saving up to 40 minutes in peak periods.

People driving on the Peninsula Link will bypass five roundabouts and eight sets of traffic lights, which provides road safety benefits.

The link will support tourism in and around the Mornington Peninsula as local businesses benefit from improved access to the region.

Other benefits from the link are improved recreational opportunities for local communities as a result of a new 25-kilometre walking and cycling path — the Peninsula Link Trail — which starts in Patterson Lakes and connects with other popular paths in the area.

As part of the Peninsula Link project more than 1.5 million plants, shrubs and trees are being planted along the freeway corridor to improve the environment.

The noise walls are a striking component of Peninsula Link's unique urban design.

The walls are known as 'poly panels' as they are made of recyclable polyethylene and are manufactured locally in Carrum Downs with a lower carbon footprint than its traditional rivals. The manufacturing process allows architectural patterns to be visible on either side of the panel, making them more visually appealing to local residents.

This bill supports Southern Way's post-construction operational role by appointing it as the responsible road authority for the Peninsula Link with the powers it needs to maintain and operate the Peninsula Link for the next 25 years. Specifically, the bill provides for Southern Way to be appointed as the responsible road authority under the Road Management Act 2004 to enable it to undertake operational functions such as construction, inspection, maintenance and repair of the road.

The powers include the power to remove abandoned vehicles or vehicles causing obstructions near the link, to erect or remove structures including permanent or temporary barriers and to restrict traffic near construction sites.

In addition to being the responsible road authority, Southern Way is also granted some of the powers of a coordinating road authority to ensure that road management functions and the use of the road reserve to facilitate the installation or maintenance of non-road infrastructure such as utility pipes and conduits are properly coordinated.

In order to deal with any accident-damaged vehicles, Southern Way Pty Ltd is also permitted to arrange to have such vehicles rapidly removed from accident scenes to a safe temporary storage area to minimise the danger to other road users.

These provisions are essential to maintaining Peninsula Link as a safe and efficiently managed freeway.

I will be declaring the freeway under section 193 of the Major Transport Projects Facilitation Act 2009 after construction has been completed. This declaration is essential to the operation of the bill, as it provides for the definition of the Peninsula Link Freeway.

I commend the bill to the house.

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

Debate adjourned until Thursday, 1 November.

ADJOURNMENT

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

That the house do now adjourn.

Inner South Community Health Service: ministerial visit

Mr LENDERS (Southern Metropolitan) — The matter I raise on the adjournment debate tonight is for the attention of the Minister for Health, David Davis. It relates to the Inner South Community Health Service in my electorate, which does a great deal of work helping people with counselling, drug and alcohol services, Gambler's Help, financial counselling, to name just a few.

I want to focus my adjournment matter on some of the really good preventive work that this service does in the electorate. I also note for the minister's attention that GST revenue is at a record $11.1 billion and commonwealth payments for health will be a record $3.612 billion in this financial year — higher than ever before. I further note that funding for flexible primary care services and health promotion was $239 million in the health budget last year and is down now to $207 million, so what we have seen is that funding for preventive health has dropped from 1.8 per cent of the budget to 1.4 per cent under Mr Davis's watch.

Without wishing to dwell overly on the particular figures, the request I want to make is for the minister to go to the Inner South Community Health Service and familiarise himself with some of the wonderful preventive work that is being done there. This preventive work will save enormously in pressures on the health system in years to come if it is maintained.

The action I am seeking is for the minister to keep a strong focus on preventive work and not make the cutbacks he has, whereby preventive health has gone from 1.8 per cent of the budget in his first year to 1.4 per cent of the budget in his second year. I ask the minister to visit the health service and also to consider whether these cuts will leave a legacy of greater hospital costs in the future if he is cutting preventive health now.

Sneydes Road–Princes Highway, Point Cook: interchange

Mr ELSBURY (Western Metropolitan) — The adjournment matter I raise this evening is for the attention of the Minister for Public Roads, Terry Mulder. It has to do with roads in the Point Cook area, more specifically Sneydes Road, which is a major thoroughfare that connects the Sanctuary Lakes area with Werribee. This is a road that is under heavy stress and certainly is in need of some help, but more importantly this road is bisected by the Maltby bypass of the Princes Highway. Currently there is a single-lane bridge going over the highway at this point and there is no access to the freeway.

I am aware that the Growth Areas Authority has put forward a proposal for increased access to the freeway with a brand-new road interchange being constructed close to the place where the overpass currently exists. This will provide not only a new bridge but also an interchange with the freeway. I also understand that the Victorian government has put $20 million behind this particular project, the Wyndham City Council has contributed about $1 million, and there is an outstanding application to the federal Suburban Jobs program. This program has been selected as being appropriate for this particular piece of work because Sneydes Road will become part of a much larger employment precinct at Werribee, the Werribee employment precinct, which will generate up to 36 000 jobs. This will improve our road, it will improve people's ability to live close to where they work, and it will allow them to have a better connection with the Wyndham region.

I ask that the minister provide an update on where VicRoads is currently with its colleagues at the Growth Areas Authority in their discussions with the federal government to see where our application has got to with the federal Suburban Jobs program, as this particular project is vital. It will provide great relief for the people of Point Cook to have a new access point to the Princes Highway that will also become a major gateway for the Werribee employment precinct.

Victorian Electoral Commission: commissioner

Mr SOMYUREK (South Eastern Metropolitan) — I raise a matter for the Attorney-General, Robert Clark, concerning an important vacant position, that of electoral commissioner with the Victorian Electoral Commission (VEC). The erstwhile electoral commissioner, Mr Steve Tully, formally notified his intention to cease his duties in a letter to the Attorney-General dated 19 March. Mr Tully's last day of official duty as the electoral commissioner for Victoria was on 27 April.

It has been seven months since Mr Tully notified his intention to vacate his position, yet there still appears to be no indication of when the position may be filled. On page 6 of the VEC annual report for 2011–12, tabled

earlier this month, the deputy electoral commissioner, Ms Liz Williams, states that a new electoral commissioner will be appointed in due course. Unfortunately that is as close to a time frame as we have at the moment. I have not yet come across any form of advertising for the position, nor am I aware of any other form of communication indicating when the role of electoral commissioner will be filled.

The electoral commission and the role of electoral commissioner are very important to our democratic traditions. The various duties of the Victorian Electoral Commission are defined by several pieces of legislation. They include: conducting Victorian state elections, local council elections, certain statutory elections, commercial and community elections, and boundary reviews; maintaining the Victorian electoral enrolment register; conducting electoral research; providing education services; and working to engage all Victorians who are entitled to vote in the democratic process.

In the past seven months we have had a number of elections, including the Melbourne by-election, without an official electoral commissioner. We are presently in the process of local government elections. We are approaching a critical time when the leadership of the electoral commissioner will be very important. In the next two years we will have a state redistribution, and in just over two years time we will also have a general election.

Given the above, I request that the Attorney-General inform the house when the electoral commissioner will be appointed by the government.

National Centre for Farmer Health: funding

Mr O'BRIEN (Western Victoria) — The adjournment matter I raise is for the Minister for Health, and it relates to the National Centre for Farmer Health in Hamilton, which is an important centre. It has been well documented that in recent years agricultural exports from this state have been up, particularly since the breaking of the drought. However, there are serious issues remaining in relation to the health of our farmers, including a generally ageing population, in some cases poor diet and in other cases poor exercise, sometimes attributed to a greater use of farm machinery in particular. There can be a range of social issues associated with farm isolation as well as increasing community division. There are also health concerns on occasion in relation to interaction with technology — for example, that associated with wind farms. I am also aware that radio towers have caused some stress to a well-known farmer, Mr John Howard, in Purnim.

These issues are matters of national importance, and they require a national response. For that reason the minister has indicated that the state government will put on the table an offer of $250 000 for the continued funding of the National Centre for Farmer Health, provided that funding is matched by the federal Minister for Health, Ms Tanya Plibersek. Important research is done at the centre in an ongoing program for which funding is provided, including, for example, a paper on the reduction of psychological distress and obesity by increasing physical activity, the Farming Fit study.

That reminds me of many of the promotional messages that come out in relation to the portfolios of not only the Minister for Health but also the Minister for Sport and Recreation, the Honourable Hugh Delahunty, who is the local Assembly member in Hamilton. In many of his programs he emphasises the importance of getting more people more active more often and building sustainable facilities for healthy communities.

I note that in the nearby town of Penshurst a local, Leo O'Brien, who is a cousin of my father, recently donated more than $400 000 to Western District Health Service, and that should be commended. The town's football and netball teams have recently enjoyed premiership success, and I congratulate them on that and the preventive message they send.

The PRESIDENT — Time!

TAFE sector: fee concessions

Mr LEANE (Eastern Metropolitan) — My adjournment matter tonight is directed to the Minister for Higher Education and Skills, Minister Hall, who is in the chamber tonight. It is in regard to TAFE training fees for young people who hold health-care cards. As the minister would know better than I do, prior to the 2010 election the coalition made an election promise to ensure that TAFE concession card holders would pay an annual fee of $100 for a TAFE course, which I consider to be a very good policy.

I understand that the policy was implemented in 2011 — and I have here the Premier's press release, which is stamped 'policy implemented' — but that recent cuts to funding for TAFE will result in this not being available next year for the young people who hold health-care cards. Next year they will face a situation where some TAFE diploma courses may cost between $3000 and $5000, and they will have to cough up that money to attend their TAFE courses.

The action I seek from the minister is that he do something for the people who fall into this category to assist them to gain the TAFE qualifications they seek.

Women: health services

Ms HARTLAND (Western Metropolitan) — My adjournment matter is for the Minister for Health. Women's Health West has received a welcome $600 000 in funding as part of a statewide bucket of money to prevent violence against women, which is the greatest cause of ill health and hospitalisation of women. The need to fund independent women's health services is reflected in the most recent Cambridge University research that shows that strong, autonomous feminist movements were the first to articulate the problem of violence against women and the key catalysts for government action.

Disappointingly, though, at the same time the government has cut funds to community and women's health programs in the west. It seems the government gives with one hand and takes away with the other. The government has cut integrated health promotion, including the Family and Reproductive Rights Education program and community and women's health and family planning programs. Aside from the rate of the consumer price index, funding to these programs has not increased in 15 years, while the population has increased by up to 30 per cent. These programs now face cuts of between 5 per cent and 13 per cent in 2012–13, with decreases threatened in the following year as well. For most women's health services, this results in a 5 per cent cut to their total budget, compounding the decrease in indexation to community service funding. The community health sector called for an indexation rate of 3.58 per cent, with a minimum of 3 per cent, to maintain current service capacity. However, the government ignored this and has committed to funding only 2 per cent.

Back in August I wrote to the minister outlining my concerns about these cuts to integrated health promotion funding. Despite the importance of this issue, the government has failed to respond to my letter of more than two months ago. In this letter I outlined that the western suburbs of Melbourne are overrepresented in many indicators of poor health and wellbeing. The delivery of integrated health promotion through the community and particularly women's health sectors has proven to be an effective, efficient and productive use of the health budget. Investing in prevention approaches to health policy has significant economic benefits to government, including reduced hospital admissions, lower pharmaceutical expenditure and a significant decrease in the need for investment in acute health services. Knowing the value and positive health impacts of this work, I believe that any cuts to these programs will result in negative health and wellbeing outcomes in the western suburbs. The cost to the public health system will be greater in the long term.

The action I ask of the minister is that the crucial funding for the integrated health promotion program be restored to continue to operate these critical programs and services.

City of Kingston: councillor conduct

Hon. M. P. PAKULA (Western Metropolitan) — The matter I wish to raise is for the Minister for Local Government. Last sitting week we were treated to the spectacle of Mrs Peulich using the Parliament not once but twice for the purpose of dirtying up local government candidates for the City of Kingston who just happened to be running against a member of her family. It surprised me to hear it, given the lectures we endured from members of the government, including Mrs Peulich, in the last parliamentary term about how improper it is for members of Parliament to involve themselves in local government matters. We heard it during the debate on the anticorruption commission, during the debate on the Local Government Amendment (Conflicting Duties) Bill 2009 and in other debates. As a consequence of that, it surprised me to hear last week's adjournment debate, particularly as Mrs Peulich in a debate during the last Parliament referred to Cr Steve Staikos as a fine young man. In any case, if yesterday's *Age* is anything to go by, Mrs Peulich's deep involvement in local government is on the verge of becoming much more well known.

That brings me to a statutory declaration sworn by Cr Rosemary Anne West some five days ago, a statutory declaration that I am happy to table for the benefit of the house. Cr West was one of the subjects of Mrs Peulich's adjournment matter last week, and in Cr West's sworn declaration she makes some serious allegations about the conduct of Cr Paul Peulich. In her sworn declaration she alleges that Cr Peulich has engaged in a witch-hunt and that the witch-hunt is 'orchestrated and coordinated by persons outside council'. I wonder who she could be talking about.

She describes a 'pattern of intimidation'. Interestingly, she says she has been warned by Cr Peulich that there is a dossier on her. Many of us in this house have heard that one before as well. She describes a campaign of bullying and personal attack designed to advance the interests of a certain select cohort of persons. These are indeed very serious allegations. The action I seek is that

the minister immediately use the powers at her disposal to ensure that these serious allegations raised by Cr West are properly investigated.

Koo Wee Rup bypass: progress

Mr O'DONOHUE (Eastern Victoria) — I raise a matter for the attention of the Minister for Roads, the Honourable Terry Mulder. It concerns the issue of the Koo Wee Rup bypass. President, as you will know from previous contributions from members in this place and the other place, Koo Wee Rup bypass has been an issue of significant community concern not only for Koo Wee Rup but also for the communities of the Bass Coast, South Gippsland and the broader West Gippsland region for many years. Despite repeated requests during the last Parliament, the previous minister and the previous government failed to take action to fund the construction of the Koo Wee Rup bypass. I am very pleased that in its first two budgets the coalition government has delivered funding for the project to be undertaken pursuant to the election commitment made by the now Premier, Mr Baillieu, on his many visits to Koo Wee Rup during the last Parliament.

Regrettably, despite various press releases having been issued by Mr Pallas, the member for Tarneit in the Assembly and then Minister for Roads and Ports in the Labor government, planning for the route was not as advanced as had been anticipated by the new government. I know Minister Mulder has been diligently working with VicRoads and others to progress the reservation, the protection of the reservation and other matters necessary to allow works to begin. I also understand that there have been some issues with the commonwealth and matters associated with its Environment Protection and Biodiversity Conservation Act 1999.

However, given the Koo Wee Rup community's significant interest in the bypass and the importance of the bypass for transport links to Phillip Island and the Bass Coast, for livestock transporters who wish to access the Victorian Livestock Exchange at Pakenham and for many other uses, I seek an update from the minister with regard to the progress of this most important project for the Koo Wee Rup, West Gippsland and South Gippsland regions. Noting that this was an important election commitment, I look forward to the update from the minister.

The PRESIDENT — Order! I indicate to the minister that Mr O'Brien's matter was incomplete as far as the Chair is concerned. I have no idea what he was asking for because he covered three or four different topics in his adjournment item. All members are supposed to address only one item. I am not sure that we are in a position to speculate on either what his request was going to be or which of the three or four matters he was talking about were the cause of his concern tonight. Mr O'Brien's adjournment matter was incomplete, so I direct that it not be responded to.

I am a little uncomfortable with the matter Mr Pakula has raised tonight in the sense that I am not aware whether or not the person who has signed the statutory declaration that Mr Pakula referred to has raised the matter with or lodged a complaint with the minister. I will not rule it out, partly because there is an element of fairness involved in this debacle. Perhaps the minister is the appropriate person to consider some of the matters that have been raised in this chamber in recent weeks. But I do not think it is a good process for us to have members bring in a document from a third party or a person outside the Parliament and ask for action by a minister on that document if the person has not chosen to lodge a complaint in that sense.

In other words, if, as it is in this case, Cr West lodged a complaint with the minister and Mr Pakula was following up that complaint and suggesting that he also thought the minister should review this matter, then that would be a proper process. But if Cr West has not at this stage lodged a complaint and the only complaint about such a document has been lodged by a member of Parliament, that is less satisfactory. I am not intending to rule the matter out, but members should take care in terms of the sorts of documentation they bring before the house.

Hon. M. P. Pakula — On a point of clarification, President, I understand the ruling and the point you have made, but I simply ask you to consider this. On the adjournment members raise matters that are brought to them by constituents on all manner of subjects that have not previously been raised with ministers. WorkCover applicants may raise a matter with a member of Parliament, who then raises it with the minister responsible for WorkCover. All manner of matters that have never previously been raised with a minister are brought to the attention of the minister for the first time by a member of this house during the adjournment debate. I understand the difference with a statutory declaration or a document of that nature, but it is in no manner unusual for a matter to be brought to the attention of a minister by a member and the member's raising it in the house being the first time it has been brought to the attention of the minister.

The PRESIDENT — Order! There is some validity in the comment Mr Pakula has made, but let me suggest

to him that with respect to local government matters there is a distinction between those and other matters that would be brought forward by members on behalf of members of the public who do not necessarily have access to some sort of adjudication process. For local government complaints there is a very clearly established complaint process through the local government department and in some cases, as perhaps with this one, through the Victorian Electoral Commission, which is conducting those elections.

There are formal processes for complaint with regard to local government matters, given that the people involved in local government are elected officials and also have some standing, which is different to somebody, for instance, who might be seeking the intervention of a minister on a water, education or housing matter and is not involved in public office. Yes, they have a complaint, and, yes, it has not necessarily been prosecuted with the minister ahead of the member raising it in here. Mr Pakula is correct that in most cases most adjournment debate items would not occur in that way, but in regard to the standing of members of local councils and the processes that are already in place, there is a distinction on this one.

Responses

Hon. P. R. HALL (Minister for Higher Education and Skills) — I have one written response to an adjournment debate matter raised by Mr Lenders on 28 August.

In addition to that, tonight Mr Lenders raised a matter for the Minister for Health urging the minister to visit the Inner South Community Health Service, particularly to look at the preventive health programs it runs. I will pass the request to visit that organisation on to the Minister for Health.

Mr Elsbury raised a matter for the Minister for Roads concerning Sneydes Road, Point Cook, seeking in particular an update on an application for some federal funding to provide access to and egress from the Princes Highway, as I understand it. I will pass on that request.

Mr Somyurek raised a matter for the Attorney-General seeking a time frame for the appointment of a chief electoral commissioner in Victoria. I will pass on the request for that information to the Attorney-General.

Mr O'Brien will be counselled by his leader to be more precise with the requests he makes on matters raised during the adjournment debate.

Mr Leane raised a matter for me, and I will come back to that.

Ms Hartland raised a matter for the Minister for Health concerning funding for women's health programs — a very important area. I will pass on Ms Hartland's comments and request to the Minister for Health.

Mr Pakula raised a matter for the Minister for Local Government urging the minister to investigate issues raised in a statutory declaration by Cr Rosemary West. I will pass that on to the minister, and I am sure that the minister will take heed of some of the comments that both Mr Pakula and the President made with respect to this matter.

Mr O'Donohue raised a matter for the Minister for Roads concerning the Koo Wee Rup bypass, seeking an update on when works on that bypass will take place. I will pass that on.

Mr Leane asked me, in my capacity as Minister for Higher Education and Skills, a question which concerned some concession fees paid by health-care card holders undertaking diplomas and advanced diplomas. I need to give a bit of background to this question and answer it in a fulsome way.

First of all, it is absolutely true that prior to the last election the coalition gave a commitment to introduce a concessional fee structure for health-care card holders who were studying at TAFE institutes and were aged under 25. There was a commitment in total of $100 million, which would provide for the limited introduction of those concessional places for TAFEs only and also for extending the number of exemptions from the full payment of fees by all students. That $100 million proved to be very popular in terms of the way it was accessed and capitalised on. I can assure Mr Leane that the $100 million for those programs was quickly absorbed in the first two years, and that commitment has been fully expended.

Prior to that, when the previous government introduced this scheme there were no concession places for students studying for a diploma or advanced diploma; that is a fact. What was available to them, as is available now, was the VET FEE-HELP scheme, which is a vocational education and training sector student scheme and is part of the higher education loan program. Under the previous government, students wishing to study for a diploma or advanced diploma would either pay the scheduled fee or access VET FEE-HELP to assist them with that payment. That is available to students now. The VET FEE-HELP scheme, like the former higher education contribution

scheme, is an income-contingent loan scheme, and currently only when a person's income reaches around $44 000 per annum — I think that is the current figure — is a repayment due on that loan scheme.

Mr Leane urges me to reinstate a concession payment for those studying for a diploma or advanced diploma. Clearly the commitments of this government have been honoured in terms of the expenditure of the promised funds. That has been completed. Now I can say to him that, just as under the previous government, for all students who are studying at the diploma and advanced diploma level that VET FEE-HELP scheme is available.

Moreover, in conjunction with the commonwealth, some certificate IV programs will now also become eligible for VET FEE-HELP. We are currently negotiating with the federal government as to which of those certificate IV programs might also assist students by having a VET FEE-HELP scheme. That is the response to Mr Leane in terms of the issue he raised here tonight. As I understand it, it was made clear by the Chair — I think it was the Deputy President — that my comments in response therefore should deal with that matter raised by him tonight.

The PRESIDENT — Order! The house stands adjourned.

House adjourned 5.34 p.m. until Tuesday, 13 November.