PARLIAMENT OF VICTORIA

PARLIAMENTARY DEBATES (HANSARD)

LEGISLATIVE COUNCIL

FIFTY-SEVENTH PARLIAMENT

FIRST SESSION

Tuesday, 17 April 2012

(Extract from book 7)

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By authority of the Victorian Government Printer

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

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

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

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

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

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

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

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FIFTY-SEVENTH PARLIAMENT — FIRST SESSION

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Jennings, Mr Gavin Wayne	South Eastern Metropolitan	ALP	Tee, Mr Brian Lennox	Eastern Metropolitan	ALP
Koch, Mr David Frank	Western Victoria	LP	Tierney, Ms Gayle Anne	Western Victoria	ALP
Kronberg, Mrs Janice Susan	Eastern Metropolitan	LP	Viney, Mr Matthew Shaw	Eastern Victoria	ALP

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TUESDAY, 17 APRIL 2012

Tuesday, 17 April 2012

The PRESIDENT (Hon. B. N. Atkinson) took the chair at 2.04 p.m. and read the prayer.

The PRESIDENT — Order! I ask that members of the Council who are wearing badges in connection with a campaign remove those badges consistent with longstanding practice in this house. I acknowledge that there is an issue that is being pursued, and I think that it is being appropriately pursued, but I do not believe those badges ought to be worn in the house.

ROYAL ASSENT

Message read advising royal assent on 3 April to:

Drugs, Poisons and Controlled Substances Amendment (Supply by Midwives) Act 2012
Legal Profession and Public Notaries Amendment Act 2012
Port Bellarine Tourist Resort (Repeal) Act 2012
Water Amendment (Governance and Other Reforms) Act 2012.

QUESTIONS WITHOUT NOTICE

Planning: revitalising central Dandenong

Mr TEE (Eastern Metropolitan) — My question is to the Minister for Planning. Can the minister assure the house that the Baillieu government is committed to the revitalising central Dandenong project?

Hon. M. J. GUY (Minister for Planning) — That is a good question that I would be very pleased to answer for Mr Tee, because the previous governments, the Bracks and Brumby Labor governments, began the revitalising central Dandenong project, which of course has caused enormous problems for the Little India traders, as Mr Tee would be well aware. Many Little India traders have had their properties compulsorily acquired under the previous government's central Dandenong initiative, and that has led to huge uncertainty for those traders. This government has had to fix that problem. We have had to go in there and send the small business commissioner to mediate with the traders for Places Victoria — —

Mr Tee — Vorchheimer did; not you!

Hon. M. J. GUY — I notice you are vocal today, Mr Tee. Maybe your letter to the Leader of the Opposition's office was leaked as well, was it, or was it just Mr Somyurek's that was leaked?

Mr Jennings — That was seamless.

Hon. M. J. GUY — One of the younger Turks is vocal, I notice. On the outer, Mr Jennings, the failed former minister and one of the old guard, comes down. In relation to revitalising projects, such as revitalising Labor's front bench, I thank Mr Tee for his revitalised question from one of the young Turks of Labor's front bench and remind him that this government will not only deliver the central Dandenong project but will deliver it in a way that does not do over local traders as Labor's commitment to it did.

Supplementary question

Mr TEE (Eastern Metropolitan) — I thank the minister for that answer. Will he at least inform the house whether the revitalising central Dandenong project is under review?

Hon. M. J. GUY (Minister for Planning) — I do like it when Mr Tee comes into the chamber with factually incorrect material. I really like it.

An honourable member interjected.

Hon. M. J. GUY — The assumption was wrong. Where do you fit in — the old guard or the new guard? You had nine months, so which one are you? Are you kind of skating either side or, as Joh Bjelke-Petersen said, walking either side of a barbed wire fence?

The PRESIDENT — Order! In his substantive answer the minister has already canvassed a number of matters that I think are extraneous to the question, and I am aware that in his supplementary answer he has limited time, as he may also be aware. I ask him as a matter of relevance to address the question that Mr Tee has asked.

Hon. M. J. GUY — The project — —

Hon. M. P. Pakula interjected.

The PRESIDENT — Order! That is not helpful to the minister.

Hon. M. J. GUY — The project is not under review. It is being delivered, and I expect it to be delivered in a manner that does not do over local businesses, as was originally planned by Labor. It will be outlined and built properly in a manner consistent with this government's vision for urban renewal.

Automotive industry: government support

Mr ONDARCHIE (Northern Metropolitan) — My question is to the Minister for Manufacturing, Exports

and Trade, Richard Dalla-Riva. I ask: can the minister update the house on any exciting new developments for the automotive sector in Victoria?

Hon. R. A. DALLA-RIVA (Minister for Manufacturing, Exports and Trade) — I thank the member for his question and his ongoing support for the automotive sector. I am very pleased to inform the house that just yesterday the Victorian government announced a historic agreement between GM Holden and the Pan Asia Technical Automotive Centre (PATAC) to develop new vehicles for the expanding Chinese automotive market. This announcement is a new joint venture between GMH and the Shanghai Automotive Industry Corporation. Part of the PATAC partnership will see the development of at least two new vehicles for the world's largest car market at the design and engineering centre at Holden's Port Melbourne base. This is a great boost for Victoria's automotive industry.

This important link recognises Victoria's reputation as a centre of excellence in automotive design and engineering. Even those opposite have told us that Victoria is one of the few places in the world where a vehicle can be taken from the design concept phase all the way through to being manufactured for the showroom floor. This is the capability that makes Victoria special.

The Victorian government is committed to continuing investment in this important high-tech manufacturing sector. It is important that industry and research institutions work closely together. The Victorian government strongly supports this collaboration, which produces outcomes like the PATAC and GM venture. This collaboration is also central to our manufacturing strategy. It has enabled important research and development capability to remain here in Victoria and to allow local contract work to be undertaken for the GMH global supply chain. The PATAC-GMH joint venture is yet another example of the great opportunities for innovation, research and development in the automotive sector here in Victoria.

We in the coalition will never talk down the automotive industry. This government is focused on ensuring that this sector is strong and successful. Although the sector is facing multiple challenges, the announcement reminds us of the strength and resilience of our car manufacturing industry in Victoria. To secure and strengthen Victoria's economic advancement we need an internationally competitive and dynamic manufacturing sector that is able to project Victorian companies confidently in the supply chain of global production. The automotive industry remains vital to achieving this outcome. I thank the member for his question.

Hospitals: Waurn Ponds

Ms TIERNEY (Western Victoria) — My question is to the Minister for Health, David Davis. I ask: does the minister stand by his statement that the construction of a new public hospital at Waurn Ponds will have commenced by the end of this parliamentary term?

Hon. D. M. DAVIS (Minister for Health) — I thank the member for her question and indicate that the government stands by all its election commitments. I will take the opportunity to make some commentary about health services in and around Geelong, Waurn Ponds and the region that is serviced by Barwon Health. I was fortunate the other day to be at Barwon Health to look at progress on a number of key matters.

Honourable members interjecting.

Hon. D. M. DAVIS — It was sitting crookedly, and I straightened it. In the spirit of the moment, I have done some minor repair work.

My point here is that Barwon Health services a significant and growing market. The government is determined to make sure that health services are well looked after throughout that whole area. It is a community that has a magnificent set of health facilities, but it needs to deal with the growth that is occurring through that region. There is significant growth throughout the region that is serviced by Barwon Health, and the government, through its election commitments, will honour the promises to the people of Geelong to deliver on those commitments.

Supplementary question

Ms TIERNEY (Western Victoria) — I take it that the minister is confirming there will be a new public hospital at Waurn Ponds. When exactly will construction of this hospital be completed, and will there be funding allocated in the May budget towards this project?

Hon. D. M. DAVIS (Minister for Health) — I thank the member for her question. She will well understand that I am probably not going to announce the budget today. In the next sitting week the Treasurer will have the honour of delivering the state budget. He will make announcements about recurrent programs but also important capital programs. The government stands by its election commitments to the people of Geelong. We put forward significant enabling works money in last year's budget to enable significant work to begin at

Geelong Hospital. I was at Geelong Hospital, as I said, late last week — —

Hon. M. J. Guy — Was it a written invite?

Hon. D. M. DAVIS — No. It was a very good opportunity to announce money for the cardiac catheter lab at Geelong Hospital, an important program to replace key medical equipment. That is a measure of the government's commitment to the people of Geelong and the surrounding region. The government will make announcements in the normal way in the normal budgetary cycle.

Skills training: government initiatives

Mrs PEULICH (South Eastern Metropolitan) — My question is to the Minister for Higher Education and Skills, who is also the Minister responsible for the Teaching Profession, Mr Hall. Since the last sitting of Parliament the minister has announced a new industry engagement model to advise the government on training needs. Would the minister advise the house on why the change was considered to be necessary and about the benefits the new model will provide?

Hon. P. R. HALL (Minister for Higher Education and Skills) — I thank my colleague Mrs Peulich for her question on this very important topic. She is right when she said that since the last sitting of this house the government has announced some new industry engagement models for liaising with industry and determining training needs for industry in this state.

The first part of Mrs Peulich's question was: why was change necessary? Change was necessary for the fundamental reason that the way in which training is secured in the state of Victoria is dramatically different to how it was secured prior to June 2009. The government at that time introduced a new market-driven training system and moved from a purchaser-provider system. Under the purchaser-provider system what was required of government was advice, which it collected primarily from industry training advisory boards and the Victorian Skills Commission, on how many training places were required in each of those vocational areas. Government then went about a process through the Victorian Skills Commission to purchase that number of training places from both public and private providers.

In July 2009, with the then government introducing a new system under the branding of skills reform, it moved to a market-driven system whereby there was no limitation on training places. According to entitlements and under certain eligibility requirements there was no cap on training places in any particular vocational areas. If Victorians wished to train in a particular area, they could. That new system was fundamentally different to that of the past.

Consequently the roles of the industry training advisory boards and the Victorian Skills Commission have now significantly changed. The government is looking for advice from industry as to whether this new market-driven system is delivering in quantity and quality to its training needs rather than advice on a particular number of training places. The government has embarked on a new industry engagement model that seeks to engage more directly with industry itself. Some of the new features of the model will include the establishment of an industry skills consultative committee that will work with me and my colleagues in relevant government departments. The Department of Primary Industries is one of those departments. People like my colleague Mr Dalla-Riva are very interested to work with the Department of Education and Early Childhood Development in making this industry engagement model effective.

One of the great features of this model is that we will be able to use the networks of other government departments and benefit from the relationships they have with providers and businesses in their sectors to work together so that across government departments there is a good network of intelligence as to what industry needs. We will also be using a model where we engage directly with industry associations and through regional development organisations, because this industry engagement model has to understand regional needs and not just particular industry vocational needs. We will utilise the networks and intelligence of the regional development organisations to assist in identifying industry needs.

Some technology will also be used so that there can be linking through a website where providers and industry can see what they need and match their needs with certain providers. There are some great benefits with that. Through the Higher Education and Skills Group we will also maintain a strong presence through our market facilitation managers. This model will work well, and it is one that is needed for current times. I am pleased to have been able to introduce it. Members will be able to comment more fully when legislative change to reflect these changes is implemented later in the year.

Higher education: training programs

Mr LENDERS (Southern Metropolitan) — My question without notice is also to Mr Hall in his

capacity as Minister for Higher Education and Skills. I refer to the minister's statement in the house on 15 March that Skills Victoria will be undertaking quality checks of training providers through a market monitoring unit and rapid response team. Given that enrolments at private training colleges have risen by more than 100 per cent in the last year, which is in effect what the minister said in his earlier answer, how much funding will be transferred from the Victorian Registration and Qualifications Authority (VRQA), which has coverage of this, to Skills Victoria, which will now need to undertake the task?

Hon. P. R. HALL (Minister for Higher Education and Skills) — Mr Lenders is right in that I am making quality a no. 1 priority in training in Victoria, and some of the processes towards ensuring that quality is achieved have already been the subject of announcements I have made in this chamber. How they will be funded is part of government decision making, and when the budget comes down I will be able to accurately give the dollar amount that will be applied to those measures.

Supplementary question

Mr LENDERS (Southern Metropolitan) — I thank the minister for his answer, but without telling me in exact dollar terms, can Mr Hall assure me that the VRQA funding will not be cut as a consequence of this policy decision?

Hon. P. R. HALL (Minister for Higher Education and Skills) — VRQA is a body that has progressively been moved towards being self-funded. That progression towards self-dependency was started under the previous government. In the last 12 months no government funding has been applied to VRQA. It has been a self-funded organisation using the appropriate fees it realises through the services it provides to education providers and training providers in this state. With respect to whether additional tasks are being applied to VRQA, if there are additional tasks, then they will be funded appropriately.

Royal Children's Hospital: award

Ms CROZIER (Southern Metropolitan) — My question is to the Minister for Health, Mr David Davis, and I ask: can the minister inform the house of any recent acknowledgements of Victoria's brand-new Royal Children's Hospital?

Hon. D. M. DAVIS (Minister for Health) — I am very happy to inform the house that the Royal Children's Hospital project has won the prestigious project of the year award from Infrastructure Partnerships Australia. I was fortunate enough to attend that function in Sydney and to see this project win project of the year, providing recognition for the good work that has been done over a number of years.

I put on record the work done by Tony Lubofsky, the project director, but also the work undertaken by the equity holders, Lend Lease as contractor, Spotless Group as facilities manager, architects Billard Leece, Bates Smart and HKS. The $1 billion Royal Children's Hospital is a project that the community can be proud of. It is a project that will stand Victoria's children in good stead into the future.

Honourable members interjecting.

Hon. D. M. DAVIS — The Queen was very impressed with the project, but she probably would not be impressed that the previous government left a $24 million black hole in unfunded ICT. Nonetheless, the project as a public-private partnership procurement model does stand up as a very good project and a project that Victorians can be proud of. It is a project that still has some way to go before it is completed. Part of the area is to be returned to parkland, and the government is committed to getting a good outcome for the community in that respect.

However, all Victorians can take pride in the delivery of this project. They can see that it is a project that will serve Victorian children for the next 50 years, a project that stands up on any world comparison and a project that was delivered on time and on budget.

Questions interrupted.

DISTINGUISHED VISITORS

The PRESIDENT — Order! It gives me great pleasure to advise the house that we have a distinguished delegation in the chamber this afternoon from our sister state Jiangsu Province. Madam Bai, the vice-chair of the Jiangsu Provincial People's Congress, is with us, along with Madam Qi, the vice-chair of the committee of foreign affairs for the Jiangsu Provincial People's Congress.

Madam Qi is a longstanding friend of Victoria and will be known to quite a number of members. Mr Pakula and I met her and Madam Bai in Jiangsu Province three years ago, I think. At any rate, Madam Qi is looking to retire from her position. That is a disappointment in some ways for Victoria because we have had such a firm friend in the people's congress. The work it has done in cementing the relationship between our two

peoples — of our state and Jiangsu Province — has been very significant over an extended time.

Madam Bai is here on her first visit, as are all the members of the delegation. I think Madam Qi has been engaged as their guide because she probably knows Victoria as well as we do. We extend a very warm welcome to all the members of the delegation. I trust that they enjoy their visit here on this occasion and that they find it informative. We extend our best wishes to the people of Jiangsu, with whom we have one of the most important relationships for the state of Victoria.

QUESTIONS WITHOUT NOTICE

Questions resumed.

Maternal and child health: funding

Ms MIKAKOS (Northern Metropolitan) — My question is for the Minister for Children and Early Childhood Development. In light of this financial year's expiration of maternal and child health funding, will the minister make the same commitment that Labor did in the 2008–09 budget to provide 10 000 additional maternal and child health funded places per annum to address Victoria's continuing baby boom?

Hon. W. A. LOVELL (Minister for Children and Early Childhood Development) — I thank the member for her question and her acknowledgement of the importance of Victoria's universal maternal and child health system, a system that the Baillieu government values and is committed to. As I have told the member before, I am not about to pre-empt any budget announcements. She will have to wait until 1 May to see funding commitments in future budgets.

Supplementary question

Ms MIKAKOS (Northern Metropolitan) — On a supplementary question, under the previous triennial service agreement between the Victorian government and the MAV (Municipal Association of Victoria) the cost of the core provision of maternal and child health services was shared equally between councils and the state government. Given the continual cost shifting we have seen in recent times from this government to local councils, does the government intend to retain the 50-50 split of costs regarding maternal and child health funding?

Hon. W. A. LOVELL (Minister for Children and Early Childhood Development) — I really thank the shadow minister for children and young adults for the question because when I was the shadow Minister for Children and Early Childhood Development and talking to the MAV I was told how the cost shifting had occurred under the Brumby government. I was told yes, maternal and child health in the past had been funded 50-50, but funding from the state government had declined until it got to about 46-54. We are currently going through a process of negotiating a further contract with the MAV, and we will announce the results of that when that contract is completed.

Housing: homelessness action plan

Mrs KRONBERG (Eastern Metropolitan) — My question without notice is directed to the Minister for Housing, who is also the Minister for Children and Early Childhood Development, Minister Lovell. I ask: can the minister update the house on the implementation of the Victorian homelessness action plan and other funding being provided to combat homelessness?

Hon. W. A. LOVELL (Minister for Housing) — I am absolutely delighted to update the house on the Victorian homelessness action plan. I thank the member for her question and for her ongoing interest in the implementation of the action plan. I was pleased last Friday to announce $25 million in funding to go towards a number of significant projects to address homelessness in Victoria. As we have already said, they are part of the $76.7 million Victorian homelessness action plan that I announced last October. The announcement of the 10 innovation action projects on Friday was a fantastic opportunity to highlight the innovation of the sector. These innovation action projects have been tailored by the sector, and it is a new approach to combating homelessness.

This new approach includes improved integrated services to address homelessness and more proactive early support to prevent people from becoming homeless. This means horizontal partnerships across providers to ensure that specific clients' needs are met. The 10 innovation action projects focus on creating partnerships that can give people the support they need when they need it. One project, the Star Housing project, has 14 partnerships involved. If we are going to make a genuine difference to the lives of people experiencing homelessness, we need to focus on the needs of individual clients, and that is what this project aims to do. We also want to focus on the underlying reasons why these people became homeless in the first place and support them to overcome those issues.

The innovation action projects will be implemented in two stages. In the first stage $15 million will fund the

establishment and delivery of 10 projects, with some funding still available to upscale the projects that demonstrate early success and also to fund a new project that we will develop in consultation with the family violence sector. Stage 2 will be a further $10 million to upscale those projects among the first 10 that are kicking real goals.

Approximately $5.4 million of the $25 million that has gone towards the action projects is from the national partnership on homelessness, but these action projects are so good and so innovative that the federal government actually tried to claim credit for them. On Friday the federal Minister for Homelessness, Brendan O'Connor, claimed credit for $14 million of the $25 million. His claim was just plain wrong. It is incorrect, and he should cease taking credit for the innovative approach of the Victorian coalition government. The 10 innovation action projects are spread throughout metropolitan Melbourne and regional Victoria, and I am excited by the promise of a new way of tackling homelessness and working in cooperation with the sector.

Child abuse: parliamentary inquiry

Ms HARTLAND (Western Metropolitan) — My question today is for Mr David Davis as the Leader of the Government. I have a copy of a police report dated 5 February in regard to the number of suicides that have occurred as a result of criminal and sexual abuse. I found this report extremely difficult to read. The question I have of the government is that this report recommends referral to a coronial inquiry. Will the government support that referral?

Hon. D. M. DAVIS (Minister for Health) — I think Ms Hartland's question is a very fair one on a very serious matter. I too read those reports and the data that was presented there. I note that much of this comes out of the Protecting Victoria's Vulnerable Children Inquiry and the issues that surround a number of its recommendations. That is the province of my colleague the Minister for Community Services, and I know the government is developing a whole-of-government response. That process is currently under way — I believe some announcements about those matters may be made today — but I indicate that I will take Ms Hartland's point on notice, and I note that the responsibility for response overall is in the area of the Minister for Community Services.

Supplementary question

Ms HARTLAND (Western Metropolitan) — I understand that, but I am asking Mr Davis as Leader of the Government. I understand that today the government announced a referral in relation to abuse by clergy, but the referral is very weak in comparison with what was asked for in the Cummins report, which was an independent inquiry separate from government. It is quite clear what recommendation 48 is asking for. A parliamentary committee is not what the Cummins report asked for, so I am asking the government: why have a half measure when a full, independent inquiry has clearly been asked for, as recommended in recommendation 48 of the Cummins report?

Hon. D. M. DAVIS (Minister for Health) — As the member alludes to, an announcement has been made; I understand that it was to be made today. I indicated that this is the responsibility of the Minister for Community Services and a whole-of-government response to the inquiry over all will occur. As to the idea that a parliamentary committee is not the right mechanism, I am not sure that I have such little faith in the Parliament. I have faith in the parliamentary committee and its capacity to provide answers in a bipartisan, non-party political way. I think that committee will be able to undertake those matters, and I know further response to the Cummins inquiry will be made as the government reviews that carefully.

Small technologies: government initiatives

Mr FINN (Western Metropolitan) — My question without notice is directed to the Minister for Technology, the Honourable Gordon Rich-Phillips, and I ask: can the minister update the house on recent developments in Victoria's small technology sector?

Mr Viney — On a point of order, President, this is the second time today that we have had a general question asking a minister to reflect upon a portfolio with no specifics related to the question. Whilst I have not had a chance to look, I think there are previous rulings that say a question to a minister needs to have some specifics to make it a question so that the minister's response will make sense and be understood by the house.

Hon. G. K. Rich-Phillips — On the point of order, President, as I understand Mr Finn's question, it related to a specific part of the technology portfolio and asked me about recent developments in that sector of the technology portfolio.

The PRESIDENT — Order! I will allow it on this occasion, but I share Mr Viney's view, in the context of our standing orders and previous rulings, that it is important for the integrity of question time that questions are specific in nature rather than general,

open-ended questions that allow ministers to go where they might. I am not going to suggest that it is laziness that prompts a question to be framed in a way that is open ended, but it is a courtesy to the house that questions go to a specific topic and that there is a particular line of question in them, so I accept the point of order to that extent.

On this occasion I will allow the question to stand; it is fairly clear that the minister has an understanding of what the question might have been seeking from him. I will allow the minister to proceed on this occasion, but I counsel members that when they are framing questions they need to try to make sure the question takes a specific line.

Hon. G. K. RICH-PHILLIPS (Minister for Technology) — I thank Mr Finn for his question and for his interest in the small technology sector, which is an important and growing part of the technology sector in Victoria. Over the last 40 years we have seen the impact that technology has had on industry in this state, in this country and around the world. We have particularly seen the impact that ICT has had on revolutionising the way we undertake many day-to-day activities in life, the many ways business operates and the many ways other areas operate, such as the medical profession, and it is important that we now take up the opportunity to enhance technology and seize the opportunity that technology creates in areas beyond ICT. That is why the Victorian government has a great interest in harnessing the opportunities which are created in the small technology area.

Last year I was pleased to release Victoria's technology plan for the future, which included a $10 million package related to small technologies. An important part of that package was the Small Technologies Industry Uptake Program (STIUP). This element of the small-tech package was designed to create opportunities for companies and organisations in Victoria that are undertaking product development or research and market development to harness the potential created by the small technology sector.

The program operates through a range of vouchers which are available to companies that seek to harness either facilities provided through the small technology sector or the services, expertise or innovation which exist in the small technology sector. It provides them with a voucher for $10 000 at the feasibility level, $50 000 at the technical level and up to $250 000 at the trial level to match their needs in developing their new products with services and facilities that are available through the small technology sector. It is a great way to drive the technology-enabled innovation that the government is seeking to drive in the broader economy and also a great way to stimulate demand in the small technology sector. It is a program that the Victorian government is very keen to support.

Earlier this month I was pleased to announce the latest recipients of trial vouchers under the STIUP program. The latest three recipients of trial vouchers are Micro-X for the development of a mobile X-ray machine which can be brought to a hospital patient's bedside, with potential new applications in veterinary and mobile medical fields; Nufarm for the development of next generation agricultural products with improved shelf life and lower production costs; and SeeD4 for the development of a rapid, low-cost diagnostic test that will allow for more efficient treatment and management of HIV.

These are important developments harnessing the potential that small technologies provide. The Victorian government is very pleased to support the Small Technologies Industry Uptake Program. It looks forward to this program delivering more opportunities for the small technology sector and, importantly, delivering more opportunities for innovation in the broader Victorian economy.

QUESTIONS ON NOTICE

Answers

Hon. D. M. DAVIS (Minister for Health) — I have answers to the following questions on notice: 161, 427, 477, 795–6, 798–9, 1085, 1091, 1107, 1123, 1139, 2299, 2658, 3274–5, 3792, 3797, 3799, 3804, 8211, 8214, 8232, 8244.

PETITIONS

Following petitions presented to house:

Dingley bypass: construction

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 Dingley bypass and the need to fit in with the needs of local residents as well as people travelling through the community.

The petitioners therefore request that the government ensure that sound barriers are built, that there are no unnecessary road closures or land acquisitions, and that residents are fairly compensated for any land acquisitions.

By Mr TARLAMIS (South Eastern Metropolitan) (78 signatures).

Laid on table.

Rail: Highett station

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 concern that Highett station will close or have reduced services after the introduction of a train station at Southland. Highett station is an important community asset, and we believe that the services should be improved.

The petitioners therefore request that the government confirms their commitment to improve services at Highett station, that the station will not close and that services will not be reduced.

By Mr TARLAMIS (South Eastern Metropolitan) (166 signatures).

Laid on table.

AUSTRALIAN CATHOLIC UNIVERSITY and MELBOURNE COLLEGE OF DIVINITY

Reports 2011

Hon. P. R. HALL (Minister for Higher Education and Skills), by leave, presented Australian Catholic University and Melbourne College of Divinity reports.

Laid on table.

SCRUTINY OF ACTS AND REGULATIONS COMMITTEE

Review 2011

Mr O'DONOHUE (Eastern Victoria) presented report, including an appendix.

Laid on table.

Ordered to be printed.

Alert Digest No. 6

Mr O'DONOHUE (Eastern Victoria) presented *Alert Digest* No. 6 of 2012, including appendices.

Laid on table.

Ordered to be printed.

PAPERS

Laid on table by Clerk:

Adult Multicultural Education Services — Report, 2011.

Centre for Adult Education — Report, 2011.

Conservation, Forests and Lands Act 1987 — Code of Practice for Bushfire Management on Public Land.

Crown Land (Reserves) Act 1978 — Minister's Order of 11 April 2012 giving approval to the granting of a lease at Heidelberg Historic Area.

Interpretation of Legislation Act 1994 — Notice pursuant to section 32(3)(a)(iii) in relation to Statutory Rule No. 17.

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

Alpine Planning Scheme — Amendment C33.

Ballarat Planning Scheme — Amendment C153.

Bayside Planning Scheme — Amendment C80.

Benalla Planning Scheme — Amendment C22.

Brimbank Planning Scheme — Amendment C151.

Buloke Planning Scheme — Amendment C22.

Campaspe Planning Scheme — Amendment C91.

Cardinia Planning Scheme — Amendment C154.

Central Goldfields Planning Scheme — Amendment C24.

Colac Otway Planning Scheme — Amendment C66.

Darebin Planning Scheme — Amendment C123.

East Gippsland Planning Scheme — Amendment C104.

Gannawarra Planning Scheme — Amendment C31.

Glenelg Planning Scheme — Amendments C34 and C56.

Greater Bendigo Planning Scheme — Amendment C176.

Greater Dandenong Planning Scheme — Amendment C131.

Greater Geelong Planning Scheme — Amendments C204 and C225.

Greater Shepparton Planning Scheme — Amendments C119, C156 and C161.

Hepburn Planning Scheme — Amendment C58.

Hume Planning Scheme — Amendment C122.

Indigo Planning Scheme — Amendment C57.

Latrobe Planning Scheme — Amendments C9, C69 and C70.

Loddon Planning Scheme — Amendment C35.

Macedon Ranges Planning Scheme — Amendments C33 and C85.

Mansfield Planning Scheme — Amendments C24 and C25.

Maribyrnong Planning Scheme — Amendment C104.

Maroondah Planning Scheme — Amendment C84.

Melbourne Planning Scheme — Amendments C191 and C192.

Melton Planning Scheme — Amendment C123.

Mildura Planning Scheme — Amendment C76.

Mitchell Planning Scheme — Amendment C83.

Moira Planning Scheme — Amendment C70.

Monash Planning Scheme — Amendment C98.

Moorabool Planning Scheme — Amendment C63.

Mount Alexander Planning Scheme — Amendment C64.

Murrindindi Planning Scheme — Amendments C29 Part 2, C37 and C40.

Pyrenees Planning Scheme — Amendment C33.

South Gippsland Planning Scheme — Amendment C57.

Strathbogie Planning Scheme — Amendment C61.

Surf Coast Planning Scheme — Amendment C75.

Swan Hill Planning Scheme — Amendment C43.

Towong Planning Scheme — Amendment C26.

Wangaratta Planning Scheme — Amendment C40.

Warrnambool Planning Scheme — Amendment C69.

Whitehorse Planning Scheme — Amendment C113.

Whittlesea Planning Scheme — Amendment C160.

Wodonga Planning Scheme — Amendment C95.

Yarra Planning Scheme — Amendment C104.

Yarra Ranges Planning Scheme — Amendment C102.

Statutory Rules under the following Acts of Parliament:

Infringements Act 2006 — No. 23.

Road Safety Act 1986 — Nos. 24 and 25.

Transport Integration Act 2010 — No. 21.

Transport (Compliance and Miscellaneous) Act 1983 — No. 22.

Subordinate Legislation Act 1994 —

Documents under section 15 in respect of Statutory Rule Nos. 21 to 25.

Legislative Instruments and related documents under section 16B in respect of —

Ministerial Direction to Boards of TAFE Institutes — Non-Acquisition of Interests in Private Providers made under the Education and Training Reform Act 2006.

Ministerial Order of 29 March 2012 made under the Education and Training Reform Act 2006.

Proclamations of the Governor in Council fixing operative dates in respect of the following acts:

Transport Legislation Amendment (Public Transport Development Authority) Act 2011 — Section 5(4) to (6), the remaining provisions of Division 2 of Part 4, Schedule 1 (except paragraph (b) of item 13.1 and item 13.6) and Schedule 2 — 2 April 2012 *(Gazette No. S101, 27 March 2012).*

Victorian Responsible Gambling Foundation Act 2011 — except for section 6, Divisions 4 and 5 of Part 2 and Part 3 — 27 March 2012 *(Gazette No. S101, 27 March 2012).*

PARLIAMENTARY PRIVILEGE

Right of reply: Mr Geoff Leigh

The PRESIDENT — Order! Pursuant to the standing orders of the Legislative Council I present a right of reply from Mr Geoff Leigh, former chairperson, Business First, to statements made in the Council by Mr Brian Tee, MLC, on 31 August 2011. During my consideration of the application for the right of reply, I gave notice of the submission in writing to Mr Tee and also consulted with him prior to the right of reply being presented to the Council. Having considered the application and determined that the right of reply should be incorporated into the parliamentary record, I remind the house that the standing orders require me, when considering a submission under the order, to not consider or judge the truth of any statements made in the Council or the submission.

In accordance with the standing orders the right of reply is hereby ordered to be printed and incorporated in *Hansard*.

Reply as follows:

Statement to the Council regarding comments in *Hansard* by the member for Eastern Metropolitan on 31 August 2011 in respect of my chairmanship of Business First.

In the Legislative Council on 31 August 2011 the member for Eastern Metropolitan Mr Tee made an inaccurate allegation against the former chairperson of Business First, Geoff Leigh.

Mr Tee asserted that 'Business First founded by development industry lobbyist Geoff Leigh and Upper House member Inga Peulich breached laws by failing to disclose its activities for 2008–09 and 2009–10'. (*Hansard*, page 2873).

The assertion was untrue as when comments relating to Business First's fundraising activities were made, I requested the new chairperson of Business First contact the Australian Electoral Commission (AEC). The chairperson offered to provide all of Business First's financial reports of my time as chairperson. All of Business First's records were then provided to the AEC.

I should also state that at all times all funds collected for the 2010 election campaign by Business First were collected correctly. There was no breach of state of federal campaign fundraising laws.

I have waited until the AEC has completed its investigation to respond to Mr Tee's allegation.

On 6 March 2012 an email was sent from the assistant director of the AEC Ms Anna Jurkiewicz to Business First. She stated, after examining all Business First financial records 'Based on the records provided to us, there does not appear to be any major issues with Business First's reporting'. The assistant director further stated 'you may recommence your activities as planned'.

Therefore Mr Tee's allegation is incorrect.

Laid on table.

Ordered to be printed.

PRODUCTION OF DOCUMENTS

The Clerk — I have received a letter dated 17 April 2012 from the Minister for Environment and Climate Change.

Letter at page 2099.

Ordered to be considered next day on motion of Mr BARBER (Northern Metropolitan).

Mr Barber — If this is an appropriate time, I wish to raise a point of order, President. It relates to other documents previously ordered by the house to be produced. In June last year and also in August last year we received correspondence from the Minister for Energy and Resources in relation to the request by the house for documents relating to smart meters — a motion that was unanimously supported by the house. Ten months later we have not received the documents or any further correspondence from the minister.

The request for these documents to be tabled related to a motion previously moved by the Liberal-Nationals coalition in the previous Parliament, and their tabling in this house would be an achievement of the coalition's own election commitment under what it described as Labor's smart meter stuff-up. If possible, can I have some information through you, President, from the Leader of the Government as to when we will receive documents ordered by the house to be tabled or, alternatively, when we might receive some further correspondence from the minister updating us as to where he has got to with this request?

The PRESIDENT — Order! Essentially this is a matter for the house rather than for the Leader of the Government. The Leader of the Government might, as a courtesy, provide some information to the house in respect of the query raised by Mr Barber's point of order, but essentially if Mr Barber is of the view that these matters are outstanding, it would be appropriate to pursue that by way of a motion to allow the house to make a decision upon that matter. Does the Leader of the Government, as a courtesy to the house, have a comment to make in regard to the point of order? Is leave granted?

Leave granted.

Hon. D. M. DAVIS (Minister for Health) (*By leave*) — I am pleased to make a short comment. I inform Mr Barber that I am aware that those documents are outstanding and that I had a conversation about them with the minister quite recently. I will pursue them further on behalf of Mr Barber and the house. I understand the significance of the documents — —

Mr Barber interjected.

Hon. D. M. DAVIS — Indeed, but I accept the President's point that the normal procedure would be to move a further motion of some type and to send a message to a minister or another member who had not for whatever reason tabled a document or communicated with the house in the appropriate time period. I will have a further conversation with the minister. I understand that the documents may not be too far away.

Mr Barber — We now seem to be in some disagreement.

The PRESIDENT — Order! Is this a point of order?

Mr Barber — Yes, I believe there is a further point of order, President, given that the Leader of the Government has just asserted that the normal procedure is for us to move another motion. I would have thought the normal procedure was that the Parliament orders

some documents and the government then tables them. Further motions would be repetitive and simply asking for the same thing. However, if the government is making a commitment to deliver them some time before the 12-month anniversary — and it was, after all, its own promise — I am very pleased.

Mr Jennings — That was just a thought bubble.

The PRESIDENT — Order! Indeed it was more a thought bubble — at best, an editorial comment — than a point of order.

NOTICES OF MOTION

Notice of motion given.

Mr ONDARCHIE having given notice of motion:

The PRESIDENT — Order! I will give some consideration to that motion being placed on the agenda. I have, as Mr Leane reminds me, made a ruling in respect of part of a motion that he sought to place on the notice paper because of the way in which it was framed and the fact that it referred to matters in a way that I thought was disparaging and, as Mr Leane commented just then, sarcastic. I cannot recall the exact words that I used in beseeching him to make changes to his motion on that occasion. I will not rule on this now. I will give some consideration to whether it might need to be reworked somewhat or whether it is appropriate at all.

Hon. D. M. Davis — On a point of order, President, in relation to your consideration of that motion, as I understand it, it referred to a press report and a document which I do not have in my possession, so I can only presume the veracity of the journalist who has written the press report. I think much of it, from what I can glean, refers directly to the matters in the document.

The PRESIDENT — Order! That is true, but the more I look at this motion, the more concerned I become, because basically the motion asks the house to pass judgement on the affairs of the Labor Party and how it operates its media office. I do not think that is within the jurisdiction of this house.

The house is required to address matters about members by way of substantive motion. I think this is derisive. It is a motion that is simply designed to sit on the notice paper and cause mischief. My view is that the house does not have the ability to comment on the affairs of another party, and I would have exactly the same view if it were in reverse. In fact I have exercised a position in regard to a motion Mr Leane sought to bring before the house. He showed me the courtesy of changing that motion; I am not sure if that motion was proceeded with.

Mr Leane — It was very skinny.

The PRESIDENT — Order! It was very skinny then, but I do not think it does any great service to the house when members move a motion which is simply designed to cause mischief. I am not reflecting on Mr Ondarchie's motives in terms of this notice of motion because as a newer member of this house, he probably raises it because he has a fair degree of concern about the way in which some manufacturing issues are dealt with in this place as questions and answers and so forth. We have had considerable discussion about what is a very important sector to the Victorian economy and one that is under stress, so I accept that Mr Ondarchie no doubt brought this motion in a genuine attempt to reflect on the manufacturing sector. Nonetheless, I am concerned about the way it is framed because I do not believe this house has any ability to direct another party on how it runs its affairs. At this point I rule that motion out and not have it included on the agenda.

Further notice of motion given.

Mr Ondarchie — On a point of order, President, apropos of your last ruling on my motion, I draw your attention to motion 297 on the notice paper. I ask that that be withdrawn in relation to your previous ruling.

The PRESIDENT — Order! Mr Ondarchie's point of order is valid in respect of the decision I have just made. I will have a discussion with the Leader of the Opposition and seek to address the matter raised by Mr Ondarchie. I will continue to adopt a consistent position in this regard. It would be open to Mr Lenders to withdraw it now if he wanted to. I call on the Leader of the Opposition.

Mr LENDERS (Southern Metropolitan) — I am happy to withdraw the motion.

The PRESIDENT — Order! Mr Lenders has withdrawn the motion, so it will be deleted from the notice paper.

BUSINESS OF THE HOUSE

General business

Mr LENDERS (Southern Metropolitan) — By leave, I move:

That precedence be given to the following general business on Wednesday, 18 April 2012:

(1) notice of motion given this day by Ms Pulford in relation to the 2012–13 budget spending;

(2) notice of motion 296 standing in the name of Ms Hartland relating to dental health;

(3) notice of motion 242 standing in the name of Ms Broad relating to education funding and Ouyen P–12 College;

(4) notice of motion 247 standing in the name of Mr Barber relating to the tabling of certain documents in relation to the large-scale integrated drying gasification and combined cycle demonstration projection; and

(5) notion of motion 227 standing in the name of Mr Barber relating to feed-in tariffs.

Motion agreed to.

MEMBERS STATEMENTS

Gippsland Industries in Transition: expo

Mr SCHEFFER (Eastern Victoria) — I congratulate the Gippsland Trades and Labour Council on the Gippsland Industries in Transition forum and expo that was held in Morwell on 3 and 4 April. I also congratulate everyone who participated and gave their time and expertise to deliver the many stimulating presentations. The Industries in Transition forum is the latest in a series that is building an understanding of the possibilities for innovation and growth in Gippsland in the context of climate change and the need to reduce carbon emissions.

As is evidenced by the transition forum, despite the Baillieu government walking in the opposite direction, business and industry are getting on with the job of innovation to capitalise on the opportunities that come with reducing their reliance on high carbon energy sources. The terrific work that is now well under way in Gippsland builds on the leadership of the six local governments that developed the Gippsland regional plan in conjunction with their communities and with the Gippsland Trades and Labour Council, Regional Development Australia and the Committee for Gippsland. I congratulate Gippsland on getting on with the real challenges of transitioning to a low carbon economy.

Senator Bob Brown: resignation

Mr SCHEFFER — I acknowledge and pay my respects to the now former national leader of the Australian Greens, Bob Brown, for his contribution to sharpening public debate and policy thinking. Without question, Bob Brown is one of this country's great communicators, and he was able to articulate the aspirations of his constituency and encapsulate the weaknesses of his opponents and, as he often said, to challenge them to think again. I think this nation owes Bob Brown a debt of gratitude.

SuperCamp Australia

Mr RAMSAY (Western Victoria) — It was with great pleasure that I launched the inaugural Australian SuperCamp at Beaufort on Good Friday, 6 April. SuperCamp has a proud 32-year history, delivering its programs across the United States of America, Europe, Asia and South America, so it was a real coup that western Victoria — in fact, Beaufort — was the location of the first Australian SuperCamp. I would like to acknowledge the convener, Heather Yelland, a Wangaratta businesswoman and psychologist, who was a driving force behind having the SuperCamp in Beaufort. I would also like to thank the ambassadors, Jeff Slayter and Kane Minkus, who helped to provide $25 000 for 47 children from the Ballarat area to enjoy what the SuperCamp had to offer.

SuperCamp provides personal development programs. It originated in the US and is supported by entrepreneurs. It raises awareness and self-esteem in children. Bringing SuperCamp to Australia was the brainchild of Heather Yelland, who as I said is also a professional psychologist. I would like to congratulate all the people who were involved in the success of the 10-day camp and also congratulate the conveners on having a second junior Australian SuperCamp in September.

Senator Bob Brown: resignation

Mr BARBER (Northern Metropolitan) — In my first speech to this place nearly six years ago I mentioned as part of my political inspiration the already considerable achievements of both Bob Brown and Christine Milne in Green politics and the inspiration that they provided to me six years ago. Now they are both going on to bigger and better things. Knowing both of them well, as I do, I can say that they are made of the same type of steel and forged in the same fire. I am even more pleased to see them moving up a step in Green politics.

I would wish Bob well in his retirement, except I do not believe he will be sitting still for long. He is a global leader in Green politics. Christine has wasted no time in taking on Tony Abbott — not just his dismal plan to do nothing on climate change but also his flawed and destructive approach to the economy generally. Unlike these other fractured political parties, the Greens are a force for stability in the Parliament and the political system. With her vast and long-running experience in difficult political environments, her intellect, her toughness and her personal commitment and warmth, Christine Milne inspires me with great confidence in my party's future.

International Student Legal Advice Clinic: funding

Hon. M. P. PAKULA (Western Metropolitan) — Late last year in this place I raised the matter of the International Student Legal Advice Clinic (ISLAC) and its efforts to secure ongoing funding for the important service it provides to international students. To recap, the clinic is headquartered at the Western Suburbs Legal Service in Newport. In its pilot year the clinic assisted almost 300 international students, whose education fees were estimated to be worth between $2.5 million and $3 million to the economy.

These international students confront a range of issues, as can be easily imagined, going from dealing with unscrupulous education providers, employment and tenancy issues to visa issues and so on. It is important that they have access to specialist legal advice, and the Western Suburbs Legal Centre says that ISLAC can be run sustainably for a little over $300 000 per annum. After the pressure that was exerted on the government last year, funding was extended via Victoria Legal Aid until 30 June, but unless funding is renewed in the budget the legal centre will be forced to shut its doors. The centre is too important to international students to allow that to occur, and I call on the Attorney-General to ensure that that funding is renewed in the May budget.

Parliament: enterprise bargaining

Hon. M. P. PAKULA — In the 15 seconds I have left, allow me to express my solidarity with the parliamentary staff in their struggle for better wages and conditions.

International students: information day

Ms CROZIER (Southern Metropolitan) — On Saturday I had the pleasure of representing the Minister for Innovation, Services and Small Business, Louise Asher, at the first 2012 international student information day. Two international student information days are held each year, funded by the coalition government's Victoria: Leader in Learning initiative. The event was organised by the Department of Business and Innovation and a team of volunteers.

I congratulate the students I met on Saturday, who gave me a fantastic overview of and insight into what they had done in their capacity as volunteers in putting the day together. The students are attending educational institutions across both Victoria and Melbourne. Many are within my electorate of Southern Metropolitan Region, and this includes Holmesglen, which has campuses in the Legislative Assembly electorates of Albert Park, Bentleigh and Malvern; Monash University, which has a campus within the Assembly seat of Caulfield; Deakin University, which has a campus within the Burwood electorate; and Swinburne University, with its main campus in the electorate of Hawthorn.

The all-day sessions provided information on a range of issues, including renting a home, finding a job, immigration and safety. What was evident from the day was the enormous enthusiasm of these students. They have come from a range of countries and have all chosen to study in Victoria and Melbourne. What was equally evident was their willingness to partake in many of the activities so well known to Melbourne life.

By the end of November last year there were more than 160 000 international students from 165 countries enrolled in Victorian education institutions. The sector contributes $4.8 billion to the state's economy each year and is responsible for 50 000 jobs. International education is an important industry sector for this state and its export market, and it is one that the Victorian government continues to support and actively promote, as was demonstrated by the recent trade delegation to India led by the Premier and Ms Asher, the Minister for Innovation, Services and Small Business.

Parliament: enterprise bargaining

Ms MIKAKOS (Northern Metropolitan) — Like Mr Pakula, I would like to express my support for the parliamentary staff in their campaign for better wages and conditions. They perform a great and important job in supporting all of us in our work.

International Women's Day

Ms MIKAKOS — On another matter, on 19 March I had the pleasure of attending the Hellenic Australian Chamber of Commerce and Industry's (HACCI) first

International Women's Day event. These events provide an opportunity to celebrate this important occasion for women and encourage and inspire younger women to achieve their goals. Congratulations to the HACCI vice-president, Roula Tsiolas, as well as Maria Ganis and Marianna Sarris on organising this successful inaugural event.

Assyrian Babylonian new year festival

Ms MIKAKOS — On 31 March I had the pleasure of attending the Assyrian Babylonian new year festival, celebrating the year 6762. This festival, also known as the Akitu Festival, marks the barley harvest during the Northern Hemisphere's spring and dates back to ancient Mesopotamia. The day was celebrated with live music and performances by dance groups in traditional costume. It was a pleasure to be present at this event with so many of my Labor colleagues: Mr Eideh; Ms D'Ambrosio, Mr McGuire and Ms Garrett — the members for Mill Park, Broadmeadows and Brunswick in the other place; and Mr Thomson and Ms Vamvakinou, the federal members for Wills and Calwell. It was a pleasure to be part of an event that promotes Assyrian cultural heritage. Congratulations to the six Assyrian organisations which organised this event.

Chaldean Babylonian new year festival

Ms MIKAKOS — On 1 April I had the pleasure of attending the Chaldean Babylonian new year festival at Coburg Lake Reserve to celebrate the year 7312. The festival also marks the spring equinox in the Northern Hemisphere and dates back to ancient times. Congratulations to the Australian Chaldean federation on organising this successful event that was filled with music, costumes and dances showcasing Chaldean culture.

Carbon tax: manufacturing industry

Mr DRUM (Northern Victoria) — I would like to inform the house of a trip I took last week as part of the government's industry dialogue program and meetings I had with local governments in the north-east of the state. I had the privilege to call in to BAE Systems in Wodonga, which constructs military vehicles, and I had the opportunity to call in to Mars, which, apart from making its world-famous chocolate bars, is also a leader in Australia in the production of pet food. Mars has well over 600 employees at its Wodonga factory. It is a critical industry in north-eastern Victoria. I also had the opportunity to call in and inspect the operations of Thales in Benalla. That company produces munitions for our troops who are engaged in conflicts around the world. I further had the opportunity to visit Parker Hannifin in Wodonga, which is a leader in the field of high-pressure reinforced PVC and rubber hoses.

All these employers are battling the current economic climate of an Australian dollar sitting above parity, and whilst this causes serious financial pressure from overseas, they also worried about the impost of the Labor Party's carbon tax. All of them questioned why the federal government would bring in such a new tax at this time of global uncertainty.

North-eastern Victoria: government initiatives

Mr DRUM — While in the north-east I took the opportunity to meet with the shires of Towong, Alpine, Indigo, Benalla, Strathbogie and Mansfield. All these shires were at pains to express their appreciation of the Baillieu-Ryan government for a couple of its initiatives, mainly the $1 million a year it is providing for roads and bridges, and the $500 000 a year from the Regional Growth Fund and its Local Government Infrastructure Fund.

Toyota Australia: job losses

Ms TIERNEY (Western Victoria) — I have, in one capacity or another, been associated with the vehicle industry in this state for some 25 years. It is an industry that prides itself on having world best practices and has some of the most sophisticated industrial agreements in this country. Voluntary redundancy instead of compulsory redundancy has been the norm in the industry during that time. The basis for this is that employers and unions have worked closely to avoid disruption of people's lives and disruption of the production process.

However, yesterday Toyota chose to undertake an exercise that made me feel physically ill. Toyota hired a security company whose guards wore red T-shirts. The red T-shirted men rode minibuses, some riding on the roofs of the minibuses, into the factories and went up and down the production lines with local managers, fingering Toyota workers and then transporting them off site. The only things missing yesterday were black balaclavas.

I went to the Toyota plant this morning to hear for myself what is happening out there. No dignity or respect has been afforded to Toyota workers. This from a company that previously had pride in its commitment to its employees. Toyota's behaviour on this occasion has trashed its own brand. This could so easily have been avoided if Toyota had just employed a proper voluntary redundancy process. My thoughts today are

with the Toyota workers who have been sacked or who will be sacked this week.

Parliament: enterprise bargaining

Ms DARVENIZA (Northern Victoria) — I too would like to lend my support to the parliamentary staff in their pursuit of improved wages and conditions. They are very hardworking, they do a great job, and without them we would not be able to do the work that we do.

Emerge on the Goulburn Festival

Ms DARVENIZA — On another matter, I would like to inform the chamber of the Emerge on the Goulburn Festival, which is happening in Shepparton between 20 and 21 April. Shepparton is going to come alive this weekend with the many flavours, sounds and colours of multicultural Greater Shepparton. It is one of the most culturally diverse regions in Victoria. This exciting family festival will welcome a wave of new cultures and talents who have made the city of Greater Shepparton their home in recent years, as well as showcasing our well-established migrant communities, which have been there for many years, and our indigenous talent. Two stages will rotate non-stop dance, music, song and drums. You can experience food, craft and culture from around the world. You can relax in an authentic Turkish lounge with coffee cup readings and backgammon games. From the traditional to the contemporary, from the local Yorta Yorta to Africa, to the Asia-Pacific and beyond, visitors can experience just a taste of what Greater Shepparton has to offer.

On Sunday, 22 April, Shepparton will host traditional Chinese dragon boat races at Victoria Park Lake. It is going to be a great day for the whole family. This is just one of the many exciting events that occur in northern Victoria — —

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

Australian Labor Party: performance

Mr ELSBURY (Western Metropolitan) — I rise today to address the duplicitous nature of the ALP and those who hold seats in the other place from across Melbourne's west, who in recent months have begun a campaign of raising issues which they themselves ignored when they had control of the Treasury bench. From railway crossings to the lack of appropriate planning for the delivery of public transport in growth areas, or perhaps the disgraceful state in which they left school maintenance, Labor members, with their short memories, continue to feign horror while taking a blinkered view of their inaction and mismanagement during the 11 years they were in office. Furthermore, we have been left with many legacies of cost overruns, ill-conceived projects and outright wastes of taxpayers funds, which have left the coffers very barren and made it difficult for this government to act quickly, even though it has every desire to do so.

Before those Labor banner-wavers wake up tomorrow morning and decide which issue they are going to be outraged about, they should take a moment to reflect on how these issues came about in the first place.

Siege of Malta: commemoration

Mr ELSBURY — I would also like to say that on the weekend I had the pleasure of joining the Maltese community at the Shrine of Remembrance to remember the siege of Malta during the Second World War and to award the George Cross to these brave people. Malta suffered from constant attack and barrage from the Nazi regime and its allies during the Second World War. They were stoic in every way, shape and form, holding out against an enemy that was going to bring tyranny to the entire globe. I join with the Leader of the Opposition and member for Mulgrave in the other place, Mr Andrews, who went to the Shrine of Remembrance on Sunday, in congratulating the people of Malta on being so brave in the face of such adversity.

Healesville freeway reservation: future

Mr TEE (Eastern Metropolitan) — I wish to raise the commitment made by the Liberal Party in the last election to protect Healesville freeway reserve as open space. When the member for Forest Hill in the Assembly, Mr Angus, was asked by the *Whitehorse Leader* on 30 March 2011 what goals he wanted to achieve by the end of that year, he answered:

> I would like to be able to resolve the future of the Healesville freeway reserve for the community …

A commitment to resolve that issue last year has not been met. Instead the member for Forest Hill has asked in Parliament for the Minister for Planning and the Minister for Roads to visit. Notwithstanding his commitment last year to resolve the future of the Healesville freeway reserve, there has been no progress. There has been a deafening silence.

The community is increasingly concerned that the commitment to protect this valuable open space is about to be broken. The community is increasingly concerned that this land will be picked up as part of the government's attempt to flog it off to the highest bidder

as part of the government's fire sale privatisation agenda. I urge the member for Forest Hill to come clean with the community and either deliver on this commitment or explain that this commitment will not be delivered and that this land will be sold off to the highest bidder.

ACCIDENT COMPENSATION AMENDMENT (REPAYMENTS AND DIVIDENDS) BILL 2012

Second reading

Debate resumed from 29 March; motion of Hon. G. K. RICH-PHILLIPS (Assistant Treasurer).

Mr LENDERS (Southern Metropolitan) — I rise to contribute to the debate on this bill, which is nothing but a shameless cash grab from a government that cannot manage its budget. The Labor Party opposes this bill. It appears to be quite a simple bill, with just five clauses, but this is a bill that is pernicious. At a time when there is a jobs crisis in Victoria, where people are losing their jobs and where confidence in business is significantly weakened in this state, the government has effectively put another payroll tax on Victorian companies by taking this money out of the Victoria WorkCover Authority (VWA) scheme.

I speak in very strong terms about this because this is a bill that quite frankly I never expected to come from this government. Over the years when Labor was in government we received lectures in the Parliament about the sacrosanct nature of the WorkCover authority and that government should keep its dirty mitts off it. Whenever the income tax equivalent revenues were taken out under the commonwealth-state agreements on competition, I was repeatedly lectured in this place by a number of members of this house about how outrageous it was that the Labor Party was raiding the WorkCover authority.

What we are now seeing is legislation to allow the government to raid the authority with no checks and balances. We had under the cloak of Christmas a statement from the Treasurer, Mr Wells, saying that $471.5 million will be taken out of the authority. We have a statement which sets out the amounts to be taken out over the next four years. The Treasurer has been granted the ability, via this legislation, to take whatever he likes, whenever he likes, out of the WorkCover authority with the only caveat being that he needs to tell the authority and the Assistant Treasurer — in this case the minister responsible for the WorkCover authority — that he is doing it. There is no other check, there is no other balance and there is nothing in here that gives me any confidence that this is anything but a grab for money.

During the committee stage I will ask Mr Rich-Phillips a number of specific questions on governance in relation to this bill, so I will not go into that in the second-reading debate. But I will go through the Treasurer's second-reading speech in the Assembly and start to flag some of those questions and express some of the outrage that so many Victorian businesses and injured workers have felt about this shameless grab for cash. I will not seek to move an amendment about this, but rather than being called the Accident Compensation Amendment (Repayments and Dividends) Bill 2012, the bill should really be called the Accident Compensation Amendment (Shameless Cash Grab) Bill 2012.

In the second paragraph of his second-reading speech the Treasurer says:

> This bill implements the government's decision to apply the standard government business enterprise dividend policy to VWA …

Let us just conveniently neglect eleven and a half years of rhetoric as to why the VWA was different. In the interests of time, President, I will not quote your views on this and the views a number of other members of the now government have expressed over the years, but I will simply make the point that if the Treasurer is saying in the second paragraph that he is applying this standard government business enterprise dividend policy to the VWA, it begs the question: how many government business enterprises are next?

I will ask the Assistant Treasurer in the committee stage — but I flag it now — whether he will unequivocally rule out that this legislation will not apply to other government business enterprises like the regional water authorities that do not pay dividends at the moment? Will it apply to other government bodies? Is he expecting dividends out of hospitals next? Where will it stop? I would like an assurance from the Assistant Treasurer that when the Treasurer so glibly says it is a standard government business enterprise dividend policy to VWA this is where he will stop and that he will not go to other government business enterprises, particularly the regional water authorities.

I go to the fourth and fifth paragraphs of the Treasurer's second-reading speech, where he glibly says:

> Victorian taxpayers effectively underwrite VWA's accident compensation insurance scheme …

He is correct. But the scheme is underwritten on the basis that the premiums that are levied are appropriate to cover the liabilities of the scheme. If you are suddenly taking $471.5 million out of the scheme with a promise of more to come, that begs the question: why has the authority struck the premium at the rate it has in the past? It struck the premium at a rate that would allow it to meet its obligations and its debt equity ratios, and to meet the obligations it has to pay injured workers at the lowest possible premium to employers with a risk weighting.

We now see the Treasurer blithely and blandly saying, 'Oh well, the state underwrites this in the end. We can do the cash grab on the authority'. So more risk comes to the state of Victoria with a government, I might add, that in its forward estimates is predicting that debt will double in the state of Victoria. Under this government's watch, debt has doubled in Victoria, and now the government is putting more risk on the state budget by saying, 'Oh well, we will take $471.5 million out of this scheme. The state wears the risk anyway, so what does it matter?'. It would make a Peronist Treasurer blush.

Then we go on to it being a fine scheme that is managed well, with the lowest premiums in Australia. Yes, it is, and that is one of the legacies of the Bracks and Brumby governments. A scheme that was in turmoil under the previous coalition government, which was sinking in a sea of red ink and which was slashing benefits to injured workers, was turned around during the 11 years of Labor government. It was turned around to the extent that benefits were improved — the Hanks review being the most recent statement on them — common-law rights were brought back in and there were six premium cuts, to the point where the WorkCover authority now has the lowest premiums in the country. Under Labor's economic management the WorkCover authority cut premiums six times, increased benefits to workers on at least three occasions and now the scheme runs in the black.

It is fine for Mr Wells to skite about this great scheme, but his first significant act — the first significant act of this government — was to rip $471.5 million out of the scheme. Then again, in a fashion that would make the Perons in Argentina or Huey Long in Louisiana blush, he also says dividend payments will have no impact on benefit entitlements because benefits under the accident compensation scheme are enshrined in legislation. If someone put that in front of me to read, I would be embarrassed at that level of naiveté — that is, that a Treasurer could think you could take $471.5 million out of a scheme and somehow or other that would not affect premium rates or benefits. I was not born yesterday, and nor was the Treasurer, but he is certainly wet behind the ears if he is of the view that ripping that much money out of a scheme will have no effect on premiums and no effect on benefits. To quote George H. Bush describing Ronald Reagan, it is voodoo economics. There is cause and effect. You just cannot take $471.5 million out of a scheme and believe that there is no cause and effect and no ripple effect.

When we go through the bill in the committee stage — and I will ask the Assistant Treasurer about this — there is one issue to discuss in relation to this bill, and I welcome Mr Rich-Phillips to the chamber. It is good that he is here, and I am sure that he will put in an afternoon defending the indefensible, as he will be required to do, and I am sure he will deliver 21 votes to get the indefensible through this place. But the issue here is that it is one thing to say that there is a dividend policy, like there is for the Transport Accident Commission, but what is missing here is any explanation as to why the Treasurer can draw capital out of the WorkCover scheme, nor is there any definition of the explanation, nor any definition of capital. I would be intrigued if Mr Rich-Phillips could outline in the committee stage or in his summing up of the second-reading debate his definition of capital.

While Mr Rich-Phillips is an honourable man, I would like to see him stand up to the Treasurer, wearing the hat of Assistant Treasurer and someone sitting around a budget cabinet, when the call comes in to raid this authority for capital to balance the budget of this government, which has seen debt double during its one and a half years in office.

Again, going to what the effect of this will be, the Treasurer said it will have no effect whatsoever, so I would suggest that the Treasurer perhaps take a little trip to regional Victoria. Perhaps he could go through the Goulburn Valley and see the manufacturing jobs that are being shed. Perhaps he could go to Ballarat and see the public sector jobs that are being shed. Perhaps he could go to Geelong and see the jobs being shed or the jobs under pressure. Perhaps he could go to Bendigo and see the delay and rising costs of construction of a hospital. Perhaps he could do all of those things and see the delays and effects on jobs, but if he actually thinks that WorkCover premiums not going down where they could or potentially having to go up because this amount of money is being ripped out of the scheme, then again he is indulging in voodoo economics and living in la-la land, to quote my good friend Rob Hulls, the former member for Niddrie in the other place. If you are taking more than $100 million a year out of a scheme that has about $2 billion in premiums coming in each year, then there is an absolute cause-and-effect relationship.

There is an absolute cause and effect because that money could be used for something else, whether it be for premium cuts, for improved worker benefits or for building up reserves at a time of global financial stress. It has been a feature since about 2002, when we had the first rush of equities going south at a rate of knots, that there is high volatility. A government that believes it can what I would describe as recklessly take this amount of money from the scheme and that there will be no consequences is an extreme disappointment to the state. We have seen unemployment go up in Victoria under the watch of this government. In fact we have seen it go up by half in regional Victoria under the watch of this government, and what relief is there for employers in any of this? There is none.

What we are actually seeing here is effectively a boost to payroll tax. A WorkCover premium foregone has an equivalent value to a business as a rise in payroll tax. This government is effectively putting up the cost of labour — that is, putting up the cost of doing business in Victoria — by doing this. It is also interesting that as we go through this legislation we also see from this government no regard for governance or propriety in this area. I will touch on one more point after this one. Let us see what is actually happening at budget time. Mr Wells as Treasurer will be trying to balance his budget, which is a very admirable thing to do. He will try to deliver on the government's election commitments, and good luck to him — I would like to see him pay teachers what he thought he would pay them. I would like to see him deliver on the Rowville rail commitment, which Henry Bolte first promised on 30 September 1958.

Ms Crozier — On your birthday.

Mr LENDERS — In fact it was the day before my birthday, Ms Crozier. It was in the newspaper on the day I was born. We see this constant promise for a railway station at Monash University. I will not dwell on this, even though I am the lead speaker on this bill, other than to say that I understand a government wishing to honour its election commitments.

But what we are seeing here is that a government looks at its budget and does several things, so what is the process for determining what capital is? The Treasurer has a cursory look at the WorkCover books — undoubtedly the Department of Treasury and Finance give them to him — and he says, 'The cash ratio looks okay; yes, we could do with a bit more dough'. So what does he do? He writes to the chair of the WorkCover authority and he writes to his ministerial colleague Mr Rich-Phillips, who is also sitting around the budget committee trying to find some savings, and says, 'I think it is a good idea to take a bit of dough out of this authority. We are looking for a few hollow logs'. Then what happens is it does not matter what they say in response to the letter — Mr Rich-Phillips could say, 'That's outrageous', or the chair of the authority could say, 'We'll go broke; we'll become like Argentina in the 1930s'. It does not make any difference. The Treasurer has acquitted his requirement to consult, so he just reaches in his hand and takes the money. That is the process. I will ask the Assistant Treasurer to try to explain a bit about clause 4 when we get to the committee stage, but there is nothing in the legislation that actually begins to define a governance process.

There is practice and precedent when it comes to taking dividends out of some water authorities and out of the Transport Accident Commission, but there is none whatsoever regarding taking capital out of the Victorian WorkCover Authority. There is certainly nothing that I have seen on the public record about what the policy for that would be, other than that Mr Wells wants to keep his budget in the black and is a bit short of cash.

What we have is that all the great election plans have been coming out. I think the government will have to not just raid the WorkCover authority but flog off the whole state to build the Rowville rail, to build the Doncaster rail and to provide the funding to make our teachers the highest paid teachers in Australia. But let us forget these thought bubbles of the government and go to this particular authority and this year's budget. There are no checks and balances at all on the Treasurer. What we have had is a very short second-reading speech that just refers to the fact that the Treasurer is required to consult, and that is the limit of it.

The final point I make in my contribution to the second-reading debate goes to how inequitable this is. I am not sure what it is a reflection of, but let us state the facts: small and medium businesses will bear the costs of this, because the large businesses — and there are of the order of 30 to 40 of them — are self-insurers and do not pay WorkCover premiums. The rules will suddenly be changed in Victoria when this bill is dutifully rubber-stamped by the 21 members of the coalition in this place. That will change the rules on business costs in Victoria.

The 37 large corporations, many of them multinational and international corporations, that self-insure will not be affected by this, but all those small and medium-sized businesses that the Liberal Party in particular claims it is the custodian of and the spokesperson for — and it wrings its hands and cries crocodile tears about how terrible the impact of the

carbon tax will be on them — will effectively have to stump up for the $471.5 million that the Treasurer, Mr Wells, with I assume Mr Rich-Phillips's complicity as the minister who is responsible for the authority, wants to find.

Let us just look at the picture of that. There is a new business cost. I know we will get the weasel words saying, 'It is not a business cost', but it is. You cannot take a big lump, about 5 per cent, out of any household budget and say, 'That will not have an effect on the household budget'. You cannot cut any household budget in this state by 5 per cent and then say, 'It is not affecting anybody'. That is in effect what the government is saying here. It is saying, 'You can take out 5 per cent' — that is $100 million out of $2 billion when it comes to the figures. It is effectively slashing it by that. If you were to go to any household and take out 5 per cent of the budget and someone said to you, 'Oh my gosh, it is not having any effect at all', you would say that they were on some form of illegal substance. That is what this government is asking us to believe today: that you can take this cash out of the WorkCover authority and it will have no effect.

I am sure Mr Rich-Phillips will talk about profits from insurance operations and forecasting forward and all the things that are in his brief to say, but the government cannot hide from the fact that if any of us went to a household in our constituency and said, 'We are going to take away 5 per cent of your income, but it will not affect your ability to live; it will not affect costs', we would correctly be laughed at.

If the government wants to say that its priority is to use the money from the WorkCover authority — effectively a new tax — to fund infrastructure, it should say so. If it were to be honest with the Victorian public and say, 'We need a bit more revenue to fund an infrastructure program', some people would disagree with it, but people would accept it at face value. If the government wishes to in effect tax not large businesses but small and medium businesses by taking this $471.5 million out of the authority — or its preference may be to take away benefits from injured workers; there is nothing in this legislation that seeks to do that and I am not putting in words, because it is a simple, five-clause bill — the consequence is that the ability to offer further benefits and the ability to cut premiums is gone. It is taken away by this.

I hope Mr Rich-Phillips corrects me and says that he will gleefully announce at budget time that there will be a cut to WorkCover premiums or an improvement to benefits, but I am not going to hold my breath for that one.

What we have is an inequitable cash grab that will put further pressures on small and medium businesses at a time when Victoria is shedding jobs. If there is one thing that will give businesses confidence so that they are not shedding jobs — if we go back to the experiences of 2008 when the global financial crisis hit this state — it is knowing that there is a future, that costs are going to come down and that it is easy to do business here. That will all be gone because of this. This will remove the possibility of that, as well as the possibility of improving benefits under this scheme, unless the government wants the scheme to go into the red or it wants the taxpayer to provide cash injections to keep the scheme solvent.

This is a dodgy bill — it should be called the WorkCover Cash Grab Bill rather than *Brave New World*, which is the name it got from the government — and one that the Labor Party will vote against. In the committee stage I will ask the Assistant Treasurer a series of questions about clause 4 regarding governance, and given that the Treasurer has so blithely said in paragraph 2, 'This is a common thing for government-owned enterprises', I give the Assistant Treasurer notice that I will ask him: 'If it is good enough for this government-owned enterprise, what about the other inconsistencies, like the regional water authorities not paying dividends, whereas the four metro ones do?'. I will have a few questions for him, and I look forward to the committee stage.

Ms PENNICUIK (Southern Metropolitan) — The Greens will be opposing this bill because no justification or rationale has been provided by the government for this legislation. It is a simple bill of five clauses, but in those five clauses it sets a precedent that we cannot support or accept. It establishes a regime whereby future and successive governments will be able to draw money out of the WorkCover system that is put there by way of premiums imposed on employers according to the risk and hazard those workplaces are to the health and safety of workers. The purpose of the funds is simply to provide for rehabilitation, medical treatment, hospital treatment and personal and household help and compensation for workers who have been injured at or made ill by their work. It is as simple as that. The Greens cannot support the precedent that is being set here — it has never been done by any other government in Australia in terms of a workers compensation authority — of systematically removing money from the WorkCover authority funds in this way.

In the last parliamentary sitting week during general business we debated a motion moved by the Leader of the Opposition, Mr Lenders, to take note of an answer

given by the Minister for Employment and Industrial Relations. I then made the same points that I want to make today. The main reason for having the workers compensation scheme is to look after injured workers. It is important that the WorkCover scheme is solvent. At the present time there is more money in the scheme than liabilities, and that is a happy position for it to be in. It is not always the case with workers compensation schemes either in Australia or around the world. That is a good position for the scheme to be in, and it is a position you want it to be in so that it can have room to move if its liabilities in terms of compensation for workers go up in a particular financial year for one reason or another or the premiums collected are not as predicted for one reason or another to do with the employment cycle and the number of employers who are paying the premiums.

The issue here is also that this will fall mostly, as Mr Lenders has pointed out, on smaller employers, because the larger employers run their own self-insurance schemes and will not be affected by this particular move by the government. It is interesting to note that the government's rationale for this is that it says it needs this money to put into the budget. As I said in this place on 28 March, that money will presumably go into general revenue and be spent on something other than what it is meant to be spent on, which is workers compensation payouts, rehabilitation of injured workers and assisting workers to return to work.

I take this opportunity to suggest that the WorkSafe Victoria annual report shows there has been quite a bit of movement over the years in its financial position due to whatever factors there may have been. There is a requirement for the fund to be able to resist or survive changes in its income, which may be income from premiums but also income from money that is invested, and both those things can change, and changes in its outgoings in terms of money paid to injured workers, which can also change from year to year even though there are projections. It is important that there is a buffer. It is inappropriate for the government to say that the fund is fully funded, therefore it will pass legislation to enable it to extract a dividend every year from the fund, as determined by the minister in consultation with the authority, which is what the bill basically provides for in its four clauses.

We agree with the many commentators who think it is inappropriate, such as the former chair of the Victorian WorkCover Authority, James MacKenzie, who has written an article on the issue. I am sure the Assistant Treasurer, Mr Rich-Phillips, who is looking at me, has read the article.

Hon. G. K. Rich-Phillips — What's he doing now?

Ms PENNICUIK — What he is doing now is not necessarily the point of his article, which I have read. Its point is that the truth of the matter is that the government should not be taking money from the WorkCover scheme. It would be very concerning if this action resulted in a rise in premiums or, worse still, a fall in compensation to injured workers.

There are too many workers injured at work. Even more concerning, there are many workers who are made ill by their work, such as through exposure to hazards in the workplace like asbestos and harmful chemicals. Compensation for workers who have been exposed to asbestos through their working life is an ongoing problem and, as I have raised in this place before, it is becoming an increasing problem for people in the community who are exposed to asbestos in domestic and commercial buildings where it has not been removed and is becoming less and less safe as time goes on.

There are also workers who are exposed to other chemicals, workers who suffer from long-term musculoskeletal injuries and workers who suffer psychosocial injury at work from exposure to chronic stress in the workplace. Not only do these workers not get compensated, they never make a claim because it is so difficult to do so. There is a whole group of forgotten workers throughout Australia, not just in Victoria, who are not captured by workers compensation schemes. It is of course much easier for somebody who has a broken limb or some sort of physical injury to make a claim, because it is easier for a doctor to see what is wrong with them, and it is easier for them to be compensated for that injury and assisted to recover and return to work. It is much harder for workers to make the connection with illnesses that may have a latency period but are still work related. Many of them never make a claim and are never compensated. It is worth making those points.

As far as we have progressed as a country and a state in terms of making sure that injured workers' lives are not destroyed because of their injury and that they do not lose their income as well — which was the case before we had workers compensation schemes — we still have a long way to go in terms of many injured and ill workers. As I mentioned in the debate during the last sitting week, we still have gaps in the system whereby the most injured workers, those who have been on benefits for more than 52 weeks, still face the prospect of those benefits being reduced or withdrawn after that time. By definition, those are the workers who have acquired the most catastrophic and heartbreaking

injuries or illnesses through their work. As I mentioned, there are still gaps in the system in terms of psychosocial types of injuries, which are a growing hazard due to the changing nature of the workplace. The more information and service types of jobs go hand in hand with those types of injuries, and yet the WorkCover authorities around Australia have not dealt with those issues as well as they could.

During the debate on the Crimes Amendment (Bullying) Bill 2011, known as Brodie's law, I mentioned to the government that bullying in the workplace results in serious psychosocial and stress-related injuries, including people suffering from post-traumatic stress due to being subjected to bullying at work. Sadly and tragically, in Brodie's case she took her life as a result of being bullied at work. Other workers have done the same thing, and yet other workers are what I would call the walking wounded as a result of being bullied at work, which is an issue that WorkSafe Victoria is not dealing well with.

WorkSafe is not on its own in that regard; most state workplace safety authorities are not dealing well with the issue either, so there is still a very large cohort of workers who are being subjected to this type of behaviour in the workplace and who either do not report it or, if they do report it, find it very difficult to get assistance. They certainly find it very difficult to have a WorkCover claim accepted, to get assistance in getting over that injury, to rebuild their lives and to be compensated for that injury. There are still gaps in the system.

The government has given no rationale for bringing this bill into the Parliament and establishing this precedent, which is a very unhappy precedent. The moneys that are collected and controlled by the WorkCover authority are there for a specific reason — that is, to compensate and assist workers and to make workplaces safer so that fewer workers are injured or made ill. That money is not there to be taken by the government and spent on other things, however worthy those things may be; that is not what WorkCover premiums are for. For those reasons the Greens will oppose this bill.

Mr P. DAVIS (Eastern Victoria) — I am pleased to have the opportunity to make a contribution to the debate on the Accident Compensation Amendment (Repayments and Dividends) Bill 2012, because it brings back memories for me. Workers compensation and dealing with insurance matters relating to workers brings back my first parliamentary sittings in 1992. How fascinating it is that nearly 20 years on we have the same high dudgeon expressed in this debate as was expressed then. The bill we considered contained significant reforms to the WorkCare scheme, a scheme so maladministered by the previous government that it had accrued unfunded liabilities of $2.1 billion by the change of government in 1992. That is to say, under Labor's stewardship up to 1992, the fund in net cost terms had an unfunded liability of 2.1 billion nominal dollars. What is that in real terms? Somebody could quickly do the multiplication for me. What would we say; about 5 billion or 6 billion of today's dollars in unfunded liabilities in WorkCare?

Now the former Treasurer in the previous government, the Leader of the Opposition in this place, gets up and expresses high dudgeon about the stewardship and public finance administration of the Baillieu government. I cannot believe the hypocrisy and cant I hear from that member of this house day after day; it just galls me. We had a debate in this place on 13 November 1992 that went for 25 hours and 50 minutes. That debate was led by a former member for Jika Jika Province, Mr Theophanous. He contributed 13 hours to that debate: about 3 hours during the second-reading debate and another 10 hours during the committee stage.

Let me say that all I have heard from the Leader of the Opposition and what I have observed of the debate in the Assembly is consistent — that is, this is just playing the song of Trades Hall Council. The good old union organisers get up and rant and rail, but the reality is that during its time in office Labor traded on the outstanding reforms made by the Kennett government which brought the WorkCare scheme back into balance so that by 1995–96 that unfunded liability had been extinguished. The liability of 2.1 billion nominal dollars in 1992 had become a surplus by 1995–96. As a result of that we also saw significant increases in employees who were on benefits returning to work, because the scheme was being better managed.

The point I make in this contribution to the debate is that the measure the government has introduced is very simple. The Accident Compensation Amendment (Repayments and Dividends) Bill 2012 simply has in effect one operative clause — clause 4 — which inserts provisions to allow the Treasurer to make determinations for the authority to repay capital and/or pay dividends to the state. The Treasurer must consult with the responsible minister and the authority, and new section 33A of the bill requires consultation in relation to those matters.

I do not want to deal with the mechanics, because they are so simple as to be entirely consistent with provisions in another act. Given the commentary run by the Leader of the Opposition, I note that he thinks there

is some great precedent here. By way of interjection I challenged the speaker on behalf of the Greens with the same question — that is, what precedent is being established? What is new? I can say with absolute certainty there is nothing new about this. This measure simply puts in place a measure which exists in relation to the Transport Accident Commission (TAC). If any member of this place can look themselves in the mirror and make an argument that there is anything materially different about the two schemes, then I would be very surprised indeed. I would like to hear the intellectual proposition that would be put, because I have not seen it in any of the debate that occurred in the Assembly — not at all.

In the Assembly, curiously, nobody thought about the consistent maladministration by Labor in previous times. In regard to the TAC the former Labor government was quite happy to use the provisions that we are putting in place in this bill in a way to support the financial requirements of the state. For consistency let me read into the record what Labor did in office in regard to the TAC. In 1999–2000 that government required the TAC to provide an ordinary dividend of $185.47 million and an interim dividend of $88 million. Further, in 2000–01 the government required a $135.74 million dividend. In 2004–05 a $295 million ordinary dividend was paid. In 2005–06, $232 million was paid. In addition to that there was a special dividend — a special dividend! How much was that? Was it $100 million? No. Was it $200 million? No. Was it $300 million? No. Was it $400 million? No. Any more bids? It was $600 million.

That John Lenders, the Leader of the Opposition, can come in here and have a crack about financial probity and administration is absolutely pathetic, and I wish the Leader of the Opposition had stayed in the chamber to hear the government's response. He left the chamber immediately after his contribution because he knows what an embarrassment this is. It is an embarrassment. He has run the lines on behalf of his party.

Let me make a point about this debate: it is about appropriate government administration and the financial administration of the state. The difficulty the Baillieu government has, as is always the case when a Labor government goes out of office, is what that Labor government leaves — black holes appear everywhere. What is this government doing? It is trying to manage the resources of the state appropriately. The economic circumstances are such that there is a challenging revenue base, and clearly one of the realities of life is that the government has to look to its government business enterprises to make a contribution, as is consistent and as has been shown with TAC making a contribution to the work of the ALP in government.

I did not complete for the record the dividends that were paid under the Bracks and Brumby governments by John Lenders as Treasurer. In 2006–07 a further $302 million ordinary dividend was paid. In 2007–08, $133 million was paid. In 2008–09 it was $133.9 million and in 2010–11, relating to the previous financial year 2009–10, $100 million was paid. It seems to me that if a former Treasurer and now Leader of the Opposition were to come into this place and make a case to say that this was unprecedented and there was no comparative insurance scheme where these dividends were paid, then he would need to be consistent and say, 'We were terribly wrong, we should not have taken a dollar from TAC'. He is not going to do that, is he?

It is important to note that in the 1990s the Liberal government did not just repair the unfunded liability situation, but it significantly drove down premiums. By 1995–96 Victoria had the lowest premium rate for a WorkCover scheme in mainland Australia. It is fair to say that the policies put into effect by the Kennett government were carried on by the Bracks and Brumby governments. The result therefore is that there has been a reasonable level of prudential management which has allowed premiums to progressively decline, just as incident rates have declined. It is something for us to boast about in Victoria that we have a much lower incident rate than other jurisdictions and that we have what is reasonably understood to be probably the best scheme to cover a workplace injury. I have worked in high-risk environments in the oil and gas industry and in agriculture and I can relate to the importance of having those arrangements in place.

Will the measures proposed by this government put at risk any issues of compensation for workers who are injured at work? The answer is no because those protections are enshrined in separate legislation which is unaffected by these amendments. Will there be an impact on employers? In the *Australian Financial Review* of 20 December 2011 the Victorian director of the Australian Industry Group, Tim Piper, is reported as saying:

> … the removal of dividends from WorkCover need not have a negative impact, but this would be dependent on the government's attitude.
>
> The money is not removed from employers …

Tim Piper, on behalf of his constituency — employers — has made it clear that he sees this as not being a significant issue.

In the commentary that is recited by members of the opposition parties on this issue they like to refer to James MacKenzie, who was chair of TAC and the Victorian WorkCover Authority and had some views which were expressed in an opinion piece published in the print edition of the *Age* of 28 February. Interestingly, in those comments he acknowledged that the strength of the WorkCover scheme owed its success to a previous Liberal government. He is reported as saying:

> The origins of this success date back to the reforms of the Kennett government.

My purpose in reading that into *Hansard* is so that any commentary that comes from the opposition hereafter is heard in the context that James MacKenzie himself acknowledges that the Kennett government's reforms in the 1990s established the basis upon which the scheme operates today. It is a well-funded scheme with lower premiums than any other state. Victoria's premiums are currently the lowest in the country at 1.34 per cent, compared to those of Comcare at 1.41 per cent, Queensland at 1.42 per cent and New South Wales at 1.66 per cent. It is important to note that both employers and employees are protected. Because of the stewardship of the scheme, employers will not be paying higher premiums and because of the legislative protections, employees will continue to receive the benefits that are enshrined in legislation.

This is a good bill. It gives a fair balance for assessing the capacity of the Victorian WorkCover Authority to contribute to dividends after an assessment of its financial performance each year. After consultation with the authority and the minister responsible for the authority, the Treasurer may declare a dividend. With that, I urge members to support the bill.

Ms TIERNEY (Western Victoria) — I rise to make a contribution to the debate on the Accident Compensation Amendment (Repayments and Dividends) Bill 2012 and from the outset reaffirm Labor's opposition to this bill. When I first heard what the Victorian government was going to do — that is, take $471.5 million out of the Victorian WorkCover Authority scheme — I was quite gobsmacked. I had two visions, the first being that of an opportunistic state government pouncing on a piggy bank, which I might add has been built up with the contributions of other people, in this case employers, and not even talking to them about what it intended to do. It was just a quick grab for the almighty dollar for the state government's own ends.

The other vision was of families anticipating Christmas — because the announcement was made just prior to Christmas — looking forward to the future with Father Christmas entering the home and laying out all the presents. Instead, Victorians got a visit from a skulking Victorian government, which crept in the back door and did not talk to anyone about what it was going to rip off, which is essentially the following: $174 million in 2011–12, $126 million in 2012–13, $87.5 million in 2013–14 and $110.5 million in 2014–15. That represents not one, not two, not three but four knives in the back of WorkCover. It is a lazy act, bereft of logic and any definition or thought.

Against the backdrop of the previous government's finely tuned management of WorkCover I find what is before us today extremely disturbing. In fact speakers in the debate from the opposite side have indicated a number of initiatives that the previous government took in respect of WorkCover, including a continuous program of reducing WorkCover premiums. As other speakers have said, WorkCover premiums in this state are lower than in any other state in this country. We also made a number of other improvements to the scheme. But I believe this measure by the government will erode the confidence of the business community and our competitive edge in the area of employment and job creation. All members of this chamber already know we in this state are in dire straits in respect of employment levels and the creation of new jobs.

The coalition government has said that taking nearly half a billion dollars out of WorkCover will not have any impact on the scheme. I say, 'What nonsense!'. It is clear that the ability of WorkCover to remain a fully funded scheme will be eroded. This bill will see money contributed by employers going to the state government and not to injured workers. It certainly will not go towards community and workplace education or injury prevention programs. The previous government left this government with a AAA rating. This government's cries of inherited budgetary woes indicate it is paralysed and in total denial. The best we can expect from this government is a sneaky, lazy grab for money, which is essentially what this represents. On this occasion it is hardly surprising, given the ideological predisposition of those opposite — a predisposition that pays very little respect to workers and their representative organisations. It demonstrates yet again their lack of care for injured workers and vulnerable families, not to mention the government's lack of concern over where it is heading.

Recently the centenary of the devastating RMS *Titanic* disaster has been commemorated and covered by most media outlets. This afternoon I appeal to those opposite to choose a driver for this state and work out what a

steering wheel is for before we have no jobs, no infrastructure and no investment in this great state. I also urge those opposite to do the only thing that is reasonable, and that is to vote against this bill.

Ms CROZIER (Southern Metropolitan) — I am pleased to rise to make a relatively short contribution to the debate on the Accident Compensation Amendment (Repayments and Dividends) Bill 2012, and I do so for a number of reasons. After hearing the contribution of Ms Tierney I want to take the opportunity to dispute some of the outrageous remarks she made in relation to business concerns. I want to speak about what we as a government are undertaking to maintain the position of this state in light of what is happening right around this country. I refer here to some policy decisions made at a national level that are having massive impacts not only here in Victoria but in other parts of the country.

Going back to the bill, my colleague Mr Philip Davis, who has a tremendous knowledge of what has gone before in this place, contributed exceptionally well to this debate. He saw some of the reforms under the Kennett government, which he referred to, in relation to WorkCover schemes. There is no doubt that those on this side of the house are very supportive of such schemes, and we need to have those schemes in place to protect workers. I think Mr Davis mentioned the gas and oil industries and the agricultural industries in his contribution and that he was very aware of what the WorkCover schemes were designed to do. Similarly I am very aware of WorkCover and what it has done for people I know who have been injured in very serious farm accidents. There are industrial areas in my electorate of Southern Metropolitan Region where these sorts of schemes are very important indeed.

Clause 4 of the bill inserts new sections 33A and 33B into the Accident Compensation Act 1985, which provide that after consultation with the Victorian WorkCover Authority and the relevant minister the Treasurer may require the authority to repay capital to the state. This is not new, as has been outlined by other speakers. There have been other authorities, such as the Transport Accident Commission, which have also undertaken such repayments. The Assistant Treasurer, Mr Rich-Phillips, outlined that exceedingly well and said that this is not new to the Victorian taxpayer. The Victorian taxpayer is ultimately responsible for underwriting WorkCover, and therefore it is appropriate that the state receive a dividend.

I turn now to Ms Tierney's comment about this government being lazy. She said it a number of times in her contribution, and it seems to me that it has been lifted straight from 'ALP Vic news'! in which the shadow minister for WorkCover, the member for Preston in the Assembly, said a similar thing. He also said the Baillieu government's financial management is reckless, but nothing could be further from the truth. This government is putting Victoria into a very sustainable and financially responsible state, and I commend all those involved in the budgetary process — the Treasurer, the Minister for Finance and others — on their stewardship of it.

Ms Tierney also said the repayment of capital was going to erode business confidence and its competitive edge. What I see as eroding confidence and the competitive edge of business is not this piece of legislation but the national legislation to introduce a carbon tax. We hear constantly from businesses about the uncertainty it is going to cause, and I think come 1 July, when we find out what its impact will be, the effects on confidence and the competitive edge might be discovered.

In relation to what already occurs, TAC is underwritten by and pays a dividend to the government, as I have mentioned. We have heard the scaremongering from the opposition. Mr Lenders said the government's process for determining what capital is involves saying, 'We could do with a bit more dough', and then taking it out of the authority with no checks and balances on the Treasurer. As was highlighted by Mr Philip Davis, when Mr Lenders was Treasurer he had no problem accepting dividends from TAC. There is a degree of hypocrisy in the opposition's argument regarding this legislation.

Members of the opposition have suggested that premiums will rise. The bill will not cause a rise in premiums. The fact that members of the opposition have stated this shows their lack of understanding as to how premiums are actually calculated. They are not based on financial year results; they are based on the projection of costs that will be incurred by the Victorian WorkCover Authority. Further, as has already been highlighted, Victoria has the lowest WorkCover premiums in Australia — 1.34 per cent — whereas Queensland has a premium of 1.42 per cent and New South Wales has a premium of 1.66 per cent. There is no question about it; we have a good track record.

Mr Tee — Who delivered that?

Ms CROZIER — I take up Mr Tee's interjection. I do not know if Mr Tee was in the chamber when Mr Philip Davis made his contribution, but the setting of the premiums at that rate was primarily due to the reforms undertaken under the Kennett government. The other interesting point Mr Davis made in his

contribution to this debate was in relation to the additional $600 million in dividends paid under the Bracks and Brumby governments.

In relation to what the Baillieu government is doing and the responsibility of the Minister for Finance in discharging this piece of legislation, I assure businesses that premiums will not rise and that the safety of workers will be ensured. It is completely misleading to say that their safety will not be ensured and that premiums will rise.

In conclusion, I reiterate that business will not suffer, as stated by those opposite, that workers will be protected, that benefits will remain enshrined in legislation and that those who are injured will still be looked after by the scheme in the same way that they are currently. I commend the bill to the house and urge those opposite to support it.

Mr ELASMAR (Northern Metropolitan) — I rise to oppose the Accident Compensation Amendment (Repayments and Dividends) Bill 2012. In order to ensure good governance for the people of Victoria, the Leader of the Opposition in the other place has consistently worked with the coalition government to enable good legislation to be carried in both houses without fanfare or vitriol. This bill is not good legislation. It will hurt workers and harm employers in this state. It allows for WorkCover moneys to be skimmed off or taken by the state government to the detriment of virtually all salaried Victorians and every employer who pays WorkCover premiums, in particular by introducing clause 1, which states:

> The purpose of this Act is to amend the Accident Compensation Act 1985 in order to enable the Victorian WorkCover Authority to repay capital and pay dividends to the State.

This is absolutely outrageous. Construction workers and, ironically, injured workers in the agricultural sector form the majority of WorkCover accident claims in Victoria. I would have thought the farming community would be better served by their elected Nationals parliamentarians.

There is almost hysteria from the Premier to balance the books, whatever it takes. It would appear that for this government the ends justify the means, and this is not good. The government is slashing the education budget, stopping state school upgrades from going ahead and cutting 3600 jobs from the public sector, to name a few draconian measures that smack of the era of former Premier Jeff Kennett.

Businesses are going bankrupt every day in Victoria. That is a fact. The bill will not arrest the destabilisation of the Victorian economy. In fact it will strip employers of necessary financial resources by denying WorkCover officers the capacity to offer rehabilitation and retraining programs to injured workers. We on this side of the house rightfully condemn this bill for the harm it will do to the current and future generations of Victorian workers.

Mr ONDARCHIE (Northern Metropolitan) — I rise this afternoon to speak on the Accident Compensation Amendment (Repayments and Dividends) Bill 2012. The bill amends the Accident Compensation Act 1985 to enable the Victorian WorkCover Authority to pay dividends or repay capital to the state of Victoria. It provides that the capital is repayable to the state at the times and in the amounts determined by the Treasurer after consultation with the authority and the minister and that in making a determination under this section the Treasurer must have regard to any advice the authority has given the Treasurer in relation to the authority's affairs.

Is it not ironic that Mr Lenders stood in this chamber today and gave this government a lesson and guidance on how to construct and operate a state budget? All that from a former Treasurer who drove this state almost to economic ruin. We could talk about the desalination plant, myki, the regional rail link — we could run a list for hours — and the irony is that Mr Lenders stood in this chamber and gave us a lesson in how to construct, frame and operate a budget. All this from a former Treasurer who did that to this state.

This last weekend in the state of Victoria we saw absolute excitement about One Direction. That is interesting because this state has just suffered 11 years of no direction under Labor, and it is about time Mr Lenders sat back and learnt. He talked about a cash grab. I cannot believe where Mr Lenders was coming from, given he was the Treasurer who took extraordinary dividends out of the Transport Accident Commission and had a consistent policy of taking large dividends from and capitalising on the windfall gains of the TAC in its investment returns. In his time as Treasurer he was happy to take dividends out of the Transport Accident Commission to supplement the state budget, but he stands here in absolute hypocrisy this afternoon and talks about the return that taxpayers should expect after their investment in the Victorian WorkCover Authority.

This bill applies the standard government enterprise dividend policy to the Victorian WorkCover Authority, bringing it into line with other government business

enterprises, including the TAC. The taxpayers of Victoria effectively underwrite the WorkCover authority's accident compensation insurance scheme, so the taxpayers should be entitled to share in the rewards through dividends and repayment of capital.

It is about time members of the former government started to treat Victorians with some respect. I have worked in and run substantial businesses in this state, and it is about risk and return. The taxpayers of the state risk their hard-earned money to underwrite the Victorian WorkCover Authority. Are they not entitled to a return on their investment? It is about time the ALP in this state decided that these people are important enough to have appropriate regard for and to treat with respect.

Just last weekend I had the absolute delight of welcoming the local community to the South Morang railway station. While I was welcoming the community to the new station, after 13 years of waiting, the member for Yan Yean in the other place was holding up signs to the media that said this was a Labor-funded project: 'Welcome to a Labor-funded project'. Unless I am mistaken, the project was funded by the Victorian taxpayers, not the Australian Labor Party. If the Australian Labor Party funded that major infrastructure project, I will take my hat off to it, but it did not. The Victorian taxpayers funded that project, and it is about time the Australian Labor Party started to treat taxpayers with the respect they deserve.

The Victorian WorkCover Authority is well managed and financially sound. Its benefits to injured workers are excellent while maintaining the lowest average premium rate of any workers compensation scheme in this country. The payment of dividends will not put pressure on insurance premiums. Premiums are set based on projected claims and costs expected to be incurred without consideration of the previous year's financial outcomes. Benefits under this scheme are enshrined in legislation. Dividends will have no impact on the benefits and entitlements.

This is a good bill. It is a reasonable bill. It is about delivering some return to the taxpayers of Victoria who have risked their own capital for the sake of the Victorian WorkCover Authority. I commend the bill to the house.

Mr EIDEH (Western Metropolitan) — I rise to speak on the Accident Compensation Amendment (Repayments and Dividends) Bill 2012, without doubt the most unjust and irrational bill that has ever come before this house and one which we on this side will oppose.

What the Baillieu government plans with this bill is the destruction of Victoria's successful accident compensation scheme — the most successful and economic accident compensation scheme in the nation. It is a strong and positive legacy from Labor in government but one which this government seems hell bent on destroying for no logical reason other than, as it cannot do anything positive, it will act to dismantle the many positive aspects of Labor administrations.

The house needs to note very clearly that under the former Labor government the Victorian WorkCover Authority was one of the government's great success stories. We saw many premium reductions over time. We saw workplaces become much safer. We saw claims reduce and the burden on the state decrease. The number of people injured, or worse, was cut back enormously, and business prospered under a safer system which Labor created.

By comparison, under the proposals of this bill the very guts will be ripped out of something that has worked and worked well. What we have is a disgraceful dash for cash, a smash-and-grab job from a government that has already proven itself to be the weakest government in the history of our state. This is a smash and grab that would make the state's worst thieves feel very proud, although they should fear their new competition, the Baillieu government. This is a government that is more interested in destruction than in growth, a government that abjectly refuses to admit its failings and its inability to govern, a government that has already cost well over 40 000 jobs, and the count is soaring ever higher on its watch.

This bill seeks to raise more money for the coffers of a government incapable of doing anything positive for the state and unable to raise funds by better administration of the state — coffers which the government needs to fill given its desire to hoodwink the people into voting for it again in two and a half years time. I say 'hoodwink' because the facts are clear and visible.

There is no mandate for this bill. It was not raised by the Baillieu team when in opposition. It was never mentioned to the people, the workers, the employers, all of whom will lose if this bill is tragically passed. This bill will destroy jobs, especially small business jobs. Big business will be spared because this government is hell bent on its 'jobs for the boys' mentality of looking after its mates rather than the good people of Victoria.

A colleague in the other place informed me that the 37 biggest employers in the state will not be paying this proxy payroll tax. The ANZ bank, BHP Billiton and BP

will be safe, as will their mega-billions. At least $500 million will be taken out of business in this state to plug gaps in the budget created by the missing Treasurer of the state — a Treasurer famous for being the first truly invisible man, and this nonsense is taking place at the very time when Victoria is facing a serious jobs crisis, the worst in mainland Australia. That is not how Victoria was left by former Premier Brumby, as Premier Baillieu acknowledged publicly after the coalition assumed the mantle of government.

I fear deeply for this state if this bill is passed. I fear for the lives of the good people of Victoria — men and women who work in factories, on building sites, at cargo terminals, in hospitals and on the roads. Under Labor, workplaces were significantly safer, the number of accidents was decreasing and we saw the multiple benefits of unions, businesses and the government working with the Victorian WorkCover Authority to improve safety. This bill will kill that. It will endanger the health and lives of workers and hurt employers and their businesses.

There are members opposite whom I regard as honest and decent, and I truly believe they are caring, intelligent and concerned about what is best for our state, even if we disagree on how to achieve what we believe is best. This is my personal view, but I fear that this bill will endanger lives as risks and short cuts are taken and small business seeks to recover costs. I oppose this bill because it is not in the best interests of the state. I urge each and every member opposite to think deeply about why they should work with the opposition to defeat a bill that should never even have been laid on this table.

Ms PULFORD (Western Victoria) — I was not intending to join this debate. However, some of the contributions by government speakers have inspired me to make a few remarks about this legislation, which seeks to enable the withdrawal of a $471.5 million dividend from the accident compensation scheme. This is an extraordinary decision — indeed, such an extraordinary decision that we must have legislation to facilitate it. In their essence, government members' arguments have been, 'Well, the money is here; it is ours, and we can take it.' This has rested on the flimsy assertion that WorkCover and the Transport Accident Commission (TAC) are somehow the same type of scheme. This is not the case. I hope Minister Rich-Phillips has some appreciation of the differences between the schemes. They go much deeper than different types of injuries and different claimant profiles, but they are a couple of places to start.

Contrary to Mr Davis's remarks, Labor was perfectly able to manage a solid package of benefits for injured workers. Some benefits, such as superannuation payments for victims of long-term serious injuries, set the standard in this country. We did this while delivering successive premium reductions to the Victorian business community, thereby reducing the cost of employment and supporting the business community's ability to create jobs. Mr Davis is obviously upset to hear Labor MPs demand that government balances decent benefits and lower premiums, but I suggest to him that that is nothing compared to what the government might hear from the Victorian community if it takes its axe to benefits for people injured at work.

Of course this is the party that abolished common-law rights and, with the same draconian package, slashed statutory benefits to a remarkable degree. The Liberal Party's form in this area is appalling, and we will be watching the actions of its members very closely. I am conscious that Mr Rich-Phillips has on numerous occasions indicated that benefits will not be touched and premiums will not be increased, but the very act of bringing this legislation to the Parliament casts some doubt on the government's ability to juggle all of this simultaneously. We will be watching this area very closely.

I am pleased that the minister is in the house. I invite him to respond to accounts that I have heard from practitioners in this area that there is a new level of aggression in claims management and that WorkCover payment recipients — some of them with serious injury certificates awarded through the courts or in receipt of long-term established benefits for medical and like expenses or court settlements providing resolution to payment claims for long-term serious injuries — are now having their claims reviewed and are receiving formal notice under the act on a range of spurious grounds, including that the injury is no longer work related. I take the opportunity to report to the minister that what I am hearing is a new-found aggression in the way in which the scheme is approaching some of the most seriously injured long-term claim recipients. I invite him to ask some questions of claims agents about the way they are approaching these questions.

Labor is opposing this bill. Ms Crozier, who is currently Acting President, said premiums are not going up and benefits are not being reduced. This cash grab is unnecessary. What I would say in response to the Acting President's earlier remarks in the debate is that what is at stake here is the opportunity cost of taking that $471.5 million, which is that Victorian employers'

premiums will be less able to be reduced and/or injured workers' benefits will be less able to be increased.

With those words, I urge the government to reconsider and to restore the balance that has worked very well for Victorian employers and injured workers alike in recent years.

Ms MIKAKOS (Northern Metropolitan) — I rise to speak in opposition to this bill. This is a bill that permits the government to take almost $500 million in dividends and capital payments from the WorkCover fund during the next four years. It seeks to make a fundamental change to the operations of WorkCover, which until now has been a closed scheme. Currently premiums paid by employers to the fund are used to benefit injured workers and prevent workplace injury and disease. Under the proposed changes this government will be able to take money from the fund to fill the gaping holes in its budget. The budget update released on 15 December last year states that this raid on WorkCover funds will take approximately $471.5 million over four years. It is important to note that the legislation before us does not limit payments to this figure, yet despite the clear and obvious disadvantage to Victorians that will result, this government is seeking to push ahead with this proposal.

The Labor opposition has been vocal in its criticism of this legislation because it believes the bill will inevitably result in either higher premiums for businesses or reduced benefits for workers, or both. It is absolutely astonishing that at a time when Victoria is losing jobs this government would seek to bring in legislation that is antijob creation and is in fact a desperate attempt at grabbing cash. The practical effect of this cash grab will be fewer jobs because premiums will be higher, deterring more and more Victorian businesses from hiring. This is coming at a time when Victoria's unemployment rate has increased to 5.4 per cent in the month of February, which is significantly higher than the national average of 5.2 per cent. We currently have 8200 more Victorians who have joined the unemployment queue, and there are more than 12 600 less jobs across Victoria. This has been caused by a government that has no plans to grow the economy, no strategy to create jobs and no vision for our state.

Whilst the Leader of the Opposition and member for Mulgrave in the Assembly announced a jobs and investment plan last week and invited the Victorian community to have a say around that jobs plan, we are still waiting for the Baillieu government to develop its own jobs plan. In fact the Minister for Employment and Industrial Relations has been critical of Labor's jobs plan at the same time as there is an absolute vacuum in place of this government's policy on this issue.

We all know that a strong economy does not appear magically and that jobs growth does not happen by accident. We need a government that is prepared to do the hard work to boost business confidence and attract investment, and a government that is willing to govern. We have not seen that from the Baillieu government. This government is missing in action. The Victorian public is becoming increasingly frustrated by this government, which is allowing jobs to be lost every week and has absolutely no idea about how to turn that around.

By contrast, Labor has a proud record on both jobs creation and WorkCover. In relation to WorkCover, the previous government reduced WorkCover premiums six times, bringing them to historic lows. It substantially improved benefits for injured workers while at the same time significantly reducing workplace accidents. It also implemented a $90 million reform package to boost support for Victoria's injured workers and families dealing with the tragedy of a workplace death.

The grave concerns we have with this bill are not only held by members of the Labor opposition; they are also shared by industry. In the *Age* of 20 December last year Tim Piper from the Australian Industry Group was quoted as saying:

> What it is more likely to do is reduce the innovative opportunities WorkCover has to consider injury prevention activities …

In addition, we have heard concerns expressed by the former chairman of the Victorian WorkCover Authority, James MacKenzie, who made a number of observations about this on 28 February this year in an opinion piece in the *Australian Financial Review*. He said that the Baillieu government either does not understand or simply does not care about the consequences of this cash grab. He described Victoria as having one of the best workers compensation schemes in the country and said that the occupational health and safety regime in Australia was arguably the best in the world. He called our record in this area enviable, yet the Baillieu government, with its misguided policy, is threatening to pull apart a scheme that is fully funded and strip $500 million from a fund that no Victorian government has ever contributed to.

In my view the Baillieu government is effectively a wolf in sheep's clothing. It may not be called the Kennett government, but for all intents and purposes it is the Kennett government. I refer members to a

comment from the Victorian secretary of the Australian Workers Union, Cesar Melham, who was quoted in a media release dated 15 March of this year as having said:

> It feels awfully like a re-run of the Kennett years when benefits for injured workers were slashed, common-law claims were eliminated and premiums shot up …

That is what we are seeing at the moment. My fear is that this is just a prelude of what is yet to come. What is yet to come is an attack on workers' benefits under the WorkCover scheme.

We have to remember, and we will constantly remind government members, that Labor left behind a AAA-rated economy and a budget in surplus. Despite what government members may wish to claim, Mr Lenders was an excellent Treasurer who delivered that budget surplus and made sure that every single year that Labor was in government we had a budget surplus. The Baillieu government is a fiscally inept government that believes raiding WorkCover for more funds is a magical solution for delivering on its promises. This government seems to believe that it has found in the WorkCover authority the money tree that will provide it with the funds it requires to deliver on its commitments. This will come at the expense of the Victorian public and in particular Victorian workers. For those reasons, I strongly oppose this bill.

House divided on motion:

Ayes, 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	

Noes, 19

Barber, Mr	Pakula, Mr
Broad, Ms	Pennicuik, Ms
Darveniza, Ms (*Teller*)	Pulford, Ms
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
Mikakos, Ms	

Motion agreed to.

Read second time.

Committed.

Committee

Clause 1

Ms PENNICUIK (Southern Metropolitan) — My question on clause 1 is: how long is this system meant to be in place?

Hon. G. K. RICH-PHILLIPS (Assistant Treasurer) — In response to Ms Pennicuik, the provision will be in the legislation until it is removed from the legislation. The government has said it is putting that mechanism in place, but that does not mean the government will necessarily seek to take a dividend every year.

Ms PENNICUIK (Southern Metropolitan) — I understood that it was only meant to be for a few years. There is no sunset clause in the bill, so it is meant to be in perpetuity.

Hon. G. K. RICH-PHILLIPS (Assistant Treasurer) — That is correct. It is in perpetuity until it is removed, but the government has said it will not necessarily take a dividend every year, as is the case with other institutions where similar provisions apply.

Mr LENDERS (Southern Metropolitan) — Acting President, I have a number of questions for the minister that relate to the appropriate levels of dividends. I will save them until clause 4, assuming the minister is comfortable with that. If he is comfortable with not dealing with that matter as part of the objects clause, I will hold off until clause 4.

Clause agreed to; clauses 2 and 3 agreed to.

Clause 4

Mr LENDERS (Southern Metropolitan) — I have a number of questions for the minister regarding clause 4, which for the first time allows the government to take a dividend out of WorkCover, or WorkSafe, and also enables the government to take capital out of the fund. I wonder if Mr Rich-Phillips would share with the house what the criteria will be for taking out a dividend. In particular, as he is required to be consulted under this legislation — and I am assuming he was consulted before the mini-budget — on what basis were the four figures that were announced in the mini-budget for the next four years determined?

Hon. G. K. RICH-PHILLIPS (Assistant Treasurer) — I thank Mr Lenders for his question. Mr Lenders would know that the legislation, which

would allow the Treasurer to undertake consultations in accordance with this provision, is not yet in place.

As to his more substantive question regarding the appropriate level of dividends, the figures set out in the budget update are based on a dividend being set at 50 per cent of performance from insurance operations, which is consistent with the policy that has been in place for the Transport Accident Commission. That is the basis on which those figures have been arrived at.

In terms of considerations, obviously the legislation sets out some matters that need to be taken into consideration by the Treasurer in consulting with the authority and with the portfolio minister. The most substantial of those would be the funding ratio of the organisation and where that is tracking versus the preferred range for the funding ratio.

Mr LENDERS (Southern Metropolitan) — Do I take it from the minister's answer that he was not consulted about this? He said he was not required to be consulted, and I know the legislation is not yet in place, but the government has announced four amounts of money that it intends to draw out of WorkCover once this legislation is passed. I ask the minister if he and the chair of the WorkCover authority were consulted on the terms of this bill when the decision was announced in December to draw this extraordinary amount of money out of the organisation?

Hon. G. K. RICH-PHILLIPS (Assistant Treasurer) — Mr Lenders cannot make that inference. I made the point that this legislation is not in place, and therefore the provisions of this bill are not in place. That does not imply that I was not consulted about this and did not have discussions with the Treasurer. Of course these matters are considered within government before such decisions are taken.

Mr LENDERS (Southern Metropolitan) — I accept that Mr Rich-Phillips was consulted by the Treasurer. Was the chair of the WorkCover authority consulted before the mini-budget announcement in December?

Hon. G. K. RICH-PHILLIPS (Assistant Treasurer) — This was a policy decision of government, and once the process set out in the legislation is in place, that process will be followed in consultation. As a former Treasurer, Mr Lenders would appreciate that governments typically do not flag their budget decisions or budget update decisions before they are announced.

Mr LENDERS (Southern Metropolitan) — I hear what Mr Rich-Phillips says, but if the purpose of consulting with the authority is to see whether it is viable for that amount of either dividend or capital to be drawn out of it, then I find it amazing that the decision for the first four years has been made by the executive government, which has an interest in a cash grab, and yet the authority — which is charged under legislation and the directors of WorkCover have the obligations of company directors — has not been consulted. I get the policy issue, that the government has a policy to draw a dividend. While I disagree with the government on that, it is a policy issue. I accept Mr Rich-Phillips's answer. My specific comment here is the authority was not consulted as to whether this was a viable amount of money to be drawn out of it before the mini-budget in December.

Hon. G. K. RICH-PHILLIPS (Assistant Treasurer) — I will use the TAC as an example because this legislation is modelled on the Transport Accident Commission legislation. I say to Mr Lenders that this is no different to the approach taken with respect to the TAC. Estimates are built into the budget over the forward estimates period. When it comes to actually determining a dividend, which is what this legislation is about and what ultimately determines how much cash actually flows from the authority to government, that is done through the process of consultation laid out in the legislation. That does not mean governments do not and cannot propose estimated figures in the forward estimates period, which is what was done through the budget update process, but of course the budget consultation process will take place with the authority on a year-by-year basis, as the legislation will require and as is the practice with the TAC.

Mr LENDERS (Southern Metropolitan) — As part of the debate we have a fundamental distinction to make. You could take Mr Rich-Phillips's argument that it is the practice of the Transport Accident Commission, and I accept that that is the intent of this legislation. I accept what is set out in the Treasurer's second-reading speech and Mr Rich-Phillips's answer, but the fundamental difference from the TAC is that the government will have a policy of 50 per cent of performance of insurance operations — or whatever its current policy is — and then it will go to the authority and say, 'Is this viable?', because obviously there are things broader than performance of insurance operations, if the cash reserves have unexpectedly gone downhill beyond actuarial before doing the adjustments and all that. But there is an obligation to consult with the authority before a decision is made to draw money out. The rules that the government wishes to apply may be the same, but a fundamental part of those rules is that you actually talk to the authority before you make the announcement, before you put it into forward

estimates and before you announce you are going to do the cash raid.

Unlike the TAC, where before it strikes a dividend the government talks to it, the government has unilaterally decided what it thinks is an appropriate rate — in this case for the first four years of the legislation. It has not tested that with the authority, whose directors are required at law to be responsible for it. Yes, the minister can give them direction, but at law they are no different from the board of a public company and they have the same obligations as directors. The government has unilaterally said it knows best. It will draw this money out and in future it will consult, but for the next four years it has already made the policy decision as to what it is going to take out. So I would ask the minister: what is the distinction? How can he say it is the same as the Transport Accident Commission? In every year the TAC has the capacity to contest the decision before the government announces it. This is a very different circumstance.

Hon. G. K. RICH-PHILLIPS (Assistant Treasurer) — I do not think we are going to reach agreement on this, but I would submit that there is no difference at all. With the last budget that Mr Lenders would have produced as Treasurer there would have been figures built in for the 2013–14 year with respect to dividends from TAC, on which the government of the day would need to consult with TAC after achieving the actual 2012–13 year results. Notwithstanding the fact that you do not have the actuals when you cast that budget, you still have to build estimates for the dividends from TAC into the forward estimates. That consultation process with respect to the dividends that you expected to collect in 2013–14 would not have taken place until after the 2012–13 year had concluded. This is no different, and this is no different to any other policy changes that the government brings about by way of either a budget or a budget update which subsequently requires legislation. Estimates are put in the budget. The legislation is then put in place, and the consequences of that legislation then take place after the legislation is in place, and this is no different.

Mr LENDERS (Southern Metropolitan) — The minister is correct: we will disagree. For the record, the TAC dividend going forward, as with any dividend from any publicly owned enterprise, whether it be Melbourne Water, the Treasury Corporation of Victoria (TCV), the Victorian Funds Management Corporation (VFMC), the SECV (State Electricity Commission of Victoria) — all the major sources of dividends — then, yes, the Department of Treasury and Finance does make an estimate which goes into the budget estimates. But all of those estimates are aggregated, and they are aggregated for a reason. The reason is that that is a best estimate from the department but the government does not dictate to the Treasury Corporation, VFMC, Melbourne Water or City West Water — you name them all — that the dividend is going to be this particular amount for the future year. It says that the government's best estimate is that it will draw X dividends from X authorities. There is a process of discussion with the authorities about whether the dividends are viable. Clearly if in balance they are wrong, the government has a budgetary problem. I am not being cute about this, but it is fundamentally different.

The Treasurer of Victoria said in December 2011 that we will get A, B, C and D dividends out of the WorkCover authority. That is completely different from what happens with the other big fee payers, which are the Transport Accident Commission — obviously, being the biggest one — and Melbourne Water, being in order. They are quite different. Treasury will make an estimate, but that estimate is one that can be negotiated and varied. This is quite different. Without having consulted with the authority, the government has said, 'We are taking these amounts of money out over the next four years'.

I am not seeking to waste the time of the house, but I am making the point that if Labor had come up with this and said, 'Trust us. We know what we are doing. Without having consulted with the board responsible we're going to take this money out', we would have been laughed out of this place by the now government. We are not going to agree, but I make the clear point that this is a completely different approach to what happens with TAC, Melbourne Water, the State Electricity Commission of Victoria, the Treasury Corporation of Victoria, the Victorian Funds Management Corporation — you name it. Unilaterally the Treasurer has said, 'I need $471.5 million to balance my budget. Where can I take it from?', and has reached his hand out and taken it, and now the government is dutifully delivering on that by rule 21:19.

Hon. G. K. RICH-PHILLIPS (Assistant Treasurer) — I hesitate to respond further on this, but I take up Mr Lenders's point about the way in which dividends are presented in the budget and the way in which they are presented in aggregate. Mr Lenders would be the first to criticise the government had the government made this policy change and not disclosed in the budget update, by way of a line item, the impact that seeking a dividend from the Victorian WorkCover Authority (VWA) would have. Of course dividends are

normally aggregated in the budget, but that does not mean that Treasury does not make an assessment and arrive at that aggregation from assessing the capacity of the individual entities. This is no different. As I said, Mr Lenders would be highly critical of the government had we made this policy decision without disclosing it in the budget update.

Mr LENDERS (Southern Metropolitan) — Further on clause 4, the legislation allows the Treasurer to extract dividends from the WorkCover authority. It also allows the Treasurer to extract capital from the WorkCover authority. The first question is not a trick question, but I am just not familiar, in relation to accounting standards, with how capital is extracted from these government bodies. I am wondering if the minister could either take on notice to answer later or provide an answer now as to what will be the standard for taking out capital. In particular I again refer to the WorkCover authority report. Without being overly technical, it shows that there was a net equity in the authority last year of $989 million. That is on page 34. I ask the Assistant Treasurer what his view is as to an appropriate amount of that capital to take out.

There are three things, I guess, to save jumping to my feet three times. Firstly, what standard is there for determining what is capital or not? I am assuming it is the equity in the report. Secondly, what is the appropriate level that the authority and the minister would discuss as to how much capital can be taken out? I will start with those two. What is an appropriate amount? We know what it is for dividends; the minister has said. And is that equity the figure that we are talking about for capital in the WorkCover authority?

Hon. G. K. RICH-PHILLIPS (Assistant Treasurer) — Responding to Mr Lenders's questions, firstly on the issue of capital, the reason this provision is in the bill is that the bill faithfully mirrors the provisions in the Transport Accident Act 1986 with respect to dividends and capital. The government has no plans to withdraw capital from the VWA, and in effect that answers the second question about suitable levels. I do not have a view on a suitable level; the government does not have a plan — does not have any plans — to withdraw capital from the VWA.

As to the definition of capital as it would apply to this provision, I am advised that it is not quite the definition Mr Lenders went to. It would essentially be the net position with respect to funding ratio assets minus funding ratio liabilities. To put it in simple terms: at 30 June last year the funding ratio was 108 per cent; essentially the capital for the purposes of this clause would be regarded as the 8 per cent — the excess above a full funding ratio. It is not quite the equity definition on the balance sheet; it is a narrower definition than that.

Mr LENDERS (Southern Metropolitan) — Again referring to the WorkCover authority report and that last year the funding ratio that Mr Rich-Phillips referred to was 108 per cent; under Labor the funding ratio got up to 134 per cent at one stage — from the same annual report. Again, does the minister have a view as to what the appropriate funding ratio is for the Victorian WorkCover Authority, after income tax, after dividends et cetera? Does he have a view? I know the authority operates on performance from insurance operations and that is the correct short-term way a government should look at this with the way equity markets go, but does the minister have a view, when the alarm bells start ringing, on the funding ratio?

Hon. G. K. RICH-PHILLIPS (Assistant Treasurer) — I am hesitant to talk about the alarm bells ringing on the funding ratio, but as Mr Lenders would appreciate there is a range for the funding ratio, which was established under the previous government and continues to date, and that is a range of 85 per cent to 115 per cent as the normal funding ratio — the acceptable funding ratio — for the authority. Obviously when it drops below that, there is an expectation that the board will put in place plans to return it to that range. The basic accepted range is 85 to 115 per cent.

Mr LENDERS (Southern Metropolitan) — I find it interesting that the minister says he is hesitant to use the term 'alarm bells'. Without being alarmist, this state under the previous government spent a lot of its early years getting the WorkCover authority back into the black, and it is no coincidence that it now has the lowest premium rates in the country. While I am sure the current government would like to gain credit for why we have gone from second lowest to lowest, I think that is more to do with the mismanagement of the Queensland scheme than anything that has happened in Victoria.

My reference to alarm bells is exactly that. If we, in a blasé fashion, think this is a cash cow, it does concern me. As the minister absolutely knows, you just need a tweak to discount rates or any of these matters, and suddenly all the ratios just go bonkers — if that is a parliamentary term. This is a volatile space. I refer to the Treasurer's second-reading speech. Without wishing to verbal the Treasurer — which I would not mind doing, but on this occasion I will not — he is quite blasé about it, saying the Victorian government is the guarantor underlying the WorkCover authority and in the end if anything goes wrong, the government

picks it up. I am paraphrasing him, but I certainly think the third and fourth paragraphs of his second-reading speech are pretty blasé.

I deliberately used the term alarm bells because it genuinely bothers me that a legislature is being asked to leave that authority, without any checks and balances, with one person, the Treasurer of the state, who has a vested interest in gouging every bit of revenue from any source he can find to balance a budget — and I think I understand that need on his part. It is not a disallowable instrument; it is just, 'This is what I'm going to do, and this is when I'm going to do it'. The Treasurer is fairly flippant with the term 'risk', and the Assistant Treasurer says he does not like the term alarm bells.

It would give me some comfort as a legislator to know that the government does have some parameters. In his answer Mr Rich-Phillips did say the funding ratio is 85 to 115. My recollection is that it was 90 to 110 when we were in government, but I stand to be corrected. That is not the point; that there is a ratio is the important part, and I respect that as something important for the minister to say. But I specifically ask him the following question, and I appreciate his rationale that others might have criticised the government if it did not specify what it wanted to take out. The government is in a conundrum here, and I will not reprosecute that. But assuming that the authority does either better or worse than the untested Treasury estimates when the mini-budget was done, will the government vary this amount to 50 per cent of profit from insurance operations?

Hon. G. K. RICH-PHILLIPS (Assistant Treasurer) — The policy the government has articulated in the budget update was dividends set at 50 per cent of PFIO (profit from insurance operations), and of course that is the government's intention. If the PFIO result is different to that forecast, then the dividends would vary, as every other element forecast in the budget varies when the actual numbers are different.

Mr LENDERS (Southern Metropolitan) — I turn now to the performance from insurance operation forecasts. I would like to ask the minister what his forecasts are going forward. All that we have on the public record is what is in the annual report. I know Mr Rich-Phillips will say Labor did not publish the forward forecasts. I would not be seeking for anything to be different, except Labor operated under existing rules. The government is asking the legislature to change the rules to let it draw down — or do a cash raid — on the VWA. The reason I am asking for the projections for future performance of insurance operations, and I do not think it is an unreasonable ask, is because this is not the same as TAC; this is a request to change the rules, and there is also a request to draw a dividend.

Mr Rich-Phillips says it is simply double the dividend being taken out each year. I will accept that as an answer. It probably goes back to his earlier answer that there was no capital withdrawal at this stage. If the answer is simply that it is double the dividend, then I will not query the Treasury methodology. If Minister Rich-Phillips could reassure me that this is what it is, that will answer my question.

Hon. G. K. RICH-PHILLIPS (Assistant Treasurer) — I can give that assurance to Mr Lenders. The policy articulated in the budget update is 50 per cent of PFIO, and that is what these figures reflect. They do not reflect any withdrawal of capital. As I said, it is not the government's intention to withdraw capital from VWA.

Mr LENDERS (Southern Metropolitan) — I have two final questions. As I said in my speech during the second-reading debate, I know the government will say this action has no effect on premiums or on payments to injured workers. On face value of course it does not; the premiums are set and the benefits to injured workers are set. But obviously the opportunity cost of this is that if you are taking in excess of $100 million out of an authority every year, no matter how the government spins it, in the end, once you take down residual surpluses or whatever, on a sustainable basis it is either potential premium cuts foregone or potential benefit increases foregone. If the authority comes under financial stress — and this is not in this legislation — it is potentially benefits drawn back or premiums going up.

If the government says it has decided to in effect put an extra payroll tax on companies through WorkCover premiums to fund infrastructure rather than cut WorkCover premiums, I accept that is a policy decision of the government. It might not be one that we would have made, but to me that would be transparent. But the Treasurer's second-reading speech and the government media response to anyone who has asked is just an assertion that this does not affect either premiums or benefits. I put the question to the minister: does it not reduce the opportunity of the authority to cut premiums or improve benefits if you are taking in excess of or an average of $120 million a year out of the authority?

Hon. G. K. RICH-PHILLIPS (Assistant Treasurer) — To answer Mr Lenders's question, it comes down to consideration of what the priorities are

in the decision making of the authority. For Mr Lenders's proposition to be correct, one would need to assume that the dividend was the priority of the authority. As Mr Lenders would appreciate, under the prudential standards which were issued for government insurers, which are the same prudential standards put in place by the member for Lyndhurst in the Assembly, Tim Holding, when he was finance minister — they have not changed — pricing for this scheme is on a break-even basis. Essentially the operating costs of the scheme, having regard to present value of the liabilities et cetera, form the basis on which the scheme is priced. The benefits under this scheme are set down in legislation and will not be impacted upon by a dividend decision.

As to a question of opportunity cost, the way in which the dividend is struck is looking back to performance from insurance operations for the completed financial year, and then, under the policy I have spoken about, 50 per cent of that is taken as a dividend. It is really a question of what comes first in this process. The reality is that the board will set the premium in accordance with the prudential standards in place, which are set on a break-even basis. The Accident Compensation Act 1985 sets out the statutory benefits, so they are not impacted by a board decision, and they are not impacted by a government decision around dividends. The dividend decision is essentially a balancing layer. It will not have the opportunity cost impact that Mr Lenders is suggesting.

Mr LENDERS (Southern Metropolitan) — It is interesting to explore the minister's thinking on this, but there are a couple of things about that which I would certainly contest. If we just read through this year's annual report, we do not see a crisis or an alarm bell but that the authority has concerns about managing common-law claims, to use that as an example. Why is the authority concerned about common-law claims? They are obviously costing the authority, so it has put a relatively aggressive process in place for managing them, which is an appropriate thing for the authority to do. Some of my plaintiff lawyer friends might not agree with me, but it is an appropriate thing for the authority to do. There is cause and effect with all of these things.

Another thing I would say to Mr Rich-Phillips concerns the board determining its profit. Even if you take $120 million out of the authority and you have the Treasury Corporation of Victoria investing in something that is as low as it could be, with the Victorian Funds Management Corporation investing at whatever ratio it likes, by any calculation that is $7 million or $8 million a year in income that the authority gets in the first year, then $7 million or $8 million in the second, third or the fourth year, let alone the interest on interest.

With this decision alone, by taking — let us assume it is capital for definition's sake — $471 million out of the authority over four years, the government is probably taking away $30 million to $40 million of revenue, which would not have been lost if the VFMC had invested that money on behalf of the authority instead of it being taken out as a dividend. That $30 million or $40 million over four years is not an insignificant amount of money. Again I find it hard that the government asserts this by using whatever definitions it wishes. I am not seeking to be complex, but this is a complex set of financial statements — trust me: for two years I was responsible for them. We can play games with words, but if you take $471.5 million out, by the end of the fourth year you have lost between $30 million and $40 million in income that the VFMC would have handed over to the WorkCover authority over that period of time.

In a sense I am incredulous that the minister says this is not going to affect the ability of the authority to cut premiums or any of these other areas. I do not know what standard you use, but if inputs and outputs suddenly change — and the outputs have gone up by $471.5 million over four years — these changes will have an effect. The ability to make a policy decision belongs to the government, not the board, although how the board implements the policy is effectively the same. However, making a premium decision has to be affected by taking this amount of money out of the authority, because in the end if the VFMC has another $471.5 million to invest at the end of those four years — which is what it will have if this bill is defeated — surely that impacts on the ability of the authority to cut premiums on the break-even basis that Mr Rich-Phillips was suggesting.

Hon. G. K. RICH-PHILLIPS (Assistant Treasurer) — I do not want to labour the point, but Mr Lenders's proposition assumes that all the resources of the authority are used for either reducing premiums or paying statutory benefits. Simply put — the purpose of this debate is to keep it simple — statutory benefits are fixed because they are laid down in legislation, so that assumes the reserves of the authority would be used for premium reductions, but the reality is that that is not necessarily the case. Under the previous government, in 2006–07, we saw the creation of the WorkHealth program under the VWA, the provision of which uses $600 million of capital from VWA. That is an example outside either reducing premiums or paying statutory benefits — an activity completely outside those areas which the board of VWA has undertaken.

The proposition Mr Lenders is advancing — that is, that statutory benefits or premiums suffer as a consequence of any funds leaving the system via dividends — does not reflect the actual experience of recent years when the board has undertaken broader activities than premium reductions and statutory benefit changes.

Mr LENDERS (Southern Metropolitan) — Again I fundamentally disagree. The WorkSafe initiative of the authority was a policy initiative of the Bracks government, so let us not hide that. The Bracks government persuaded the authority that under its act — through its corporate governance and the requirements of directors — it was appropriate for the WorkCover authority to implement programs to reduce claims. An overweight truck driver might have a huge gut, high cholesterol, high blood sugar and high salt levels — all things proven in the industry. If you can implement a WorkSafe process whereby that truck driver, through basic health checks and some preventive measures, suddenly reduces their risk, then it is a significant benefit for not just the driver in a health sense but also the scheme, in the form of a significant reduction in risk and therefore obviously a reduction in risk for the company, which pays lower premiums.

The WorkSafe initiatives were decided by the board — board members made the decision. The executive government was very keen and sought to persuade board members to do so; there are no ifs or buts about that. However, the difference was that this initiative was absolutely related to reducing injuries in the workplace. An injury implies that someone has fallen and broken a leg — for example it can also mean an injury due to stress and all the other things that go with it, which were significantly affected by WorkHealth initiatives.

On the other hand, the legislation before us provides for the government drawing $471.5 million out of the scheme, and who knows what for? It does not matter what for; it can be for anything — you name the project — but it is not related to reducing injuries or claims in workplaces or cutting premiums. I note the 37 companies listed on page 82 of the WorkCover authority's annual report that are self-insurers. Some companies choose to self-insure because they think in the end it is a cheaper proposition than taking out insurance through WorkCover, and when such a company is big enough, it can do so. Labor always supported that. I think our colleagues in the Greens probably did not, and some people in the trade union movement do not like it, but we always took the view that if a company had a standard of safety equal to that of WorkCover, then let that company take the risk if it can do it more cheaply.

But why are companies doing it more cheaply? Because of this decision more companies will seek to self-insure, because they will come to exactly the same conclusion that I came to and Ms Pennicuik came to in the second-reading debate — that is, this will mean either premiums will go up or benefits will go down. Let us leave the premiums going down and benefits going up.

If in the end $2 billion of premiums is somehow or other taken out of the WorkCover authority — in my contribution to the second-reading debate I said it was around $2 billion — you are suddenly taking out $120 million a year in dividends. No matter how that is couched, it is going to mean unequivocally for any company that 5 or 6 per cent of its premium will be a dividend for the state government. That provides another incentive for companies to pull out of the scheme, and good on them if they do! If I were the chief financial officer of a corporation and trying to make savings, I would do it.

I say that not to criticise companies for leaving but to say they will leave the scheme. It will be cheaper outside the scheme than in it, because the government is taking 6 or 7 per cent of WorkCover premiums as a dividend. That effectively increases payroll tax for most companies. In fact it is more than that, because every company in the scheme is above $15 000, or whatever it is, a year where you start paying WorkCover premiums, whereas companies do not start to pay payroll tax until they turn over $500 000. Effectively there are a lot of small businesses — even microbusinesses — of that size that in effect will be paying a payroll tax because of this decision.

If it is the government's decision to do it because the budget is tight, then I would say that if the government came out and was transparent about it, it would not hear anywhere near the level of angst from members on this side that exists at present. I am not accusing the government of anything; I am more accusing the Treasurer and the spin meisters who seem to circle around a lot. Nevertheless, government members should just come out and say, 'This is a new tax to fund a problem in the budget', and people would probably say, 'That is the government's authority'. Instead we have to hear the spin which says, 'It is not a tax'. For the life of me I cannot see how you can take $471.5 million out of an organisation and say it is not a tax? We will disagree. Sorry! It is a dividend! That it is not ultimately a small-t tax just baffles me, but we will not agree on that.

My final question is about something I specifically flagged in my contribution to the second-reading debate. In the second paragraph of the Treasurer's second-reading speech he said something like, 'We are making this change so the scheme will be like the TAC and other government bodies, because we want to be consistent'. I say to the minister, to be specific, wholly owned government economic entities like Melbourne Water, City West Water — —

Ms Pennicuik — Port of Melbourne.

Mr LENDERS — The Port of Melbourne Corporation pays a dividend, but what about Barwon Water? I can start going through other bodies, including Coliban Water — in fact I could list the 26 or so commercial regional water authorities which do not pay dividends at the moment because of a policy decision of the Brumby government. It is all very well for the Treasurer to say, 'We are being consistent in ruling that the VWA is like the TAC and other government entities', but will the minister categorically rule out taking dividends from any of the water authorities which at the moment do not pay dividends?

Hon. G. K. RICH-PHILLIPS (Assistant Treasurer) — I will say to Mr Lenders that this legislation specifically relates to a dividend specifically for the VWA and puts it on the same footing as the TAC, and that is what the second-reading speech refers to. That is the consistency that the government is talking about.

Mr LENDERS (Southern Metropolitan) — I hear what the minister says. We are talking of two things. We are talking about the Accident Compensation Amendment (Repayments and Dividends) Bill — the *Pirates of the Caribbean* Johnny Depp bill. Mr Wells is coming in with an eye patch and wearing a bandana, swinging on a rope with a cutlass between his teeth saying, 'I will get on this boat and grab $471.5 million'. This is a Johnny Depp bill — we get that. However, Johnny Depp — or rather the Treasurer, Mr Wells — then got up and said in his second-reading speech, 'We are doing this to align the VWA with other government entities because basically it is our policy to do so'. In this place the minister says this bill does not do that, and I completely accept that, but as my last question I ask him: specifically in relation to paragraph 2 of the second-reading speech of the Treasurer, will the Assistant Treasurer rule out any other authority having a similar dividend taken from it?

Hon. G. K. RICH-PHILLIPS (Assistant Treasurer) — I do not know if I am being asked this question as the Assistant Treasurer or as the representative of the Treasurer, but I can tell Mr Lenders that the intent of that paragraph in the second-reading speech is to indicate the government's intention to put VWA on the same footing as TAC, and that is it.

Mr LENDERS (Southern Metropolitan) — Whatever hat Mr Rich-Phillips is wearing, I note that he chose not to rule out regional water authorities paying dividends; nor did he seek to correct the general statement in paragraph 2 of the second-reading speech, that the bill would result in a greater consistency in taking dividends out of these authorities. It would not require legislation for Johnny Depp, with a cutlass between his teeth, wearing a bandana and an eye patch to swing on board Coliban Water, Barwon Water or Central Highlands Water — you name it — and take a dividend. It does not need legislation.

Ms PENNICUIK (Southern Metropolitan) — I did not want to disturb the flow of the Leader of the Opposition's questions. He has certainly gone to some of the issues I was going to raise. One of them referred particularly to the government's statement in the second-reading speech that this legislation would bring WorkCover into line with other government business enterprises (GBEs). What other government business enterprises are solely or substantially funded by contributions from employers?

Hon. G. K. RICH-PHILLIPS (Assistant Treasurer) — I thank Ms Pennicuik for her question. I am not responsible for other government business enterprises, so I am not in a position to answer that question. This paragraph in the second-reading speech sets out the government's intention to put VWA on the same footing as TAC.

Ms PENNICUIK (Southern Metropolitan) — The second-reading speech refers to most other GBEs. My point is that most GBEs the Treasurer would be talking about are taxpayer funded, so for them to pay a dividend to the taxpayer is taxpayer money going back to the taxpayer. This is different, because it is not taxpayer money.

Hon. G. K. Rich-Phillips — The employer is a taxpayer.

Ms PENNICUIK — Yes, but it is coming out of the general revenue of the budget to fund GBEs. My point is that there is a difference between other GBEs and WorkCover, which is not a statutory authority, and its funding arrangements are different from those of most other GBEs. For the government to say it is bringing the WorkCover authority into line with most GBEs as if

it was just a GBE that has been out on a limb and has not been brought into the fold is, I think, not correct. This is why the Greens are opposing the bill. We fundamentally disagree with the funds from WorkCover being used for purposes other than those for which they were meant to be used. The minister's answer to my earlier question was that the government would not always take a dividend, so my question is: under what circumstances would the government not take a dividend?

Hon. G. K. RICH-PHILLIPS (Assistant Treasurer) — That would come down to consideration of the circumstances set out in clause 4 of the bill: the need to have regard to the circumstances of the authority in the year in which the decision was taken. Ms Pennicuik's question, which asked under what circumstances the government would not take a dividend, is a little hypothetical. Obviously the government would need to have regard to the financial position of the authority at the time a decision was made.

Ms PENNICUIK (Southern Metropolitan) — If the PFIO falls into the red, for example, would that mean that the government would not take a dividend?

Hon. G. K. RICH-PHILLIPS (Assistant Treasurer) — The government said in the budget update that the policy is the dividend based on 50 per cent of PFIO, so if there were no PFIO, it would follow that there would be no dividend. But in terms of the considerations around this section — and this is not to say that a zero PFIO would trigger a dividend — a more fundamental consideration would be the funding ratio of the authority against its target band.

Ms PENNICUIK (Southern Metropolitan) — My final question is: does it work the other way? If unfortunately, and I hope it never happens, the Victorian WorkCover Authority fell out of surplus, would the government be injecting funds into it?

Hon. G. K. RICH-PHILLIPS (Assistant Treasurer) — That would not be the government's intention. To pick up that point, and it is not quite the same point, one of the fundamental issues related to the government's role in underwriting VWA is the implicit guarantee that taxpayers provide to VWA. In answer to the point that I think Ms Pennicuik made in her contribution to the debate on the second-reading speech about it being a closed scheme, in the sense that employers pay premiums and injured workers get benefits, I would submit to the committee that it is not a closed scheme, because in the event the authority was not able to pay its liabilities as they fell due, the taxpayer would be required to step in. It would not be a case where we would say to injured workers, 'We are going to cut your benefits'. It would not be the case that we would say to employers, 'We are going to pass the hat around for a second time this year because we have a shortfall'. If the VWA were unable to pay its liabilities, then the state would have to step in — the taxpayer would have to step in. That is why we believe it is appropriate that the taxpayer get some return when there is an upside such as a positive PFIO result.

Ms PENNICUIK (Southern Metropolitan) — I fundamentally disagree with that. I accept what the minister is saying, that if there were a liability, then taxpayers would have to step in, but the fact is that the scheme has been running effectively as a closed system and has not required taxpayers to step in because it has maintained a surplus and been able to meet its liabilities. One of the reasons we are opposing the bill is that the scheme is working well. If it is not broken, do not fix it and do not meddle with it. I believe the taking of this dividend puts that particular status at risk. As I mentioned before, the inputs and outputs can be quite volatile — as I think Mr Lenders termed it — and they have changed a lot over the last five years. I will leave that as a comment rather than a question.

Mr LENDERS (Southern Metropolitan) — If I could comment on that, Mr Rich-Phillips is saying that if the authority is in trouble, then the taxpayer would be called in. The government would not go back to the employers and ask them to contribute again or whatever. I find that incredible. I am wracking my brain for a WorkCover authority in this country, under whatever name, that has been in that situation — taking into account glitches as a result of share markets going up and down — where the response from government to the performance of insurance operations as a standard measure going pear-shaped has been, 'We will just chuck some money in and fix it'. On every occasion the response has been to slash benefits and increase premiums — one or the other, or both.

I guess I challenge the theory that Mr Rich-Phillips has espoused. I am reflecting here on the last 10 years in New South Wales, Queensland and South Australia and the last 15 years in Victoria; I will not venture into any of the other jurisdictions. I cannot recall a situation where the government has written a cheque if a scheme has gotten into trouble. In every case it has been either premiums up or benefits down, or both. I state that for the record; I am not asking the minister to comment on or reply to it. I state for the record that I think it is a little cheeky.

Hon. G. K. RICH-PHILLIPS (Assistant Treasurer) — I will reply, because I do not know that Mr Lenders necessarily understood completely what I was saying. I am not talking about the authority being in difficulty in the sense that the PFIO is negative. I said if the authority were unable to pay its liabilities as they fell due — so it is not the fact that it is running a deficit or is having a bad year on the markets — the expectation would be that the taxpayer, via the government, would step in.

Mr LENDERS (Southern Metropolitan) — From memory, and without going back to its annual report, the authority has close to $10 billion in assets. The investment brief may have changed with the change of government, but the investment brief to the Victorian Managed Insurance Authority (VMIA) was always to have enough fluidity, probably far more than was necessary, to absolutely avoid as Mr Rich-Phillips is saying any call on such funds. I read that in terms of if you had to come to government, it would be because the fundamentals were wrong, not because of cashflow problems. I would be gobsmacked if circumstances have changed so much that the VMIA is not flexible and does not give the WorkCover authority whatever cashflow it needs, because of the nature of its clients and the nature of WorkCover being prudent and foreseeing what is happening. I guess it foresees most things, other than a $471.5 million raid.

Clause agreed to; clause 5 agreed to.

Reported to house without amendment.

Report adopted.

Third reading

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

That the bill be now read a third time.

I thank all members for their contributions to the debate on and in the committee stage of the bill.

The PRESIDENT — Order! The question is:

That the bill be now read a third time and that the bill do pass.

House divided on question:

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
Petrovich, Mrs (*Teller*)
Peulich, Mrs
Ramsay, Mr (*Teller*)
Rich-Phillips, Mr

Noes, 19

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

Question agreed to.

Read third time.

AUSTRALIAN CONSUMER LAW AND FAIR TRADING BILL 2011

Statement of compatibility

Hon. M. J. GUY (Minister for Planning) tabled following statement in accordance with Charter of Human Rights and Responsibilities Act:

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 Australian Consumer Law and Fair Trading Bill 2011.

In my opinion, the Australian Consumer Law and Fair Trading Bill 2011 (bill), as introduced to the Legislative Council, is compatible with the human rights protected by the charter act. I base my opinion on the reasons outlined in this statement.

Overview of bill

The purposes of the bill are to:

introduce a new principal act that will repeal and replace the Fair Trading Act 1999;

amend the Credit (Administration) Act 1984 to close the Consumer Credit Fund and transfer funds to the Victorian Consumer Law Fund;

amend certain powers and functions of the director of Consumer Affairs Victoria (director);

amend certain powers of the Minister for Consumer Affairs relating to the Victorian Consumer Law Fund;

clarify the jurisdiction of the Victorian Civil and Administrative Tribunal in certain circumstances;

expressly provide for the objective of promoting uniformity in consumer law through the consistent interpretation and application of the Australian

Consumer Law in Victoria and in other participating jurisdictions;

make any other necessary technical amendments; and

make consequential and other amendments to other Victorian acts.

Application of non-Victorian law

Parts 2 and 4 of chapter 2 of the bill deal with the application of the Australian Consumer Law to Victoria. Clause 8 of the bill declares that the Australian Consumer Law, being schedule 2 of the Competition and Consumer Act 2010 (cth) and the regulations under s 139G of that act, applies as a law of this jurisdiction, and as so applying, is part of the bill. Accordingly, s 32 of the charter act will apply to the Australian Consumer Law (Victoria), and the human rights impacts of the Australian Consumer Law (Victoria) are addressed in this statement of compatibility. However, I note that cl 11 of the bill applies the Acts Interpretation Act 1901 (cth) to the Australian Consumer Law, and s 15AA of that act requires preference to be given to statutory constructions that promote the purpose or object underlying the act in question. I note that in order to encourage consistency in the interpretation of the Australian Consumer Law (Victoria) with the same law in other jurisdictions and at a commonwealth level, cl 1(f) of the bill expressly states that one of the bill's purposes is to provide for uniformity with the consumer laws of other jurisdictions by promoting the consistent interpretation and application of the Australian Consumer Law in Victoria and the other participating jurisdictions.

Clause 8 applies the Australian Consumer Law as a law of Victoria as in force from time to time. Clause 9 states that a modification made by a commonwealth law to the Australian Consumer Law will not apply under cl 8 if the modification is declared to be excluded by a published order of the Governor in Council within two months after the date of the modification. Accordingly, I note that future modifications to the Australian Consumer Law made by federal legislation will apply to the Australian Consumer Law (Victoria) unless otherwise specified by order of the Governor in Council.

Clause 20(1) of the bill provides that authorities and officers of the commonwealth referred to in the Australian Consumer Law have the functions and powers conferred on them under the Australian Consumer Law. However, cl 20(3) of the bill clearly excludes the commonwealth minister responsible for administering the Competition and Consumer Act 2010 (cth) from the definition of 'public authority' in s 38 of the charter act. Accordingly, the duties of public authorities under the charter act will not apply to the commonwealth minister in the exercise of his or her functions under the Australian Consumer Law in this jurisdiction.

Human rights issues

Privacy

Section 13 of the charter act provides that a person has the right not to have his or her privacy unlawfully or arbitrarily interfered with. An interference with privacy will not be unlawful if it is permitted by law that is accessible and precise. An interference with privacy will not be arbitrary if the restrictions it imposes are reasonable, just and proportionate to the end sought.

A number of the provisions in the bill and the Australian Consumer Law engage the right to privacy. However, for the reasons set out below, none such provisions limit this right.

Public advertisements and notices

Various provisions in the bill enable the public disclosure of information and statements in respect of a contravention of the bill or any unsafe trade practices. For example, cl 210 of the bill permits a court, upon application by the director, to make a corrective advertising order against a person involved in a contravention of the bill, requiring that person to publish an advertisement or disclose certain information.

Pursuant to cl 228, if satisfied it is in the public interest to do so, the minister or director may issue a public statement or warning in relation to unsatisfactory goods or services, unfair business practices, or any other matter that adversely affects the interests of persons acquiring goods or services. The minister or director may also provide information about persons who supply unsatisfactory goods or services or engage in unfair business practices. Similarly, s 246 of the Australian Consumer Law provides that a court may, on application of the regulator, make an order in relation to a person involved in a contravention of chapter 2, 3 or 4 of the Australian Consumer Law, requiring them to disclose specified information.

Section 129 of the Australian Consumer Law states that a responsible minister may publish a safety warning notice on the internet about certain goods or services, provided those goods or services are under investigation to determine whether they may cause injury.

Under cl 211 of the bill, a court may make an adverse publicity order against a person found guilty of an offence against the bill, requiring that person to advertise or disclose certain information. Similarly, under s 247 of the Australian Consumer Law, a court may make an adverse publicity order against a person who has contravened chapter 2, 3 or 4 or committed an offence under chapter 4, of the Australian Consumer Law.

Section 223 of the Australian Consumer Law states that the regulator may issue a public warning notice about the conduct of a person, if the regulator has reasonable grounds to suspect that the conduct may constitute a contravention of certain provisions of the Australian Consumer Law, that one or more persons may have suffered detriment as a result of the conduct, and that it is in the public interest to issue the notice.

The ordering of public disclosure or issuing of public warnings or statements under these provisions may involve identifying individuals and may negatively impact upon the reputation of these individuals. However, I consider that any interference with the right to privacy and reputation resulting from these provisions will be neither unlawful nor arbitrary. The bill clearly sets out the circumstances in which the provisions may operate: corrective and adverse publicity orders may only be granted by a court against a person found to have contravened the bill; and the minister or director may only issue a public warning or statement upon being satisfied that it is in the public interest to do so. Similarly, ss 129, 223 and 247 of the Australian Consumer Law can only be exercised where there are reasonable grounds to suspect that a contravention has occurred, and in circumstances where members of the public may have suffered detriment. Furthermore, these provisions are necessary to ensure that

consumers and the wider public do not continue to suffer loss or damage as a result of a breach of the bill or improper trade practices.

Access to personal information

Part 2 of chapter 4 of the bill deals with the disposal of uncollected goods by a receiver. A receiver who disposes of unclaimed goods must, in accordance with cl 74(1) of the bill, maintain a record which includes the name and address of the purchaser of the goods. Pursuant to cl 74(2), the receiver must make the record available upon request to the provider, owner or any other person claiming an interest in the disposed goods.

Under cl 64 in that part, a receiver of a motor vehicle may apply to the Roads Corporation for a certificate setting out the registered person responsible for an uncollected motor vehicle. The Roads Corporation must provide the certificate if it is satisfied that the application is being made for the purpose of disposing of an uncollected vehicle.

Clauses 64 and 74 engage the right to privacy by allowing persons to access the personal information of the purchaser of unclaimed goods and the registered operator of a motor vehicle respectively. However, in my opinion, any interference with the right to privacy occasioned by cls 64 or 74 is neither unlawful nor arbitrary. In both cases, the circumstances in which and persons to whom the information is made available for inspection are prescribed by the bill. Moreover, under both provisions, the legitimate purpose of allowing access to information is to ensure the proper and accountable disposal or, in the case of cl 74, recovery, of unclaimed goods.

Powers to obtain information, documents and evidence

Several provisions in the bill empower the director, or an inspector appointed by the director, to require the provision of information or documents to assist in investigating a contravention of the bill, or in monitoring compliance with its provisions.

For example, under cl 125 the director may require a person, whom the director believes is capable of providing information or documents which may assist in monitoring compliance with the bill or regulations thereunder, to provide this information or these documents. Likewise, under cl 126 the director may compel a person, whom the director believes is capable of assisting in the investigation of a contravention of the bill, to provide information, documents, or give evidence on oath or affirmation. A person must not refuse or fail to comply with a request under cls 125 or 126.

Clause 148 provides that, for the purpose of monitoring compliance with the bill or regulations thereunder, the director or an inspector appointed by the director may direct a publisher to produce specified information which has been published by the publisher, or that the publisher is required to keep in accordance with the bill or regulations thereunder.

Clause 177 states that, to the extent it is necessary to determine compliance with the bill, an inspector exercising their inspection powers may require the occupier of the premises, or their agent or employee, to provide information, documents or reasonable assistance to the inspector.

Not all information required under cls 125, 126, 148 or 177 will be of a private nature. However, insofar as these provisions do require disclosure of private information, there is no arbitrary or unlawful interference with the right to privacy because of the need to comply with clearly articulated requirements. Access to material evidencing non-compliance or breach of the regulatory scheme allows the director and inspectors to effectively and efficiently administer the bill. The provisions are circumscribed in their scope and can only operate to compel the provision of material necessary to monitor compliance with, or investigate a breach of, the bill. Moreover, under cl 131, any person may complain to the Secretary of the Department of Justice (secretary) about the exercise of the director's powers under cls 125 or 126, following which the secretary must investigate and provide a written report to the complainant.

Other provisions allow an inspector to apply to the Magistrates Court for an order compelling a person to provide information or documents. For instance, pursuant to cl 145, an inspector who believes on reasonable grounds that a person may have contravened the bill or the regulations thereunder, may also apply to the Magistrates Court for an order requiring that person to answer questions, provide information, or produce documents relating to the alleged contravention.

Clause 162 empowers an inspector executing a warrant permitting seizure of an item to issue an embargo notice if the item cannot, or cannot readily, be seized. An embargo notice prohibits an embargoed item from being sold, leased, transferred, or dealt with. Clause 163 states that, for the purpose of monitoring compliance with an embargo notice, an inspector may apply to the Magistrates Court for an order requiring the owner of the subject item, or the occupier of the premises on which the item is located, to answer questions or produce documents.

I consider that any interference with the right to privacy resulting from these provisions will be neither unlawful nor arbitrary. Both cls 145 and 163 relate to an inspector investigating potential non-compliance with the regulatory scheme, and the bill clearly sets out the limited circumstances in which an inspector may apply for an order. Further, the scheme is subject to oversight by the Magistrates Court, which will only grant an order under cls 145 or 163 if is satisfied that the order is necessary to achieve the purpose of the relevant provision. For these reasons, I consider that this clause does not limit the right to privacy under section 13 of the charter.

Information-sharing arrangements

Clause 133 provides that the director may enter into, or approve of, an arrangement with a relevant agency for the purposes of sharing or exchanging information held by either party. The arrangements are limited to information concerning certain prescribed matters, including investigations, law enforcement and licensing or disciplinary matters. Under an information-sharing arrangement, the director and the relevant agency may request, receive and disclose information with the other party to the arrangement, but only if the information is reasonably necessary to assist in the exercise of functions under the bill, or any act administered by the minister, or the functions of the relevant agency concerned.

In my view this section will not lead to any interference with privacy, as any disclosure of personal information authorised by this section will only occur to the extent necessary to carry out the director's or relevant agency's legal functions.

Additionally, given that the disclosure can only occur where reasonably necessary, and that the director must comply with the charter act when making a disclosure or receiving information, in my view any such disclosure will not be arbitrary. Consequently, I consider that cl 133 is compatible with section 13 of the charter act.

Inspection and search powers

Part 4 of chapter 6 of the bill sets out the powers that inspectors appointed by the director may use to monitor compliance and investigate potential contraventions of the bill or the Australian Consumer Law. It must be noted at the outset that these powers are directed to obtaining commercial information relevant to compliance with the regulatory scheme, as opposed to private information. However, insofar as these powers do engage the right to privacy, I consider that they do not limit the right.

Clauses 153 and 154 provide that if an inspector believes on reasonable grounds there is evidence on a premises of goods being supplied which are either dangerous, or are subject to a ban order, the inspector may enter and search the premises at any time, seize goods located on the premises, require the production of documents, and make such images or audiovisual recordings as are necessary. Under cl 153(2), the inspector may enter and search premises under cl 153 with the assistance of another inspector, a member of the police force, or any other person necessary to provide technical assistance to the inspector.

Clauses 153 and 154 are only available for the important purpose of dealing with emergency situations which may pose a significant risk to consumers. Entry is only available to premises that an inspector believes on reasonable grounds contain dangerous or goods that have been banned because they are of a kind that will or may cause injury to a person. The bill also sets out the following safeguards relating to the exercise of this power. Under cl 181, an inspector must not give out any information acquired in carrying out their inspection functions, except to the extent necessary to carry out those functions. Clause 154(6) provides that if an inspector searches premises under these provisions in the absence of the owner or occupier of the premises, they must leave a notice setting out the details of the search. Moreover, under cl 179, any person may complain to the director about an inspector's entry and search under these provisions. Accordingly, as cls 153 and 154 are circumscribed, and will only apply where emergency entry is necessary to ensure public safety, any interference with privacy that may occur as a result of the entry will be lawful and not arbitrary.

Clause 155 states that, for the purpose of monitoring compliance with the bill or regulations thereunder, an inspector, without consent or warrant, may enter and search a premises on which the inspector believes on reasonable grounds a person is conducting a business or supplying goods or services, or is keeping a record or document that is either required by the bill or regulations, or that may show whether the bill or regulations have been complied with. An inspector who searches premises under cl 155 may examine, seize, or take samples of any thing, document or electronic equipment on the premises.

In my view, while the exercise of the search power by an inspector under cl 155 may interfere with the privacy of an individual in some cases, any such interference will not be arbitrary. As noted above, the purpose of the entry and inspection powers is to ensure compliance with the regulatory scheme, which is designed to protect consumers from unsafe practices and unscrupulous operators. The search and seizure powers under cl 155 are also strictly defined and contain a range of safeguards. Pursuant to cl 155(3), an inspector must not exercise this power in any part of the premises that is used for a residential purpose, and may not enter and search premises except between the hours of 9.00 a.m. to 5.00 p.m., or when the premises are open for business. If an inspector searches premises under cl 155 without the owner or occupier being present, they must leave a notice containing the details of the search, and the procedure for contacting the director for further details. Furthermore, an inspector cannot disclose any information acquired in carrying out a search except to the extent necessary, and any person may complain to the director about the exercise of a search under cl 155.

The bill also contains several provisions, such as cls 157 and 164, which permit an inspector to search premises, and examine and seize items on the premises pursuant to a warrant obtained on the basis that there are reasonable grounds to believe a contravention of the bill has occurred, or for the purpose of monitoring compliance with the bill. In these circumstances, I am of the opinion that any interference with privacy occasioned through the operation of these provisions will be lawful and not arbitrary.

Property rights

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

Seizure of property by the director or inspectors

As outlined above, the bill provides that inspectors exercising the search powers under cls 153, 154 and 155 may, in certain circumstances, seize goods and other items located on the premises. These provisions precisely confine the circumstances in which inspectors may seize property for the purposes of preventing the dissemination of dangerous or banned goods, or for monitoring, investigating and enforcing compliance with the bill's regulatory scheme. The bill also strictly limits the seizure power of inspectors. For instance, an inspector conducting a search under cl 155 cannot search, and therefore cannot seize, any thing from a part of the premises that is used for a residential purpose. Furthermore, inspectors who seize an item under cls 153 to 155 must take reasonable steps to return it if the reason for its seizure no longer exists, and they must provide persons from whom documents were seized with certified copies of those documents within 21 days of seizure.

As outlined above, cl 126 permits the director, in certain circumstances, to require a person to produce documents which the director believes may assist in investigating a contravention of the bill. Pursuant to cl 127, the director may seize documents produced under cl 126, if the director considers the documents necessary to obtain evidence for proceedings under the bill, regulations, or any other consumer act, or if the director believes on reasonable grounds that it is necessary to prevent the documents being concealed, lost or destroyed. Clause 127 is circumscribed and can only operate to permit seizure of material necessary to investigate breaches of the bill or other consumer acts. Moreover, under cl 131,

any person may complain to the secretary about the exercise of the director's powers under cl 127, following which the secretary must investigate and provide a written report to the complainant. Accordingly, I consider that cl 127 is clearly formulated, confined, and thus compatible with s 20 of the charter act.

Several provisions in the bill empower the director or an inspector to apply to a magistrate or court for a warrant or order authorising the seizure of property. For example, as outlined above, cl 145 allows an inspector to apply to the Magistrates Court for an order requiring a person to produce documents to the inspector. Clause 146(c) permits an inspector to seize documents produced to them pursuant to cl 145, if it is necessary to obtain evidence for any proceedings under the bill, any consumer act, or regulations thereunder.

An inspector may also seize items pursuant to a warrant obtained under cl 157. Clause 161 allows an inspector to seize anything not named or described in the warrant, if the inspector believes on reasonable grounds that it is of a kind which could have been included in the warrant, or it will afford evidence of a contravention of any consumer act. Additionally, an inspector executing a search warrant pursuant to cl 157 may in certain circumstances issue an embargo notice over items named in the warrant. Subsequently, an inspector may apply to a magistrate to search premises and seize or secure anything on the premises for the purpose of monitoring compliance with an embargo notice under cl 164.

Under cl 174, the director may apply to a court for an order permitting destruction of any goods seized by an inspector that are of a kind to which a safety standard applies and that do not comply with that standard, or which are subject to a ban order.

As discussed above, these provisions allow the director or an inspector to properly investigate potential non-compliance with the regulatory scheme. The order or warrant must be issued by a magistrate or a court, following the consideration of the rights and interests of parties affected, and in the case of cl 161, an inspector may only seize items not identified in the warrant which they believe on reasonable grounds are of a kind which could have been included in the warrant or which could provide evidence of a contravention. Consequently, I consider that these provisions are lawful and not arbitrary, being subject to clearly formulated requirements, and are thus compatible with the right to property under s 20 of the charter act.

Powers to recall goods or ban goods or services

Under s 122 of the Australian Consumer Law, the minister may publish a compulsory recall notice which may require the supplier to refund, recall, destroy or dispose of goods. Section 109 of the Australian Consumer Law permits the minister to impose an interim ban on goods or services. Similarly, s 114 permits the commonwealth minister to impose a permanent ban on goods or services. Pursuant to cl 220 of the bill, the director may recommend to the minister to issue an interim ban under s 109 of the Australian Consumer Law.

These provisions may lead to the deprivation of property, as the issuing of a ban or recall notice may lead to a loss of income. However, any such deprivation will occur as a result of powers conferred by legislation and will not occur in an arbitrary manner, given that the provisions are confined and clearly formulated. Consequently, these provisions are compatible with the right to property under s 20 of the charter act.

Uncollected goods and unsolicited goods

Clause 58 of the bill allows the receiver of unclaimed goods to dispose of those goods. The bill establishes a process by which receivers of unclaimed goods may properly dispose of unclaimed goods. Similarly, both division 2 of part 3 of the Australian Consumer Law, which deals with unsolicited goods and services, and division 2 of part 3-2, which concerns unsolicited consumer agreements, contain provisions which prohibit suppliers from recovering goods they have supplied to a consumer under certain circumstances.

The bill and the Australian Consumer Law appropriately balance the rights of all parties claiming an interest in goods. Clauses 60 to 63 of the bill set out the requirements that a receiver must fulfil before being able to dispose of unclaimed goods, including giving or attempting to give notice of their intention to dispose of the goods to the owner and provider of the goods, and waiting until the prescribed period of time has elapsed before disposing of the goods. Similar notice requirements apply to the disposal of perishable goods under cl 65 of the bill.

Section 41 of the Australian Consumer Law provides that, if a person supplies unsolicited goods to another person, the other person is not liable to make any payment for the goods and is generally not liable for loss or damage to the goods. A supplier has either three months starting on the day after the day on which the person received the goods or one month, if the person has notified the seller in writing, to collect the goods. Following the end of this recovery period, the sender is not entitled to take action to recover the goods. Furthermore, s 85 provides that goods become the property of a consumer if the relevant supplier does not collect the goods from the consumer within 30 days after the termination of an unsolicited consumer agreement where the consumer gives notice to the supplier.

In my opinion, the right to property is not limited by these provisions, as any deprivation of property will only result from adherence to the sufficiently certain and circumscribed provisions, and only following the provision of notice to persons whose interests in property may be affected by the provisions.

Clause 68 in part 2 of chapter 2 of the bill permits a receiver of uncollected goods to apply to a court for an order to dispose of the goods.

Pursuant to cl 212, a court may, in prescribed proceedings against a person under the bill, make an order prohibiting a person from parting with possession of, or transferring any of that person's money or property. The proceedings that are prescribed for the purpose of the provision are set out in cl 212(8) of the bill. The Australian Consumer Law also permits a court to grant an injunction requiring a person to transfer property or dispose of goods under s 232.

As any deprivation of property which occurs as a result of the operation of cls 68 or 212 of the bill, or of s 232 of the Australian Consumer Law, will occur by way of a court order, it will be in accordance with law. Accordingly, I

consider these provisions to be compatible with s 20 of the charter act.

Possession of land

Clause 184(k) clarifies that, in a trader and consumer dispute, VCAT may make an enforceable order for the possession of land. As any deprivation of property under this provision will occur by way of an order by VCAT, following consideration of the rights and interests of the parties to the proceedings, it will be in accordance with law, and compatible with s 20 of the charter act.

Freedom of expression

Section 15 of the charter act protects a person's right to freedom of expression, which has been interpreted to include a right not to impart information. The right to freedom of expression is not absolute; lawful restrictions reasonably necessary to protect the rights of other persons, or for the protection of public order and public health, are permissible under the charter act.

Provisions compelling the provision of information

As outlined above, cls 125 and 126 of the bill empower the director to require a person, whom the director believes is capable of assisting in monitoring compliance with, or investigating a contravention of, the bill, to provide information, documents or evidence. Likewise, under cl 148, for the purpose of monitoring compliance with the bill or regulations, the director or an inspector may direct a publisher to produce specified information which has been published by the publisher, or that the publisher is required to keep in accordance with the bill or regulations. Clause 177 permits an inspector conducting a search to require the occupier of the premises, or their agent or employee, to provide information, documents or reasonable assistance to the inspector.

Pursuant to cl 145, if an inspector believes on reasonable grounds that a person may have contravened the act or the regulations thereunder, the inspector may apply to the Magistrates Court for an order requiring the person to answer questions or provide information in relation to the alleged contravention. The Magistrates Court may make the order if it is satisfied that there are reasonable grounds to believe that a person may have contravened the act or regulations.

Clause 163 states that, for the purpose of monitoring compliance with an embargo notice, an inspector may apply to the Magistrates Court for an order requiring the owner of the item subject to an embargo notice, or the occupier of the premises on which the embargoed item is located, to answer questions or produce documents.

The bill sets out strict limits for these provisions. Clauses 125, 126, 148 and 177 only allow an inspector or director to require information, documents or assistance to the extent that it is reasonably necessary to determine compliance, or non-compliance, with the bill. Under cls 145 and 163, an inspector can only obtain an order compelling the provision of answers or information if they have reasonable grounds to believe a contravention has occurred, or for the purpose of monitoring compliance with an embargo notice. Moreover, the order must be issued by a magistrate, following the consideration of the rights and interests of parties affected by the order.

Section 219 of the Australian Consumer Law states that the regulator may require a person who has made a claim or representation promoting the supply or potential supply of goods or services to provide specified information or documents that support or substantiate the representation made. Under s 219(2)(c), the regulator may also issue a notice requiring a person who has made a claim or representation to provide documents or information that are of a kind specified in the notice. Any kind of information or documents that the regulator specifies under s 219(2)(c) must be of a kind that the regulator is satisfied is relevant to substantiating or supporting the claim or representation.

The Australian Consumer Law also sets out numerous provisions requiring dealers or suppliers to provide specified information to consumers or to the commonwealth minister. Examples include, but are not limited to: s 96, which requires a supplier who is party to a lay-by agreement to provide a copy of the agreement to a consumer; s 131, which compels a supplier of goods, upon becoming aware of the death or serious injury or illness of a person caused by the use of those goods, to inform the commonwealth minister of the goods and the circumstances of the death or injury; and s 175, which requires unsolicited consumer agreements to set out certain information, including the supplier's name and address. Section 246(2)(c) permits a court to order a person found to have contravened a specified provision of the Australian Consumer Law to disclose information that the person possesses or has access to.

The assistance of the persons to whom these provisions relate is necessary to conduct investigations into whether or not the regulatory obligations of the bill and the Australian Consumer Law are being complied with. This duty to assist is consistent with the reasonable expectations of these individuals as persons who operate a business within a regulated scheme. These provisions enable appropriate oversight and monitoring of compliance with the bill and the Australian Consumer Law, and are reasonably necessary to protect consumers and the wider public from unsafe goods or unfair practices which may cause them injury or loss. Therefore, to the extent that freedom of expression is engaged, these provisions fall within the exceptions to the right in section 15(3) of the charter act, as reasonably necessary to respect the rights of other persons, or for the protection of public order.

Restrictions on commercial expression and the right to establish and develop relationships

A number of provisions in the bill and the Australian Consumer Law have the effect of limiting a person's ability to engage in business activities. For example, cl 47 prohibits certain categories of people from engaging in debt collection. Similarly, cl 92 disqualifies certain categories of people from acting as introduction agents.

Clause 120 states that the director may suspend a licence issued or granted under a business licensing act, if the director has reasonable grounds to believe that the licensee has engaged in conduct constituting either grounds for disciplinary action under the relevant act or for bringing proceedings for an offence or injunction. It must be likely that the licensee will continue to engage in that conduct and there must be a danger that a person may suffer substantial harm, loss or damage unless urgent action is taken.

Several provisions in the bill and the Australian Consumer Law permit the minister, director, regulator, or any other

person, to apply to a court for an injunction order restraining a person from engaging in a business practice. For example, under cl 201 of the bill, the minister, director or any other person may apply to the Supreme Court, County Court or Magistrates Court for an injunction restraining a person from certain actions that result in a contravention of the bill (but not the Australian Consumer Law). Similarly, under cl 202, the same parties may apply to the Supreme Court or the County Court for an order compelling a person to do any thing where that person has engaged in certain conduct resulting in a contravention of the bill. Upon an application to it under cl 202, the relevant court may grant an interim injunction under cl 203 pending the determination of an application.

Clause 205 of the bill provides that the minister or the director may apply to the Supreme Court for the grant of an injunction restraining a person from carrying on a business of supplying goods or services if the person is or has been engaging in certain conduct that results in a contravention of the act. Pursuant to cl 206, the Supreme Court may grant an interim injunction restraining a person from carrying on a business, pending determination of an application under cl 205. Likewise, under s 232 of the Australian Consumer Law, a court may grant an injunction in terms it considers appropriate if it is satisfied that a person has engaged or is proposing to engage in conduct that involves a contravention of chapter 2, 3 or 4 of the Australian Consumer Law. Section 234 permits a court considering an injunction application under s 232 to grant an interim injunction pending the determination of the s 232 application.

Under cl 220 of the bill, the director may recommend to the minister that an interim ban be made under s 109 of the Australian Consumer Law, or that a recall notice or a safety warning notice be issued under ss 122 or 129 of the Australian Consumer Law, respectively.

Section 109 of the Australian Consumer Law empowers a responsible minister to impose an interim ban on consumer goods or product-related services. A permanent ban on consumer goods or product-related services may be imposed by the commonwealth minister pursuant to s 114. Section 122 provides that a responsible minister may order a compulsory recall of consumer goods in certain circumstances. Furthermore, pursuant to s 248, a court may make an order disqualifying a person from managing corporations for a period it considers appropriate, if it is satisfied that the person has contravened specified provisions of the Australian Consumer Law prohibiting unfair practices and unconscionable conduct.

These provisions may interfere with an individual's ability to carry on his or her business and related commercial enterprises, which could potentially limit an individual's right to freedom of expression, to the extent that such interferences restrict an individual's ability to communicate ideas and information.

Commercial expression has been found to be protected on the grounds that the right to freedom of expression does not apply solely to certain types of information or ideas or forms of expression. However, it is treated as being of less importance than political or artistic expression. Restrictions on commercial expression will generally be subject to less scrutiny on the basis that commercial expression serves a private, rather than a public, interest.

In light of the limited nature of the right to commercial expression, and the fact that these provisions aim to protect consumers from dangerous goods or services, or from persons engaging in damaging and non-compliant trading activities, in my view they do not limit the right to freedom of expression. Rather, the provisions fall within the exceptions to the right in s 15(3) of the charter act, as reasonably necessary to respect the rights of other persons, or for the protection of public order.

Right not to be compelled to testify against oneself and the right to a fair trial

Section 25(2)(k) of the charter act provides that a person who has been charged with a criminal offence has the right not to be compelled to testify against himself or herself or to confess guilt. It is also an aspect of the right to a fair trial protected by s 24 of the charter act. This right under the charter act is at least as broad as the privilege against self-incrimination protected by the common law. It applies to protect a charged person against the admission in subsequent criminal proceedings of incriminatory material obtained under compulsion, regardless of whether the information was obtained prior to or subsequent to the charge being laid.

Derivative use immunity

As outlined above, cls 125 and 126 of the bill empower the director to require a person, whom the director believes is capable of assisting in monitoring compliance with, or investigating a contravention of, the bill, to provide the director with information or documents. In the case of cl 126, the director may also require the person to appear to give evidence on oath or affirmation. It is an offence to refuse or to fail to comply with a notice issued pursuant to cls 125 or 126. Under cls 125(3) and 126(4), a person is not excused from answering a question, providing information or producing or permitting the inspection of a document required by a cl 125 or cl 126 notice on the ground that the answer, information or document may tend to incriminate that person. Clause 125(4) provides an exception to cl 125(3), stating that answers, information or documents provided in compliance with cl 125 are not admissible in any proceedings other than proceedings under the provision. Clause 126(5) provides an exception to cl 126(4), stating that answers or information provided in compliance with cl 126 are not admissible in any criminal proceedings other than proceedings under the provision.

Clauses 125 and 126 thus abrogate the privilege against self-incrimination. However, cls 125(4) and 126(5) provide a direct use immunity by prohibiting the use of answers, information, and in the case of cl 125(4) documents, from being admissible in evidence against the person in any other criminal proceedings. Neither cls 125(4) nor 126(5) apply to 'derivative' use, which is when, as a result of the compelled statement, further evidence is uncovered that incriminates the maker of the statement. This means that such further evidence is permitted to be used in a criminal prosecution against the person, which arguably limits the right against self-incrimination.

However, I am of the view that any such limitation is reasonable under section 7(2) of the charter act for the following reasons.

The privilege against self-incrimination prohibits the state from compelling an individual to assist in proving that they have committed an offence, prevents oppressive government

conduct, ensures the reliability of evidence, and protects privacy. However, a denial of derivative use immunity might be capable of justification in a regulatory context.

The statutory purpose underlying the limits to the right against self-incrimination in cls 125 and 126 is to enable the director to monitor compliance with the bill and to investigate potential contraventions. The effective monitoring of compliance and the investigation of potential contraventions are necessary to adequately protect consumers from detriment resulting from non-compliance with the regulatory scheme.

The availability of a derivative use immunity to counter the director's compulsory information-gathering powers would limit the director's ability to monitor compliance with, and investigate contraventions of, the bill. It would enable a person to extract a considerable forensic benefit by providing the director with information, answers, or documents, thereby ensuring that any thing derived directly or indirectly from such information, answers, or documents would be rendered inadmissible in any criminal proceedings against them. The director would potentially be reluctant to question people who may be suspected of breaching the regulatory scheme, in light of the possibility that they may attempt to purposely immunise themselves from prosecution by volunteering incriminating material. Derivative use immunity would also place an excessive and unreasonable burden on the prosecution to prove that evidence it sought to tender in criminal proceedings against a person claiming the immunity was not obtained either directly or indirectly from the questioning of a person under these provisions. This would unduly complicate trials and generate separate hearings to determine when, and from what sources, particular evidence was obtained.

Although the use of derivative evidence engages one aspect of the rationale for the privilege against self-incrimination — that a person should not be required to assist the state in building a case against him or her — it does so to a lesser extent than the direct use of evidence because derivative evidence exists independently of the will of the accused. Moreover, it does not engage the most important principles underlying the right, namely the risk of improper interrogation techniques or the unreliability of evidence obtained through such methods.

Furthermore, it is likely that only a small percentage of persons in this class would be affected by the lack of derivative use immunity; being such persons who engage in regulated activities under the bill, and who would consequently be aware of their obligations to comply with the regulatory scheme. Additionally, the penalty for failing to comply with a notice issued by the director is relatively low under both provisions.

Granting immunities in a regulated commercial context to individuals most likely to be questioned and exposed to criminal and civil penalties leads to protracted investigations, and those responsible for wrongdoing and misconduct may escape liability. The limitation on derivative use immunity addresses this issue by allowing the director to effectively monitor compliance with the regulatory scheme without jeopardising the success of any proceedings which may be brought after all relevant information concerning a person's activities have come to light.

As outlined above, the availability of derivative use immunity, far from being a proper and balanced counterweight to the director's compulsory information-gathering powers, would give some persons a forensic advantage far in excess of what was ever contemplated under the privilege against self-incrimination. Accordingly, there are no less restrictive means reasonably available to achieve the purpose of this limitation.

Therefore, I am of the opinion that cls 125 and 126 of the bill are compatible with the right not to be compelled to testify against oneself and the right to a fair trial in ss 25(2)(k) and 24(1) of the charter act.

Documents exception to the privilege against self-incrimination

Clause 169 makes it an offence to refuse or fail to comply with a requirement of the director or an inspector under part 4 of chapter 2 of the bill without reasonable excuse. Clause 170(1) provides that it is a reasonable excuse for a person to refuse or fail to give information or do anything required if it would tend to incriminate that person. However, under cl 170(2), it is not a reasonable excuse for a person to refuse or fail to produce a document if doing so would tend to incriminate them.

Furthermore, as highlighted above, cl 126(5) provides that answers or information provided in compliance with a requirement issued by the director under cl 126 are not admissible in any criminal proceedings other than cl 126 proceedings. However, cl 126(5) does not extend to documents which the director can require to be produced under cl 126, and which the director may seize pursuant to cl 127.

The privilege against self-incrimination generally covers the compulsion of documents or things which might incriminate a person. However, at common law, the High Court of Australia has held that the protection accorded to the compelled production of pre-existing documents is considerably weaker than the protection accorded to oral testimony or to documents that are brought into existence to comply with a request for information (*Environment Protection Authority v. Caltex Refining Co Pty Ltd* (1993) 178 CLR 472, 502 (Mason CJ and Toohey J); 527 (Deane, Dawson and Gaudron JJ); 55 (McHugh J)). The delivery of existing documents to investigators on request in most circumstances is analogous to the seizing of documents or evidence through the execution of a lawful warrant, which is not considered as engaging the right to protection against self-incrimination. This is quite different from compelling a person to write an incriminating document. Some jurisdictions have therefore regarded an order to hand over existing documents as not constituting self-incrimination. Accordingly, any protection afforded to documentary material by the privilege is limited in scope and not as fundamental to the nature of the right as the protection against the requirement that verbal answers be provided.

As with cl 126, cl 169 enables the director to monitor compliance with the bill, investigate potential contraventions, and protect consumers from detriment resulting from non-compliance with the regulatory scheme.

There may be particular circumstances where an order to produce a document may involve an inadvertent infringement of the right to silence; for example, if a person is incriminated through revealing knowledge of a document's existence, location or contents. However, such a scenario can be

considered rare and is a reasonable limitation given the limited nature of the right and the importance of ensuring the scheme can be effectively regulated.

The limitation is directly related to its purpose. The documents required to be produced are those that are connected with an alleged contravention of the bill. The duty to provide these documents assist is consistent with the reasonable expectations of these individuals as persons who operate a business within a regulated scheme. Moreover, it is necessary for regulators to have access to documents to ensure the effective administration of the regulatory scheme.

There are no less restrictive means available to achieve the purpose of enabling regulators to have access to relevant documents. To excuse the production of such documents where a contravention is suspected will allow persons to circumvent the record-keeping obligations of the bill and significantly impede the regulator's ability to investigate and enforce compliance of the scheme.

Therefore, I consider that cls 126(5) and 170(2) of the bill are compatible with the right not to be compelled to testify against oneself and the right to a fair trial in ss 25(2)(k) and 24(1) of the charter act.

Consumer and trader disputes

Clause 191 of the bill provides that if a consumer and trader dispute involves the failure of a supplier to comply with the bill or any other act, VCAT may make an order to resolve the dispute even though the supplier has not been charged with the offence; or has been charged with the offence, but has not had the charge heard; or has had the charge heard, but was not convicted of committing the offence; or has had the charge heard and was convicted of committing the offence; or has been sentenced in relation to the offence; or is the subject of pending disciplinary action; or may be, or has been, subject to disciplinary action.

It is possible that a proceeding before VCAT could involve a person providing information on the matters that do or may form the basis of a criminal charge against that person. However, whether or not the right against self-incrimination is engaged by the operation of cl 191 is dependent upon the circumstances of each particular case. In any event, I consider that the tribunal has sufficient powers available, such as the direct use immunity in s 105 of the Victorian Civil and Administrative Tribunal Act 1998, and the power to conduct a hearing in private under s 101 of that act, to enable it to ensure the fairness of the hearing and to protect a person's right against self-incrimination.

Right to a fair hearing

Access to courts

Under s 24(1) of the charter act, a party to a civil proceeding has the right to have the proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing. The right to a fair hearing includes a right to access a court.

Sections 143, 236(2), 237(3), 239(6) and 273 of the Australian Consumer Law set limitation periods for commencing specified legal proceedings for compensation or damages resulting from a contravention of the Australian Consumer Law. The imposition of these time limits could impact on a person's right of access to a court. However, the right to access the courts is not absolute, and may legitimately be limited by the needs and resources of the community and individuals. Accordingly, in my view, these sections do not unreasonably restrict the right of access to courts, as the time limitations are reasonable in the circumstances and necessary to ensure certainty and fairness to all parties potentially involved in the proceedings.

Use of evidence

Clause 216 states that, in any proceedings for an offence against, or a contravention of, the bill, the court may make any order it considers fair if it finds that the person against whom the proceedings were brought has contravened a provision of the bill, and another person has suffered, or may suffer, loss or damage as a result. Clause 217 permits a person who suffers loss, injury or damage because of a contravention of the bill to initiate legal proceedings for compensation or damages.

Clause 215 states that, in a proceeding against a person under cl 216 or 217 of the bill, a finding of fact made in proceedings under cls 201, 202, 203, 205, or 206 (proceedings for the issuing of an injunction against a person who has contravened a provision of the bill), or cl 210 (proceedings for a corrective order), or cl 211 (proceedings for an adverse publicity order), in which that person has been found to have been responsible for or involved in a contravention of the bill (other than the Australian Consumer Law) is evidence of that fact.

The purpose of cl 215 is to facilitate greater efficiency in the court process by ensuring that a court hearing a matter under cls 216 or 217 need not reconsider factual matters previously determined in related proceedings.

Clause 215 only applies to proceedings against a person under cls 216 or 217. Section 216 is concerned with certain remedial or other orders that a court may make against a person found to have contravened the act. These orders are civil in nature, such as an order for damages or compensation. Proceedings for an order under section 216 may also be sought in the course of criminal proceedings under the act, although this does not affect the overall status of the provision as a 'civil' provision. As such, the 'balance of probabilities' standard of proof that applies to the original injunction proceedings also applies to proceedings under cls 216 and 217.

Furthermore, cl 215 only applies to a finding of fact, which cannot of itself be determinative of a contravention of, or offence against, the act, in proceedings under cl 216 or 217. Furthermore, cl 215 only allows for the use of findings in cl 216 or 217 proceedings involving the same person against whom the injunction proceedings were brought. Consequently, that person will have the opportunity to be heard on the facts to be determined in the injunction proceedings. The injunction proceedings must also meet the requirements of a fair hearing under s 24 of the charter act.

For these reasons, I consider that no unfairness arises, and therefore cl 215 does not limit the right to a fair trial under s 24 of the charter act.

Right to be presumed innocent

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

Evidential onus of proof

A number of provisions in the bill impose an evidential onus upon a defendant in criminal proceedings. Under cl 169, it is an offence to refuse or fail to comply with a requirement of the director or inspector made in the exercise of their inspection powers under part 4 of chapter 6 of the bill without reasonable excuse. Clause 170(1) provides that it is a reasonable excuse for a person to refuse or fail to give information or do anything required if it would tend to incriminate that person. Clause 172 states that a person must not, without reasonable excuse, hinder or obstruct an inspector exercising a power under part 4 of chapter 6 of the bill.

The Criminal Procedure Act 2009 sets out the laws relating to criminal procedure in the Magistrates Court, County Court and Supreme Court. Section 72 of the Criminal Procedure Act 2009 states that where an act creates an offence and provides any excuse upon which an accused wishes to rely, the accused must present or point to evidence that suggests a reasonable possibility of the existence of facts that will establish the excuse.

Clause 169 reflects a policy of imposing obligations upon persons who engage in consumer activity to ensure compliance with the act. It is intended to make persons responsible for any breaches that occur. However, in order to avoid overly harsh consequences, a defence is provided by cl 170(1), to enable persons to escape liability for breaches where they are acting in a manner consistent with their rights under ss 24 and 25(2)(k) of the charter act.

Clause 5 states that it is an offence for a debt collector to recover, or attempt to recover, from a debtor any payment in connection with the collection of a debt. Clause 52(3) states that it is a defence if the debt collector had an honest and reasonable belief that the enforcement expenses they sought to recover did not exceed those reasonably incurred by the creditor. Clause 52(3) does not require the defendant to prove the honest and reasonable belief, but does impose an evidential onus upon defendants by requiring them to put forward evidence which is sufficient to raise the cl 52(3) defence.

Clause 214(1) states that in proceedings for an offence against the bill, evidence that a person carries on business in a place where goods are kept in stock is evidence that the goods are in the possession of the person for supply. Likewise, cl 214(2) provides that in proceedings for an offence against the bill, evidence that goods were imported from a particular port of shipment is evidence, and in the absence of evidence to the contrary, is proof, that the goods were manufactured or produced in the country in which that port of shipment is situated. Both clauses impose an evidential onus on a defendant to adduce evidence that rebuts the presumption. Clause 214(4) provides that in any proceedings under the bill, goods which have been manufactured are presumed, in the absence of evidence to the contrary, to have been manufactured for supply.

Courts in other jurisdictions have generally taken the approach that an evidential onus on an accused does not limit the presumption of innocence. Additionally, cls 52(3), 169, 172 and 214 are based on matters within the knowledge of the relevant defendant, and are matters which a defendant would be cognisant of, given that they would be participating in regulated commercial activities. Consequently, even if these provisions were found to limit the right to be presumed innocent through imposing evidential onuses upon defendants, they would be reasonable and justified under s 7(2) of the charter act.

The Australian Consumer Law contains several provisions which impose an evidential onus of proof upon a defendant in criminal proceedings.

Sections 151(1)(e) and 151(1)(f) of the Australian Consumer Law provide that a person commits an offence if the person makes a false or misleading representation that purports to be a testimonial, or concerning a testimonial, relating to goods or services. Section 151(2) provides that, in relation to a proceeding concerning a representation of a kind referred to in subsections (1)(e) or (1)(f), the representation is taken to be misleading unless evidence is adduced to the contrary. Section 151(3) provides that section 151(2) does not have the effect of placing on any person an onus of proving that the representation is not misleading. Accordingly, s 151 imposes an evidential onus on a defendant to adduce evidence that rebuts a presumption that a representation is misleading.

Furthermore, ss 154(3), 158(8), 161(2), 163(6), 166(3), 166(5), 170(2), 172(4), 189(2), 190(2), 194(4), 197(4), 205(2), and 206(2) of the Australian Consumer Law all set out exceptions to offences. These sections arguably place an evidential onus on a defendant to raise these exceptions to the relevant offences. In my view, none of the above sections impose a legal burden on a defendant. The provisions do not transfer the burden of proof, because once the defendant has adduced or pointed to some evidence, the burden is on the prosecution to prove beyond reasonable doubt the elements of the relevant offences.

As with cls 169 and 214 of the bill, these sections of the Australian Consumer Law create defences and exceptions apply to obligations and duties under the Australian Consumer Law which defendants should be aware of, and are based on matters which the defendant should have knowledge of. Consequently, even if these sections of the Australian Consumer Law were found to limit the right to be presumed innocent through imposing evidential onuses upon defendants, they would be reasonable and justified under s 7(2) of the charter act.

Both the bill and the Australian Consumer Law also contain provisions for civil remedies that impose evidential onuses. For example, s 4(1) of the Australian Consumer Law states that if a person makes a representation with respect to future matters for which they do not have reasonable grounds for making, that representation is taken to be misleading. Section 4(2) states that for the purposes of applying s 4(1), the party or person is taken not to have had reasonable grounds for making the representation unless evidence is adduced to the contrary. Similarly, s 29 provides that a representation purporting to be a testimonial, or concerning a testimonial, is taken to be misleading unless evidence is adduced to the contrary.

The bill also provides an evidential onus for the certification power of the director under cl 209(1). Pursuant to that clause, if the director is satisfied that a person has, without reasonable excuse, failed to comply with a requirement under cl 125, 126 or 148, the director may certify that failure to a court. Under cl 209(5) a certification by the director is taken to be evidence that a person has failed to comply with cls 125, 126 or 148, unless the person provides evidence that the requirement was

complied with or there was a reasonable excuse for failing to comply with the requirement. Clause 209(3) states that the director cannot issue a cl 209(1) certification if the person to whom it relates has been charged with an offence against cls 125(2), 126(3) or 169. Furthermore, cl 209(6) states that if a proceeding is brought under cl 209 in relation to a failure to comply with a requirement, the person to whom that failure relates cannot be charged with an offence under cls 12(2), 126(3) or 169. Additionally, cl 103(6) of the bill establishes specified categories of reasonable excuse which except an accommodation provider from liability for failing to provide a safekeeping service under cl 103.

All of these provisions carry a civil penalty, which, in some circumstances, may be of such a magnitude that a court may consider that it involves truly penal consequences, therefore engaging the right to be presumed innocent. However, I do not consider that the penalties for breaching the provisions under the bill or the Australian Consumer Law to which reverse onuses apply can be classed as 'truly penal consequences'. An accommodation provider who breaches cl 103 of the bill is liable for any loss suffered up to $3000, unless certain circumstances warranting greater liability exist. The only available remedy under cl 209 is a court order compelling a person to comply with a requirement under cls 125, 126 or 148. If a person is found liable for breaching a civil penalty under the Australian Consumer Law, they may be subject to a pecuniary penalty order under s 224, an injunction order under s 232, or a compensation order under ss 237 and 238 of the Australian Consumer Law. As the pecuniary penalty is a civil debt in the form of an order made in civil proceedings against the person, a person will not be imprisoned for a failure to discharge the debt. Accordingly, in my view s 25(1) of the charter act is not engaged by these provisions.

Legal onus of proof

The following sections of the bill and the Australian Consumer Law place a legal onus upon defendants by requiring them to prove, on the balance of probabilities, certain defences.

Under cl 162(4) of the bill, it is an offence for a person who knows that an embargo notice relates to a thing to move that thing without the consent of the inspector. Clause 162(5) provides that it is a defence to cl 162(4) to prove that the accused moved the thing or part of it for the purpose of protecting or preserving it.

Clause 213 of the bill provides general defences to offences under the bill. Clause 213(1)(a) states that it is a defence if the accused establishes the contravention occurred due to a defence of reasonable mistake of fact. Clause 213(1)(b) states that it is a defence if the accused establishes that the contravention occurred due to the act or default of another person, provided that the accused took reasonable precautions and exercised due diligence.

Section 157 of the Australian Consumer Law establishes a defence to the offence of bait advertising. Sections 162 and 163 provide defences to the offences of assertion of a right to payment for unsolicited goods or services, or unauthorised entries or advertisements respectively, if the defendant proves that they had reasonable cause to believe that there was a right to the payment. Section 207 provides a defence of reasonable mistake of fact in relation to a number of strict liability offence provisions in chapter 4 of the Australian Consumer Law. Section 208 establishes that it is a defence to the offence provisions in chapter 4 of the Australian Consumer Law if a defendant proves that a contravention was due to the act or default of another person and the defendant exercised due diligence to avoid the contravention. Section 209 states that it is a defence to a chapter 4 offence if the defendant proves they did not know the publication of an advertisement would amount to a contravention. Sections 210 and 211 state it is a defence to a chapter 4 offence if the defendant proves they could not have known that goods or services did not comply with relevant safety or information standards.

Clauses 162(5), 213(1)(a) and 213(1)(c) of the bill and ss 157, 207, 208, 210, and 211 of the Australian Consumer Law require defendants to prove certain things in order to make out the relevant defence. Sections 162 and 163 of the Australian Consumer Law require a defendant to prove something in order to be exempt from the application of the relevant provision. By placing a burden of proof on a defendant in relation to a criminal offence, these provisions limit the right to be presumed innocent in section 25(1) of the charter act. However, I consider the limits upon the right to be reasonable and justifiable in a free and democratic society for the purposes of section 7(2) of the charter act, having regard to the following factors.

The right to be presumed innocent is an important right that has long been recognised under the common law, well before the enactment of the charter act. However, the courts have held that it may be subject to limits, particularly where, as here, the offences are public welfare offences of a regulatory nature, and the defences are enacted to enable a defendant to escape liability.

The purpose of imposing a legal burden for these provisions is to ensure the effectiveness of enforcement and compliance with the bill and the Australian Consumer Law by enabling offences to be effectively prosecuted and to thus operate as an effective deterrent and protection of the public.

The defences outlined in these provisions reflect a policy of imposing obligations upon persons who engage in consumer activity to ensure compliance with the bill and the Australian Consumer Law. The provisions ensure persons are held responsible for all breaches that occur, with the exception of those breaches that are proven to have occurred in circumstances beyond a person's control, such as where they did not and could not know of the facts or where they took all reasonable steps to prevent a breach.

The defendants seeking to rely on these defences will be persons who engage in trade or commerce, and who are in the business of providing consumer goods or services. Thus, they should be well aware of the regulatory requirements and, as such, should have processes and systems in place that enable them to effectively meet these requirements. Conversely, it would be difficult and onerous for the Crown to investigate and prove beyond reasonable doubt the relevant elements of these provisions.

The limit is imposed only in respect of the defence. The prosecution would first have to establish the elements of the offence. Moreover, the defendants seeking to rely on these defences will be persons who participate in the supply of goods or services. Therefore, defendants should be well aware of the responsibilities under the regulatory scheme and, as such, should have processes and systems in place that enable them to meet these requirements, including

maintaining proper business records and associated documents which would enable them to prove the elements of the relevant defence.

The imposition of a burden of proof on defendants is directly related to the purpose of enabling the relevant offence to operate as an effective deterrent whilst allowing persons to escape liability for breaches which occur due to circumstances beyond a person's control.

Although an evidential onus would be less restrictive than a legal onus, it would not be as effective because it could be too easily discharged. The inclusion of a defence with a burden on the accused to prove the matters on the balance of probabilities achieves an appropriate balance of all interests involved.

Accordingly, in my view, these sections of the Australian Consumer Law are compatible with the charter act.

The Australian Consumer Law also contains several provisions which impose a legal onus upon a defendant in civil penalty proceedings. For example, ss 252 and 253 of the Australian Consumer Law state that it is a defence if the defendant proves either that they did not know that goods supplied or services provided did not comply with a safety standard, or that they relied in good faith upon a representation made by the person who supplied the goods or provided the services.

These provisions potentially impose pecuniary penalties on individuals. As discussed above, the pecuniary penalties potentially imposed are civil debts in the form of orders made in civil proceedings against the person and thus do not engage the right to be presumed innocent.

Conclusion

For the reasons given in this statement, I consider that the bill is compatible with the Charter of Human Rights and Responsibilities Act 2006.

Hon. Matthew Guy, MLC
Minister for Planning

Second reading

Hon. M. J. GUY (Minister for Planning) — The bill was amended in the Assembly, and I note the house amendments essentially fix typographical errors such as a reference to section 211 that should have been to section 221. I move:

That, pursuant to standing order 14.07, the second-reading speech, except for the statement under section 85(5) of the Constitution Act, be incorporated into *Hansard*.

Motion agreed to.

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

That the bill be now read a second time.

Incorporated speech as follows:

The Fair Trading Act 1999 is Victoria's primary piece of consumer protection legislation, and an important source of consumer law for both consumers and traders.

The recent spate of significant consumer law reforms in Victoria has left the structure of the act in need of improvement. Large parts of the act have been repealed to make way for the application of the Australian Consumer Law in Victoria. In addition, reforms to other consumer acts in recent years for modernisation purposes have resulted in the consolidation of many consumer protection schemes within the act. These reforms have left the act patchy and cumbersome to use.

The Australian Consumer Law came into effect on 1 January 2011, and it is, therefore, timely that work be undertaken to restructure and consolidate the Fair Trading Act.

It is important for Victorian businesses and consumers seeking to understand their rights and responsibilities under consumer protection legislation to be able to access a clear, logically arranged and accessible act.

This bill tackles that challenge. It re-enacts the remaining provisions of the Fair Trading Act, and renames the act the Australian Consumer Law and Fair Trading Act. The legislation has been substantially reorganised to make the structure of the act clearer and easier to navigate. Chapters have been introduced acknowledging significant components of the act and extensive renumbering has been undertaken. The new act showcases reforms that have already been made while retaining the core elements of the Fair Trading Act which have served the Victorian community so well.

As such, many of the key components of the Fair Trading Act have been re-enacted with little or no amendment. However, in undertaking this project, the government has also sought to make further improvements to assist Victorian businesses, particularly small businesses, and to ensure that the act remains relevant and reflective of current regulatory and enforcement practices.

I will now focus on the changes introduced by this bill.

Firstly, the bill implements the government's election commitment to promote expanded services for small business consumers and to highlight the consumer protections available to small business under the Australian Consumer Law by making changes to the director of Consumer Affairs Victoria's powers to conciliate and mediate disputes.

The bill removes the limitations that currently exist on the director's capacity to help small businesses resolve disputes by enabling the director to conciliate any dispute between a business that is a consumer and a supplier about the supply of goods or services in trade or commerce.

This will increase the capacity for disputes involving small businesses to be referred for conciliation provided those businesses fall within the definition of 'consumer' under the Australian Consumer Law.

The full spectrum of small businesses is covered. This includes, but is not limited to, small businesses defined by the Australian Bureau of Statistics as having fewer than 20 employees, as well as other businesses that may exceed this number but would commonly be perceived as small

businesses, such as, for example, a cafe or restaurant with a large proportion of casual employees.

In addition, the existing requirement in the Fair Trading Act that requires disputes including businesses to involve a matter of significant public interest has been deleted. There is no need for such a restriction.

This forms part of a larger strategy to assist business as consumers, which already includes a dedicated info line, launched in July this year, and customised information for business on the Consumer Affairs Victoria website.

The bill also removes restrictions on provisions allowing the payment of special purpose grants from the Victorian Consumer Law Fund. Currently grants from the fund can only be made to a not-for-profit organisation, or the director of Consumer Affairs Victoria.

The bill will enable special purpose grants to be made to any person or organisation for purposes consistent with the objectives of the Australian Consumer Law. This change opens the door for other persons that are able to deliver consumer protection and education initiatives to apply for grants. It recognises that, in many cases, these services can be provided by businesses generally and that there is no need to exclude any one class of business. What is important is who is best placed to deliver the service.

The bill also provides for the closure of the Victorian Consumer Credit Fund and the accrual of all residual funds, liabilities, and any future revenue to the Victorian Consumer Law Fund.

Established in 1984, the Consumer Credit Fund is funded from civil penalties awarded by a court under the former consumer credit code. Grants can be made from the fund for the purposes of funding education services about credit, as well as education, advice and assistance to persons to whom credit has been, is or may be provided under a credit contract. However, following the transfer of the regulation of consumer credit to the commonwealth in 2010, the role of the Consumer Credit Fund has declined.

The bill transfers residual moneys in the Consumer Credit Fund to the Victorian Consumer Law Fund and, in so doing, ensures that such moneys will continue to be applied for consumer protection purposes within Victoria. The consolidation of the funds avoids any duplication in administrative costs, enabling the director of Consumer Affairs Victoria to maximise the application of moneys in the two funds for their intended purposes.

The existing suite of inspection powers in part 10 of the Fair Trading Act have also been re-enacted with enhancements.

The most important of these will ameliorate the impact of investigations upon the operation of business. Currently, inspectors needing to access records of a business often find that they cannot access the records on site because they do not have the necessary expertise, and have to remove the storage device. This is an unnecessary interruption. The bill therefore provides that an inspector conducting, for example, an emergency search of premises may, in addition to another inspector or a member of the police force, bring with them any other person necessary to provide technical assistance. This ensures that inspectors exercising this power who need to examine, copy or take an extract from anything found on the premises, which requires particular expertise can enlist the assistance of a suitably qualified person.

The bill re-enacts the functions of the Victorian Civil and Administrative Tribunal thereby ensuring that Victorian consumers have continued access to the tribunal as a low-cost forum for resolving disputes.

An amendment has been included to put beyond doubt the tribunal's power to make an order for the possession of land in the course of a consumer and trader dispute. These orders can only be exercised by a judicial member, and are limited to a consumer and trader dispute where a debtor under a loan agreement commences proceedings to prevent a creditor from enforcing a mortgage to claim possession of the mortgaged land.

Under the Fair Trading Act, a court has discretion to order a person to comply with a written notice issued by the director of Consumer Affairs Victoria requiring the person to provide information, documents or evidence. A publisher may also be ordered by a court to comply with a notice to produce certain information. To obtain such an order, the director must certify that the person has failed to comply with an earlier requirement. Courts have interpreted this as requiring the director to prove on the balance of probabilities that non-compliance has occurred, requiring affidavits to be sworn and evidence tendered.

The bill addresses this by providing that certification by the director will be taken as evidence of non-compliance by the recipient of a notice issued by the director, as specified in the particular provision. This presumption only applies where the director has forgone the opportunity to take criminal proceedings and may be rebutted by evidence of compliance or evidence of a reasonable excuse for non-compliance.

Finally, the bill includes provisions to clarify the relationship between the Australian Consumer Law and the Charter of Human Rights and Responsibilities Act 2006.

The bill introduces into the Australian Consumer Law and Fair Trading Act a new purpose, namely to promote uniformity with the consumer laws of other jurisdictions by interpreting and applying the Australian Consumer Law in Victoria in a manner that is consistent with that adopted in other jurisdictions. This specifically addresses concerns that section 32 of the Charter of Human Rights and Responsibilities Act applies to the Australian Consumer Law and, in cases of conflict, will result in provisions of the Australian Consumer Law being read in an unintended or inconsistent manner. The new purpose makes it clear that when considering the application of the charter to the operation of the Australian Consumer Law, the importance of maintaining a nationally uniform Australian Consumer Law must be recognised.

In order to address constitutional issues, the bill also clarifies that the commonwealth minister administering the Australian Consumer Law is not a public authority when performing his or her relevant functions under the Australian Consumer Law as applied in Victoria.

Necessary savings and transitional provisions have been included in this bill to ensure a smooth transition for Victorian consumers or businesses, and consequential amendments to a number of Victorian acts to reflect the title of the new act and changes to the commonwealth legislation.

Section 85 of the Constitution Act

Hon. M. J. GUY — Clause 231 of the bill states that it is the intention of clauses 187, 188 and 189 to alter or vary section 85 of the Constitution Act 1975. I therefore make the following statement under subsection 85(5) of the Constitution Act 1975 on the reasons for altering or varying that section.

Clause 187 provides that if proceedings regarding a fair trading dispute or other matter under the Fair Trading Act 1999, over which the Victorian Civil and Administrative Tribunal has jurisdiction, are commenced first in VCAT and are not struck out or withdrawn, the dispute is not justiciable by a court unless the proceeding in that court was commenced before the application to VCAT was made and that proceeding is still pending or VCAT refers the proceeding to that court under section 77 of the Victorian Civil and Administrative Tribunal Act 1998.

Clause 188 provides that if proceedings regarding a fair trading dispute are first commenced in a court, the court must stay the proceedings if they could be more appropriately dealt with by VCAT, including if a party could obtain a material advantage in VCAT — for example, if it would be cheaper or quicker — provided that it is not outweighed by any material disadvantage suffered by another party if the dispute goes to VCAT. Where the court stays proceedings, a party may apply to VCAT for an order in relation to the proceedings, whereupon VCAT must notify the court, which must dismiss the proceedings except where VCAT has exercised its power to refer the matter to the court.

The reasons for the variation by sections 187 and 188 to section 85 of the Constitution Act 1975 are to allow the parties to a fair trading dispute a choice of forums in which to litigate and to ensure that a party wishing to take advantage of the benefits offered by VCAT is not unfairly frustrated by another party commencing proceedings in a court merely as a tactical manoeuvre to put pressure on the other side to settle disadvantageously or to abandon the proceedings.

Clause 189 provides that where a consumer who is in dispute with a trader over a 'small claim' makes an application to VCAT to hear the claim and lodges the amount in dispute with VCAT, VCAT has exclusive jurisdiction over the claim and that any proceedings by the trader in a court in respect of the claim be dismissed. This is to ensure that VCAT is retained as the only forum for dealing with claims that would formerly have been made to it under the Fair Trading Act 1999. Clause 189 also sets out a procedure for a consumer to lodge the amount in dispute with VCAT.

The reason clause 189 allocates VCAT as the only forum able to deal with small claims is because it is intended to have an informal, low-cost procedure to deal with such claims without, for instance, the expense involved in having legal representation. It is considered critical to keep costs at a minimum to ensure that the benefit of any judgement is not effectively rendered useless by the costs involved. That intention is frustrated if small claims can be taken to the courts.

Incorporated speech continues:

> The introduction in 2010 of nationally consistent consumer protection and fair trading rules was an important development in Australia's consumer protection laws, as were the modernisation reforms over the last two years. However, it is important to finish this task. This bill presents a new Australian Consumer Law and Fair Trading Act, with a new structure in chapters and parts, with reorganised definitions, and themes. Provisions concerning contracts, general business and specific business matters have been placed together. The bill preserves other important features of the current Fair Trading Act, such as the ability to develop codes of practice, access to the Victorian Civil and Administrative Tribunal, and its range of flexible remedies.
>
> This bill is a good example of the government's dedication not just to the business of reform, but also to ensuring that in undertaking that reform, the legislation itself is not neglected but continues to be refined and enhanced. It will ensure that Victorian consumers and businesses will have legislation that is clear and comprehensible into the future.
>
> I commend the bill to the house.

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

Debate adjourned until Tuesday, 24 April.

VICTORIAN INSPECTORATE AMENDMENT BILL 2012

Second reading

Debate resumed from 29 March; motion of Hon. P. R. HALL (Minister for Higher Education and Skills).

Hon. M. P. PAKULA (Western Metropolitan) — It gives me pleasure to rise to speak on the Victorian Inspectorate Amendment Bill 2012 and to indicate that the opposition will not be opposing the passage of this bill. However, we will take this opportunity to point out that this is now the fifth piece of legislation that has been brought before the Parliament in the government's so far futile attempt to create an independent broadbased anticorruption commission. From the comments of government members, it appears that this will not be the last bill either, although I would remind

the house that during the committee stage of a previous bill we tried unsuccessfully to ascertain from the government how many more pieces of legislation would be required before we had a functioning independent, broadbased anticorruption commission, and we are so far none the wiser about that.

We are also none the wiser about exactly when this independent, broadbased anticorruption commission will be operating. The Premier has at various times indicated that 1 July 2012 is the target date. He has also indicated that the target date is around the middle of the year. We are now quite close to the middle of the year. We still do not have in place the entire legislative framework to allow an IBAC to function. We still do not have an IBAC commissioner or IBAC staff engaged, and it looks highly unlikely that we will have an IBAC up and running by 1 July 2012.

It is, as I indicated in a previous debate on IBAC legislation, very difficult to properly conduct a parliamentary debate about powers that are being provided to elements of the IBAC framework in this piecemeal manner because we are effectively being asked to buy a pig in a poke. We are being asked to make assumptions about what future pieces of legislation might look like. For example, we are being asked to assume that the powers that are being given to the Victorian Inspectorate will be similar to or the same as the powers given to the IBAC itself, but we do not know in fact when it comes to examination of witnesses or summoning individuals or coercive powers whether the powers that are being provided to the inspectorate in this piece of legislation are greater than, equal to or less than the powers that will ultimately be given to the IBAC itself.

It seems somewhat incongruous that we are being asked to provide a series of powers to the body that will oversee the IBAC without knowing what powers will be given to the IBAC itself. Whether that is a matter of putting the cart before the horse or, more likely, buying the cart before the horse has even been born, it does seem to be legislation in the wrong order at the very least.

We are being asked to pass legislation that creates an inspectorate which effectively has no home. We are being asked to do it in an environment where we cannot place the powers that are given to the inspectorate in the proper context — the proper context being a comparative analysis of the powers given to the inspectorate vis-a-vis the powers given to the commission.

What makes it even more difficult is that we still do not have, and it seems we will never have, before us for analysis the advisory committee report that was provided to the government which formed the basis, we assume, of its IBAC legislation. Not only are we forced to assume that it formed the basis of the IBAC legislation but we are forced to assume that it may have at least in part formed the basis of this legislation. It is an extraordinary set of circumstances. In the committee stage of the last piece of IBAC legislation that we dealt with in this place the minister, Mr Dalla-Riva, simply relied on the notion of cabinet in confidence to indicate that the report had not been released and would not be released.

In those circumstances we have multiple pieces of legislation being brought before the house in an environment where the government has created a special advisory committee to no doubt provide the government — but I would suggest the Parliament and the Victorian community more generally — with a proper context through which we should view this IBAC legislation. It may well be that there is an enormous amount of information contained in those advisory committee reports that would help the Parliament and enable those who are expected to vote on this bill and are expected to debate this bill to provide better analysis and to more fully understand the global context in which each individual piece of legislation is brought before the Parliament.

I think it is instructive that Doug Meagher, QC, who is, I think everyone would admit, a very prominent Queen's Counsel, and who provided advice to the panel, is reported as having raised concerns about the body's narrow scope and warned that the wording of the IBAC legislation may lead to legal challenges for the new commission. I think it is worth noting that in a *Sunday Age* article on 17 March when Mr Meagher was asked about the $170 million cost of the IBAC he said that the government would be well advised to save its money and abandon the project.

What is important about that is that Mr Meagher is not somebody who is opposed to the notion of an IBAC. Mr Meagher is in fact somebody who has provided advice in regard to IBAC. Mr Meagher in his comments is expressing his dissatisfaction with the extremely narrow focus that the government has provided to the IBAC in the pieces of legislation that have come before the Parliament before today.

But in the context of this bill, it again raises this issue of why it is that we are debating legislation about a body which is designed to oversee a commission which has not been created and whose powers have not been

properly formed or granted by the Parliament or indeed by the government or the minister or by regulation, or via any other method.

It is also important in the context of that criticism to note what Professor David Yencken said. He is a spokesperson for the Accountability Round Table, which, as members would be aware, the Liberal-Nationals coalition spent a great deal of effort courting before the last election with a series of promises that it has either abandoned, watered down or broken altogether. Nevertheless the Liberal-Nationals coalition did court the Accountability Round Table assiduously in the lead-up to the election on matters like the ministerial code of conduct, FOI and IBAC. We saw the letter from the Minister responsible for the establishment of an anti-corruption commission, Mr McIntosh, which made all sorts of grandiose promises to the Accountability Round Table, all of which he has scurried away from at a great rate of knots since November 2010.

However, Professor Yencken was reported as saying that the secrecy shrouding every aspect of the consultation carried out by the government is a matter of great concern. We concur with those comments, because when you have a change as profound as the creation of an independent, broadbased anticorruption commission, despite the fact that it does not accord with the promises that were made by the current government, including its commitment to have a New South Wales-style independent commission against corruption or any of the commitments about the commission's breadth and scope, it is still a fundamental change.

A group of eminent persons have been charged by the government with the responsibility of looking into and advising on the structure and powers of a commission of this nature. It is unreasonable to force the Parliament to debate and decide upon the structure of that commission without access to that report and without access to the pieces of legislation that have not yet been drafted or perhaps not even been dreamt up. It is an unreasonable burden to place on the Parliament and its members. Members are entitled to be in possession of all the information that is available, and we are not. Members of the government have that information, but members of the opposition and members of the Greens do not.

I am not going to go through all of the powers of the Victorian Inspectorate in detail because that has been done in the second-reading speech and also by my colleague the member for Altona in the other place. I find some of the powers interesting. We know from the legislation before the Parliament that we now have a range of provisions around witnesses, around the way that summonses for witnesses will be processed and served upon individuals and around what their responsibilities will be when they receive them — that is, summonses from the inspectorate presumably to an IBAC officer. We know how those witness summons powers will work, but we do not yet know how they are going to work for IBAC itself. We know how the inspectorate can compel members of IBAC or staff of IBAC, but we do not know what IBAC's powers are.

I do not want to belabour the point, but I would hope members of the government would appreciate the incongruity, to be generous, or the idiocy, to be less generous, of having the Parliament decide on the powers of those overseeing IBAC before we decide on the powers of IBAC.

Ms Pennicuik — Good question.

Hon. M. P. PAKULA — Yes. Another example is that we know what sort of weaponry IBAC officers will be able to access but we do not know whether they will have the power to issue summonses or be able to require people to give evidence under oath. Apparently that detail is still to be filled in. It is still to be determined. It will be brought before the Parliament at some point before 1 July, if the government's new time line is to be believed. We should not forget that the original promise was that it would be by 1 July last year, so we are already almost a year over that, and I doubt very much whether we will hit this one.

We know that the inspectorate can issue summonses, we know that the inspectorate can require evidence to be given under oath, but we do not yet know whether IBAC can require either of those things. A number of questions have been answered in respect of the Victorian Inspectorate but they have not yet been answered in respect of IBAC. As I indicated, that is more than putting the cart before the horse; that is buying the cart before you have even got a horse — buying the cart before the horse has even been born.

I also want to turn to the *Alert Digest* report on the bill. The Scrutiny of Acts and Regulations Committee (SARC) report, which was tabled today, has gone into two matters — clauses 10 and 12 of the bill. Both matters require some elucidation beyond that which has been provided by the minister in his cursory response.

I refer firstly to the question of unauthorised disclosures, which is set out in new section 28A, which is inserted into the Victorian Inspectorate Act 2011 by clause 10 of this bill. What that new section 28A

indicates is that a person who is or was a Victorian Inspectorate officer must not directly or indirectly provide or disclose information acquired by the person or the Victorian Inspectorate except in a very narrow range of circumstances.

The point that is made by the Scrutiny of Acts and Regulations Committee is that one of the things that the Victorian Inspectorate might discover is that in an IBAC investigation that involves an existing or ongoing prosecution of somebody for corrupt conduct — and let us not forget that the type of corrupt conduct that is allowed by the IBAC legislation as it is currently constituted is only what would be an indictable offence — the express permission of disclosure in that investigation would not, for example, permit the disclosure of relevant information to a criminal defendant in a circumstance where IBAC itself may be engaging in misconduct. In other words, if the inspectorate learns that IBAC has engaged in misconduct and as a consequence of that misconduct someone is being prosecuted for corruption, the inspectorate is not allowed to reveal that information to the defendant for the purpose of the defendant conducting his or her defence.

As I have indicated, the minister has responded to that in a cursory way, simply asserting that there are appropriate safeguards for the confidentiality of the Victorian Inspectorate's operations, but I think SARC has hit on a serious matter. I note that one of the members of the committee is in the chamber. I imagine that that member of the committee might be a contributor to this debate, and I would hope in his contribution that member will provide clarification beyond what has been provided by the minister about whether or not the Victorian Inspectorate will be allowed to provide information to an individual who is being prosecuted as a result of IBAC activity if the inspectorate finds that the IBAC has engaged in misconduct and that misconduct led to the prosecution. It would be a gross miscarriage of justice if somebody was being prosecuted as a result of improper behaviour by the IBAC and that individual was never any the wiser about it and could not use the information about the misconduct either in his or her defence or in order to have that particular charge thrown out.

That is the first item raised by the Scrutiny of Acts and Regulations Committee. The second item relates to clause 12. It goes to the question of the abrogation of the privilege against self-incrimination. On the face of it the bill seems to make it very clear that if a person is summoned by the inspectorate, they cannot use the privilege against self-incrimination to refuse to answer questions. That has also been raised with the minister. Equally it has been observed by the Scrutiny of Acts and Regulations Committee that not only can the individual not refuse to answer questions on the grounds of self-incrimination but also there is nothing preventing the Victorian Inspectorate from passing those compelled answers on to the IBAC itself, Victoria Police or other agencies for the purpose of initiating a prosecution in the future. On the face of it, that seems to be a fairly substantial alteration to what has always been a well understood tenet of criminal law.

The minister's response is contained in the SARC report at page 12, so I do not propose to read it into *Hansard*, but the minister indicates that the provision:

> … is coupled with a limitation, known as a use immunity, stating that the answer or information obtained by these means cannot be used as evidence against the person in any proceedings, other than in —

certain circumstances. That response from the minister seems to contradict the finding of the committee in regard to the ability of the Victorian Inspectorate to pass on that information to other agencies for the purposes of commencing a prosecution.

I hope the member who has the best knowledge of the deliberations of the Scrutiny of Acts and Regulations Committee, Mr O'Brien, a member for Western Victoria Region, who is routinely the government's lead speaker on justice bills, will address those matters in his contribution and demonstrate for the house, if he can, how there is no contradiction between the findings of the committee and the minister's response. Where there is a disagreement it would be useful if he could elucidate on that for the Parliament so that we can vote on this bill with the best knowledge we can have, even if we cannot have the advisory committee report. Certainly at this stage the opposition does not intend to deal with this matter in committee, but I think it would be appropriate to indicate that if some of the matters that are outlined in the Scrutiny of Acts and Regulations Committee report are not appropriately dealt with during the second-reading debate, we may have no alternative.

With those few words I indicate that the opposition will not be opposing the bill, and I look forward to hearing from other speakers on it.

Ms PENNICUIK (Southern Metropolitan) — I have to say from the outset that I am perplexed as to why we have this bill before us today. The Independent Broad-based Anti-corruption Commission that has been coming to us in tranches, or in dribs and drabs, is not operating and does not have its full powers, as the government has freely admitted. There is still another

substantial piece of legislation to come, which we understand will outline the investigatory powers of the IBAC. Even if a commissioner and staff were appointed, the IBAC could not commence an investigation without its full powers, so this bill is not required at this time. I am also concerned because we do not yet have the full outline of the IBAC; we have three-quarters or maybe two-thirds of the legislation required to set up the IBAC. I am not convinced that the inspectorate bill we have before us today, which again is the second one of those, will not be required to be amended again after we get the next substantial bill that refers to the establishment of the IBAC and its investigatory powers.

I have to say I am not convinced that that will be the last of the IBAC bills either. However, we are in a situation, and Mr Pakula and I have both referred to this before, where the Parliament is unable to see the full picture and is being asked to vote on parts of the establishment of what will be a very important body — that is, the Independent Broad-based Anti-corruption Commission. I have supported the establishment of that.

The Greens first motion in Parliament in 2007 asked the then Attorney-General to send the whole question of how an independent, broadbased anticorruption commission should be established in Victoria to the Victorian Law Reform Commission. That would have been a good idea. It is a pity the previous government did not do that, because that would have been an open process run by the Victorian Law Reform Commission whereby members of the public and interested groups could have contributed to its investigation into the matter. It would have been fully public, and I would suggest models would have come from that process that the government could have implemented.

Instead, at the end of the previous government's term in office and after much lobbying by various parties, the government set up the Proust review, which put forward a report and suggested particular models, some of which I agreed with and some of which I did not agree with. One I particularly agreed with was that the Office of Police Integrity should remain intact and operate alongside the Independent Broad-based Anti-corruption Commission, as is the case in New South Wales, where the Police Integrity Commission operates alongside the Independent Commission Against Corruption and has done so now for 15 years. That is one of the great departures from the New South Wales ICAC model, which is the model on which the government has told us this system we are in the process of establishing bit by bit is modelled. It is quite a substantial departure from that model.

As I have said before, the Victorian IBAC will be in and of itself a different model from those that exist in New South Wales, Queensland, Western Australia or Tasmania, and probably from what is going to be set up in South Australia, so we will have very different models in every state. That may or may not be a good thing; they all have their pros and cons I assume. In my research into this issue I have had a look at the different models around the country.

While we support the process of setting up an independent, broadbased anticorruption commission, I have to say I am a bit exasperated that we now have had another bit of the jigsaw puzzle put on the table. In terms of putting the whole puzzle together, there are still a lot of gaps and pieces that have not been fitted together, which means the Parliament and the people of Victoria are unable to see the whole thing. I say again that that is very disappointing. It is the job of the government to put together this body which is going to have substantial powers. This body will be overseeing all public servants, members of Parliament, elected councillors and the police. It is a huge job. It needs much more scrutiny and discussion than is enabled by the process that the government is following.

It really is not too late for the government to be more forthcoming with the information and advice that it has been privy to and to release it publicly so the people of Victoria and the Parliament are able to make a more informed assessment of what we are being asked to agree to here. What should have happened is there should have been a full exposure bill establishing the IBAC and a full exposure bill establishing the Victorian Inspectorate and they should have been referred to a committee for investigation and report. That is what should have happened.

In addition to spending some time looking at IBAC models around the country, I asked the parliamentary library to look at the different models of oversight bodies that oversee the anticorruption and crime and misconduct commissions of the three major jurisdictions of New South Wales, Queensland and Victoria. I thank Adam Delacorn and Bella Lesman for putting that information together for me in a briefing.

It is true to say that all of those anticorruption bodies, as we would call them, have similar bodies to oversee them. In New South Wales the Office of the Inspector of the Independent Commission Against Corruption is responsible for investigating complaints against ICAC or its former or current officers and also for overseeing the exercise of ICAC's powers. The inspector is independent of ICAC and appointed by the New South Wales Governor. However, the Committee of the

Independent Commission Against Corruption, which is a joint parliamentary committee, has a veto over the appointment.

Sitting suspended 6.30 p.m. until 8.02 p.m.

Ms PENNICUIK — As I was saying before the dinner break, the general functions and powers of the New South Wales Office of the Inspector of the Independent Commission Against Corruption are, as far as we know, generally similar to those of the Victorian Inspectorate in this bill, except in one interesting aspect that I have been able to glean from information provided to me by the parliamentary library, and that is with regard to the privileges of a witness. Under the New South Wales inspectorate a witness may not refuse to take an oath or affirmation to answer any questions put to the witness. However, section 11(2)(a) of the New South Wales Royal Commissions Act 1923 also states that it is not compulsory for a witness to answer any question if the witness has a reasonable excuse for refusing.

Further, section 11(3) provides that:

> A witness summoned to attend or appearing before the commission shall have the same protection, and shall in addition to the penalties provided by this Act be subject to the same liabilities in any civil or criminal proceeding as a witness in any case tried in the Supreme Court.

That provision in the New South Wales inspectorate act is quite different from what is in the bill before us now. That is the issue that was raised by Mr Pakula in his contribution and also by the Scrutiny of Acts and Regulation Committee (SARC) regarding the abrogation of the right to not answer a question if the answering of that question would incriminate the witness. Under the New South Wales act there are protections for witnesses that are not contained in this bill. That is an issue I would like to raise briefly during the committee stage if the government speakers are unable to answer this question in more detail than was provided by the minister in his answer to the question put in the letter written to him by SARC. As Mr Pakula said — and I agree — it was quite a cursory answer to that question provided in the *Alert Digest* tabled in the Parliament this morning. New South Wales has similar reporting requirements to those in this bill.

The Western Australian IBAC is overseen by the Office of the Parliamentary Inspector of the Corruption and Crime Commission, and the inspector's powers and functions include the ability to hold inquiries and conduct investigations, similar to what is provided in this bill. As far as I can see that regime is very similar in content to the one in this bill.

Queensland also has a very similar body, the office of the Parliamentary Crime and Misconduct Commissioner. Under the Crime and Misconduct Act 2011 the primary role of the commissioner is to assist the Parliamentary Crime and Misconduct Committee in enhancing the accountability of the Crime and Misconduct Commission by undertaking a range of functions, including conducting audits, investigating complaints, inspecting the register of confidential information and reviewing reports by the CMC to the parliamentary committee.

Interestingly, there is a difference in the ability to hold an inquiry by the Queensland inspector. Under that regime the parliamentary commissioner may conduct hearings if the commissioner has used all reasonable means to obtain information about a matter without success and the parliamentary committee authorises the parliamentary commissioner to hold a hearing to obtain the information.

Obviously when you are setting up something like an IBAC or a corruption commission you need to have an oversight body. In that respect the Victorian Inspectorate that is being partly established by this bill is in keeping with the other states that already have commissions and inspectorates established.

Turning to what this actual bill does, the first thing you would say about it is that it amends the previous act, the Victorian Inspectorate Act 2011. That act only came into being late last year and it is already being amended by this bill. As I said before, who is to know if this will be the last of the bills we see regarding the Victorian Inspectorate?

It gives the Inspector the power to audit the Public Interest Monitor to ensure that the PIMs comply with their statutory obligations, and it also provides new inquiry powers to add to the powers already provided to question IBAC personnel and to gain access to IBAC documents. The main provisions of this bill, under clause 12, provide the inspectorate with the ability to conduct an inquiry for the purposes of an investigation. That power is similar to the power that exists in Western Australia and New South Wales, but it is slightly different to the one in Queensland, which is slightly limited by the act there. In that state the commissioner — a position similar to the Inspector here — cannot just decide to hold an inquiry. They need to have taken reasonable measures to find out information before conducting an inquiry.

In clause 12 of this bill, which is the major part of the bill regarding the holding of inquiries, there are some issues that I do think need to be addressed by the

government. There are two issues regarding the new section 33J, which allows for legal representation of a witness except where the legal representative is a witness to the inquiry or is involved in a complaint or suspected of being involved in a complaint that IBAC or the Victorian Inspectorate is investigating. That basically gives the IBAC the power to refuse legal representation. Certainly we have had stakeholders say to us that they would prefer that the normal situation apply — that is, a legal practitioner would not appear for a witness if they thought there was a conflict of interest. The Federation of Community Legal Centres has put the view that if there still remains a problem, then that could be sorted out by the legal services commissioner rather than the provision in the bill in front of us.

The other issue is that raised by new section 33T, which is the privilege against self-incrimination, which is that a witness cannot claim privilege against self-incrimination to avoid answering a question or provide information. However, under section 33T(2) any answer or information they provide cannot be used against them except in proceedings for perjury or giving false information, an offence against this legislation, an offence against the Independent Broad-based Anti-corruption Commission Act 2011 or a disciplinary process or action. But as SARC pointed out in its report on this bill, sections 36(3) and 38(3) of the principal act do not prevent the Victorian Inspectorate from revealing compelled answers from IBAC personnel to IBAC, Victoria Police or other agencies for the purposes of initiating a prosecution in the future.

New section 33T(2) does not prevent anyone from being prosecuted on the basis of information derived from self-incriminatory answers or documents they were compelled to provide. SARC has raised that as a concern. It wrote to the minister, and as I mentioned, he gave a fairly bland answer to that question which basically went on say that he is of the view that it is an appropriate and important provision. That does not go to the issue raised by SARC, which is whether there is a more reasonable way of dealing with this. The minister has also said the provisions such as these are standard in legislation relating to investigatory bodies in Australia and are important to ensure that the Victorian Inspectorate has the tools needed to undertake full and proper investigations, but as I pointed out, the New South Wales commissioner does differ in that regard and allows witnesses to refuse to answer questions if they have a reasonable excuse. It is an issue that has been raised by stakeholders in consultations with us and with SARC, and I think it is incumbent on the government to respond to those concerns that have been raised.

There is also a query that I have with regard to new section 33K, to be inserted by clause 12 of the bill, which I did raise with the government's departmental advisers during the briefing, and I do thank them for their briefing. That is regarding the treatment of witnesses who are under 18 years of age or who are minors under the summonsing of witnesses provisions in clause 12 and new section 33K.

One issue that has been raised by the Law Institute of Victoria concerns the boundaries or ability of the Victorian Inspectorate. The institute has some concerns that the inspectorate may be able to reprosecute cases that have already been run by the IBAC. My question there was about why the Victorian Inspectorate would be summonsing and questioning witnesses who are aged under 18, who are minors, so that provisions have to be put in the bill about how that is to be done, when in fact the purpose is about the inspectorate overseeing the activities of IBAC and making sure that IBAC officers act within their statutory responsibilities, auditing the activities of IBAC, producing reports and investigating complaints.

I am concerned as to how far that would go and whether the questioning of witnesses who are minors would go above and beyond the overseeing of the activities of IBAC officers, none of whom would be minors I would presume. That is a question I raised at the briefing, and I think the departmental officers and ministerial advisers who were there would understand that I did not really feel that that question was well answered. Hopefully they have given some advice to the minister about that.

They are the main provisions of the bill. Primarily it is those issues that were raised by the Scrutiny of Acts and Regulations Committee that I have concerns with. They are over and above the concerns that we still cannot see the whole thing and cannot understand how it will all work, and that is an inappropriate and disappointing position that we have been put in by the government. As I have said, it still has the opportunity to release some information to better inform us and the public as to where it is heading with this and why it is being dealt with in a particular way.

As I have said, I am supportive of the whole idea of setting up an independent, broadbased anticorruption commission. The three that I have been referring to — in New South Wales, Queensland and Western Australia — were all set up after major scandals and royal commissions and people going to jail. As I said in

the previous Parliament, it is best to set one up without that background. It is getting a little bit exasperating to see information coming in dribs and drabs and not being able to see the full story, and it not being developed in a more public way with a bit more input from the public and not just from certain stakeholders who were invited to submit to the special advisory committee.

Some of those stakeholders have released their submissions, even though the government has tried to say it has been a confidential process. But the process should never have been confidential; it should have been open and transparent, involving members of the public. It is not too late to do that, and I would encourage the government to do so. Mr Pakula read out statements from people who have been supportive of the establishment of an IBAC and who are critical of the process. This is not a good start. I would encourage the government to become more open and transparent with the development and establishment of IBAC and the inspectorate.

Mr O'BRIEN (Western Victoria) — It is with great pleasure that I rise to make a contribution on behalf of the government to the Victorian Inspectorate Amendment Bill 2012. This is an important bill and another important step in the progressive and careful establishment of one of the most significant and historic reforms to the integrity regime in Victoria. The Labor Party consistently failed, and indeed refused until its death throes, to introduce an anticorruption commission, which was consistently called for by many members of the then opposition, including the current Minister responsible for the establishment of an anti-corruption commission. We have committed to the introduction of a broadbased anticorruption commission that will deliver far-reaching and fundamental reforms to Victoria's integrity system.

The Victorian government has delivered on and is continuing to deliver on this important commitment. In its first year it passed legislation which included the bill to establish the Victorian Inspectorate, the Victorian Inspectorate Act 2011. If members recall, the bill was passed in this house after a cognate debate with the Independent Broad-based Anti-corruption Commission Bill 2011.

It is important to remember where the inspectorate sits in the hierarchy and to understand the relationship between Victoria's carefully established oversight and integrity bodies. There has been a suggestion by Mr Pakula and by the member for Altona in the Assembly, Ms Hennessy, that this is the fifth piece of such legislation. In reality it is the fourth; the other piece of legislation which was passed around the same time and which relates to the integrity models and to other interception powers was the legislation creating the Public Interest Monitor (PIM). That has a slightly different genesis and history but is nevertheless an important part of Victoria's integrity legislation and, specifically in relation to the bill before the house, is also a matter for which the inspectorate, as the oversight body of both IBAC and PIM, will have the powers that we are discussing, considering and debating and, with the best of intentions, will be passing into law tonight.

It is important to note that the oversight is accompanied by the oversight provided by both the Parliament and, in particular, the parliamentary committee, which is also established under the suite of legislation. The role of the inspectorate as it relates to IBAC is as the guarder of the guards, if you like. There is a famous Latin phrase for 'Who will guard the guards?', which has been raised by speakers on this piece of legislation, and the role of the Victorian Inspectorate is in fact to guard the primary guard, being IBAC.

IBAC itself has important roles in relation to Victoria's law enforcement bodies — the police, the Ombudsman et cetera — and their relationship with the public sector. IBAC has a broad jurisdiction across the public service. Members may recall the time I took in my contribution to the debate on the IBAC bill to outline the breadth of coverage that IBAC has across the public service — from the Parliament to the vice-regal officers of the Governor and to the public service, the judiciary and the other integrity bodies. It is important that the oversight role is carried out by the inspectorate, and that is what we are considering tonight.

In response to the second matter raised by Mr Pakula, which was that in effect we are putting the cart before the horse by considering the investigative powers of the inspectorate prior to those relevant to IBAC, it could equally be contended that one should put in place the protections, or the guarding of the guard powers, before the cognate powers of IBAC are put in place, which would perhaps otherwise be unchecked. In a sense this is a point that can go backwards and forwards. Ultimately the government is committed to delivering on its range of commitments in relation to this integrity legislation. Comments have been made by the minister and other speakers that the remaining matters that have been said to be coming in relation to the IBAC's examination and referral powers will indeed be coming. We look forward to it being up and established. As was put by the member for Prahran in the other place, Mr Newton-Brown, if it is five pieces of legislation, it

is five steps more than what Labor failed to achieve in its last term in office.

Some of the contributions to the debates in both houses have picked up this theme of what the government is committed to and what the opposition failed to commit to. It is relevant to again refer to an article in the *Australian* of 4 June 2010, which looked at what has been described as a spaghetti tree approach which the former government put in place at the very end of its time in office. The article says:

> … what is the next level and what will it achieve?
>
> Proust's model for an anticorruption regime has received a mixed response. Not because it is considered unnecessary; almost no-one in Victoria, apart from Labor politicians, is arguing that the status quo is good enough. But there is uncertainty and confusion about Proust's chosen structure and its effectiveness.
>
> 'This is not going to work', says former Queensland Criminal Justice Commission investigations chief and former National Crime Authority member Mark Le Grand. 'It is totally fragmented and it is not built on [a] real appreciation of the challenges Victoria faces'.

By contrast, the Victorian government has taken some time to implement this policy, but it has taken a careful and considered approach. In that respect with this bill we are delivering these important oversight powers.

The bill will amend the Victorian Inspectorate Act 2011 to provide the Victorian Inspectorate with duties, functions and powers in relation to the oversight of the IBAC, commensurate with the IBAC's proposed full investigation and examination powers, and monitoring the public interest monitors for compliance with their information transmission, disposal and storage obligations. Specifically, the bill clarifies the respective roles of the IBAC and the Victorian Inspectorate. It extends the Victorian Inspectorate's oversight functions and powers to take into account IBAC's proposed investigative and examination powers. It empowers the inspectorate to hold an inquiry for the purposes of an investigation into IBAC, and it invests the inspectorate with broad powers to obtain information during an inquiry. Some of these matters have been referred to in the contributions of Mr Pakula and Ms Pennicuik and have been discussed in the reports of the Scrutiny of Acts and Regulations Committee (SARC), of which I am a member.

In relation to the scope of the bill, the text of the clauses of the legislation is obviously the most important matter to consider, accompanied by the explanatory memorandum and the statement of compatibility. The legislation should also be read in conjunction with the SARC reports, including the minister's detailed response, and these debates. In relation to the most recent SARC *Alert Digest*, which was tabled this morning, the government is committed to providing timely responses and has provided timely responses by ministers to matters raised by SARC. That is in stark contrast to the practices of the previous government, where many matters were not answered until well after royal assent. The ministers in the present government are continuing to diligently provide responses to matters raised by SARC.

In relation to the questions raised about clause 10 of the bill the response of the minister to SARC on page 12 of the *Alert Digest* says:

> Provisions such as these are common in legislation applying to investigatory bodies, and have been designed to safeguard the confidentiality and integrity of the VI's operations.

This is consistent with the statements in the statement of compatibility about the importance of adopting a balanced approach to these issues. The report continues:

> Disclosure of information by the VI for the purposes of a particular court proceeding will depend on the facts and circumstances of each case.

That is an important matter to consider and is relevant in this situation — namely, each case will be considered on its merits. It is important to remember that the Victorian Inspectorate is not a prosecution body; it is an investigatory body. Just because powers are given does not mean that the Victorian Inspectorate will necessarily conduct investigations in a certain way; it will be important to refer to the powers specifically provided in each provision of the bill. In relation to clause 12 the response of the minister says:

> I further note that, assuming the information is lawfully obtained and disclosed, it would still remain open to a court, under the rules of evidence and procedure, and taking into account the charter, to consider whether and in what circumstances any derivative use of information disclosed pursuant to new section 33T is admitted as evidence in any eventual proceeding.
>
> I am of the view that the clause 12 is an appropriate and important provision to enable the VI to achieve its purpose, taking into account the explicit use immunity set out in the legislation, and am advised that there are no less restrictive means reasonably available to achieve the purpose of this clause.

That is important in relation to confirming that the Victorian Inspectorate will be an oversight body. It will not be undertaking primary investigations or prosecutorial roles; rather, it will be an oversight body of the IBAC, and it has referral powers to appropriate prosecution bodies.

Having said all that, it is important in relation to this bill to consider again the idea of the inspectorate as a guarder of the guards. The government is continuing to deliver on its election commitments to establish IBAC, the Victorian Inspectorate and the oversight committee. I commend this bill to the house and look forward to the continuation of the step-by-step process of carefully establishing a broadbased integrity regime.

Ms MIKAKOS (Northern Metropolitan) — I welcome the opportunity to speak on the bill. The opposition is not opposing the bill, but we have a number of concerns about it. The bill is the fifth instalment of a piecemeal and incomplete legislative framework for the establishment of the Independent Broad-based Anti-corruption Commission and its associated bodies, such as the Victorian Inspectorate and the Public Interest Monitor, which are designed to monitor the powers and functions of the IBAC.

Just like the four bills before it, this bill brings us no closer to a fully fledged, operational IBAC — an IBAC, I remind members of the government, that they promised would be up and working by 1 July last year. After 16 months and five pieces of legislation we still do not know how the IBAC will operate, who will head it up or when it will begin doing its work. These are definitely issues of great concern to the opposition, and it has been disappointing that not much light has been shed in relation to these important issues.

The bill aims to amend the Victorian Inspectorate Act 2011 to provide the Victorian Inspectorate with additional duties and powers which are intended to improve the IBAC's capacity to perform its statutory duties and functions. The bill also seeks to amend the purpose of the Victorian Inspectorate to include responsibility for oversight of the public interest monitors (PIMs), including a capacity to inspect and audit PIM records, enter PIM premises and report to the minister on the functions of the PIM and any contraventions by the PIM. The bill also seeks to introduce consequential amendments to the Evidence (Miscellaneous Provisions) Act 1958 to enable Victorian Inspectorate officers to witness statutory declarations.

Obviously a lot of technical provisions are associated with a bill such as this, and I do not propose to go through them in any great detail. However, I point out that the Victorian Inspectorate will have the power to hold an inquiry for the purpose of an investigation, which will include a capacity to hold an examination, to enter and search IBAC premises and to inspect, seize and copy any document or thing. There are provisions in the bill that relate to examinations being held in private. There is a qualified right to legal representation and some provisions relating to conflicts and issues around interpreters. There are powers to summons witnesses to attend and give evidence, and there are entry, search and seizure powers.

A point I want to make in relation to the technical provisions of the bill is that there are a lot of confidentiality provisions regarding the operations of the Victorian Inspectorate. Victorian Inspectorate officers, both present and former, will only be able to divulge information for the purposes of performing their duties, taking a prosecution disciplinary action following an investigation or making recommendations to IBAC or other bodies for further investigative or enforcement action.

There are also a range of provisions regarding confidentiality notices. During an investigation the Victorian Inspectorate can issue confidentiality notices specifying restricted matters in relation to the investigation of a person who is not a Victorian Inspectorate officer if it is considered by the inspectorate on reasonable grounds that disclosure would prejudice an investigation, the safety or reputation of a person or the fair trial of a person charged or to be charged with an offence. There are a lot of restrictions in relation to disclosure and confidentiality in this legislation.

Opposition members have concerns around a lot of the secrecy that has surrounded the consultation process that has led to this legislation being drafted. Whilst we do not oppose this bill, we do have concerns about the fact that we are now being asked to consider the powers and functions of a body that will eventually oversee the IBAC, yet we still do not know the totality of the powers and functions of the IBAC itself. As I have said, the government has taken a piecemeal approach — and I would argue a completely botched approach — to implementing the IBAC, because we have got only part of the information we need in considering the merits of this legislation this evening.

I note that in an article published in the *Age* of 12 March entitled 'Baillieu suppresses key report on corruption commission', there is a reference to the advisory committee panel set up to report on and advise the Baillieu government on IBAC's most controversial aspects. It was conducted by a panel of four well-qualified and distinguished Victorians, including the chair of the committee, Stephen Charles, QC; retired judge, Gordon Lewis; a member of the Victorian Commission for Gambling Regulation, Gail Owen; and Peter Harmsworth, the chair of the State Services Authority. That report could quite clearly shed some

light on the issues the coalition may have faced in setting up this body, but the article makes it very clear:

> The government has confirmed to the *Age* the report will never be made public …

If this report were disclosed, it could clarify stakeholders' views and opinions about IBAC's operations. It could provide some insight into the design of the IBAC framework, yet it has been buried by the government.

This brings me to the heart of my concern and that of the opposition — that is, it is ironic for a government to bury a report that goes to the core of public integrity at the same time as introducing a piece of legislation that government members claim will enhance that public integrity. This is the same government that came into this place promising an open and accountable government at all times. It was going to be a transparent government, a government with nothing to hide, yet at every opportunity it is seeking to hide reports that would cast some light on its internal workings. We do not know if stakeholder views have fed into the development of this legislation, because, as I said, the report will never be made public.

Opposition members are concerned about the shortfalls in this government's integrity regime, and that is why we will continue to hold this government to account for its promises made to the Victorian public. The fact is that the government sought to introduce a package of integrity measures around IBAC and the other associated bodies, yet it is not seeking to make this report public. The Accountability Round Table spokesperson, Emeritus Professor David Yencken, said in the *Age* of 12 March:

> The secrecy shrouding every aspect of the consultation carried out by the government is a matter of great concern.

It is of concern that a lot of the information about the Baillieu government's most touted and hyped election promise relating to the establishment of the IBAC has been kept secret and will be kept secret into the future. As I said at the outset, it is concerning that this legislation is being introduced in a piecemeal fashion. We do not have the benefit of seeing the totality of the legislation in considering how the powers of this body will fit in and work with the powers of the IBAC. All we can do is wait for further legislation to be introduced to put all the jigsaw puzzle pieces together. It is disappointing, and if this is the best the government can do when it promises open and accountable government, then the government is incompetent and dishonest in its approach to the Victorian public.

Mrs PEULICH (South Eastern Metropolitan) — I am going to speak very briefly about the Victorian Inspectorate Amendment Bill 2012. This bill is a tranche of the legislation to introduce the Independent Broad-based Anti-corruption Commission (IBAC), which the coalition agreed to and which was a centrepiece of our election policy. The Victorian Inspectorate Amendment Bill 2012 amends the Victorian Inspectorate Act 2012 to give the Victorian Inspectorate (VI) powers, duties and functions to ensure that the Independent Broad-based Anti-corruption Commission's use of its powers is both appropriate and proportionate. This bill also gives the VI the power to monitor public interest monitors (PIMs) with certain statutory obligations. Obviously and importantly the bill does this to provide oversight of the Independent Broad-based Anti-corruption Commission commensurate with IBAC's proposed full investigation and examination powers, which were discussed extensively when we debated the previous legislation. The objective of the bill is to monitor public interest monitors' compliance with their information transmission, disposal and storage obligations. Obviously that is a very important safeguard.

We have heard why this model of a broadbased anticorruption commission was ultimately adopted. It was as a way of getting rid of the hotchpotch of integrity units that operated, and in centralising those, it centralises a fair bit of power. It has very robust powers to investigate and examine, which is in the public interest. It is also very important that the handling and transmission of information, coupled with the disposal and storage obligations, are commensurate with the sensitivity of such information and that any breaches are treated very sternly indeed.

I commend the Scrutiny of Acts and Regulations Committee on the work that it has done in this area, focusing in particular on a very important issue in relation to clause 10. I will not speak for long because clause 10 has been given a fair bit of an airing by SARC and was addressed by the minister in his response. Basically clause 10 contains an appropriate limitation on the disposal of information to safeguard the confidentiality and integrity of the operations of the VI. The VI's role in overseeing IBAC and the public interest monitors means that it will be privy to a lot of very sensitive information about the operations of IBAC, the police force and other law enforcement agencies. It is important to limit the disclosure of such information to ensure its integrity and that unnecessary prejudice or harm is not caused to an investigation of a person as a result of any disclosure.

We know from some of the existing integrity mechanisms, such as significant reports by the Ombudsman, that a lot of them receive a lot of publicity and public airing, but several of them have not led to prosecutions. It is very important to minimise the detriment to people whilst they are being investigated; however, once those investigations are concluded, and depending on the outcome, appropriate action should be taken.

The government's election commitment to establish the IBAC proposed a fundamental overhaul of the entire integrity regime. This is something that has been welcomed by the broad community and by many pundits. This single body will be a much more powerful way of combating corruption in the public sector in particular, and I think it is a very important measure in order to provide oversight of a whole range of activities in the public sector, whether it is Parliament, whether it is members of Parliament, whether it is advisers or whether it is local government. These people hold special positions of trust and it is important that we have the ability to vigorously and robustly investigate any corruption while at the same time making sure that reputations are protected where nothing substantial is found and there is no breach.

With those few words, I commend the bill to the house. I also commend the obligations imposed on VI for the proper storage, transmission and disposal of information, which is very important in terms of the public interest.

Mr ELASMAR (Northern Metropolitan) — In a previous parliamentary sitting week in mid-March of this year I spoke in the debate on the Independent Broad-based Anti-corruption Commission Amendment (Investigative Functions) Bill 2011, and during my speech I kept wondering who guards the guards. Now I know. If ever an investigative body was set up to fail, and I am referring to IBAC (Independent Broad-based Anti-corruption Commission), it is this one. IBAC is fairly loose in its broad interpretive powers as to what constitutes grounds for an investigation. My understanding is that IBAC has an ad hoc capacity to investigate anonymous complaints from anonymous individuals, seemingly at the drop of a hat. A *1984* scenario if ever there was one, or, if you prefer another likening, the witch-hunt for supposed communists during the disgraceful McCarthy era in the United States in the 1950s.

We now learn the Victorian Inspectorate (VI) has investigative powers over IBAC. A previous bill established the VI to provide oversight of IBAC; it is in fact designed to monitor the activities and functions of IBAC. The VI can suspend, arrest and cite for contempt any subject of an investigation and, to top it all off, it has legal indemnity. So too does IBAC. Talk about the Keystone Cops! The lawyers will love this one. However, at this point in time the VI is totally reliant on the commonwealth government's ability to introduce telephone interception powers legislation in the federal Parliament. So while IBAC has powers of search and seizure of material and the powers to coerce witnesses to testify at its hearings, the VI has the power to investigate IBAC in regard to the conduct and processes used in its investigations.

Victoria Police will have the power to apply for a Supreme Court injunction against IBAC and force the return of any seized material. Needless to say, the Victorian taxpayer will be footing the bill for all this game playing.

Provisions in the bill will enable VI officers to witness statutory declarations. Presumably this will save time and money in ferreting out justices of the peace or other suitably qualified pillars of the community. It is the only cost-cutting measure I can see included in the bill for the Victorian taxpayer. My guess is the biggest associated costs will be when IBAC or VI investigations are held up in the court system. Notwithstanding that, jurisdictional arguments are yet to be put and won for both entities.

The object of the exercise has been lost in the government's plethora of legislative attempts to nobble the intent of IBAC. The reason we are not opposing this bill is that we want to see an effective body established with the appropriate tools to destroy corruption wherever it exists in the Victorian government.

Mr RAMSAY (Western Victoria) — I will be very brief also, given that all parties are supporting this bill tonight. I would also like some time to be available to my colleague Mr Philip Davis. I want to respond to a few key points, but I do not intend to drag through the clauses, which have all been pretty well covered. However, I do want to make some comments in relation to comments made by Mr Pakula and Ms Pennicuik.

Firstly, I rise to speak in the debate on the Victorian Inspectorate Amendment Bill 2012, as I have done before for the tranches of legislation in respect of the Independent Broad-based Anti-corruption Commission (IBAC). This is yet another demonstration of a Baillieu election commitment being delivered to the Victorian community, which is in stark contrast to the mishmash of legislation that the previous Labor government foisted on the Victorian public to the extent that it lost

faith and trust in the Bracks and Brumby governments. The important point I want to make is that any hope of the previous Labor government producing an anticorruption commission or even giving the Office of Police Integrity oxygen with appropriate powers to provide a trusted integrity was never realised. Even then the Premier, John Brumby, questioned the performance of the OPI as an oversight body, and retired judge David Jones — and even Elizabeth Proust — questioned the oversight of the OPI and called for the strengthening of the powers of the special investigations monitor.

In the past we did not see an anticorruption commission established, nor was the oversight monitor given the appropriate powers. Was it a lack of courage or will or commitment — who knows which? — that gave us a Clayton's model? But it gave the Victorian public no confidence that we had an integrity system that had sufficient powers to investigate corruption, coupled with a defective oversight regime that had significant shortcomings, as I have already demonstrated.

What we have here today is legislation that provides the Victorian Inspectorate with duties, functions and powers. I will not go through them all because they have all been well said. While the opposition is not opposed to the bill, I continually read, through *Hansard* in the other house, the whingeing and whining that goes on about the legislation with respect to the fact that the full functions of IBAC are not yet complete. That is true; they are coming in tranches. It is important that we get this commission right, and introducing this amendment with the examination of powers is premature, but I say to those who have raised these issues: it is important that the Victorian Inspectorate be invested with robust oversight functions and powers to ensure that IBAC's use of its powers are appropriate and proportionate.

In relation to Ms Pennicuik's concerns about the treatment of minors, I refer her to new section 33E(3) and restrictions in relation to minors or under-16s in new section 33G. I suspect she might want to raise that matter down the track if that does not satisfy her. In a very short contribution, I stand here and support the bill.

Mr P. DAVIS (Eastern Victoria) — I thank my colleague Mr Ramsay for the encouragement to make an extended contribution this evening. It had been my intention to be so brief that it would have been barely noticeable, but as a result of the encouragement I have received from Mr Ramsay, I will extend my contribution.

The contribution I want to make is consistent with the contributions I have made to debate on this framework of legislation which we have been progressively dealing with through the course of the 57th Parliament in relation to the function of an independent broadbased anticorruption commission and of course progressively putting in place, as my great friend and colleague Mr O'Brien likes to express it, the arrangements for the guards watching the guards. Indeed, the Victorian Inspectorate arrangements are such that again we are here to seek the approval of Parliament to amend the framework legislation to ensure that we have a high level of scrutiny in relation to the oversight of the Independent Broad-based Anti-corruption Commission.

The Victorian Inspectorate Amendment Bill 2012 has been supported by virtue of the fact that there has been indication from all sides of the house that there will be no opposition to it. I understand the Greens will take this bill into committee to appropriately inquire of the minister, Mr Dalla-Riva, tediously I am sure, as the committee stages in relation to these bills have been over time. In private discussion with Ms Pennicuik — and I will verbal her, and I apologise at the outset if I do so — she indicated to me that there are only two issues in principle that the Greens wish to examine in detail tonight, but they may be given some assistance by the opposition, I suspect, and that might then morph into a larger number of issues that are teased out. But I do not want to anticipate the committee stage. What I want to say is that this legislation is another tranche of the framework which the government committed to introducing in a form that was comprehensive and clearly constructed to achieve community confidence in the institutions of government, whether it be Parliament, the executive or the judiciary, are above reproach.

Therefore the approach that the government has taken has been to build a framework from the ground up, given the failure of 11 attempts of legislative amendment by the previous government to achieve such a convoluted oversight process that it had no respect and no standing, and as a consequence the community call with an incoming government was to establish an appropriate framework. This was a clear and precise election commitment.

We have progressively been introducing the changes which are necessary to ensure that all the elements are tied together. There might be a view, I suspect, and the view has been put that it might have been preferable to have one slab of legislation that was a catch-all and provided every element of detail in one bill. The government has taken a different approach from that which some on the other side might urge be taken. The

approach has been to demonstrate the requirement and the measures that will allow for that building block approach to ensure that we get this right.

While I am one of those people who will often say, 'Let us look at all of the detail in a consolidated sense before we bring it into the Parliament', I think the way the government has approached this is commendable because, from my point of view — —

Mr Barber — A sort of Lego approach?

Mr P. DAVIS — Would you really like me to extend my contribution? I was going to be succinct; however, I am tempted by the invitation of Mr Barber to expand on my comments. Mr Barber is talking about the Lego approach. What we had in the previous government for 11 years was that we had 11 years of Labor and we had 11 separate bills relating to trying to design, redesign, revise, rebuild something that might work, and it did not work. Everybody knew it did not work. What have we done? We have taken the approach of building the framework in a considered manner, step by step, so that it is transparent, in that each layer of the legislation builds upon the previous layer. All members of this house and of this Parliament are given the opportunity to examine the detail of each of those bills — in this place through the committee stage. I have noticed as a result that there is overwhelming support from the Parliament for this process in terms of the legislation.

Mr Barber, seeking to get a rise from me, makes the accusation of it being a 'Lego approach'. What I would say to Mr Barber is that if ever there were demonstration that there needed to be a different way of doing business, it is in the failure of the previous government, in 11 attempts, to get legislative reform right. It got it wrong.

It is important for us to recognise that a consolidated act is evolving from a series of bills which are providing the Parliament with a high degree of transparency in the way the act is being structured to ensure that the appropriate powers are vested in both IBAC and the oversight bodies. Those oversight bodies are dealing with the inspectorate, which oversees IBAC. We must have an understanding about the role of the public interest monitors. Ultimately, from a parliamentary oversight perspective, we need to have regard to the fact that the Parliament itself will take a higher level oversight role and have an opportunity to ensure that IBAC and the inspectorate are operating in the public interest.

What fills me with confidence are recent discussions I have had in another parliamentary oversight committee, the Public Accounts and Estimates Committee, which I chair. There could not be a higher level of cooperation and enthusiastic application to the oversight of the functions the Public Accounts and Estimates Committee has and is required to oversee and to ensuring that there is transparency. That cooperative approach is to be believed. Recent experience is that it is hard to believe the degree of cooperation on that committee. To date, every contribution that the chairman and deputy chairman of that committee have made in this house in tabling reports has reflected that cooperation. I am delighted to say that cooperation cutting across the house enhances the capacity of the Parliament to take a collective view on ensuring the integrity of processes.

Honourable members interjecting.

Mr P. DAVIS — There are interjectors on my right. There are not many people on my right in this place, but the members who are on my right in this chamber and who are interjecting have pointed out that the reason for the cooperation is that the Greens are not on the Public Accounts and Estimates Committee. They have elected not to participate.

I can say from some experience that we need the oversight; we need the guards watching the guards. If we look at the layers, we can see that we have IBAC watching public probity in the first instance. We have the inspectorate watching IBAC, and we have the parliamentary committee watching the inspectorate and IBAC. These are good checks and balances. At the end of the day it is up to the conscience of each member of this house and the other house to raise issues in this Parliament if they are concerned that those oversight functions are not effective.

I advise Ms Pennicuik that in a moment she will get the opportunity to further examine the detail of these arrangements. I encourage her to explore every issue that she would like to have studied, because it is only by way of transparency that the community can be absolutely confident that this oversight regime is appropriate.

Ms Pennicuik — I'm glad that's my job!

Mr P. DAVIS — It is indeed Ms Pennicuik's job, because it is she who has some doubts that the government has got this right. The government has said it will bring legislation in only when it has it right. We in government have brought the legislation in; we

believe it is right. If Ms Pennicuik wants to challenge that, it is in her hands.

Ms Mikakos — Sounds to me like you've got a few doubts.

Mr P. DAVIS — I advise Ms Mikakos that I have no doubts whatsoever. In fact I thank her very much for giving me the opportunity to clarify that point. I am absolutely committed to ensuring that we have the best possible regime of public accountability in Australia. Ultimately this legislation will ensure that that is the case. The thing that we all need to be clear about, however, is that the Parliament needs to have the same level of confidence that the government does. It is not just about the government's confidence, it is also about the Parliament's confidence. At the end of the day there needs to be a bipartisan view about this, and that bipartisan view needs to be that this is a good oversight process.

The fact that the opposition and the Greens are not literally opposing the bill, meaning that they are supporting the bill in practice, indicates that we can be reasonably confident that this is a good bill.

Mr O'Brien — A balanced bill.

Mr P. DAVIS — Indeed, it is a balanced bill, but it is also a good bill because I am sure that the opposition parties would be opposing it otherwise. I am filled with confidence when I hear that Mr Pakula and Ms Pennicuik are not opposing the bill. I read that as being a vote of confidence in the government's legislation, and for that reason, if I did not have any other reason, I would be supporting the bill, but I have another reason, and that is because my colleague, Mr Dalla-Riva, who has carriage of the bill in this place, is proposing a bill on behalf of the government and I have absolute confidence that the government has got this right.

Motion agreed to.

Read second time.

Committed.

Committee

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I seek leave to have Mr O'Brien join me at the table.

Leave granted.

Clauses 1 to 9 agreed to.

Clause 10

Hon. M. P. PAKULA (Western Metropolitan) — In opening let me say that I listened intently to the last few moments of Mr Davis's contribution. I never thought I would say this, but Mr Davis reminded me of the well-known popular hip hop artist Marshall Mathers, otherwise known as Eminem, who had a song in which he said, 'I am whatever you say I am. If I wasn't, then why would I say I am?'. That was basically the sum total of Mr Davis's contribution at the end when he said the bill is good because it is good and if it was not good, the government would not move it, and if it was not good, the opposition would not not oppose it.

Mr P. Davis — Good summary.

Hon. M. P. PAKULA — It is an interesting stretch of logic. If what he is suggesting is that the only way the opposition can ever demonstrate dissatisfaction with any element of a piece of legislation is to oppose it, I am not sure his ministerial colleagues would be all that delighted with him.

Mr P. Davis — Are you proposing to move amendments?

Hon. M. P. PAKULA — I am proposing to ask the minister some questions about the bill.

Mr P. Davis — You have no amendments?

The DEPUTY PRESIDENT — Order! Mr Pakula, we are on clause 10. I invited people to make general comments under clause 1. That invitation was not taken up. Rather than responding to Mr Davis's broad comments in the second-reading debate in clause 1, Mr Pakula is trying to get those comments into clause 10, and I do not think that stands. I draw him back to clause 10.

Hon. M. P. PAKULA — Thank you, Deputy President. You are right; I will not pass up the option of dealing with clause 1 in the future. Minister, I raised during the second-reading debate the matter of clause 10 in respect of the Victorian Inspectorate (VI) potentially learning of misconduct associated with an IBAC investigation. This goes to the Scrutiny of Acts and Regulations Committee (SARC) report on the bill and the possibility of that misconduct being at least in part the cause of a prosecution, either ongoing or past, and in those circumstances whether the inspectorate is permitted to disclose that information to the individual being prosecuted. In other words, if the inspectorate finds out that there is an unjust prosecution occurring, as a consequence of an investigation the inspectorate is

carrying out, can the Inspector make that known to the person being so prosecuted, and if not, why not?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I am advised that clause 10 contains the appropriate limitation on the disclosure of information to safeguard the confidentiality and integrity of the operations of the Victorian Inspectorate. The VI's role in overseeing the IBAC and the public interest monitor means that it will be privy to sensitive information about the operations of IBAC, the police force and the other law enforcement agencies, and it is important to limit the disclosure of such information to ensure the integrity of the information and that unnecessary prejudice or harm is not caused to an investigation or a person as a result of any disclosure.

Hon. M. P. PAKULA (Western Metropolitan) — Thank you, but the minister at the table has just read verbatim from Minister McIntosh's response to the Scrutiny of Acts and Regulations Committee. He has not provided this committee with any further information and he has not answered the direct question. I understand the information as provided by Minister McIntosh in the SARC report, and I do not need that read to me again.

I am asking about a specific set of circumstances. The minister says that public interest monitors will be privy to sensitive information and that it is important to limit disclosure of such information to ensure the integrity of the information, and I accept that. What I am asking is: in the circumstances outlined by the committee — that is, the Scrutiny of Acts and Regulations Committee of this Parliament, of which Mr O'Brien is a member — where the information that is discovered by the Inspector is such that it would be of interest to a person being improperly prosecuted, can that information be disclosed to that person to either assist with their defence or to see that such an improperly brought charge is thrown out?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I am aware of the fact that we are providing the answer. I think it is important that the minister's response to the Scrutiny of Acts and Regulations Committee pointed out that the disclosure of information by the Victorian Inspectorate for the purposes of particular court proceedings will depend on the facts and circumstances of each case.

As I will further indicate, the Victorian Inspectorate's role is to oversee IBAC and monitor the compliance of the public interest monitors with particular obligations. The government is of the view that it is not necessary or appropriate for the Victorian Inspectorate to conduct its investigations or inquiry in public. The Victorian Inspectorate will be able to publish its conclusions in a report which will be tabled in Parliament, providing an appropriate opportunity for public scrutiny. In addition to these special reports the Victorian Inspectorate is required to table an annual report in Parliament containing information about the performance of its duties and functions. Public examinations may put a person at risk of future prejudice if the subject matter of the investigation later forms a basis for a civil, disciplinary or criminal proceeding, or they may expose a person to damage to their reputation from untested allegations.

I will refer back to the minister's letter. The provision on the advice that has been provided to me and to SARC is:

> Provisions such as these are common in legislation applying to investigatory bodies and have been designed to safeguard the confidentiality and integrity of the VI's operations.

Hon. M. P. PAKULA (Western Metropolitan) — The minister has now referred to the last paragraph of Minister McIntosh's response in regard to clause 10, which goes on to say:

> Disclosure of information by the VI for the purposes of a particular court proceeding will depend on the facts and circumstances of each case.

I would accept that answer if the government were saying that the inspectorate had the power to release this information to an individual in the circumstances and that it would decide whether or not to do so in accordance with the circumstances of each case. If that were the answer, I would accept it, but my problem with the answer is that it appears from new section 28A that the circumstances described by SARC are not among the permitted circumstances where information can be released. In other words, what I am suggesting to Minister Dalla-Riva is that Minister McIntosh's answer is incorrect. Where Minister McIntosh says, 'Disclosure of information by the VI for the purposes of a particular court proceeding will depend on the facts and circumstances of each case', that answer is in fact not supported by the clause. The clause sets out a very rigid, limited number of circumstances in which information can be released, and it seems to me at least that the circumstances described by SARC are not circumstances where that information could be released even if the Inspector wanted to do so.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — Without wanting to read it again, the government's view is that the minister's answer is in fact correct. In terms of the

clause itself, clause 10 inserts and sets out specific circumstances in which a current or former Victorian Inspectorate officer cannot be compelled to produce documents or disclose information to a court. It also provides that a person who is or was a Victorian Inspectorate officer cannot be required or compelled in a court to produce any document or other thing that has come into their possession or control in the performance of their duties and functions or the exercise of powers of the person or the Victorian Inspectorate under the act, nor disclose any matter or thing of which a person has knowledge as a result of the performance of their duties and functions or the exercise of powers of the person or the Victorian Inspectorate under the act. An exception to that production or disclosure would be permitted for the purpose of proceedings for an offence or a disciplinary process or action instituted as a result of an investigation conducted by the Victorian Inspectorate.

Hon. M. P. PAKULA (Western Metropolitan) — I am looking at new section 28A, which is inserted by clause 10. It says that a person who is or was a Victorian Inspectorate officer must not directly or indirectly provide or disclose any information acquired by the person or the Victorian Inspectorate et cetera except for the purposes of proceedings for an offence or a disciplinary process or action. That exception is in paragraph (b) of new section 28A(1). Is the minister saying that the exception in paragraph (b) is the one that would allow the inspectorate to release information to a defendant who has been improperly prosecuted as a result of misconduct by IBAC? Is that what the minister is relying on?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — New section 28A protects the confidentiality of information acquired by a Victorian Inspectorate officer in the course of the performance of their duties and functions or exercise of power by restricting disclosure to particular circumstances. This new section makes it an offence for Victorian Inspectorate officers to provide or disclose any information acquired by reason of or in the course of the performance of their duties and functions or exercise of powers under the Victorian Inspectorate Act 2011. The new section identifies the limited circumstances in which information acquired in the course of their duties may be disclosed — namely, in performing the duties or functions or in the exercise of powers of the person or the Victorian Inspectorate under the Victorian Inspectorate Act or another act; for the purposes of proceedings for an offence or disciplinary process or action instituted as a result of an investigation; or as otherwise authorised or acquired under the Victorian Inspectorate Act. The VI officers will have powers to obtain information and documents necessary for the Victorian Inspectorate to conduct investigations. It is appropriate that these powers be balanced by appropriate provisions to safeguard the confidentiality of the information or documents obtained.

The DEPUTY PRESIDENT — Order! I am having trouble relating the answer to the question that I understood Mr Pakula presented. It is not my role to make a judgement. The committee process is a process to allow members to elicit detailed information about a bill. Incumbent upon that process being a success is a requirement for the minister to actually respond to the question.

Mr P. Davis — On a point of order, Deputy President — —

The DEPUTY PRESIDENT — Order! Mr Davis can take a point of order, but he cannot question the ruling. I am basing this on the kinds of rulings that Mr Atkinson made previously as Deputy President in the previous Parliament. It is important for this process to allow members to elicit clarification and information. My understanding is that Mr Pakula's question related to new section 28A(1)(b) and that the answer related to 28A(1)(a).

Mr P. Davis — Am I going to be allowed to make my point of order, or do I just have to listen to the Deputy President for the evening?

The DEPUTY PRESIDENT — Order! Mr Davis will get the call. I am just explaining the reason I am trying to get — —

Mr P. Davis — I would like to make my point of order.

The DEPUTY PRESIDENT — Order! Mr Davis, on a point of order.

Mr P. Davis — On a point of order, Deputy President, it seems incumbent on whoever is in the chair for the time being — in this case it is the Deputy President although it could be another member on behalf of the Deputy President — to recognise the fact that a member in this place can make their own contribution, and they should be able to make a contribution without assistance. By 'without assistance' I mean in the orderly conduct of this place without assistance from the Chair directing members how to respond in whatever contribution they choose to make. It is a matter for the minister or any other member when making a contribution, whether it is in a second-reading debate or in any other debate in the house, but in

particular in the committee stage, to make a contribution reflecting their own view. With great respect to you, Deputy President, it is not about the editorial oversight of the contribution a member makes. If the contribution a minister makes during the committee stage is not regarded as being apposite by the member asking the question then the member asking the question or raising the point with the minister may seek further clarification, but that is a matter for that member; it is not a matter for the Chair to adjudicate.

The issue here is that at the present time there is a contest between two members. Mr Pakula is asking a series of questions to which the minister is responding courteously and patiently. I think it is clear that the rules of this place enable the minister to make whatever response he chooses or sees fit to make and if you, Deputy President, would like to be a minister, there are other arrangements in place to achieve that. It is not to respond on behalf of a minister of the Crown who has carriage of the bill and who is making an honest attempt to respond reasonably to the proposition put to him by the member.

Hon. M. P. Pakula — On the point of order, Deputy President, I disagree with Mr Davis on his point of order. He characterises what is occurring here as a series of questions. In fact, it is one question, which is very specific and to which I seek a specific answer. The only reason why that one question is being asked over and over again is because the specific point that I am seeking to have clarified in committee is not being clarified. As you indicated, Deputy President, there are numerous precedents, and I recall them from a previous Parliament as well when Deputy President Atkinson, as he then was, called a minister to order when that minister was continuing to not provide the elucidation which the committee was seeking; it is not anything new. It is not appropriate for the committee to simply have to ask the same question over and over again where a minister simply finds a different device to not answer it.

The DEPUTY PRESIDENT — Order! Thank you, Mr Pakula. On Mr Davis's point of order I make this point: I did not direct the minister to answer in a particular way; I simply asked for him to be more responsive to the precise question put to him. The minister chose to give a general outline, obviously from his briefing notes on the clause. What he had been asked to do was to give a specific response. I am simply asking the minister to be responsive to the question; I am not directing him to answer in any particular way. I think this is well established as a proper process for a committee. Otherwise we will be here until whatever time going around and around questions without getting a specific response. That is all I am trying to get — not a particular answer, but a more responsive answer. The minister can answer in whatever way he chooses.

Hon. M. P. PAKULA (Western Metropolitan) — Thank you, Deputy President. Let me say again for clarification that this is a concern that was raised by the Scrutiny of Acts and Regulations Committee; it is not a concern being dreamt up by me in the committee stage tonight. I am simply, and I think not unreasonably, seeking a specific answer to the question raised by SARC — which is whether by inserting new section 28A, and preceding sections inserted by other clauses, clause 10 permits the disclosure of relevant information, for example to a criminal defendant, in a wider set of circumstances. If the answer is yes, it does — or as the minister describes it, that it is a matter for the courts — I am asking the minister to take me to the part of new section 28A that would allow the inspectorate to reveal the kind of information as highlighted by SARC in its report tabled today. That is all I am asking the minister for.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I thank members for their discussion. I must say that I provided the answer and I have just gone through the bill. Clause 10 inserts new sections 28A, 28B, 28C, 28D, 28E and 28F and covers from page 15 to page 24 of the bill. I thought that in his initial request Mr Pakula was after clarification in relation to new section 28A and that was what my response was.

In the government's view the legislation is clear and should be read on its terms. In terms of the specifics of where I now understand Mr Pakula is going, it is that Victorian Inspectorate information may be disclosed for the purposes of a court proceeding in the circumstances set out in new section 28D, which I read before. Of course, this will depend on the facts of the case and, depending on the facts and circumstances, information relevant to a criminal offence may be disclosed in accordance with new section 28D. The Victorian Inspectorate may also share information with the police or with the Director of Public Prosecutions in accordance with new section 28C. I am trying to be clear for Mr Pakula and, as I indicated at the start of this response, the legislation is clear and should be read on its terms, and I have tried to do that for the member.

Clause agreed to; clause 11 agreed to.

Clause 12

Ms PENNICUIK (Southern Metropolitan) — Clause 12 is rather long, and I direct the minister to page 33 and to new section 33J. At subsection (2) this new section states:

> The Victorian Inspectorate may direct a witness not to seek legal advice or representation in relation to a witness summons from a specified Australian legal practitioner if the Victorian Inspectorate considers on reasonable grounds that the inquiry would be prejudiced …

et cetera. Usually a witness has a right to choose their legal representation and, as I raised in the second-reading debate, if a legal practitioner considers they have a conflict of interest they would normally excuse themselves and there would be other processes by which this could be sorted out rather than leaving the Victorian Inspectorate to decide who a witness can have as their legal representative. I wonder on what grounds this particular provision is in the legislation, which takes away the right of a person to their own legal representation.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I thank the member for her question. New section 33J, which is headed 'Legal representation of witnesses and other persons', provides for a witness to be represented at an examination by an Australian legal practitioner. Subsection (2) empowers the Victorian Inspectorate to direct that a witness not seek legal advice or representation from a specified Australian legal practitioner if the Victorian Inspectorate considers on reasonable grounds that the inquiry would be prejudiced because of the matters that are listed in new subsections (2)(a) to (d). As I indicated before to Mr Pakula, Ms Pennicuik should read the bill on its terms, which I will not go through now.

New section 33J(3) provides that a direction under subsection (2) may be made at any time, including before the time for complying with a witness summons, at the time for complying with a witness summons or after the time for complying with a witness summons. New section 33J(4) requires the Victorian Inspectorate to advise the affected person that a direction has been made, and subsection (5) provides that the person will be bound by the direction from the time of being advised that such a direction has been made. Subsection (6) requires the Victorian Inspectorate to allow a person bound by a direction, as determined under subsection (2), at least three days from the date of receipt of the direction to obtain alternative legal representation before being required to comply with the summons. There is an exception where new section 33H(2) applies, which is where the Victorian Inspectorate issues a witness summons requiring immediate attendance.

New section 33J(7) makes provision for the Victorian Inspectorate to allow a person who is not a witness to be represented by an Australian legal practitioner. This will only be permitted in special circumstances. Subsections (8) to (10) contain similar provisions in relation to persons who have received a draft or part of a proposed report or to whom a confidentiality notice is directed. The Victorian Inspectorate may direct these persons not to seek legal advice or representation from a specified Australian legal practitioner if the Victorian Inspectorate considers on reasonable grounds that the inquiry would be prejudiced because of matters set out in subsection 8(a) to (d), as outlined in the bill.

Ms PENNICUIK (Southern Metropolitan) — I do not want to take up too much of the committee's time with this issue, but I am just wondering how the inspectorate would actually come to that view prior to any inquiry, investigation or examination having commenced.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I thank the member for her question. Where the Victorian Inspectorate considers that an inquiry would be prejudiced because of the matters listed in new section 33J(2)(a) to (d), it is appropriate that it is able to direct a witness not to seek legal advice or representation from a specified Australian legal practitioner. A similar provision is contained in the Police Integrity Act 2008, and the Inspector will make a decision on the information at hand.

Ms PENNICUIK (Southern Metropolitan) — I will not labour the point any more, except to ask: given that the Victorian Inspectorate may make such a determination and issue such an order, would the witness then be given time to find alternative legal representative?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — New section 33J(6) sets out that the Victorian Inspectorate will allow a person bound by the direction to obtain representation from another Australian legal practitioner, unless new section 33H(2) applies — which I can go to, but I am sure Ms Pennicuik can read it — within at least three days.

Hon. M. P. PAKULA (Western Metropolitan) — I want to raise only one issue, so hopefully one question and one answer will deal with it. I again refer to the

SARC report, and this goes to a matter of a person having to comply with a request from the Victorian Inspectorate to answer a question or produce a document, even if complying with that request may tend to incriminate him or her. SARC goes through that matter in some detail, including the fact that the Victorian Inspectorate is not prevented from revealing compelled answers to IBAC, Victoria Police or other agencies for the purpose of initiating a prosecution in the future. It is obviously a rather serious provision.

Minister McIntosh responds in part by saying:

> I am of the view that the clause 12 is an appropriate and important provision to enable the VI to achieve its purpose, taking into account the explicit use immunity set out in the legislation, and am advised that there are no less restrictive means reasonably available to achieve the purpose of this clause.

The Scrutiny of Acts and Regulations Committee then makes a further comment in response to the minister's letter. It states:

> The committee also notes the minister's remark that he has been 'advised that there are no less restrictive means to achieve the purpose of' clause 12.

But then SARC goes on to say that it:

> … refers to Parliament for its consideration the question of whether providing an express statutory derivative use immunity would be a less restrictive means available to achieve the purpose of clause 12.

This is directly contrary to the minister's advice in his letter.

Interestingly, in providing that further matter for Parliament to consider the Scrutiny of Acts and Regulations Committee refers to no less compelling a source than Her Honour Chief Justice Warren in a case which I have here, which no doubt the minister has read in detail, headed 'Re an application under the Major Crime (Investigative Powers) Act 2004'. That is a decision by Chief Justice Warren, and in that case Her Honour indicated that the Supreme Court rejected an argument that the residual discretion of a trial judge to exclude evidence is a sufficient mechanism for upholding the rights contemplated by the charter.

Having given him that preamble, I suppose my question to the minister is: now that SARC has responded further to Minister McIntosh's letter and has in fact outlined a mechanism which would be a less restrictive means to achieve the purpose of clause 12, can the minister explain the difference between the most recent position of the Scrutiny of Acts and Regulations Committee and that of Minister McIntosh — that is, whether the government accepts that the suggestion made by SARC in its response to the minister, supported by the judgement of the chief justice, is in fact correct?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I thank the member for his question. I am advised that the government has been advised that there is no less restrictive means reasonably available to achieve the purposes of this clause — that is, the minister's response stands. I would also make the point that the Scrutiny of Acts and Regulations Committee report does not state that the minister's response was incorrect. Rather SARC says it is a matter for Parliament to consider, and our response was outlined, as Mr Pakula rightly pointed out. I do not want to go through it again; it is in the SARC report, but I make the point that the minister's response stands.

Hon. M. P. PAKULA (Western Metropolitan) — I thank the minister. I accept what the minister says — that is, SARC says it is a matter for Parliament to consider. That is what I am trying to do. We are in possession of SARC's response to the minister. SARC's response is that an express statutory derivative use immunity might in fact be a less restrictive means available to achieve the purpose of clause 12. Mr Dalla-Riva appears to be saying, 'We do not believe it is'. I do not want to verbal the minister, but the government appears to be saying, 'We do not believe it is a less restrictive means available to achieve the purpose of clause 12'. My question is: why not? Why does the minister say it is not a less restrictive means available to achieve the purpose of clause 12?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I thank the member, and again I reiterate: the government is advised that there are no less restrictive means reasonably available to achieve the purpose of this clause — that is, the minister's response will stand in regard to that clause.

Hon. M. P. PAKULA (Western Metropolitan) — It seems to me, then, that the government's response is, 'We have said there are no less restrictive means available and that is our answer, regardless of what other evidence is brought forward or what other suggestions are made'.

I am putting to the minister that SARC has raised specifically for the purpose of Parliament's consideration the question of whether or not an express statutory derivative use immunity might be a less restrictive use. SARC seems to be supported by the Chief Justice of the Supreme Court in its suggestion,

and the minister's response to the Parliament is, 'Our answer stands', and he does not even seek to explain why SARC's suggestion might not be correct. I am asking the minister: will he explain to the Parliament why an express statutory derivative use immunity is not a less restrictive available means to achieve the purpose of clause 12? I am not asking the minister to tell me that there is no less restrictive means available; I am asking him to explain to me why this one is not a less restrictive means.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — Again I make this point. The SARC report says it 'refers to Parliament for its consideration'. I make the point to the honourable member that if the member has any concerns, he can propose amendments to deal with the issues with which he has concerns — and my advice at this stage is that he is not proposing any amendments. As I have indicated, the government is advised that there are no less restrictive means reasonably available, and the minister's response will stand.

Hon. M. P. PAKULA (Western Metropolitan) — I am not sure why I should have to propose an amendment in order to get an answer to a question. The purpose of the committee is so that members of Parliament can understand legislation better. That is the purpose of the committee. It is so that we can ask ministers questions, and let us be clear — I am not asking the minister a question that he necessarily even needs to know the answer to. He has an advisers box full of departmental representatives, and if the minister does not know the answer, maybe Mr O'Brien — who by the way is a member of the committee that wrote this paragraph — knows the answer to the question. If he wants leave to answer it, I am happy to give it.

The question is not whether or not the government stands on its dig; the question is: if an express statutory derivative use immunity is not a less restrictive means available, can the minister explain why — why, not whether — it is not?

The DEPUTY PRESIDENT — Order! I will call Ms Pennicuik, who wants to discuss this very same point. I think it might assist proceedings if we hear from Ms Pennicuik and then give the minister the opportunity to respond.

Ms PENNICUIK (Southern Metropolitan) — I agree with what Mr Pakula is saying, that the committee has suggested, or put for our consideration, that an express statutory derivative use immunity would or could be a less restrictive means available. But I also draw attention to the minister's letter where he says that this is the case in every other anticorruption commission or inspection body around the country.

I draw to the minister's attention that during my contribution to the second-reading debate I said that under the New South Wales regime a witness may not refuse to take an oath or an affirmation; however, it is not compulsory for a witness to answer any question if the witness has a reasonable excuse for refusing. That is a less restrictive means as well. What I am suggesting to the government is that this is an issue that has been drawn to the attention of the Parliament. We have paid attention to it and have raised concerns about it. It may be that neither the ALP nor the Greens have put forward an amendment, but the Scrutiny of Acts and Regulations Committee has raised significant concerns about it and responded to the minister's letter, and I suggest the minister's letter was not completely accurate. I am suggesting that the government should relook at this provision of the bill and the act.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I will take Mr Pakula's question first, in which he referred to the advisers box which is, quote, 'full of advisers'. The advisers have advised me there are no less restrictive means and therefore the minister's response stands, per the letter. In terms of Ms Pennicuik's question, the New South Wales Independent Commission Against Corruption inspector has the powers of a royal commission. The New South Wales Royal Commissions Act 1923 includes a provision abrogating the privilege against self-incrimination, the Western Australian Corruption and Crime Commission inspector and the Queensland Crime and Misconduct Commission inspector abrogate the privilege against self-incrimination, and under new section 33T inserted by this bill a person is not excused from answering a question on the grounds of the privilege against self-incrimination. New section 33P states that it is an offence for a summoned witness to fail to answer a question without reasonable excuse.

Hon. M. P. PAKULA (Western Metropolitan) — Deputy President, I do not know how long the minister wants to do this. I must say I think his behaviour is grossly disrespectful to the Parliament. We have a committee of this Parliament, which has a government majority, that has a responsibility for bringing matters to the attention of the Parliament. It has done that appropriately and in accordance with its obligations, and it has queried the minister's response. I do not query the minister's response itself. I simply ask the minister at the table to explain to the Parliament, so that we all have a better opportunity to vote on this bill in proper knowledge, that if he says the minister's answer

stands — and he has said that over and over again — why it is that the minister refuses to engage on that matter, taking into account the Scrutiny of Acts and Regulations Committee's further comment, which it has specifically referred to the Parliament for our consideration, that an express statutory derivative use immunity might in fact be a less restrictive means available to achieve the purpose of clause 12?

I am not asking him to simply continue to repeat that the government's response stands. Since that response was given the Scrutiny of Acts and Regulations Committee has provided further information for the Parliament, which we are entitled to interrogate. If the government believes an express statutory derivative use immunity would not be a less restrictive means, we are entitled to find out why it believes that. That is all we are asking. We could have had this done and dusted 20 minutes ago if the minister would simply engage and deal with the question raised by the principal legislative scrutiny committee of the Parliament. I ask the minister again to tell me: if an express statutory derivative use immunity is not a less restrictive means available, why not?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I have nothing further to add in regard to the previous answers because I believe I have answered the question. The committee refers to Parliament for its consideration. The government's position is that it is reflected in the bill, and it is reflected in the minister's response, as has been outlined.

Ms PENNICUIK (Southern Metropolitan) — Further to what I said before, I query the minister's response because I pointed out, notwithstanding what the minister has just read out about the royal commission powers that the New South Wales inspectorate has, that it still has that qualifier that a person may refuse to answer a question. That is not the case under this bill. For the minister to suggest that it is exactly the same everywhere else is not correct. Mr Pakula raised the further comment made by the Scrutiny of Acts and Regulations Committee, which it does not do very often. It does not always make a further comment — —

Mrs Peulich — Of course it does.

Ms PENNICUIK — Not after a minister's letter.

Mrs Peulich interjected.

The DEPUTY PRESIDENT — Order! We have been going well and we have 2 minutes until 10.00 p.m. when we will be required to report progress. I am happy to do that, or we can see what we can deal with in the 2 minutes.

Mrs Peulich interjected.

The DEPUTY PRESIDENT — Order! Mrs Peulich, enough.

Ms PENNICUIK — As I was saying, I am concerned about that. My point is that the abrogation of the right to not self-incriminate is a serious issue, and if there are ways of ameliorating that which have been put forward by me and by SARC, the government should consider them. I agree with Mr Pakula. On this question and on clause 10 the minister was just reading out the minister's response, which we have all read, and not engaging with the committee. We have now spent nearly an hour in committee, not through any fault of our own, trying to get the answers to questions. I still have another small question to ask. I really only had the two issues to raise — this one and the other one — and through no fault of either Mr Pakula or me, we are now still standing here at 1 minute to 10 in the evening.

This is a serious issue that has been raised by the committee and by us, and we have not been able to get the minister to do anything but read from pieces of information that we already have and clarify those further. Mr Philip Davis got up before and said on a point of order and in his second-reading contribution that we could take this bill into committee and scrutinise it — that was our right, and that was accountability and transparency et cetera. We are not getting any of that in this committee stage so far.

Mr P. DAVIS (Eastern Victoria) — Could I contribute to this?

The DEPUTY PRESIDENT — Order! Mr Davis is perfectly entitled to do so for 5 seconds.

Mr P. DAVIS (Eastern Victoria) — I am delighted that we are having an exhaustive committee stage, because I am sure that at the completion of it all members of the house will be satisfied with the information that has been provided. The minister is making a genuine attempt to — —

The DEPUTY PRESIDENT — Order! It being 10 o'clock, I am required to interrupt the committee and report progress.

Progress reported.

Business interrupted pursuant to sessional orders.

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

That the sitting be extended.

Bells rung.

Mr Lenders — On a point of order, President, the doors to the chamber are still open. I ask you generally: what is the status of a division when members can wander in and out of this house?

The PRESIDENT — Order! The Leader of the Opposition has posed a valid question. As members would be aware, there is currently a union industrial campaign proceeding, and the house and members have been given notice of that campaign. It is understood that it is protected action under the provisions of the Fair Work Act 2009. I can only give an assurance to the Leader of the Opposition and the house that I am keeping an eye out — over both shoulders — to ensure that nobody comes in whilst this vote is in progress. I can only suggest that I am using my best endeavours to ensure the integrity of the vote.

House divided on motion:

Ayes, 20

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

Noes, 17

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

Pairs

Finn, Mr	Darveniza, Ms

Motion agreed to.

VICTORIAN INSPECTORATE AMENDMENT BILL 2012

Committee

Resumed from earlier this day; further discussion of clause 12.

Mr P. DAVIS (Eastern Victoria) — My contribution was interrupted by the desire of the house to report progress and consider the issue of an extension of the sitting. I note that during the brief adjournment of the committee stage members on the other side — the Greens and the opposition — joined together to oppose the motion on the extension of the sitting. Given that I have just listened to the pejorative remarks made by Ms Pennicuik and previously by opposition members in relation to their dissatisfaction with the minister's response to their interrogation of him, and given that I have observed the minister showing enormous forbearance, tolerance, patience and goodwill to the committee, I am extremely alarmed at the attitude and the frankly overt hypocrisy of the position that has been expressed during the course of this committee stage and just momentarily in the contribution on clause 12 made by Ms Pennicuik and opposition members.

In fact the opportunity is here to continue to sit and to pursue the detailed scrutiny through the committee stage that I invited the member earlier in the night to pursue, and indeed she acknowledged that just prior to the brief adjournment.

The DEPUTY PRESIDENT — Order! The decision about extending or not extending the sitting has been made by the house, and I ask Mr Davis to deal with clause 12.

Mr P. DAVIS — Deputy President, in relation to clause 12, as we all understand the committee stage, it is not just an opportunity to do a Q and A and ask questions — we can do that on Monday nights on the ABC. The issue here is that members are entitled to debate the issues around clauses. I am debating issues raised by members of the opposition and the Greens in relation to clause 12, and I will persist in doing that momentarily. Thank you very much for your assistance, Deputy President.

In relation to this matter, before I was interrupted by the Chair I made the point that it is entirely hypocritical for Ms Pennicuik to belabour the point that she is dissatisfied with the advice being given by the minister when he is endeavouring to give a response that is coherent, cogent, relevant and responsive to the issues that she has raised and then to have the temerity to say

she does not want to persist with the scrutiny. What I say to Ms Pennicuik is that we have the opportunity to examine these issues in detail, and the minister has made himself available to do so. It may be the case that it may take a little longer for Ms Pennicuik to get the precise intuitive response that she is seeing — I suspect we are splitting hairs here on a number of issues. Ms Pennicuik is seeking to have the minister answer a question in a particular way, and the minister has indicated quite clearly that he does not want to respond exactly in the way that the member would wish. I am sure that the minister will, if the member persists to examine him, in the end give all the information that the member is seeking by way of comfort.

The purpose of the committee stage is to provide an extended period of detailed examination so that all of the provisions in the bill — that is, the detailed provisions of clauses — can be understood by the house. Personally I am very pleased with the responsiveness of the minister and pleased that he is making a genuine effort to deal with the questions and issues being raised through the committee stage. If the member is dissatisfied, I would encourage her to persist and ask further questions. Perhaps it might be incumbent upon her to make clear what it is that she really wants to know, because perhaps the reason that she is dissatisfied with the answer is that she has not been asking the right question, so I implore the member to be more precise and to give the minister an opportunity to give a more responsive answer.

Hon. M. P. PAKULA (Western Metropolitan) — If only what Mr Davis was suggesting were so. Let me very briefly lay out why there is absolutely no inconsistency between the line of questioning and the position taken by the opposition and the Greens on the one hand and our opposition to the extension of the sitting on the other.

Quite contrary to what Mr Davis has suggested, the minister has made it very clear that he has no intention of answering the question, so while he says, 'If you just keep probing, you might get the answer you want', in fact the minister has already closed that option off. The minister has said, 'You have the response from Minister McIntosh in writing; that is the answer, and it is not going to change'. No matter which way we ask the minister to deal with the fact that SARC has questioned Mr McIntosh's reply, the minister has indicated that it is his intention to rely on Minister McIntosh's reply no matter how the question is framed. In those circumstances I would have thought that it was absolutely consistent for the opposition to say that this committee should reconvene on Thursday, because perhaps between now and then the minister can get the answer to the question asked by the opposition and by the Greens, not the answer the minister chooses to continue to repeat.

What I say to Mr Davis and to the committee is that in those circumstances there is absolute consistency between the position that we have adopted during this committee stage and the position that we adopted on the question of the extension of the sitting. In fact there is no point in continuing to go on and on getting the same answer, and it is just possible that if the committee does reconvene on Thursday, between now and then there can be some discussions between this minister and Minister McIntosh. The specific question that is being asked by the opposition, and to some extent by Ms Pennicuik, is for the minister to explain the response to the position of the Scrutiny of Acts and Regulations Committee where its members have queried Minister McIntosh's reply and raised the possibility that there is a less restrictive means, being an express statutory derivative use immunity. What we are asking is that the minister explain the inconsistency as it appears between the minister's response and SARC's reply to the minister's response as backed by the Supreme Court Chief Justice Marilyn Warren.

I will ask the minister that question one more time, but I indicate to the house and to Mr Davis that if the minister persists in answering the way he has answered thus far, it would be in the interests of all of us for the committee to reconvene on Thursday. Perhaps between now and then the specific answer to the question we have asked might be provided.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — In terms of the government's response, obviously the minister provided a response to SARC, and SARC, in its further comments, said:

> The committee refers to Parliament for its consideration the question of whether providing an express statutory derivative use immunity would be a less restrictive means available to achieve the purpose of clause 12.[7]

Footnote 7 states:

> In *Re an application under the Major Crime (Investigative Powers) Act 2004* [2009] VSC381 78, [78], the Supreme Court of Victoria rejected an argument that 'the residual discretion of a trial judge to exclude evidence is a sufficient mechanism for upholding the rights contemplated by the charter.'

As I have indicated before, the government is advised that there are no less restrictive means reasonably available to achieve the purpose of this clause — that is, that as I have indicated before, the minister's response stands. The government does not consider that a

statutory derivative use immunity would enable the inspector to achieve the purposes of the bill. The government believes that the appropriate course is to allow the use of derivative information to be determined by the court. Attempting to provide limitations on derivative use immunity by statute does not provide the flexibility that is appropriate as when the matter is left for the court to determine on the individual facts and circumstances so that the Victorian Inspectorate can undertake its functions properly. In accordance with that, the government's view is that the matter has been dealt with.

Hon. M. P. PAKULA (Western Metropolitan) — I have one more question for the minister. Why did he not say that an hour ago?

Ms PENNICUIK (Southern Metropolitan) — Before I go to my next question, which is on a different issue, I would like to briefly go to what Mr Davis said. I thank him very much for the lecture he gave me during the committee stage and would like to rebut what he said. There was no contradiction in our voting against the extension of the sitting, because in good faith I had mentioned to the Deputy Leader of the Government and to the Government Whip, when they asked me how many questions I had for the committee stage, that I had two issues to raise which should not take long. Mr Pakula also had an issue to raise on clause 10, and that went on for ages while the minister read out his answer ad nauseam. We were querying the minister's answer to the Scrutiny of Acts and Regulations Committee. The minister's answer did not even answer the question that the committee asked him.

The same procedure went on during the questioning about clause 12. I agree with Mr Davis that the minister has been even-tempered during this, but he has gone through the same process — with respect to him — of reading out the minister's response to the SARC question. He has not gone any further than that when we have questioned aspects of the minister's answer and the further comment by SARC. I did not belabour anything; I mentioned it only once. Mr Davis said I belaboured it; I only said it once, at the end. My comment to the government was that this is an important issue. Other less restrictive means were put forward by SARC that are extant in the New South Wales regime could be used. The government should look at them. That is what I said 15 seconds before the interruption of the proceedings.

I rebut pretty much everything Mr Davis said. It was not inconsistent, because it is no fault of ours as we have stood here asking questions and getting no answers that the whole committee stage has gone on as long as it has.

The DEPUTY PRESIDENT — Order! I have given Ms Pennicuik fair leeway to respond to Mr Davis's points. We are now on clause 12, and I ask Ms Pennicuik to come back to that rather than the issue of the extension of the sitting.

Ms PENNICUIK — Thank you, Deputy President. You gave me a fair go and had a fair go at me, so I thank you for that.

The provisions in new section 33, particularly sections 33E and 33K, state that if a summons were given to a witness who was found to be under 16 years of age, then the summons would not stand. But a witness between the ages of 16 and 18 can be summonsed to appear as a witness at a VI inquiry. Under section 33E(3) that should only happen if:

> (a) the information, document or thing that the person could provide may be compelling and probative evidence; and
>
> (b) it is not practicable to obtain the information, document or thing by any other means.

That is the provision that I am concerned about — the appearance of minors at a VI inquiry, which is done in private under the bill. Given that clause 7 of the bill sets out the functions, which are fairly limited:

> (e) to inspect and audit relevant records …
>
> (f) to report to the minister …
>
> (g) to report on, and make recommendations as a result of, the performance of its duties and functions under paragraphs (a) to (d) —

I wonder in what circumstances a minor would be required to be summonsed. In what sort of scenario would the minister envisage that a minor would be summonsed to a VI inquiry, which I assume is to look at the conduct of IBAC and IBAC officers?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I thank Ms Pennicuik for her question. The government is absolutely committed to the proper, fair and appropriate treatment of persons aged between 16 and 18 under these historic reforms to Victoria's integrity system. As I have already indicated, the Victorian Inspectorate will have the capacity to commence investigations whether or not a particular IBAC investigation is on foot. For the first time a dedicated broadbased anticorruption body will have special powers to investigate more than 250 000 public sector employees, including persons employed at schools and other educational institutions,

members of Parliament, ministers, ministerial staff, parliamentary staff, all councillors and council staff, judges, public prosecutors, consultants to government and contractors to government engaging in public functions. All public servants, employees and office-holders of all government departments, agencies and authorities will be subject to IBAC's jurisdiction.

In such circumstances, where IBAC will be able to conduct investigations into various public bodies which have an involvement with persons aged between 16 and 18 — for example, schools and other educational institutions — it is absolutely appropriate that the Victorian Inspectorate will also be able to look into these matters. There are appropriate safeguards in place to ensure that persons aged between 16 and 18 are treated fairly. Clause 12 inserts new section 33K, which states that a witness under 18 must be accompanied by a parent, guardian or independent person. This is an important protection. The Victorian Inspectorate may only issue a witness summons to a person under 18 in the circumstances set out in new section 33E(3) — that is, where the evidence may be compelling and probative and where it is not practicable to obtain the information by other means.

All Victorians, including those between the ages of 16 and 18, will benefit from these historic reforms.

Ms PENNICUIK (Southern Metropolitan) — I think this is an important issue, because the Law Institute of Victoria has raised the issue of the Victorian Inspectorate doing merit reviews of IBAC inquiries. As we understand it, the Victorian Inspectorate is being set up to oversee the activities of IBAC and IBAC officers. My question went to what sort of scenario would involve a minor being summonsed to a Victorian Inspectorate inquiry, which, even though this bill does not suggest — —

Hon. M. P. Pakula — If a minor works for IBAC?

Ms PENNICUIK — A minor would not be working for IBAC. That is my point. There would not be an IBAC officer who is under 18, probably not even under 30. My question is: what sort of scenario would require this? It is a very important issue when you consider the other issue we have been talking about under this clause, which is the abrogation of the right to not self-incriminate. Under this bill that would apply to someone between the ages of 16 and 18, and we have just spent 40 minutes going round and round on that one. I need to know from the minister what sort of scenario this would be, because I hope that it would never happen.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — As I indicated, I have answered that question and have given an example in relation to IBAC being able to conduct investigations into various public bodies which have involvement with persons aged 16 to 18. I gave the example of schools and other educational institutions. We believe the legislation is appropriate.

Ms PENNICUIK (Southern Metropolitan) — The minister raises the issue of schools. Is he suggesting that in the course of Victorian Inspectorate oversight of the activities of IBAC that a person who was enrolled in a school and is between 16 and 18 could be summonsed to an inquiry by the Victorian Inspectorate and be subject to the coercive powers et cetera and have their right to silence abrogated under this bill?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I again reiterate that the government is absolutely committed to the proper, fair and appropriate treatment of persons aged between 16 and 18 under these historic reforms to Victoria's integrity system. As I have already indicated, the Victorian Inspectorate will have the capacity to commence investigations whether a particular IBAC investigation is on foot or not. The government believes that all Victorians, including those between the age of 16 and 18, will benefit from these historic reforms.

Ms PENNICUIK (Southern Metropolitan) — The minister is again repeating answers, reading from a script and not answering the issues I have raised in relation to this bill about the seriousness of exposing children between the ages of 16 and 18 to the coercive regime in this bill. The only safeguard — and I acknowledge there is a safeguard — is that there will be an independent person present, but will that independent person be able to look after the rights of a minor? How is a minor going to know what their legal responsibilities and rights are, and why should they be subjected to a coercive regime?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — The circumstances in which the Victorian Inspectorate may examine a person between the ages of 16 and 18 are very limited, and the ability would only be able to be used in rare circumstances and would be subject to all the protections in the bill.

Ms PENNICUIK (Southern Metropolitan) — My point is that there are no protections in the bill. It is a coercive regime that does not allow people to refuse to answer questions. Clause 12 of the bill has a lot of problems in it, notwithstanding the ones we have raised about the abrogation of the right not to self-incriminate.

We have now established that there is no escape for people aged between 16 and 18. I have not heard any good reason why they would be summonsed to an inquiry by the Victorian Inspectorate in the first place, because none of them would be IBAC officers, and the job of IBAC is to oversee the behaviour of IBAC officers and their compliance with statutory requirements, about which of course we do not really know, but in any case I cannot see any rationale for a minor being subjected to this coercive regime.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I outlined specifically for the first time the powers that a dedicated broadbased, anticorruption body will have to investigate, and I outlined a whole range of individuals who will be subject to that. I then said that in circumstances where IBAC will be able to conduct investigations into various public bodies which have involvement with persons aged between 16 and 18 — for example, schools and other educational institutions — it is absolutely appropriate that the Victorian Inspectorate be able to look into these matters, and the legislation reflects that.

Ms PENNICUIK (Southern Metropolitan) — For argument's sake let us accept that the Victorian Inspectorate needs coercive powers to get the truth out of an IBAC officer who has been involved in bribery et cetera. I cannot understand why a minor who is not an IBAC officer, who does not hold powers that an IBAC officer has, who does not hold the information that an IBAC officer has, can possibly be compared to an IBAC officer and thereby be exposed to the same coercive regime as an IBAC officer. If the minister accepts what I said before, the minor could be a student enrolled in a school where somehow or other a public servant at that school was being implicated. They are two different things. Why has the government not provided more protection for minors under this clause?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — Again Ms Pennicuik has asked why there are no protections. Maybe if I refer the member to new section 33K(3), she will see that there is protection. It is ultimately a matter for the Inspector to determine in what circumstances any witness may be summonsed, including any person aged between 16 and 18.

Committee divided on clause:

Ayes, 34

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

Noes, 3

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

Clause agreed to.

Clauses 13 to 23 agreed to.

Reported to house without amendment.

Report adopted.

Third reading

Motion agreed to.

Read third time.

JUSTICE LEGISLATION AMENDMENT BILL 2012

Introduction and first reading

Received from Assembly.

Read first time on motion of Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations).

ADJOURNMENT

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

That the house do now adjourn.

Department of Primary Industries: regional job losses

Mr LENDERS (Southern Metropolitan) — The matter I raise on the adjournment tonight is for the attention of the Minister for Agriculture and Food Security, Peter Walsh, and it concerns funding provided to regional Victoria and particularly the funding provided to run the Department of Primary Industries' (DPI) regional offices. For the benefit of the house I will quote from the editorial in last Thursday's *Stock*

and Land, which should be of great importance and interest to the minister.

Stock and Land expressed its 'dismay' at the Liberal-Nationals government's intention to cut one in five jobs in the Department of Primary Industries. Even more concerning are reports that these job cuts will come from those DPI staff based on the ground in regional and rural Victoria. This is from *Stock and Land*, not from me. *Stock and Land* goes further and states that The Nationals love to bask in their reputation of supposedly being the farmers' friends, but that is proving to be far from the case.

The editorial calls on the minister and his party to actually do something for a change and to pressure colleagues to ensure that regional Victoria does not suffer a disproportionate burden of this government's slash-and-burn approach to jobs and service delivery. A job lost in regional Victoria is a job that is hard to replace, and every regional town that has lost jobs knows that. The editorial goes on further and says:

> … we were far better off under the Brumby government in terms of agricultural investment.

That is from *Stock and Land* — its view of the upcoming budget. The action I seek from the minister is that he commit to there being no staff cuts in the Department of Primary Industries in this budget.

Rail: Balaclava station

Mrs COOTE (Southern Metropolitan) — I direct my adjournment matter to the Minister for Public Transport, Terry Mulder. I would like to congratulate the minister because he has in fact listened to the member for Caulfield in the other place, David Southwick, who spoke to him prior to the election about Balaclava station. Balaclava station was a dark and scary place. There was graffiti everywhere; and I know people in this chamber would agree with me when I say it was a particularly nasty place.

However, Minister Mulder has honoured his election promise, which was to upgrade the station. He has recently announced that $13.3 million is going into an upgrade of this dark and scary place. He has issued an invitation for rail users and locals to have their say on the upgrade. The concept design can be viewed at the St Kilda library, and the minister has asked people for their comments and suggestions. It is a good opportunity for locals to have their say on this important upgrade. Project staff are apparently going to be on hand on Saturday, 28 April, and Thursday, 3 May, to answer questions about the design and the construction.

One of my constituents has had a really good idea for railway stations. She said she thought it would be a really good idea if planter boxes filled with herbs were put at each railway station so that on their way home from work people could pick some herbs and put them into their salads, their pasta or their soup. This is an excellent idea and is certainly something to be considered. I am going to encourage her to go and meet with the project staff on Saturday, 28 April, or Thursday, 3 May, and to put forward her suggestion because it could be used at Balaclava station.

The action I seek from the minister is that he continue to actively encourage Balaclava rail users to engage in this very important process.

Dingley bypass: construction

Mr TARLAMIS (South Eastern Metropolitan) — The adjournment matter I raise tonight is for the Minister for Roads and relates to the Dingley bypass. Prior to the last election both the Labor and Liberal parties committed to the construction of the Dingley bypass. The Baillieu government has promised $55 million.

The action I seek is that the minister provide some clarity and certainty for local residents who will be affected by the construction of the Dingley bypass. Local residents have raised with me their concerns over the sound walls or similar devices which will be a feature of this arterial road, their cost and the overall cost of the Dingley bypass, what land will be compulsorily acquired and which roads will be closed. Members of the community and local residents have a right to know the answers to those questions.

Despite promising $55 million, the Baillieu government only delivered $20 million in its last budget, which is just over one-third of its election commitment. This project is far from being implemented, despite the government's ironic media release featuring a stamp saying 'policy implemented' for this project. I must have a different interpretation of the word 'implemented'.

The uncertainty surrounding the Dingley bypass is exacerbated by the fact that, according to VicRoads, it is not likely to have sound walls. This arterial runs alongside residential areas, and I, along with many local residents, am concerned that the increased traffic noise locally will have a detrimental impact on local amenity. Other arterial roads near to or adjoining this project feature sound walls, and I question the government's commitment to funding aspects which are important to the community and not just the road users.

It is also anticipated that the construction of the Dingley bypass will result in a number of road closures and forced land acquisitions. I hope the Baillieu government will treat fairly those whose land is to be compulsorily acquired and will consider the impact on the community of any road closures.

The money allocated so far is well short of the amount required to complete this project. It is worth noting that the member for Mordialloc in the other place, Lorraine Wreford, has failed to raise any of the concerns raised with me by local residents or to advocate for the shortfall in funding.

VicRoads is doing a good job, with a difficult government, of getting in contact with the local community. It held a community forum and has written over 18 000 letters to inform the local community of the goings-on with the bypass, but it is now time the government showed the same commitment. I call on the minister to provide certainty to the community and have regard to the many concerns of the local residents so that they know exactly what they can expect from the construction of this project. The government needs to ensure that it is properly funded and is not another project that is not delivered during this term of government.

Rail: Altona loop service

Ms HARTLAND (Western Metropolitan) — My adjournment matter tonight is for the Minister for Public Transport, but, unlike Mrs Coote, I have nothing to congratulate the minister on. Obviously we are treated much differently in the western suburbs.

It has been almost one year since the Greenfields train timetable was introduced, and it has resulted in the Altona loop trains being cut in five ways. The passenger impact statement obtained by the Greens at the time revealed that the Altona loop was badged with five capital Ls, presumably meaning 'Losers'. These cuts meant a bad train service got even worse, but, as I have witnessed, the scale of the negative impact may not have been foreseen. It is now very clear; it is unacceptable and it must change.

Every public transport customer satisfaction survey filled in since the introduction of the new timetable shows that the Altona loop commuters are the most dissatisfied on the whole train network. Many have been forced off public transport and into cars. Others can no longer participate in social and cultural activities, such as members of the Finnish Society of Melbourne seniors group. The volunteer philosophy teacher was forced to quit the Altona senior citizens centre. The elderly and those with a disability have been hardest hit — for example, Annemarie Kelly, who has a vision impairment, has been forced to take action in the Victorian Equal Opportunity and Human Rights Commission.

Mount St Joseph's Girls College has had to change its school start and finish times due to the extended time students need to travel. There were also safety concerns as girls were spending a lot more time at the train stations waiting for the next train.

This is just the tip of the iceberg. Over 2000 residents signed a petition. Hundreds of complaint letters were delivered to the minister and his colleagues. Hundreds of residents attended a community meeting, and they held a forum at Parliament House, which the minister did not bother to attend. Residents peacefully protested both at the minister's office at Parliament House and locally. Numerous media outlets wrote stories.

Today I am delivering to the Premier more than 800 personally signed postcards from Altona residents, and there are more to come. Each is calling for the duplication of the Altona loop single track as far as is possible and, in the meantime, more frequent trains, including trains that go directly through the city loop. I ask that the minister make the required timetable amendments so trains run directly to the city, including trains that go through the city loop. I also ask the minister to move on the duplication of the single track — a relatively easy task — from either end of the Altona township to allow for increased frequency of services. I would also suggest to the minister that the previous government lost the election on the basis of neglect of public transport, and I hope this government does not make the same mistake.

Rail: fencing

Hon. M. P. PAKULA (Western Metropolitan) — The matter I wish to raise is also for the Minister for Public Transport. It concerns the issue of railway fencing, particularly where the rail corridor abuts private land.

Last week I met with a constituent, Mr Shaun Rodgers, who told me about an incident that occurred early in the morning of 22 March. Some youths crossed the railway tracks in Yarraville, not far from my electorate office. Those youths entered a property on Wilson Street in Yarraville through an area where the fence between the railway corridor and private property has fallen into disrepair. That property abuts the property of Mr Rodger's next-door neighbour. There are two

buildings which are extremely close to one another on those two properties.

Whilst the youths were on the property that they entered through the gap in the railway fencing they set fire to an old shed containing an old car. That fire burned within metres of the home of Mr Rodgers' neighbour. I am happy to provide the minister with an aerial photo which demonstrates just how close those two properties are. It was put to me by Mr Rodgers that it was lucky the fire was lit at 8.00 a.m. rather than at 5.00 a.m. when everybody would have been asleep, because it might have led to tragedy.

The action I seek from the minister is that he provide me with some clarity around the matter of responsibility for fencing which divides the railway corridor from private property so that I can convey that to my constituent. Specifically I ask what responsibility resides with VicTrack or the metropolitan franchisee for maintaining that fencing, what responsibility resides with the landowner and what steps the landowner or another interested party can take to have the rail authorities examine a specific situation like the one that was brought to my attention by Mr Rodgers.

Housing: Our Voices project

Ms CROZIER (Southern Metropolitan) — My adjournment matter for this evening is for the Minister for Housing, who is also the Minister for Children and Early Childhood Development, Wendy Lovell. I am pleased to say that the government recently announced details of a $36 000 employment support initiative project called Our Voices, which is aimed at disadvantaged and vulnerable people in the area of St Kilda, including many people who are homeless and those who are not currently working.

The Our Voices project will operate in partnership with the City of Port Phillip and the Department of Planning and Community Development. It will provide real and practical benefits for some of St Kilda's most disadvantaged people, and it will go on to build public housing tenants' work skills through their participation in a leadership program and through a series of local events and activities. Each project will be in collaboration with local employers and service providers and ensure that training and work experience will lead to continuing employment for many of these people who are experiencing some form of disadvantage.

The Our Voices project will be auspiced by the Port Phillip Community Group and, as I said, delivered in partnership with the City of Port Phillip, the Inner South Community Health Service, the Inner South East Partnership in Community and Health, the New Hope Foundation, the St Kilda Youth Service, the Sacred Heart Mission, the Good Shepherd Youth and Family Service, Gatehouse, the Department of Human Services and the Department of Planning and Community Development.

I am pleased that the Victorian government is committing to tackle the issue of poverty and disadvantage and is providing opportunities for training and employment by undertaking projects such as this. The Our Voices project is keeping with the Victorian government's commitment of a $4.6 million initiative to establish five work and learning centres in locations such as St Kilda with high concentrations of public housing and disadvantage. The action I ask of the minister this evening is that she come with me to visit the Our Voices project and see firsthand the outcomes of the project and what benefit it is providing to those people who are participating in the project.

William Ruthven Secondary College: funding

Ms MIKAKOS (Northern Metropolitan) — My matter this evening is for the Minister for Education. At the end of 2010 the merger of William Ruthven Primary School, Lakeside Secondary College and Merrilands College created William Ruthven Secondary College. It was envisioned that the school would be a super-school, with newly refurbished buildings, and that it would be situated at the site of the Merrilands College.

Whilst funding for planning and design works at William Ruthven Secondary College were committed by the Brumby government, the coalition did not commit to the completion of this project at the last election, and the completion of the project has been stalled for the last 16 months. The proceeds from the sale of the old Lakeside Secondary College could and should go towards new buildings at William Ruthven Secondary College. Darebin City Council has also recently thrown its support behind this proposition, voting at its last council meeting to lobby both the Premier and Minister Dixon.

Of course this school is just one of many in my electorate to miss out on funding in last year's state budget, and it is time the issue was addressed. The Baillieu government's significant lack of investment in education is bitterly disappointing for the thousands of Victorian government schoolchildren in the northern suburbs. This is why it is more important than ever that any underutilised educational facilities or land within my region be available for community use or, if that is

not possible, the proceeds be redirected to other schools in the area.

The City of Whittlesea has also sought a commitment from the Department of Education and Early Childhood Development in relation to Peter Lalor Vocational College, Lalor Park Primary School and the former Mernda Primary School. These three sites have the potential to become vibrant community precincts, enabling social, educational and recreational outcomes for local communities situated in Melbourne's growing northern corridor. I therefore call on the Minister for Education to ensure that educational facilities in the north are in fact used for the north. I am specifically seeking that proceeds of the sale of the former Lakeside Secondary College site be allocated for the completion and rebuilding of William Ruthven Secondary College and that surplus education land in my electorate be considered for possible social, educational or recreational use.

Toyota Australia: job losses

Ms TIERNEY (Western Victoria) — My adjournment matter this evening is directed to the Premier. It deals with a very serious matter, and that is a matter I raised earlier today in relation to Toyota. Without repeating my members statement, I refer the Premier to the contents of my members statement so that he is acquainted with the background and the industrial and political context of what is happening at the Toyota Altona plant.

Further to the points I have previously made, the chamber is informed that the redundancies have been deliberately targeted and directed at workers who are on light duties — that is right — after being injured at work while working for Toyota. All those workers are gone; they have all been sacked. In addition, over 50 per cent of all shop stewards and occupational health and safety representatives have been sacked. All three groups have not only been targeted but will obviously have more difficulty than most in gaining future employment. Furthermore, all workers sacked at Toyota this week will have to fight the false assumption that they are not up to par as workers.

Toyota workers I have spoken to over the last two days have had 19, 26, 23, 22, 24 and 25 years of service. They have never received warnings. They have extraordinary banks of sick leave. They have been promoted and have sought and completed training and courses. They are good, solid workers now labelled as unskilled and unreliable. Oh, what a feeling! I think not. I call on the Premier tonight to make a public statement on the events at Toyota this week indicating that Toyota's actions have gone far beyond the realm of acceptable management practice and that a cooperative approach to such matters is critical. To not do so only gives the green light to other employers to act in the same inhumane manner.

Roads: Eastern Metropolitan Region

Mr LEANE (Eastern Metropolitan) — My adjournment matter is directed to the Minister for Roads. The action I seek is for the minister to fully fund and build the roadworks in Eastern Metropolitan Region which were pre-election commitments by his government.

I will touch on four projects that were committed to. One project is the duplication of Stud Road between Boronia Road and Mountain Highway in Bayswater. I concede that there was some money in the last budget to plan this project, but I call on the minister to fund and start some work out there. A set of traffic lights was committed to at the intersection of Tormore Road and Boronia Road in Boronia. It was good that there was some money for that project in the last budget as well, but up to this point no work has been undertaken.

There was also a commitment for some traffic lights in Mooroolbark at the intersection of Hull Road, Cardigan Road and Brice Avenue. There seems to be some confusion about whether this commitment will be delivered. There was a commitment of $800 000 for the project, but there seem to be some different messages about whether this will be delivered by the government. Some traffic lights were also promised for the intersection of Eastfield Road and Morinda Street in Croydon South. There seems to be a question mark over whether the amount of funding that was committed will be enough to build the lights at this intersection. I reiterate my call for the minister to fully fund the projects that were committed to by his government. It would be great to see them built rather than just planned for.

The PRESIDENT — Order! I will let that adjournment matter stand, but I indicate to members that only one matter is supposed to be raised on the adjournment. I suppose the four projects were neatly put, and I will let the matter stand tonight, but members need to be mindful that it is not a smorgasbord when it comes to the adjournment; matters need to focus on one specific item. I am taking the view with this one that the issue was to address some budget provisions for particular projects.

Responses

Hon. M. J. GUY (Minister for Planning) — There is a smorgasbord of responses coming up. Mr Lenders raised a matter for the Minister for Agriculture and Food Security, Peter Walsh, in relation to Department of Primary Industries offices across regional Victoria and staff cuts, and I will pass that on to the minister for his response.

Mrs Coote raised a matter for the Minister for Public Transport in relation to Balaclava station. Tonight Minister Mulder has a number of responses to deal with, and I will pass this matter on to him as the first of a number.

Mr Tarlamis raised a matter for the Minister for Roads in relation to the Dingley bypass. I am reliably informed by my colleague Mrs Peulich that our policy at the last election was to start the bypass in this term, and we will. VicRoads consultants have been out there doing design works. I remind the member that the previous government did nothing for more than a decade, so the bypass will start under this government, as was committed to. Nonetheless, I will ask Minister Mulder to give a more detailed response.

Ms Hartland raised a matter again for the Minister for Public Transport in relation to rail services through Altona, which obviously originate at Werribee and go into the loop. She believes the service is substandard, and she needs a response. That matter will be sent on.

The former Minister for Public Transport, Mr Pakula, raised a matter for the current Minister for Public Transport in relation to rail fencing. It is a matter that needs a response in relation to whether VicTrack or the private owners of a property are responsible for rail fencing. The minister will get a response to Mr Pakula for that.

Ms Crozier raised a matter for the Minister for Housing, Wendy Lovell, in relation to the Our Voices project, asking if she could visit it to see its outcomes.

Ms Mikakos raised a matter for the Minister for Education, Martin Dixon, in relation to the proceeds of the sale of the former Lakeside Secondary College to William Ruthven Secondary College. I will ask Minister Dixon to respond to the question.

Ms Tierney raised a matter for the Premier in relation to job losses at Toyota.

Mr Leane raised a matter for the Minister for Roads in relation to fully funding the smorgasbord of projects he mentioned in his adjournment matter tonight.

I have written responses to 21 questions raised by members in the chamber.

House adjourned 11.06 p.m.

Minister for Environment and Climate Change

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Mr Wayne Tunnecliffe
Clerk of the Legislative Council
Parliament of Victoria
MELBOURNE VICTORIA 3002

17 APR 2012

Dear Mr Tunnecliffe

LEGISLATIVE COUNCIL ORDER TO PRODUCE DOCUMENTS - WILDLIFE CONTROL

I refer to the Legislative Council's resolutions of 14 March 2012 seeking the production of all authority to control wildlife permits issued by the Department of Sustainability and Environment in 2011.

The Government is in the process of responding to this resolution.

Regrettably, the Government is not able to respond to the Council's resolution within the time period requested by the Council. The Government will endeavour to respond as soon as possible.

Yours sincerely

THE HON RYAN SMITH MP
Minister for Environment and Climate Change

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State Government Victoria